Un nouveau juge à la Cour supérieure

Droit-Inc
Martine Turenne
27 mars 2017

Le gouvernement du Canada annonce une nomination à la magistrature au Québec...
Benoît Moore, professeur à la Faculté de droit de l'Université de Montréal, est nommé juge de la Cour supérieure du Québec, district de Montréal. Il remplace la juge Hélène Langlois, qui a choisi le statut de surnuméraire.

C'est la ministre de la Justice et procureur général du Canada, Jody Wilson-Raybould, qui en a fait l'annonce, en vertu du nouveau processus de nomination à la magistrature annoncé le 20 octobre 2016. Ce nouveau processus « met l'accent sur la transparence, le mérite et la diversité, et se traduira par la nomination de juristes qui incarnent les plus hautes normes d'excellence et d'intégrité », peut-on lire dans le communiqué du ministère de la Justice.

Le juge Moore a obtenu un baccalauréat et une maîtrise en droit de l'Université de Montréal, ainsi qu'un D.E.A. de l'Université Paris I Panthéon-Sorbonne. Il a été stagiaire, puis avocat, au cabinet Martineau Walker (devenu Fasken Martineau), avant de devenir professeur de droit privé à l'Université de Montréal.

Depuis 2006, il est le premier titulaire de la Chaire Jean-Louis Baudouin en droit civil. Il enseigne et publie dans les domaines du droit des obligations et du droit de la famille. Dans ses écrits, il analyse notamment les réponses du droit familial québécois aux changements sociétaux.

Plus d'argent dans le budget

Rappelons que le budget de 2017, déposé la semaine dernière, propose un financement supplémentaire de 55 millions de dollars sur cinq ans, commençant en 2017-2018, et de 15,5 millions de dollars par année par la suite pour 28 nouveaux juges fédéraux.

De ces nouveaux postes, douze seraient alloués à l'Alberta et un au Yukon, les quinze autres étant placés dans un bassin pour les besoins dans d'autres juridictions.

La nomination du juge Moore ne fait cependant pas partie du Budget 2017.

More judges, prosecutors hired to reduce delays in Quebec's justice system

There are almost 700 requests for a stay of proceedings for unreasonable time delays
CBC News
March 27th 2017

The Quebec government says it's making progress in reducing court delays, as the ministers of Justice and Public Security announced they've been hiring judges, prosecutors and support staff.

The Court of Quebec appointed 16 new judges. The province also recently hired 52 new prosecutors and hundreds of support staff were hired to help unclog the province's court system.

"We did everything we could to make it possible," said Quebec Justice Minister Stephanie Vallée.

But there are still several problems, such as waiting for Ottawa to appoint judges to fill the vacancies at Quebec Superior Court.

Vallée said she's encouraged by the federal government's announcement last week to appoint 28 new judges.

"We expect that eight...out of these 28 resources will be appointed in Quebec."

'Delays became completely unreasonable,' criminal lawyer says

Another issue plaguing the system are the 684 requests for a stay of proceedings.

In July 2016, the Supreme court issued the "Jordan decision", which set strict new deadlines on the justice system. Less serious offences must now be wrapped up within 18 months and more serious charges, including murder, have a 30 month deadline.

It's resulted in charges being stayed and cases thrown out — from impaired driving and drug trafficking, to aggravated sexual assault, and even murder.

Lawyers warn court delays are creating black hole in Canada's justice system
'I wanted a conviction': Father says court delays denied his toddler justice
"The Supreme Court of Canada set out a guideline. That guideline is one that says, 'Listen, a person that is presumed innocent is entitled to a trial within a reasonable delay.' What happened over the past few years... is that those delays became completely unreasonable. Sometimes one person would come into our office and say, 'When will I have my trial? When am I going to have my chance to explain to the courts that I did not commit this offence,' for instance. And then your answer would be, 'Well your trial is probably going to be within two years, two-and-a-half years, three years from now," said Philipe Knerr, a criminal lawyer at Schurman, Longo and Grenier.

Knerr said the new appointments and hires are a step in the right direction.

"The appointment of judges has had a profoundly positive impact on the system. Now we just have to see if we have enough courtrooms for all these judges."

Most trial dates for this year are taken, 2018 is filling up quickly, and dates are already being booked for 2019.

With files from CBC's Sean Henry and Salim Valji

Details surrounding new judge remain unclear

The new federal budget is allocating funds to hire at least one new judge in the Yukon.

Whitehorse Daily Star
Emily Blake
March 27, 2017

The new federal budget is allocating funds to hire at least one new judge in the Yukon.

The Liberal government released its budget last Wednesday. It contains a number of funding proposals related to justice across the country.

This includes $55 million over five years and $15.5 million per year thereafter, as well as legislative amendments, to hire 28 new federally appointed judges across Canada.

Alberta and the Yukon are specifically mentioned as jurisdictions that will benefit from the new positions.

But it remains unclear how many judges and what funding the territory will receive. Also uncertain is whether a new judge in the Yukon will be for the territorial or supreme level court.

Currently, the territory has two Supreme Court justices and three territorial judges, with other judges visiting for cases as needed.

Ian McLeod, a spokesperson for the federal Department of Justice, said in an email to the Star that the funding is meant “To help respond to workload pressures facing many courts,” and that “This includes specific positions for courts in Alberta and the Yukon, to address their demonstrated immediate need for additional judges.”

But McLeod said details on the implementation of the proposed funding have not yet been determined.

He added that, “The government will continue to work with requesting jurisdictions to understand, assess and respond to their requests.”

Keeping with Prime Minister Justin Trudeau’s commitment to feminism, the budget also proposes to invest $100.9 million over five years and $20.7 million per year thereafter to establish a National Strategy to Address Gender-Based Violence.

The budget notes, “Violence affects people from all backgrounds, with indigenous women, children and youth, and LGBTQ2 and gender non-conforming people at greater risk of experiencing gender-based violence.”

The strategy will create a centre of excellence within Status of Women Canada to better align existing resources, as well as measures to be implemented by the RCMP and Department of National Defence.

“We’re really excited to see the commitment, particularly the financial commitment the government is making,” said Kirsten Madsen, acting director of the Yukon Women’s Directorate.

“The fact that they are really putting some resources and kind of a shared understanding of the importance of this issue is great news.”

While more details on the strategy have yet to be released, Madsen said, Maryam Monsef, the federal minister of the Status of Women, has reached out to provincial and territorial ministers to discuss this aspect of the budget.

“We’re hoping to talk about the situation in the Yukon,” explained Madsen.

She noted that the directorate and Monsef have a good working relationship.

Jeanie Dendys, the minister responsible for the territorial Women’s Directorate, recently attended a United Nations event on the status of women in New York with Monsef.

The Yukon experiences some of the highest rates of gender-based violence in the country.

In 2011, the Yukon’s rate of violence against women was four times the national average, and the rate of sexual offences against women was more than 3.5 times the provincial average.

On how the new strategy will affect the territory, Madsen said, “I think we’ll know more when more details come out on the specifics, but for now, we’re pleased with the commitment.”

The budget also makes commitments to address the overrepresentation of indigenous people in the Canadian criminal justice system.

This includes $55.5 million over five years and $11.1 million per year ongoing to the Indigenous Justice Program (formerly the Aboriginal Justice Strategy).

The program provides funding for community-based programs that use restorative justice approaches as an alternative to corrections. It currently supports 197 community-based programs and in 2014-15 had about 9,000 referrals.

The Liberals have also proposed $65.2 million over five years and $10.9 million thereafter to help previously incarcerated indigenous people heal, rehabilitate and find good jobs.

This is significant as in 2015-16 in the Yukon, indigenous people accounted for 62 per cent of adults under correctional supervision.

The provincial/territorial average for the same year was 26 per cent, and federally, 27 per cent of adults under correctional supervision were indigenous.

Comparatively, in 2011, indigenous people made up only 23 per cent of the total population of the Yukon and four per cent of the total Canadian population.

Other highlights in the budget related to justice include:

• $107.8 million over five years to deliver provincial and territorial family justice services;

• $81.6 million over five years starting 2018-19 to address the most immediate needs of indigenous police forces;

• $57.8 million over five years to expand mental health care capacity for federal inmates;

• $62.9 million over five years to enhance the delivery of immigration and refugee legal aid services;

• $2.7 million over five years to the Canadian Judicial Council to support programming on judicial education, ethics and conduct; and

• $2 million over two years to the Courts Administration Service to enhance the federal court's ability to make decisions available in both English and French.

More details on budget spending and how it will affect the Yukon are expected in the upcoming months.

Yukon Justice Minister Tracy-Anne McPhee could not be reached for comment before this afternoon's press deadline.

And a representative from the Yukon Department of Justice said they could not comment on the federal budget at this time.

18 nouveaux juges en renfort afin de réduire les délais judiciaires !

Droit-Inc
Martine Turenne
27 mars 2017

Conséquences de l'arrêt Jordan, la Cour du Québec accueille 18 nouveaux juges, dont 16 occuperont des postes additionnels… Ces postes ont été octroyés « pour répondre aux exigences quant aux délais à l'intérieur desquels les poursuites criminelles et pénales doivent être traitées, à la suite de l'arrêt Jordan, de la Cour suprême du Canada », dit le ministère de la Justice.

C'est la ministre Stéphanie Vallée qui en a fait l'annonce.

« L'ajout de ressources additionnelles constitue un grand pas pour que la Cour du Québec puisse déployer de manière récurrente les mesures nécessaires pour assurer le droit de chaque inculpé à avoir un procès dans un délai raisonnable », a dit la juge en chef de la Cour du Québec, l'honorable Lucie Rondeau.

Neuf nouveaux juges à Montréal

Neuf d'entre eux exerceront leurs fonctions principalement à la Chambre criminelle et pénale à Montréal.

Patricia Compagnone était, depuis 2010, juge de paix magistrat à la Cour du Québec. Elle est détentrice d'un baccalauréat en droit de l'Université de Montréal et a été admise au Barreau en 1998. Elle a exercé sa profession de procureure au sein du Directeur des poursuites criminelles et pénales.

Alexandre Dalmau Directeur adjoint des poursuites criminelles et pénales du Québec depuis 2015, Alexandre Dalmau est détenteur d'un baccalauréat en droit de l'Université du Québec à Montréal. Il a été admis au Barreau en 1996 et a commencé sa carrière en pratique privée. À partir de 1997, il a agi à titre de procureur aux poursuites criminelles et pénales au fédéral et au provincial.

Manlio Del Negro exerçait le droit criminel et pénal au sein du cabinet qu'il a fondé en 1989, Del Negro Polnicky Perron, avocats, devenu Del Negro et Associés. Il est détenteur d'un baccalauréat en droit de l'Université de Sherbrooke et a été admis au Barreau en 1984.

Pierre Dupras Depuis 2015, Pierre Dupras exerçait sa profession au sein du cabinet Roy Bélanger Dupras, avocats. Il est détenteur d'un baccalauréat en droit de l'Université de Montréal et a été admis au Barreau en 1985. Il a notamment agi à titre de procureur à la cour municipale de la Ville de Montréal. En 1991, iI s'est joint au cabinet Trudel Nadeau, dont il a été associé à partir de 1993.

Mylène Grégoire était depuis 2014 juge à la cour municipale de la Ville de Montréal. Elle est détentrice d'un baccalauréat en droit de l'Université de Montréal et été admise au Barreau en 1990. Elle a commencé sa carrière au sein du Directeur des poursuites criminelles et pénales où elle a agi à titre de procureure et ensuite de procureure en chef adjointe.

Procureure au sein du Directeur des poursuites criminelles et pénales depuis 2011, Mélanie Hébert est détentrice d'un baccalauréat en droit de l'Université de Montréal. Elle a été admise au Barreau en 1996 et a commencé sa carrière en cabinet privé. Elle a ensuite poursuivi sa carrière à l'Autorité des marchés financiers.

Anne-Marie Lanctôt a toujours exercé sa profession au cabinet Rock Vleminckx Dury Lanctôt et Associés, où elle était associée principale. Elle est détentrice d'un baccalauréat en droit de l'Université de Montréal. Elle a été admise au Barreau en 1985.

Depuis 1999, Flavia K. Longo exerçait sa profession au Cabinet Schurman Longo Duggan, aujourd'hui Schurman Longo Grenier. Elle est détentrice d'un baccalauréat en droit de l'Université de Montréal et a été admise au Barreau en 1998.

Guylaine Rivest Juge de paix magistrat à la Cour du Québec depuis 2014, Guylaine Rivest est détentrice d'un baccalauréat en droit de l'Université de Montréal. Elle a été admise au Barreau en 1999 et a commencé sa carrière comme procureure à la cour municipale de la Ville de Montréal.

David-Emmanuel Simon était, depuis 2005, procureur au sein du Directeur des poursuites criminelles et pénales. Il est détenteur d'un baccalauréat de droit civil et de common law de l'Université McGill. Il a été admis au Barreau en 2002 et a commencé sa carrière dans un cabinet privé.

Alexandre St-Onge exerçait sa carrière en pratique privée en droit criminel. II a fondé le cabinet Gariépy, St-Onge, Marcoux en 2014. Il est détenteur d'un baccalauréat en droit de l'Université de Montréal et a été admis au Barreau en 1993

Quatre nouveaux à Laval

La Chambre criminelle et pénale à Laval se dote de quatre nouveaux juges.

Maria Albanese était procureure au sein du Directeur des poursuites criminelles et pénales. Elle est détentrice d'un baccalauréat en droit de l'Université du Québec à Montréal et a été admise au Barreau en 2002.

Claudie Bélanger Depuis 2013, Claudie Bélanger était juge à la cour municipale de la Ville de Laval et, depuis 2014, elle était également juge-présidente de cette cour. Détentrice d'un baccalauréat en droit de l'Université du Québec à Montréal, elle a été admise au Barreau en 1990.

Elle a d'abord travaillé au Centre communautaire juridique de Montréal. Au cours de sa carrière, elle a notamment agi comme procureure à la cour municipale de la Ville de Montréal.

Serge Cimon était, depuis 2012, juge de paix magistrat à la Cour du Québec. Détenteur d'un baccalauréat en droit de l'Université de Montréal, il a été admis au Barreau en 1989. Il a commencé sa carrière en cabinet privé jusqu'en 1991. Par la suite, il a travaillé à titre de procureur à la Ville de Montréal.

Marc-André Dagenais Procureur au sein du Directeur des poursuites criminelles et pénales depuis 2012, Marc-André Dagenais est détenteur d'un baccalauréat en droit de l'Université de Montréal et d'une maîtrise en droit de l'Université de Sherbrooke. Il a été admis au Barreau en 1999 et a commencé sa carrière à la Société québécoise d'information juridique.

Deux nouveaux à Longueuil

Deux nouveaux juges entre en fonction à la Chambre criminelle et pénale à Longueuil.

Procureur au Service des poursuites pénales du Canada depuis 2000, Dominique Dudemaine est détenteur d'un baccalauréat en droit de l'Université de Sherbrooke. Il a été admis au Barreau en 1992 et a commencé sa carrière en pratique privée.

Magali Lepage exerçait sa profession en pratique privée chez Hébert, Bourque et Downs, aujourd'hui Lepage Carette SNA. Elle est détentrice d'un baccalauréat en droit de l'Université de Montréal et été admise au Barreau en 1995.

Et un nouveau à Gatineau...

Mark Philippe exercera ses fonctions principalement à la Chambre criminelle et pénale à Gatineau. Depuis 2004, il était procureur au sein du Directeur des poursuites criminelles et pénales. Il est détenteur d'un baccalauréat en droit de l'Université de Montréal, et a été admis au Barreau en 2002. M. Philippe, qui est membre de la communauté innue de Mashteuiatsh, a commencé sa carrière comme procureur à la cour municipale de la Ville de Longueuil.

Les 16 nouveaux juges pourront, dès la mi-mai, commencer à siéger.
Selon le ministère de la Justice, l'arrivée des nouveaux juges permettra « d'accroître, à très court terme, le nombre d'heures d'audience dans chacune des régions en cause», et d'éviter « de reporter à une date éloignée la suite d'une affaire qui exige des heures d'audience supplémentaires à celles qui étaient prévues ». Les nouvelles ressources « permettront de transférer à un autre juge les assignations régulières que le collègue qui doit poursuivre une affaire aurait dû assumer ».

Supreme Court of Canada hearing important bullying case from British Columbia

News 880 AM
Charmaine de Silva
March 28, 2017

Supreme Court of Canada hearing important bullying case from British Columbia
Canada's highest court is hearing a B.C. case Tuesday that could make it harder for employees to fight workplace harassment.

The Supreme Court of Canada is looking at a B.C. Court of Appeal decision last year.

It took away the ability of the B.C. Human Rights Tribunal to look at cases where the alleged perpetrator is not in a position of economic authority over the target.

In other words, the Tribunal, often the first stop for employees who feel wronged, won't deal with cases where the bully is a colleague.

Employee rights groups argue the decision also makes it easier for employers to ignore harassment, because it takes away the incentive for proactively dealing with toxic and unhealthy work environments.

Margot Young at UBC's Allard School of Law says it raises questions about what happens if the alleged perpetrator is not the target's boss.

"So, you're on a worksite, there's someone who is there by virtue of a contracted activity, they're harassing you, they're not your employer, but nonetheless, that harassment is happening in your employment context."

Young says if the ruling stands it would even take away legal ramifications for workplace sexual harassment from a colleague who is not a boss.

Former asylum seeker looks to Supreme Court to clear 'tarnished' name

The Canadian Press/Globe and Mail
Geordon Omand
March 28th, 2017

An El Salvadoran asylum seeker who became a permanent Canadian resident after spending two years in sanctuary in a British Columbia church is looking to the Supreme Court of Canada to clear his "tarnished" name following another legal loss.

Writing for a three-judge panel, Justice Mark Noel of the Federal Appeal Court scuttled Jose Figueroa's most recent court bid to receive a certificate from Canada's minister of foreign affairs declaring that the man is not a terrorist.

"I am still in the process of evaluating the steps that I need to be taking in the near future, but for certain ... I do need to take this to the Supreme Court," Figueroa, 50, said in an interview on Tuesday.
Austin Jean, a spokesman for Global Affairs Canada, confirmed in an email the government was aware of the court decision made last Thursday but declined further comment.

Figueroa and his wife applied for refugee status after arriving in Canada two decades ago.

As a young man, Figueroa belonged to a student union that backed the Farabundo Marti National Liberation Front, or FMLN, a Salvadoran group Canada considered a terrorist organization, Figueroa said. The same group is now the country's elected government, he added.

The FMLN is not included on the list of terrorist entities compiled by Canada's public service department.

Former immigration minister John McCallum granted Figueroa a ministerial exemption in late 2015, which allowed him to leave the Walnut Grove Lutheran Church in Langley, B.C., and apply for permanent resident status.

Figueroa estimated the legal proceedings that have taken place since 2010 have cost his family $250,000, which required him to take out a mortgage on his home.

The former Salvadoran refugee, who is completing his first year of law school at the University of Victoria, has a son, 19, and two daughters, 16 and nine, all of whom were born in Canada.

"My family, they will require an apology from the government of Canada because of the way we have been treated. We have been here for almost 20 years – May 6 will be 20 years – and we are still being affected," he said.

"This is very un-Canadian and the current government should be taking a stand on this."

Figueroa said his court battles are also taking a toll on his studies.

"It's a very painful way to learn about the law. And costly," he said. "I am learning the hard way."

The breakup of Canada- The legal wrangling encore
By Marc Montgomery | english@rcinet.ca
Tuesday 28 March, 2017

Canada, Quebec independence, and the constitution.

It is a long and complicated process, but in Quebec in 2000, the then governing "separatist" Parti Quebecois passed Bill 99 which stated that it alone could decide whether it would leave Canada to become an independent nation and the federal government and the rest of Canada had no say. This had been the separatist position for many years previoiusly and during the referendum campaign of 1995.

That notion runs counter to the Canadian constitution and in 2001 that provincial law was challenged by Keith Henderson, who was then leader of the Equality Party, a now defunct provincial Anglophone rights political group.

That battle has dragged on for years until finally heard this week by Quebec Superior Court.

To begin somewhere in the middle, in 1995 the province of Quebec then under a "separatist" government held a second referendum on whether the province should become an independent nation. (The first was in 1980 which separatists lost)

It was a bitter campaign marked by accusations of cheating by both sides, the Yes side, for independence, and the No side for staying within the Canadian confederation.

The separatists/sovereigntist-"independentistes", also claimed and stated later in Bill 99, that 50% of the population plus one vote (50+1) constituted a majority.

In the end the 1995 referendum vote was extremely close with 50.58% of the population voting against separation, or a majority of just over 50,000 votes.

Because of the narrowness of the vote, the convoluted question posed, and Constitutional issue, the federal government asked the Supreme Court of Canada to rule on the consitutionality. They did (in a still disputed decision) that Quebec could separate under certain conditions. The federal government then passed "The Clarity Act" setting out conditions which said that Quebec could separate if there was a clear majority (not 50+1) on a clear question after which "Canada" would begin negotiate conditions with Quebec.

In reaction to this concept of "clear majority" (not 50+1) , the then Parti Quebecois (separatist) government passed Bill 99 in 2000.

That in turn prompted the constitutional challenge by Henderson in 2001. This challenge was joined in 2013 by the federal government, provoking bitter reaction in Quebec even by the ostensibly "federalist-leaning" provincial Liberal government.

The Liberal Party of Quebec, in power since 2013, has somewhat ironically been fighting against the legal challenge. In the court case this week, the opposition also refused to allow Henderson to make a statement. The Quebec Superior Court judge is likely to make a ruling in late August or September.

Henderson says, the Quebec government, if they lose, could either drop their case or appeal to a higher court.

If the judge agrees with the Quebec government, the federal government would almost certainly appeal.

Henderson says it potentially the debated could end up in front of the Supreme Court of Canada. He says the obligation to abide by the Constitution, which means separation requires an amendment to the Constitution (meaning all of Canada has a say) could result in a whole new battle over the legality of separation at all.

Ministers must respond to requests for relief within reasonable time frame, court rules

Financial Post
Julius Melnitzer
March 28, 2017

The Federal Court of Canada has ruled that cabinet ministers are not entitled to wait "as many years as they see fit" before responding to valid requests from the public.

"Ministers of the Crown are typically very busy people," Chief Justice Paul Crampton acknowledged in a recent immigration decision involving Morteza Tameh. "But they are not so busy that they can take as many years as they see fit to respond to requests made pursuant to validly enacted legislation, by persons seeking determinations that are important to them. At some point, they will have an obligation to provide a response."

Yet the public might take small comfort from the court's ruling that a four-year delay in responding to a request for ministerial relief from an order of inadmissibility for permanent residence, is "at the outer limits of what is reasonable."

As it turned out, Tameh waited a total of eight years before applying to the Federal Court for an order requiring the Minister of Public Safety and Emergency Preparedness to rule on his request to become a permanent resident of Canada.

Tameh, previously granted refugee status, applied in 1994 to become a permanent resident.

In 2001, an immigration counsellor turned him down because of his previous involvement with a terrorist organization in his home country of Iran. The counsellor, however, recommended that the minister exercise his authority to grant relief from the order of inadmissibility.

Six years later, Stockwell Day, then federal Minister of Public Safety, denied the request for relief. In 2008, the Federal Court overturned Day's decision and sent the matter back for reconsideration.

Four years later, the minister had still not reconsidered. At that point, Tameh requested that the redetermination be delayed pending an important ruling from the Supreme Court of Canada that touched on the points in issue in his case. The Supreme Court released its decision in June 2013.

Almost four more years passed without a response from the minister. Tameh went back to the Federal Court with a request for an order requiring the minister to act. The minister's eventual response was dismissive.

"The minister takes the position that, because of his many duties and responsibilities, he should not be subject to any timeline whatsoever in rendering his determinations in respect of such requests," Crampton noted in his reasons before summarily dismissing the argument.

"I disagree," Crampton wrote. "Although the minister must have considerable latitude in prioritizing his many duties, he must nevertheless respond to requests made for ministerial relief, within a reasonable period of time."

What was reasonable, Crampton added, was related to the facts at hand. Here, the four-year delay between 2008 and 2012 while Tameh's application was being processed was "at the outer limit of what is reasonable in that regard." The additional 45-month delay after the SCC decision, however, was not reasonable.

"Stated differently," Crampton wrote, "I find that the minister has not provided a satisfactory justification for that additional delay."

At Crampton's urging, the government agreed to an order mandating a procedure that would have the minister render a decision within 315 days of the court's order.

The upshot is that Tameh will have to wait for almost another year before he knows his fate.

Sifting through the system: criminal justice summit finding fixes

Jordan decision's strict timelines for speedy trials leading to 'very real concerns'
CBC News
Meghan McCabe
March 28, 2017

Hiring more Crown attorneys and a potential drug court for Newfoundland and Labrador are two ways of speeding up the criminal justice system, to meet strict new timelines set by the Supreme Court of Canada, a summit in St. John's was told Tuesday.

Provincial Justice Minister Andrew Parsons said he's willing to listen to any ideas, because the timelines laid down in the Jordan decision are "a big challenge."

"Some if it may have to be increased resources," he said, noting that three new Crown attorney positions have been added to help move cases through the system.

"I don't think it's just a case of throwing money at the problem," Parsons said.

"In many cases if you want to look at changing policy and changing procedure there's no cost to that. And that's where this meeting comes down to 'can we do things differently?'"

"Just because we've done things a certain way for so long doesn't mean we have to stay entrenched in that view."

Keeping cases out of court

The Jordan decision set requirements for criminal cases to get to trial within 18 to 30 months, and has led to several acquittals in this province – including two involving major drug investigations using significant police resources.

Some of the changes being discussed include using restorative justice, mental health and addictions treatment to keep people out of the criminal system, drug court, and looking at each step from arrest to sentencing.

Judges, lawyers, police officers, advocates, and corrections officers attended Tuesday's meeting.

Parsons said roughly 40 per cent of people in jail in this province are awaiting trial, compared to almost 65 per cent in Ontario.

The average cost of incarceration is about $110,000 a year. "So I think that just putting people in jail is a very expensive proposition, and it's not the best proposition when we talk about rehabilitation, deterrents."

'Doing it right'

"Clearly there are very real concerns," said the parliamentary secretary to the federal Justice Minister, Bill Blair, who attended Tuesday's summit.

"There's an old saying, 'justice delayed is justice denied.' And people have a right to timely justice, not only for offenders in the system but for the victims of crime," said Blair, who's a former Toronto police chief.

Blair said this summit is part of a national conversation on how to make the whole system more efficient.

"We're looking at how we can, through legislative change and through investment, find ways to help them become more efficient in the way they're doing their job, but it is absolutely essential that we work together on this."

Drug court for N.L.?

He said new funding for mental health care is one of the ways the federal government is already helping, and Ottawa has funded a study into setting up a drug treatment court in Newfoundland and Labrador as well.

"Those drug treatment courts have been utilized in a number of other jurisdictions across the country and proven very effective" for people involved, said Blair.

There's no timeline for when some of these major changes to the criminal justice system may come into place.

"I'm not given to a precise date, except it's work that's necessary and we're absolutely committed to getting it done and doing it right," said Blair.

Pot legalization: Canada doesn’t need another profit-seeking drug industry

The Globe and Mail
Michael Devillaer
March 28, 2017

Michael DeVillaer is an assistant professor in the Department of Psychiatry & Behavioural Neurosciences and a faculty member with the Peter Boris Centre for Addictions Research at McMaster University in Hamilton, Ont.

When Canadians have expressed concerns about upcoming cannabis legalization, the government has assured them that the legal cannabis industry will be strictly regulated to protect public health.

This promise raises important questions: Has legalization of our other drug industries – alcohol, tobacco, and pharmaceuticals – prevented harm from their misuse? Have these drug industries effectively balanced the pursuit of revenue with protection of public health? Has government regulation of drug industries been effective?

A review of the research and policy documents is not reassuring. The many potential liabilities of the Canadian government's approach to cannabis legalization are described in my report, published by the Peter Boris Centre for Addictions Research at McMaster University and St. Joseph's Healthcare in Hamilton.

First, the research is clear that the great majority of current drug-related harm and economic costs arise not from the misuse of illegal drugs but from legal, regulated drugs: tobacco and alcohol. The extent of harm and costs is enormous, and continues year after year.

The epidemic of opioid deaths that has been sweeping across North America had its genesis in the conduct of the legal pharmaceutical drug industry.

Second, we have a history of pan-industry failure to balance revenue interests with the protection of public health. Industries protect their revenue by disregarding existing regulations and opposing the introduction of new evidence-based reforms. They also have a history of breaking the law to maximize revenues.

Third, government has been reluctant to adopt evidence-based regulatory reforms, and the effectiveness of existing regulations is often compromised by permissive enforcement. Rarely-assessed penalties are typically insufficient to discourage recidivism. In sum, drug industry regulation is not simply less than perfect, it is seriously less than adequate, and contributes to the perennial high levels of harm from drug products.

Early indications are that the emerging cannabis industry is on a similar trajectory.

There may be providers of medical marijuana who possess the best of intentions, but some of the big players have already distinguished themselves by violations of Health Canada's advertising standards, collusion with criminal elements, tainted product recalls and the knowing use of banned pesticides. There have been no licence suspensions. Regulatory oversight has been laissez-faire and ineffective.

The cannabis industry is now eager to make the enormously lucrative transition to a market for recreational use.

Amid indications of conflict of interest, the government's Task Force on Cannabis Legalization and Regulation has put forward recommendations that appear to favour industry revenue over public health.

Canadians have far more to fear from a revenue-obsessed, poorly regulated cannabis industry than they do from cannabis itself.

Cannabis law reform provides an opportunity to introduce an approach that truly places the priority on social justice and public health over revenue.

The approach begins with immediate decriminalization of minor cannabis offences that would save tens of thousands of mostly young Canadians from criminal records before legalization takes effect approximately two years from now. It would also save hundreds of millions of dollars in enforcement and justice costs each year.

Canada should continue to pursue a strictly regulated approach to legalization, but I strongly assert that the prevailing profit-driven, poorly regulated paradigm is a dangerous one.

Canada should establish a non-profit cannabis authority that would operate exclusively with public health objectives. The authority would serve only the existing level of consumer demand for cannabis products, with no objectives related to market growth. Epidemiology teaches us that market growth usually leads to an increase in related problems.

The proposal of a non-profit approach will not be warmly received by either the cannabis industry or the government, which looks to gain financially from the legalization of recreational cannabis.

However, given the legacy of failure of our for-profit drug industries to strike a balance between revenues and public health, a non-profit model for cannabis may provide the only opportunity to achieve a near-neutral impact on public health.

Judge shortage causing unnecessary legal trauma: MacKay

The bottle neck in appointing judge has led to fewer cases tried on a timely basis, more cases dismissed, more “burnout” inside our justice system, including our judges, our police services, our prosecutors, defence counsel, court staff, victim services and child youth advocacy centres.
Toronto Star
Peter McKay
March 29, 2017

The federal government has a fundamental responsibility to appoint a sufficient complement of judges such that our courts can function properly. Its failure in that regard creates a constitutional crisis that goes to the very rule of law that underpins our justice system.

A lack of judicial appointments in the context of increasing pressure to conduct timely trials equals a systemic miscarriage of justice. With caseloads where they are, the system is at its breaking point.

Add to this difficult dynamic the recent Supreme Court of Canada ruling in the R v Jordan decision, which mandates criminal trials must be heard within 18 months for the so-called lower

courts, and 30 months for the Superior ones. Absent compelling circumstances, “delinquent” prosecution equals administrative dismissal.

Due to this artificial prescription dozens of cases have been tossed, including murder and sex assault cases. No trial. No verdict. Worse still, the victims and their families are left without recourse or remediation and no one is accountable. Not fully appreciated as yet, this jarring situation stands to worsen due to the arbitrary deadline, which provides no consideration for the seriousness of the offence.

Against this backdrop we note inertia from the federal government on the appointment of judges to hear these languishing cases. Canadians face an alarming scenario of serious violent charges being vacated due to the acute shortage of judges. “Justice delayed is justice denied” is a maxim never more appropriately invoked than now.

As minister of justice (2013-15) I oversaw the appointment of more than 230 judges; prior to that my government prioritized hundreds more. We appointed a judiciary that represented “the face of Canada,” a diverse bench predicated and built on inclusion of all races, creeds, and genders in the legal community across Canada.

Vacancies on the federally appointed bench is at an all-time high. Sixty-two empty seats of the 840 federally appointed judges, against 14 (the lowest in decades) when my government left office. In June 2015, we appointed a record 22 women: over 60 per cent of the judges appointed on that occasion. We appointed more judges on one day (43) than the current government has in 16 months in office.

We also incorporated several justice enhancing features in the long-standing Judicial Advisory Counsel (JAC) process, such as a police presence on the oversight selection committee, to augment law society, governmental and judicial oversight. The present government precipitously axed police participation, despite increasingly obvious security concerns. Seemingly as the government let lapse all the existing JAC’s and has only reconstituted seven of the 17 required to vet lawyers, it has also diminished wider participation.

The current resultant “bottleneck” in the process is predictable: relatively few judges appointed since this government took office. More than half the country is now without a system of nomination given the dearth of committees for judges. And the corollary: a moribund system, few cases tried on a timely basis, more cases dismissed, more “burnout” inside our justice system, including our judges, our police services, our prosecutors, defence counsel, court staff, victim services and child youth advocacy centres.

The most profoundly impacted are the victims. Investing time and trust in our justice system is hard enough for victims. To have the alleged perpetrator walk away scot-free makes it that much worse. Many victims come away feeling re-victimized by the system and form the conclusion that they would not report the crime again based on their negative experience.

Will such frustration and betrayal result in refusal or failure to report crime? Most assuredly. Many more victims will be re-victimized by an undernourished system unless and until the government acts decisively.

Speaking of those disenfranchised by this inertia, recall the Victim's Bill of Rights, which became law in 2015. One can search high and low and will find nary a mention of this important legislation. The government has failed them further by ignoring and underfunding programs for victims, in rolling-back mandatory minimum penalties for serious violent offenders and use of conditional sentences (house arrest), and in stripping away victim fine surcharge-funded support for the victims.

So … what justifies starving the bench of its human capital? A reluctance to replenish in the face of a growing number of terrible injustices? The present government owes us immediate action.

The impact of the Jordan decision undeniably exacerbates the current systemic crisis. Adherence to a political philosophy, Charter affinity, or party loyalty cannot be seen or heard to interfere with high-quality candidates filling widening vacancies.

Reprioritization of an efficient, functional, reliable judicial system can only occur with a full complement of competent judges. It's fundamental to the rule of law. Justice must be seen to be done lest "justice be denied."

Peter MacKay is a former federal minister of justice and partner at the law firm Baker McKenzie in Toronto.

OPINION: Canada's Justice System Is A Pathetic Failure

MyToba
Spencer Fernando
March 29th 2017

WINNIPEG, MB – A news story last week in MyToba generated a significant reaction, and is an example of how our justice system has become a pathetic failure. The story was about a warning issued by police regarding a high-risk sex offender being released into Winnipeg. The man who was released had three convictions for sexual assault, in addition to aggravated assault, assault, and even breaching probation. He got incredibly weak sentences for his crimes, being sentenced to a combined 40 months for those three sexual assaults. Of course, he was let out in between, and went on to commit more crimes. He was considered so dangerous that the police said "all women and girls are at risk. "The reaction to the story was swift. It received over 2,600 shares on Facebook, with many readers pointing out that such a dangerous person should not be released. It seems like common-sense: If the police have to warn all women and girls in an entire city that someone is dangerous, that person shouldn't be out on the streets. Unfortunately, our justice

system is empty of common-sense these days. Here's the thing: A justice system that cannot keep people safe is a failed system. It isn't worthy of using the word "justice."

This isn't the fault of the police. All they can do is arrest people. Once that's happened it's out of their hands. The fault lies with soft-on-crime politicians, more focused on building up their own "compassionate" reputations than actually stopping crime. The system treats victimizers as victims, which ends up making real victims suffer even more. Worse, the system creates more victims, by letting dangerous people out to commit more crimes. What I'm saying isn't politically correct. You can always count on some person coming by and saying "the justice system isn't about revenge or retribution," or quoting some obscure legal rule to justify letting dangerous people out to walk the streets. One of the big problems is that most of the elite don't worry much about crime. The elites that have weakened our justice system tend to live in the safest neighbourhoods, far removed from violence and fear. So for them, the justice system can be an abstract problem, a chance for them to signal how "virtuous" and "kind" they are. Those released from prison never move in next to the elites. But for the rest of us, crime is a real thing. We've known what it's like to be in unsafe areas, and we know that our safety, and the safety of those we love could be put at risk from the weakness of our justice system. That's why we need to hear the voices of regular people when it comes to fixing our justice system. The elites have had their chance to fix the system, and they failed. They don't deserve another chance. Instead of those in power imposing their system on us, it's time for the people to impose a real justice system on them. Remember, our justice system is a choice. As much as those in power like to act as if it's set in stone, the rules and laws were made by people, which means people can change them. We don't have to put up with a pathetic system that puts law-abiding citizens at risk. Politicians want to get re-elected, and if they think fixing our justice system will help them win, many of them will listen to the demands for change. That means if enough of us speak out and demand real justice, we can finally get a justice system worthy of the name. Contact your MP and tell them you demand a real justice system.

Case of two B.C. men tests limits of workplace discrimination legislation

Can a worker claim discrimination when subjected to insensitive comments from someone from another company?
CBC News
Karin Larsen
March 29, 2017

A landmark case involving two men from British Columbia that is being heard at the Supreme Court of Canada this week will test the limits of the B.C. Human Rights Code — and who can claim discrimination in the workplace.

At the heart of the trial is the question of whether a worker can claim workplace discrimination after being treated rudely and insensitively by someone from a different company.

In 2013 Mohammadreza Sheikhzadeh-Mashgoul was the target of repeated derogatory comments and emails concerning race, religion and sexual orientation while working as a supervising engineer on a road project in Delta.

The comments were made by foreman Edward Schrenk who was working on the same project but for a different company.

Schrenk was fired by his employer and Sheikhzadeh-Mashgoul had his claim of employment discrimination upheld by the B.C. Human Rights Tribunal in 2014.

But the B.C. Court of Appeal subsequently dismissed the complaint in 2015 ruling that the tribunal acted outside of its jurisdiction, stating that not all insults made in the workplace amounted to "discrimination regarding employment."

A summary on the Supreme Court of Canada website says the appeal to the nation's highest court, which began on Tuesday, will test "whether an employee's protection from discrimination in the workplace is restricted to specific relationships marked by economic power imbalance."

UBC Law Professor Margot Young says the outcome will have important consequences.

"What's at stake is the extent to which there's going to be protection from harassment in the modern workplace," she said.

"Increasingly we're in workplaces where we don't have a direct employer-employee relationships ... with contracting out and so on. And yet it's still your workplace and you can still can be exposed to the kind of treatment that is really destructive."

Young says the Supreme Court of Canada decision will likely take a year or more.

Legal expert worries victims suffer more harm when delayed criminal cases are thrown out

Ruling could result in 6,000 cases thrown out in Ontario alone
CBC Radio's Ottawa Morning
March 29, 2017

A law professor believes that by staying serious criminal charges such as murder and sexual assault if court proceedings take too long, the justice system runs the risk of further victimizing people who suffered harm, as well as their families.

The Supreme Court of Canada's controversial ruling last July, known as the Jordan decision, sets new rules on an accused person's right to be tried within a reasonable timeframe. Cases that take longer than 30 months in Superior Court and 18 months in provincial court could be thrown out.

University of British Columbia law professor Ben Perrin said the Supreme Court "failed miserably" and that justices were "irresponsible" making that ruling.

"I'm concerned about victims of crime. It is an absolute tragedy of justice when you have accused killers going free, not because they've been acquitted, or because the evidence was unconstitutionally obtained, but because the system took too long," Perrin told host Hallie Cotnam on CBC Radio's Ottawa Morning.

The new rules could result in some 6,000 criminal cases stayed in Ontario alone. CBC found Ontario judges stayed 46 cases due to court delays from July to December 2016, including a high-profile murder case here in Ottawa.

Perrin said that can result in a "complete loss of confidence" in the court process. "It creates what we call secondary victimization," he said.

'It's made so much worse'

"It's the harm done by the justice system. We look at cases in Canada where the initial harm done was bad enough, and it's made so much worse."

He highlights two issues that arise as a result of the Supreme Court decision, the first being the lack of consideration of the seriousness of cases.

"The Jordan test treats a sexual assault charge the same as a shoplifting charge, in terms of its timelines. They don't care. Literally the test does not account for it, expressly denies it. We used to consider that, and we should again," Perrin said.

"The second thing is the court does not consider the impact on victims when these charges are stayed, and that also is highly problematic that they're completely ignored in this calculus. Victims have no standing to appear on a Jordan application to tell the judge about the impact of the offense, and how it will affect them."

To address some of the problems he believes the Jordan decision creates, he believes the justice system needs to overhaul its structure to take non-serious charges out of criminal courts in order to deal with them through administrative processes, among other measures.

Court decision may open border to First Nation hunters from U.S.

Judge rules Sinixt in Washington have right to hunt in southern B.C.
CBC News
Adrian Nieoczym
March 29, 2017

A new court ruling could make it impossible for the federal government to stop members of a First Nation who live in the U.S. from coming to B.C. to hunt, according to a former deputy minister of aboriginal affairs.

"It's unlikely that the federal government has any power to stop them from coming into Canada if they specifically want to carry out those activities," said Doug McArthur to Daybreak South host Chris Walker.

Earlier this week, a provincial court judge in Nelson, B.C., acquitted a Sinixt man from Washington State of hunting without a licence and hunting without being a resident.

Extinction challenged

Richard Desautel, 64, lives on the Colville Reservation, south of the Canada-U.S.border. He travelled to Canada to hunt in order to challenge the B.C. Wildlife Act and the government's view of the Sinixt as extinct.

Judge Lisa Mrozinsky ruled the Sinixt have not lost their connection to a huge swath of southern B.C., from Revelstoke to the U.S. border and still have Aboriginal rights to the territory.

"If his ancestors — as a tribe or a First Nation — were engaged in those kinds of activities and were present on those lands, then they do have a continuing right — as the ancestors — to harvest wildlife in accordance with their traditions," said McArthur, who in the early 1990s was B.C.'s deputy minister of aboriginal affairs, in charge of setting up the Treaty Commission.

He is currently the director of Simon Fraser University's School of Public Policy.

The federal government argued in court that the Sinixt voluntarily abandoned their lands. They were declared extinct for the purposes of the Indian Act in 1956.

But the court was presented with evidence that the Sinixt were forced off their land and didn't leave willingly.

"They were under a huge amount of pressure to move south and get off those lands but they never did abandon them voluntarily," said McArthur.

Most people of Sinixt descent now live in Washington and Desautel's defence was funded by by the U.S.-based Colville Confederated Tribes.

Appeal likely

So, while the Sinixt may have won the right to come up to Canada and hunt, McArthur said it's unlikely they will be able to claim many other rights.

"It's difficult to imagine they would have anything like the rights other First Nations have, such as aspects of self-government or control over the management of those lands and so on."

Even the right to hunt may not last. McArthur suspects this case will ultimately end up in front of the Supreme Court of Canada.

"It will almost certainly be appealed," he said.

With files from Daybreak South

Company argues bidding process for federal contracts is flawed

The Canadian Press
Colin Perkel
March 29, 2017

TORONTO -- A company that lost a $428-million federal contract in 2007 is calling on Canada's top court to weigh in on the long-running case, arguing the fairness and integrity of the country's public-procurement process is at stake.

The Supreme Court of Canada should decide among other things whether a winning bidder should be disqualified if it cannot deliver what it promised, and what the remedy should be if a judge finds the procurement process to have been unfair, TPG Technology says in its application for leave to appeal.

"No bidder ought to be permitted to make false, misleading or ambiguous bids, and win without recourse by bidders who complied with the procurement rules," TPG's application states. "That damages confidence in the procurement system in Canada, is manifestly unjust (and) undermines the principle of fair competition."

The federal government argues against reopening the case, saying TPG is trying to get the Supreme Court to weigh in on factual matters particular to a specific case that have already been decided and which have no wider bearing. In addition, the government maintains relevant procurement law is already well settled.

"There are simply no novel issues of law or public importance raised in this application," the government says.

The case arose when TPG Technology was shut out in 2007 from running the main computer networks at the federal Public Works department, something the Ottawa-based company had done since the late 1990s. Instead, the seven-year contract, which called for delivery of a team of more than 100 qualified IT professionals, went to Montreal-based CGI Group.

CGI presented an "audacious" bid that effectively relied on it being able to recruit TPG's contractors, which it was unable to do, TPG argues in its application.

"The winning bidder could not deliver the very subject matter which was required in the procurement," TPG asserts. "Yet, the winning bidder in this case was not disqualified. It was permitted, even assisted by the government, to try to become compliant."

After several attempts at a remedy before the Canadian International Trade Tribunal, TPG president Don Powell sued Public Works for $250 million.

In 2014, Federal Court Judge Russel Zinn threw out the lawsuit despite finding that the government had failed to evaluate parts of TPG's bid fairly. Among other things, Zinn ruled the CGI bid had indeed been compliant, and that TPG had failed to prove it suffered damages.

"Although it has been found on the balance of probabilities that TPG was not treated fairly and equally in the evaluation of its proposal, TPG cannot succeed in this action unless it can prove that it has suffered damages as a consequence of that breach," Zinn wrote. "I find that it has failed in that respect."

Zinn ordered TPG to pay the government more than $600,000 in legal costs. The findings were upheld by the Federal Court of Appeal.

TGP now asserts that the current state of the law allows a bidder to win a public contract by making promises it knows it can't keep and then hiding behind an amended agreement -- with the government's help.

Allan Cutler, an Ottawa-based consultant and procurement expert, said he knows of a case in which a limousine company lost a contract, but then discovered the winning bidder did not have the needed licences. However, the government helped the competitor repair its bid and keep the contract, he said.

These cases expose a "loophole" in current law the Supreme Court should close, Cutler said.

"In brief, a firm does not have to bid honestly for the public sector," Cutler said. "Once the firm wins a contract, the subsequent contract can be amended to correct the dishonesty."

Budget 2017: dépenses en Justice insuffisantes, dit la bâtonnière

Droit-Inc
Jean-François Parent
29 mars 2017

La justice obtient à peine 1,3 % des dépenses totales du budget 2017. « C’est insuffisant », dit la bâtonnière.

Le Barreau déplore le manque de vision et de gestes concrets pour améliorer l'accès à la justice dans le dernier budget présenté mardi par le ministre des Finances, Carlos Leitão.

« Rien sur les seuils d'accès à l'aide juridique, on ne s'attaque pas du tout aux délais en matière de justice civile et familiale, on ne propose pas de vision... »

La bâtonnière du Québec, Claudia P. Prémont, juge insuffisantes les mesures contenues dans le dernier budget Leitao, déposé le 28 mars.

Les besoins sont pourtant criants dans plusieurs domaines du droit, déplore Me Prémont. Selon elle, la Justice n'obtient que « 1,29 % des dépenses totales, c'est insuffisant ».

Des besoins criants

Si elle salue les investissements de 175 millions $ consentis avant les Fêtes, « on ne prévoit rien pour la réduction des délais ailleurs dans le système de justice ». Outre la famille et la justice civile, elle relève que les besoins sont criants en matière de justice administrative, surtout depuis la grève des juristes.

Pourtant, la justice administrative qui offre ses services aux citoyens dans des délais raisonnables, « c'est aussi une question d'accessibilité à la justice ». Sans compter que rien n'est prévu pour s'attaquer aux irritants comme les pertes de temps dans les palais de justice, affligés par des délais jusque dans le simple fait d'obtenir une date d'audience.
« Nous préconisons des États généraux sur la Justice, et on n'a rien là-dessus dans le budget. »

La bâtonnière est d'avis que l'on « n'a pas été entendu. Pourtant, il faut que le gouvernement réalise qu'on ne peut pas attendre qu'il y ait une autre crise pour agir », soutient-elle.

Concédant qu'on a agit rapidement dans la foulée de l'arrêt Jordan, elle déplore néanmoins qu'on semble s'en tenir à ne réagir qu'en mode de gestion de crise. « Il faut faire réaliser au gouvernement que l'action est importante, avant d'avoir une autre crise. »

Un peu de baume sur la plaie

Le Barreau note toutefois quelques bouffées d'air frais : les modifications à la Loi sur l’administration fiscale favorisant la déjudiciarisation, des investissements dans les télécommunications en Basse-Côte-Nord, ce qui permettra une accessibilité accrue aux services de justice là-bas, et la hausse des investissements visant l’application de la Loi sur l’indemnisation des victimes d’actes criminels (LIVAC). « Toutefois, notre position demeure de revoir la LIVAC », ajoute Me Prémont.

L'arrêt Jordan profite au crime des cols blancs

Par ailleurs, plusieurs dossiers de criminalité financière sont menacés d'être abandonnés, faute de ressource pour les traiter dans un délai raisonnable. Selon le Journal de Québec, « 69% des dossiers pénaux en cours pilotés par l'Autorité des marchés financiers étaient considérés à risque de tomber à l'eau ».

Le budget Leitao relaterait en outre que « l'arrêt des procédures dans les dossiers de poursuites pénales de Revenu Québec pourrait avoir un impact négatif sur les efforts du gouvernement pour lutter contre l'évasion fiscale et les crimes économiques et financiers», peut-on lire dans le Journal de Québec.

LGBT discrimination class actions against federal government merge

Group includes people fired in 'LGBT purge' after Canada decriminalized homosexual acts in 1969
CBC News
March 30, 2017

Lawyers working on three separate class actions against the federal government seeking damages for military members and civil servants who were fired for being LGBT have merged their cases.

The lead plaintiffs in the class are Todd Ross, Martine Roy and Alida Stalic, who were representative of the classes in different lawsuits filed late last year.

Each of them served in the Canadian Armed Forces, where their lawyers allege they faced interrogation about their sexual orientation and were pressured to inform on other military members.

Roy was in her early 20s when she was handed a dishonourable discharge in 1985. She told CBC Thursday she was interrogated for four hours about her sexual orientation and required to undergo a psychiatric evaluation to determine if she was "normal."

"I was so destroyed, my self-esteem. Because you get kicked out for something that you have no power over that has nothing to do with your skill and your work ethics," she said.
It left her worried about being identified as homosexual in future workplaces. She eventually turned to drugs and ended up in rehab two years after her discharge.

"You have to understand, you get let go because you're a sexual deviant — who are you going to tell that to? Your parents? Your friends?" she said. "You feel like you're a bad, bad person, that you're horrible."

Despite homosexual acts being decriminalized in 1969, gay people were banned from serving in the military until 1992 when the Supreme Court of Canada ruled the policy unconstitutional.

Audrey Boctor, a lawyer with Montreal-based law firm Irving Mitchell Kalichman, said some civil servants have already come forward though they aren't among the representative plaintiffs.

"We know that this extended beyond the Armed Forces and a lot of times it would be under the pretext of some kind of security concern," Boctor told Mike Finnerty host of CBC Montreal's Daybreak.

"It was people who needed a security clearance and it was linked with this notion that somehow LGBT public servants were a security risk."

Class could include 'thousands'

Boctor said the class action could involve thousands of people; one of the previous classes was estimated to include as many as 9,000 people. The class includes people who experienced discrimination after June 27, 1969, the date homosexual acts were decriminalized.

The law firms representing the class have launched a website for people to learn about the "LGBT purge" and to reach out to possible members of the class.

Boctor said the lawsuit is seeking punitive and moral damages for the violation of charter rights, along with compensation for financial loss and psychological harm.

One of the previous class action filings that has now merged into this pan-Canadian lawsuit was asking for $600 million in damages for cases outside of Quebec. There was no figure for damages in Quebec because litigation laws are different there.

The firms representing the class are Cambridge LLP, Koskie Minksy LLP, Irving Mitchell Laichman LLP and McKiggan Hébert.

The Liberal government is planning an apology to the LGBT community for the past discrimination, but it's unclear when it will act. A report presented to the Liberals in June 2016 by the human rights group Egale, urged the government to examine how to compensate those who had suffered past discrimination. The organization said such a plan could involve individual compensation, funding for programs and services, or a mixture of both.

Winnipeg lawyer, 87, retires rather than submit to professional development rules

CBC News
March 30 2017

An 87-year-old Winnipeg lawyer who lost his fight against mandatory professional development rules says he will proudly go into retirement continuing his resistance.

"At a certain stage, I suppose it has to end. And I can't think of a more honourable way to leave the profession than to resist this program," said Sidney Green, who has been a lawyer for 62 years.

"This program is wrong, no matter what the Supreme Court of Canada says."

Green challenged the Law Society of Manitoba's requirement that members complete 12 hours of continuing professional development a year.

He just didn't do it.

"I objected to going to programs which were of no value to me," Green said. "And I don't regard the law society as an educational institution."

He didn't report any continuing professional development for 2012 or 2013, so on May 30, 2014, the law society told him to comply within 60 days or he would be automatically suspended from practising law, court documents say.

He was invited to correct any errors in his professional development record, but did not reply, so his licence was suspended on July 30, 2014.

Green did not apply for a judicial review of the decision to suspend him. Instead, he challenged the rules by applying for declaratory relief — essentially, to have the rules set aside.

"Mr. Green has challenged the impugned rules because he has no interest in complying with them," court documents state. "He argues that the impugned rules are unfair because they impose a suspension without a right to a hearing or a right of appeal."

The application was dismissed, so Green took the matter to the Court of Appeal, where it was also dismissed.

Then he sought, and was granted, leave to appeal to the Supreme Court of Canada. That decision was released Thursday and also went against Green, in a 5-2 split decision, dismissing his appeal.

"It proves that even the Supreme Court of Canada can be wrong," a persistent Green told CBC News. "I disagree with the program and that is still my position."

Although a suspension of the type handed to Green ends as soon a law society member complies with the rules, Green has no intention to do that.

"I'm not going to go [take lectures or courses] at the behest of the law society. It's a sham, and most lawyers agree with me, but they do it because they don't want to be suspended."

Up until about seven years ago, Green said, all professional development was voluntary and he even presented at some of the education sessions that were offered.

"They had, and have, no right to make it compulsory," he said, arguing there is no statutory authority to make it mandatory.

"So I will be the only lawyer that I know of in Canada suspended without the allegation of dishonesty or incompetence. I am unique in that regard, I believe."

Programs enhance public confidence

The Supreme Court found the rules to be fair and said law societies are required to protect members of the public who seek legal services "by establishing and enforcing educational standards for practising lawyers."

Professional development programs serve this public interest and enhance confidence in the legal profession, the ruling states.

As well, imposing a suspension for failing to comply with the rules without giving members a right to a hearing or a right of appeal is not unreasonable, the Supreme Court decision states.

"In fact, it is entirely consistent with the law society's duty to establish and enforce educational standards.

"While they may improve the currency of a lawyer's knowledge, these standards also protect the public interest by enhancing the integrity and professional responsibility of lawyers, and by promoting public confidence in the profession."

A suspension for not completing professional development is the least of any penalty. It's an administrative, not a disciplinary one, and is not recorded in a personnel record, so it is not likely to undermine public confidence in the lawyer or affect their career, the Supreme Court decision states.

"A reasonable member of the public would understand that a temporary suspension for failing to complete CPD hours is not akin to a more serious disciplinary suspension."

Law society may automatically suspend member over CPD requirement: SCC

Canadian Lawyer Magazine
Elizabeth Raymer
March 30, 2017

The Supreme Court of Canada has dismissed the appeal of a Manitoba lawyer who was automatically suspended from the law society for his failure to comply with continuing professional development requirements.

In Green v. Law Society of Manitoba, the majority of the Supreme Court found that a lawyer's failure to comply with the society's educational rules provided "clear justification for the Law Society to impose a temporary suspension," Justice Richard Wagner wrote for the majority.

"The standard applicable to the review of a law society rule is reasonableness," Justice Wagner wrote, with Chief Justice Beverley McLachlin and Justices Michael Moldaver, Andromache Karakatsanisand Clément Gascon concurring. "A rule will be set aside only if it is one no reasonable body informed by the relevant factors could have enacted."

Sidney Green was called to the bar of Manitoba in 1955. In 2011, the Law Society of Manitoba established mandatory requirements for CPD for its members, which came into effect in 2012. Green took no CPD in 2012 or 2013, and in May 2014, the law society sent him a letter advising him of his obligations under the established rule and warning him that he had 60 days to complete his CPD requirements, with the possibility of an extension if required and the risk of suspension.

Section 2-81.1(12) of the Law Society of Manitoba's rules state that, after receiving such a letter from the society, "A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid."

Green was suspended on July 30, but the law society agreed not to enforce the suspension while Green litigated the matter. He argued that the impugned rules were unfair because they impose a suspension without a right to a hearing or right of appeal.

Charles Huband, a civil litigator at Taylor McCaffrey LLP in Winnipeg who represented Green, says he believes the real question before the Supreme Court was whether or not the law society had the right to impose a suspension without a hearing or right of appeal.

"The issue is a real one not only for law societies but any other professional bodies with a disciplinary bent," Huband told Legal Feeds. "We never argued that [the law society] couldn't have a mandatory educational program, but our position was that . . . if a person falters or fails in fulfilling it, there shouldn't be an automatic suspension."

Justice Rosalie Abella (also writing for Justice Suzanne Côté) agreed, writing in dissenting reasons that the "issue in this appeal is not whether the Law Society can impose a suspension for failing to complete the 12 annual hours of mandatory education courses, but whether it can impose an automatic one."

The minority also found that this rule could undermine public confidence in lawyers.

But the majority found: "The purpose, words, and scheme of [The Legal Profession Act] support an expansive construction of the Law Society's rule-making authority. . . .

"The impugned rules with respect to CPD are reasonable in light of the importance of CPD programs and the Law Society's broad rule-making authority over the maintenance of educational standards," wrote Justice Wagner.

"In my view, the Act provides clear authority for the Law Society to create a CPD program than can be enforced by means of a suspension."

"We're pleased that the Supreme Court has confirmed the broad rule-making authority of the law society over the educational standards for lawyers," Kris Dangerfield, CEO of the Law Society of Manitoba, told Legal Feeds. "From a regulator's perspective, we're pleased to see that the court has weighed in, . . . said these rules are reasonable and that we haven't overstepped our boundaries [and] allowed us to take steps to protect the public."

Green could have opted to challenge the law society's decision to suspend him, but he opted to challenge the rule itself, said Dangerfield (who was not the law society's CEO at the time of Green's suspension). The majority of the court found that had Green "challenged the law society's decision to suspend him instead of simply challenging the impugned rules, this Court could have examined the specific procedure that the Law Society followed in making its decision."

In her dissenting reasons, Justice Abella looked at law society rules for CPD requirements in other provinces and territories, noting that in Ontario, for example, the law society can exempt a lawyer from mandatory CPD, or reduce the number of hours, and that the executive director of Nova Scotia's Barristers' Society can waive the requirements if the waiver is "in the public interest." In British Columbia, if there are "special circumstances," a lawyer can apply to the Practice Standards Committee to not be suspended for failing to comply with CPD requirements.

"There's no question that there are some distinctions across Canada," says Dangerfield, adding that in Ontario an automatic suspension would also follow a lawyer's failure to comply with CPD requirements, which is expressed in the Law Society of Upper Canada's statute. She said she didn't believe Manitoba's legislation was more stringent than that of other jurisdictions.

The law is settled on sexual assault. When will the legal system catch up?

Rabble.ca / pro Bonon
Shelina Ali
March 30, 2017

Over the past year, the treatment of sexual assault complainants in the justice system has received a great deal of mainstream media attention. Much of the coverage has focused on how unfairly sexual assault complainants are treated. Examples include:

- The cross-examination of complainants in the Jian Gomeshi case and the judge's findings that inconsistencies in the complainants' testimony made them not credible.
- Comments made by Justice Robin Camp during a sexual assault trial in Alberta -- asking why the victim didn't keep her knees together -- that ultimately led to his resignation.
- A comment by a Nova Scotia judge that a drunk person can consent -- in a trial where the complainant was found by police unconscious and undressed in the back of a cab.

And then, just this past week, the Supreme Court of Canada released a one-sentence decision that sums up the exasperation at the failings of the justice system when it comes to sexual assault.

In its R v. S.B. decision, the Supreme Court stated only that it agreed with all of the reasons provided by Justice Green of the Newfoundland and Labrador Court of Appeal in granting an appeal of the acquittal of a husband accused of sexually assaulting his wife. The Supreme Court did not feel the need to revisit the meaning and application of rape shield provisions, which have been in place since 1992 to protect sexual assault complainants from having their entire sexual history put before a court during a sexual assault trial. The Supreme Court's brief decision, to me, communicated clearly that the law is settled on this issue. Whether or not people in the justice system, and society at large, can actually follow and respect the protections the law seeks to provide to sexual assault complainants is another matter.

The amendment to the Criminal Code, passed in 1992, colloquially known as the rape shield law, prevents evidence from being introduced about a complainant's previous sexual activity, other than:

"[t]he sexual activity that forms the subject matter of the charge, unless the evidence is of specific instances of sexual activity, is relevant to the issue at trial, and has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice."

In 1992, just like in 2017, sexual history had nothing to do with the likelihood that a complainant consented to sexual activity, or with the complainant's credibility.

The main issue that was the subject of the appeal in R. v. S.B. was straightforward. The trial judge in that case allowed defence counsel to introduce two pieces of problematic evidence: sexually explicit text messages between the complainant and her affair partner, and a transcript

of a sex video she had made with the accused, being her husband. Neither of these pieces of "evidence" was relevant to the actual issues at trial.

The trial judge thought these items were relevant to the complainant's credibility. In particular, the trial judge allowed the text messages to be read aloud in court, despite the fact that the complainant had already admitted to the court that she had lied to the police about having an affair.

The Court of Appeal as a whole disagreed with the trial judge, finding that:

"[i]n the circumstances of this case...where the unfaithfulness and the untruthfulness in [the complainant's] statements to police were admitted, reading out the texts had the effect of conjuring up the first of the twin myths which section 276 is intended to prevent, that because of her prior sexual activity (here, her unfaithfulness) the complainant is more likely to have consented to sexual intercourse with the accused on the occasions as charged, being a woman (to use an old phrase) of easy virtue."

Despite this finding by the Court of Appeal, only Justice Green found that the evidence admitted -- of prior sexual history -- was so prejudicial that it warranted a new trial on the charges. According to Justice Green:

"By prohibiting admission of sexual history evidence to support the inferences leading to the twin myths, parliament has signalled that because of the significant dangers of influencing the jury to engage in lines of reasoning based on those myths, it is not sufficient to allow them to hear it even with an appropriate cautionary instruction."

The Supreme Court agreed. But the trial judge's decision did its damage. The complainant has now had private text messages and a transcript of a private sex video made public. She has also had to endure cross-examinations on these issues.

Clearly, even after 25 years, the rape shield provisions have not succeeded in dismantling the hostile climate for sexual assault victims in the Canadian legal system. But I do take comfort in the Supreme Court's very direct statement granting the appeal. The highest court in Canada does not need to analyze, reiterate or rationalize the meaning of these protections. The law is settled on this point, even though practically speaking, the legal system may still be catching up.

Saying he was poisoned in Russia, ex-Canadian Justice Minister fights a Kremlin bullying campaign

Irwin Cotler believes he was targeted during a 2006 official visit to Moscow
Israel Times
Simona Weinglass
March 30, 2017

Following last week's sudden death and sudden near-death of two prominent opponents of Russian President Vladimir Putin – one of whom is a lawyer for murdered Moscow lawyer and whistleblower Sergei Magnitsky — a former Canadian justice minister and parliamentarian, heavily involved in the movement to combat corruption in Russia, told The Times of Israel that he believed he had been the victim of foul play.

In a phone interview from his office in Montreal, Irwin Cotler – a longtime lawyer for Soviet dissidents and refuseniks – recalled that during a 2006 official visit to Moscow, he went out to dinner with a colleague and a few hours later began vomiting blood.

"He and I ate exactly the same thing," Cotler recalled of his dinner with fellow Canadian MP Joe Comartin, during an interparliamentary trip to the Russian capital. "Later, back at my hotel, I began to vomit blood and became really sick. I called the hotel and asked for a doctor. They sent cleaning ladies instead, who cleaned up the blood."

Cotler then called the Canadian Embassy, who sent a doctor. Cotler was rushed to the European Medical Center in Moscow, where he was hospitalized for several days, undergoing tests and injections. He subsequently flew back to Canada, where he remained ill for months afterwards. In Moscow, his liver and pancreas were X-rayed, but he received no response to his inquiries as to what had occurred, and no investigation, as he had requested. While Cotler has no conclusive proof he was poisoned, he now believes it likely.

"When it happened, I figured it was a bad case of food poisoning. Until I began to connect the dots."

Cotler, a human rights lawyer, had represented Soviet dissidents in the 1970s and 1980s, including Andrei Sakharov, Natan Sharansky and Yuli Edelstein. In 1998 he represented accused spy and environmentalist Alexander Nikitin, who had been imprisoned by the FSB, the successor organization to the KGB, while Putin was its head.

"People say Putin has a long memory," Cotler remarked, speculating as to why the Russian leader might have felt motivated to poison him.

Cotler first publicly discussed the incident in 2014, after he was placed on a Russian blacklist of 13 Canadians who are prohibited from entering Russia, the third time he has been so banned. Cotler's revelation received a modest amount of publicity at the time, but has renewed relevance now, in light of the mysterious death and near death of Putin opponents and the FBI investigations about Russian interference in the US presidential election campaign.

Further connecting the dots, Cotler said he began noticing, shortly after his illness, that other outspoken critics of Putin's regime were suffering a high rate of mortality and sickness.

Cotler's former colleague from Yale Law School, Luzius Wilhaber, the former president of the European Court of Human Rights, became violently ill, with similar symptoms, after a three-day trip to Moscow in October 2006. Wilhaber had previously angered the Russian government by upholding the complaints of Chechen human rights activists.

A month later, former KGB and FSB officer Alexander Litvinenko died from drinking poisoned tea in London. Litvinenko had become an outspoken critic of the Putin regime and an informant for the MI6.

In 2009, Russian lawyer Magnitsky died in prison after allegedly exposing a $230 million tax fraud committed by allegedly corrupt officials colluding with gangsters in Russia. Two key Russian witnesses in the case, Valery Kurochkin and Octai Gasanov, died of liver failure and heart failure, respectively. Alexander Perepilichny, a whistleblower in the multi-million tax fraud case, died of apparent poisoning while jogging near his UK home, in November 2012.

Russian democratic opposition leader Boris Nemtsov, who had come to Canada to support his Justice for Sergei Magnitsky legislation, was gunned down on February 27, 2015. Nemtsov's protege, a young liberal politician named Vladimir Kara-Murza has twice succumbed to severe and sudden illnesses that he believes were brought on by poisoning.

Then, last week, former Russian MP turned Kremlin critic Denis Voronenkov was gunned down on a street in Kiev. And a lawyer for the family of the deceased Magnitsky, Nikolai Gorokhov, who was about to testify in two separate Magnitsky-related trials in Russia and the US, fell from a fourth-floor balcony in Moscow last Tuesday. Gorokhov suffered severe head injuries but miraculously survived.

"You see that Gorokhov's injuries have to be contextualized in terms of what has happened to other people who were connected to the Magnitsky case," Cotler told The Times of Israel.

All told, said Cotler, there are about 40 "journalists, lawyers, human rights activists, opposition leaders and dissidents who are connected to each other or all connected by virtue of the fact that they have been critics of Putin, who have been assassinated, poisoned and the like."

The people behind these assassinations or attempted assassinations are rarely held to account, he said, and in many cases are even rewarded.

In some instances, the hit men are put on trial, but there is no inquiry into who sent them.

Putin for his part said in a 2013 Russian television interview that while Magnitsky's death was a "tragedy," investigators had "concluded that there was no malicious intent, or criminal negligence in Magnitsky's death. One might think no deaths occur in US prisons."

Cotler said that citizens of liberal democracies may not fully grasp the extent to which Russia's nascent steps toward democracy in the 1990s have been aborted

"Three things in Russia that people don't always appreciate, and Magnitsky is a case study of it, are the intertwined cultures of corruption, criminality and impunity. People speak of the culture of corruption and the culture of criminality in Russia but they miss the third point, that is the culture of impunity, that nobody is brought to justice, and those who seek to bring the officials to justice — not only inside Russia but outside Russia — become targets of the regime."

'Mafia state'

In "Convergence: Illicit Networks and National Security in the Age of Globalization," a 2013 book published by the US Department of Defense, foreign affairs experts Michael Miklaucic and Moises Naim describe Russia as a country where the mafia and government are increasingly indistinguishable.

Organized crime groups, they write, "are able to infiltrate 'their own members' into positions of governmental responsibility… and subvert the legitimate intent of the state from the inside for ulterior — criminal — purposes."

"While Russian state institutions continue to engage in traditional governmental activities — making and enforcing laws, adjudicating disputes, providing services admittedly often without competence or efficiency," they add, "the government often practices either neglect or complicity with illicit network activity throughout the country."

In 2010, a senior Spanish investigator, José "Pepe" Grinda Gonzalez, told a group of US officials in Madrid that Russia has become a "virtual mafia state."

He described prosecuting organized criminals from the former FSU, and realizing he was up against a formidable force with the full infrastructure of a state behind them.

"Here I am, a prosecutor, a magistrate in Spain, but on the other side of me I face the best lawyers that can be hired in Spain and I face nation-states that are deploying diplomats, the military, intelligence and spies."

Before his murder, Boris Nemtsov, the Russian pro-democracy leader, lobbied the US Congress, Canadian and European governments to pass "Justice for Sergei Magnitsky" laws that would personally sanction Russian officials whom Western governments believe were involved in the death of Magnitsky, who has become a symbol and rallying cry for some members of the pro-Western Russian opposition.

“In principle, the Magnitsky Law would be unnecessary if a truly independent judiciary and law enforcement agencies that actually enforced the law existed in Russia,” Nemtsov said in an April 2013 interview, “and if thieves and criminals were actually punished for their actions. But in the years under Putin, the independent judiciary has been destroyed, law enforcement agencies are under the control of the interests of a corrupt regime and the thieves and criminals loyal to the regime are at large and actually promoted for their services.”

The US Congress was the first to pass the Magnitsky Act in 2012, prohibiting several dozen individuals believed to be Russian human rights abusers and corrupt officials from travelling to the US, buying property, or using the banking system. Moscow was outraged by the law and in retaliation prohibited Americans from adopting Russian babies.

In March 2015, before Cotler retired from the Canadian parliament, and after holding hearings on the need for Justice for Sergei Magnitsky legislation, the Canadian parliament unanimously adopted Cotler’s motion urging the legislature to pass a Canadian Magnitsky Law. Such a law has not yet passed in Canada but in the meantime Cotler said the law has evolved into a “Global Magnitsky Human Rights Law,” that would sanction individual human rights abusers in any country.

The expanded legislation has been adopted by the US Congress, and Cotler believes versions of it will soon be passed by the UK, Canada and the European Union. Even the small Baltic state of Estonia recently passed Justice for Sergei Magnitsky legislation, Cotler pointed out, “to ensure that Estonia will not be a country where Russian violators can travel freely or launder their assets.”

As journalist Luke Harding recently told USA Today, “If you steal money in a place like Russia, you have a problem. You need to convert it to rubles and dollars and put it somewhere someone can’t steal it from you. One place to do that is buy real estate in New York, Miami or London.”

Last week the Organized Crime and Corruption Reporting Project (OCCRP) and a worldwide consortium of journalists released a series of articles dubbed the “Russian Laundromat,” which detailed a pattern of corrupt Russian officials moving billions of dollars of assets out of the country through complex offshore schemes and laundering some of their money through UK and US banks. Asked if “Justice for Magnitsky” laws would curb such activity, despite the fact that it is financially advantageous to some people in the West, Cotler replied that he hopes so.

“Enforcement will be crucial. If enforcement is globalized, Russia may get the message and start to curb its own cultures of corruption, criminality and impunity, which it shows no signs of doing.”

The case of Israel

Israel, said Cotler, shows no signs of passing “Justice for Sergey Magnitsky” legislation. Cotler recalled that he wrote an article on this issue for the Israeli media in 2012. Then and now, when

Prime Minister Benjamin Netanyahu meets with Putin, the case of Magnitsky is not on the agenda.

“I understand that the issues of Iran and Syria are at the forefront for Israel. I am not unmindful of the national security threats to Israel,” Cotler noted.

Nevertheless, Cotler said Russia’s culture of corruption, criminality and impunity can be a problem for Israel.

For instance, Israeli banks have helped launder money for Russian oligarchs, while large-scale fraudulent industries, like binary options, have been allowed to flourish here. A May 2009 diplomatic cable by the US ambassador to Israel warned that “many Russian oligarchs of Jewish origin and Jewish members of organized crime groups have received Israeli citizenship, or at least maintain residences in the country.”

The United States estimated at the time that Russian crime groups had “laundered as much as $10 billion through Israeli holdings.”

“I think it might be advisable for there to be a parliamentary inquiry into whether – and the extent to which – this culture of corruption has extended into Israel, and is involving Israelis in that orbit of corruption and impunity,” Cotler suggested.

Unfortunately, he said, when he talks to Israelis about Magnitsky, most have never heard of him.

“Looking at it through the lens of an Israeli, they say, understandably, ‘we have much more important things to worry about, namely security threats.’ But one hopes that a country can walk and chew gum at the same time.”

Cotler views Magnitsky legislation as a tool the West can use to pressure Russia and curb the malignant spread of Russian criminality, much like the United States’ 1974 Jackson-Vanik Amendment pressured the Soviet Union to allow Soviet Jews to emigrate.

“Israel is a responsible member of the international community. Its close allies and friends (the US, UK and Canada) are in the process or having adopted or adopting such legislation. When Israeli MKs come to Canada or the US or UK or engage with fellow parliamentarians, they should at least able to discuss the justice for Sergei Magnitsky legislation, to be part of the conversation.”

Crown appealing stay of proceedings in sex case of former priest

The Western Star
Gary Kean
April 1st 2017

The Crown is appealing a stay of proceedings granted in the case of a former Roman Catholic priest from western Newfoundland charged with sex offences.

Gary Gerard Hoskins, 58, is a convicted sex offender, having served three months in prison in 1997 for sexually assaulting a boy on the west coast in 1985.
He currently has two charges against him of sexual assault. The allegations involve one male victim and are alleged to have taken place in Stephenville sometime between January 1984 and December 1986.

The current charges, to which Hoskins has pleaded not guilty, had been coursing their way toward a trial in the Supreme Court of Newfoundland.
However, the defence filed an application to have a stay of proceedings granted because of unreasonable delays in the prosecution.

In February, Justice David Hurley rendered his decision in support of the defence's application and granted the stay of proceedings. Hurley ruled the delays in the prosecution were a violation of Hoskins' rights under Section 11(b) of the Canadian Charter of Rights and Freedoms.
The defence's application is known as a Jordan application, referencing a Supreme Court of Canada decision in July 2016 that stipulates there should be reasonable timeframes for an accused person to be prosecuted. The decision states that matters in provincial court should be prosecuted within 18 months, while matters in the Supreme Court should take no longer than 30 months.

The most recent charges against Hoskins were filed more than four years ago.
When he delivered his decision orally Feb. 16, Hurley did not give all of his reasons for his judgment to grant the stay of proceedings. He indicated a written decision fully outlining his reasons would be available within a few days. However, as of Thursday, the written version was still not available to the lawyers involved, let alone to the public.

Among the delays, as previously reported by The Western Star, were the Crown's efforts to gather documents to support an argument that would incorporate similar-fact evidence related to a prior conviction on similar charges in 1997.

Crown prosecutor Kari Ann Pike was not in court the day Hurley delivered his oral decision. She said she would like to read the full written decision before commenting on it.
In any event, it would not be Pike who would argue the appeal of Hurley's decision. That will be done by Crown prosecutor Lloyd Strickland of the Special Prosecutions Office of the provincial Department of Justice and Public Safety.

Strickland filed a notice of appeal with the province's Court of Appeal on March 15. It claims Hurley erred in finding Hoskins' charter rights were infringed.
The notice states Hurley erred in determining Hoskins had not waived his charter rights during significant periods of delay in the prosecution. It also states Hurley failed to properly assess

Hoskins' matter as a transitional case that predates the Supreme Court of Canada's ruling in R. v. Jordan.
The Crown is asking that the stay of proceedings be set aside and the matter remitted to the Supreme Court for continuation of the trial.

LGBT discrimination class action lawsuits against federal government merge

660 NEWS
March 31st, 2017

TORONTO (NEWS 1130) – Three separate class action lawsuits against the Canadian government over the alleged purge of LGBT persons from the military and the public service have merged into one.

Leading the pan-Canadian class action are Todd Ross, Martine Roy and Alida Satalic, who each served as members of the Canadian Armed Forces. They allege that during their time with the military they were investigated and interrogated about their sexual orientation by the military police and pressured to out other members of the LGBT community serving in the armed forces.

The actions have been termed the "LGBT Purge."

Ross, who joined the military in 1987, became the focus of an 18-month investigation two years later. According to his lawyers, Ross admitted he was gay while hooked up to a polygraph machine and told he could "accept an honourable discharge or spend the remainder of his naval career performing 'general duties,' with no hope for promotion or advancement."

"I was really devastated. I had not admitted to myself that I was gay so the fact that I had just admitted to a stranger, in a room, facing a two-way mirror, hooked up to this machine, that I was gay… I was just kind of a collapsed shell at that point," he explained.

Ross said the shame associated with being forced to leave the military, as well as trying to explain to his friends and family what had happened, made him suicidal.

"I did try to commit suicide after that. I couldn't speak to anyone. I was not out to anyone. If I was close to anyone I was told not to speak to them by the military police, and so I was really isolated and didn't know what to do next."

Ross's original lawsuit was asking for $600-million in damages.

"We're looking for recognition of what happened, for the government to go through the records and to do a thorough evaluation of the LGBT purge that happened here in Canada. We want that record public," said Ross.

In 1981, at the age of 19, Roy joined the military. Despite having a boyfriend, an investigation was launched into her actions. She said she admitted to meeting a woman and, just two years after joining the military, she received a dishonourable discharge for being a homosexual.

In 1992, the Supreme Court of Canada ruled the LGBT ban on military service was unconstitutional.

Satalic, a former postal clerk, claims she was mistreated and harassed while she was serving her country because she was a lesbian. Satalic joined the Canadian Armed Forces in 1981 at Canadian Forces Base Cornwallis in Deep Brook, N.S., and served at three bases.

According to court documents, she said she was repeatedly interrogated by investigation units on the pretext of security screenings, and was asked about her sexual relationships in detail. Satalic claims she dropped out of the military as a corporal in 1989 after learning she had no career prospects, re-enrolled in 1993 and then left again years later.

It says after she told investigators about her sexual orientation, Satalic was given the option of staying in the military with no further training or promotions, or a release from service as “Not Advantageously Employable.”

The lawsuit is asking for compensation for all current or former employees of the Canadian Armed Forces, the Government of Canada or Federal Crown Agencies who were investigated, discharged, terminated, sanctioned or faced threat of sanction, by the Government of Canada because of their sexual orientation, gender identity or gender expression, between June 27, 1969 – the day homosexual acts were officially decriminalized in Canada – and the present day.

“The LGBT Purge was implemented at the highest levels of the Government of Canada and was carried out with callous disregard for the dignity, privacy and humanity of its targets,” Douglas Elliott of Cambridge LLP, one of the lawyers representing the class, explained.

“The Purge caused tremendous harm to those affected, subjecting them to discriminatory, and humiliating treatment that demeaned their dignity and infringed their basic human rights.”

Ross said he believes the class action lawsuit could end up involving about 9.000 people from across the country.

The class is represented by Cambridge LLP and Koskie Minsky LLP in Toronto, Irving Mitchell Kalichman LLP in Montreal and McKiggan Hébert in Halifax.

Treasury Board wants PS to take time off in lieu of year-end cash-out to ease strain on Phoenix

Ottawa Sun
Jim Bagnall

March 31st 2017

There seems no end to the knock-on effects of the federal government's rollout of Phoenix Pay, the upgraded human resources system that was supposed to save tens of millions of dollars annually.

Treasury Board has advised public service executives not to pay employees automatically on March 31 for “excess” vacation, travel and time-off in lieu of overtime earned during the previous 12 months — unless employees request it.

Under normal rules, public servants are limited in the amount of time they may carry over from one year to the next. Anything over the maximum set by Treasury Board policy or union agreement — typically five or six weeks — is automatically paid out in cash on March 31, the end of the government’s fiscal year.

The rules are to prevent the creation of large time banks that allow employees to take lengthy leaves of absence. But the government is trying to reduce as many demands as possible on the Phoenix pay system, which is still grappling with a backlog that will take months to fix.

“We didn’t want to place an undue burden on the (Phoenix) system,” said Debi Daviau, president of the Professional Institute of the Public Service of Canada, which has 57,000 members. Daviau, who was consulted by Treasury Board, the agency responsible for negotiating with public sector unions, didn’t have a problem with the changes because the automatic payouts are supposed to benefit management.

The Treasury Board directive applies to all government employees, including executives, and union and non-union workers. Treasury Board implemented a similar policy a year ago when difficulties associated with Phoenix first surfaced.

Daviau said relatively few of her members exercised their right to an immediate payout. In some cases this was because that would bump them into a higher tax bracket. Nor did PIPSC members want to risk putting an optional request through Phoenix software that might not be able to handle it properly.

Treasury Board’s directive does not make clear how the excess vacation and overtime will be dealt with once Phoenix returns to steady state — perhaps before year-end 2017. Certainly the government’s liabilities for this item are growing.

Nor is it known how departments will pay out cash to employees who do request automatic payments for time owing from the fiscal year ending March 31.

The human resources manager for one federal department wrote this week: “We are awaiting further instructions from Treasury Board” about how to process cash-out payments for employees who want them.

Editorial: Phoenix glitches just keep on coming

Ottawa Citizen Editorial Board
March 31, 2017

Ah, the end of the federal government's fiscal year, and a young public servant's fancy turns to enjoying that annual block of unused vacation, time owing and overtime that will automatically be paid out under union contracts …. Oh, wait.

For the second time, Treasury Board is telling departments not to dole out these sums unless individuals specifically request them. The problem – you guessed it – is the Phoenix payroll system. Treasury Board fears that these special payments will overtax a system already stumbling between crises.

The delay is a logical move, which will "allow us to focus on addressing current and upcoming priorities with the pay system while still providing employees with the option to cash out extra credits should they wish to do so," according to a statement from Treasury Board. Even the Public Service Alliance of Canada agrees the move is "prudent." But it doesn't exactly inspire confidence that the end is in sight for the Phoenix fiasco.

As it stands, dozens of departments are still struggling to ensure regular and accurate paycheques for many employees, well over a year since Phoenix was introduced amid a planning brain cramp that failed to ensure proper training or resources so the software could be smoothly adapted for the massive federal bureaucracy. As well-meaning executives struggle to plug the holes in the system's leaky dike, new ones emerge.

At a recent government briefing, Marie Lemay, the deputy minister in charge of the problem-plagued pay system, said 284,000 pay transactions hadn't been processed, a work backlog of about three months. She nonetheless remained resolute that progress was being made, adding that the government would meet its standards by the end of March or April for dealing with parental leave claims and disability issues.

Back In February, public servants were being asked to delay until the end of that month the printing out their tax forms to ensure these were accurate. In early February at least one union asked emergency funding because the Phoenix wasn't properly transferring union dues.

The federal budget wasn't a confidence booster either; it contained no extra money for fixing Phoenix despite a plea from the unions to earmark a specific emergency sum.

This latest glitch seems minor to the government and unions, since any public servant who actually wants his or her extra compensation right now can get it. But the government normally

wants to clear this backlog, since we taxpayers must ultimately underwrite it. It’s important that this not happen a third time.

Les avocats et notaires contestent la loi spéciale

La Presse Canadienne
31 mars 2017

Les avocats et notaires de l'État québécois contestent la loi spéciale du gouvernement Couillard qui les forçait à revenir au travail après plusieurs mois de grève.

LANEQ a annoncé vendredi après-midi avoir déposé une requête en Cour supérieure.

Le syndicat des juristes estime que la loi 2 du gouvernement libéral porte atteinte au droit de grève et au droit à la libre négociation de ses membres.

La loi spéciale, adoptée le 28 février dernier à Québec, contraignait les avocats et notaires de l'État à retourner au travail le jour suivant.

Les quelque 1100 avocats et notaires du gouvernement étaient en grève depuis plus de quatre mois et leur débrayage commençait à affecter les services du gouvernement, selon le président du Conseil du trésor, Pierre Moreau.

M. Moreau martelait que LANEQ n'avait pas bougé sur ses positions depuis le début des pourparlers et selon lui, le syndicat avait l'intention de transformer ce conflit «en contestation judiciaire».

L'une des revendications de LANEQ était de bénéficier du même traitement que ses pairs procureurs aux poursuites criminelles et pénales. Et l'organisation jugeait que les offres que leur avait faites Québec étaient loin d'équivaloir à celles qu'ont eues les procureurs de la Couronne.

La Cour suprême rejette l’appel d’un prédateur sexuel

Radio-Canada
31 mars 2017
Le septuagénaire, originaire du Saguenay, avait pu retrouver sa liberté durant les procédures d'appel...

La Cour suprême du Canada rejette la requête du pédophile Jean-Louis-Savard qui demandait au plus haut tribunal au pays un acquittement ou un nouveau procès.

L'individu, maintenant âgé de 69 ans, avait été reconnu coupable d'attouchements sexuels sur cinq de ses neveux et nièces dans les années 60 et 70 à la résidence familiale de Saint-David-de-Falardeau.

À l'issue de son procès, il avait été condamné à six ans de pénitencier en juin 2015 par le juge Michel Boudreault de la Cour du Québec.

La Cour d'appel du Québec avait maintenu les décisions du tribunal de première instance, mais un juge avait inscrit sa dissidence et concluait qu'un second procès aurait dû se tenir.

C'est à partir de cette dissidence que l'avocat de l'accusé, Christian Maltais, s'est présenté vendredi matin devant cinq juges de la Cour suprême à Ottawa.

Il a basé son argumentaire sur le fait que le juge Boudreault, qui avait déclaré Jean-Louis Savard coupable, lui avait reproché son absence d'émotion durant le procès. Il s'agit, selon lui, d'un élément très subjectif qui touche au cœur de la présomption d'innocence du système judiciaire.

« L'accusé est discrédité au départ par le juge à cause de son absence d'émotion, a souligné Me Maltais devant la Cour suprême. L'accusé se retrouve dans la situation où il est discrédité dès le point de départ parce que le juge a une vision des choses qui ne correspond pas à sa façon de témoigner. »

Pour sa part, le procureur aux poursuites criminelles et pénales Sébastien Vallée a soutenu que le juge Michel Boudreault avait fondé sa décision sur un ensemble d'informations, incluant toute la preuve et qu'il l'avait fait avec rigueur.

Selon lui, un jugement rendu par un juge dans un procès criminel avec des accusations à caractère sexuel touchant des mineurs « est un exercice extrêmement complexe, où il n'y a pas de guide. C'est un exercice qui demande de la rigueur et cette rigueur-là, on la retrouve dans les motifs que le juge Boudreault a expliqués. »

Au cours des plaidoiries, des juges de la Cour suprême sont intervenus pour demander des précisions à l'argumentaire des deux avocats, pour les ramener au but de la rencontre ou pour soulever des questions de droit.

Les cinq juges de la Cour suprême ont rendu leur décision après avoir délibéré moins d'une heure.

« Une majorité des juges de notre cour sont d'accord avec les motifs de la majorité de la Cour d'appel. Pour sa part, la juge Suzanne Côté pour les motifs du juge dissident en Cour d'appel aurait ordonné la tenue d'un nouveau procès. Pour ces motifs, le pourvoi est rejeté », a écrit le juge Richard Wagner, de la Cour suprême du Canada

Le dossier est donc clos et sans appel pour Jean-Louis Savard qui devra continuer de purger sa peine de pénitencier.