Supreme Court to revisit Jordan in spring session

Lawyer's Daily
Cristin Schmitz
March 31, 2017

In its spring session, the Supreme Court of Canada is revisiting the thorny question of what the Charter right to a speedy trial requires, and it will also hear from unionized federal Crowns who say their Charter right to liberty and privacy is impinged by being required to be on-call (without pay) outside regular work hours.

So far the top court has booked only a dozen appeals for its new session starting April 17, but there are a wide range of issues (see highlights below), including a case which raises the politically sensitive interpretive question whether the Indian Residential Schools Settlement Agreement requires Ottawa to destroy the records from the Independent Assessment Process (IAP) used to redress sexual and serious physical abuse claims from former students: A.G. Canada v. Fontaine, to be argued May 25.

On April 25, however, criminal lawyers will turn their attention to the arguments in companion appeals from Newfoundland that give the nine justices their first opportunity to elaborate on — and "course correct," if they deem it advisable — last year's criminal justice juggernaut known as R. v. Jordan 2016 SCC 27: Cody v. The Queen; R. v. Hunt.

Half a dozen provincial attorneys general are intervening in Cody to express their views as to how the Charter's s. 11(b) guarantee of trial within a reasonable time should be interpreted in the wake of Jordan — a 5-4 ruling which has resulted in hundreds of cases being dropped or thrown out for unreasonable delay in the past eight months because they exceed the court's presumptive time limits of 18 months from charge to end of trial in provincial court, and 30 months in superior court.

According to the intervener Criminal Lawyers' Association (Ontario), the court should resist prosecution pleas to restrict, or resile from, Jordan — i.e. the court should not follow its own example in R. v. Morin [1992] 1 S.C.R. 771, which saw the Supreme Court modify or reverse itself on several key elements of its landmark s. 11(b) ruling 17 months earlier in R. v. Askov [1990] 2 S.C.R. 1199. (Askov led to more than 52,000 cases being thrown out in Ontario alone for unreasonable trial delay.)

"The defence bar would like to see no rollback of Jordan," said Toronto's Megan Savard, who with Frank Addario represents the CLA.

Savard said Jordan was itself a compromise. "The Supreme Court shouldn't roll it back because Jordan hasn't been fully implemented," she argued. "We don't know how well it's working — and we need to see that before we tinker further with the law."

Savard discerns an echo today from the Askov/Morin situation that faced the top court a quarter-century ago. "The government did lobby the court after Askov to roll the [s. 11(b)] law back —

as they've done here," she remarked. "The difference is that Jordan acknowledges that [the law as modified by the court in] Morin was a failure."

Ottawa criminal lawyer Michael Crystal, co-counsel for the appellant James Cody, notes that in applying the Askov/Morin framework for s. 11(b) analysis, the trial judge found the five-year wait for a five-day trial in his client's case unreasonable and thus stayed drugs and weapons charges.

"I intend to argue that the Jordan language, and the spirit of Jordan which is to basically address a 'culture of complacency,' would again support the same results," explained Crystal.

Croft Michaelson, counsel in Toronto for the respondent Public Prosecution Service of Canada (PPSC), did not wish to comment before Cody is argued.

Cody is a "transitional" case where charges were laid before Jordan. The Supreme Court is asked how to apply the Jordan framework for determining s. 11(b) violations, including what the majority meant when it said judges may relieve from the presumptive time limits in "exceptional circumstances," and what qualifies as a "transitional" exceptional circumstance for cases that were already in the system when Jordan was handed down?

In Hunt, which will also be argued April 25, the Newfoundland Crown is seeking to overturn a groundbreaking "pre-charge delay" decision that stayed charges against four men in a complex fraud case because it took police a decade to charge them. The Newfoundland courts below, partly inspired by Jordan, found that 10 years to be egregious in the circumstances, and deemed it an abuse of process in violation of the respondents' s. 7 Charter rights.

The appellant Crown objects in its factum "a majority of the Newfoundland Court of Appeal has now determined that the speed and efficiency of a police investigation may be subject to judicial scrutiny in a similar manner as a trial under s. 11 (b) of the Charter. With respect, Jordan concerns time management in the course of criminal litigation; the courts may be expected to regulate their own proceedings. But scrutinizing police investigations on the basis of efficiency and resource deployment is a step too far." The Crown also contends that the stay of proceedings was not the appropriate remedy for the pre-charge delay.

On April 19, the Supreme Court will turn to a novel appeal from **the Association of Justice Counsel (AJC):** Association des jurists de Justice v. Procureur general du Canada. The union for 2,700 Crowns and other federal government lawyers is appealing last year's Federal Court of Appeal ruling that there was no infringement of their members' s. 7 Charter privacy/liberty rights (which are incorporated into their collective agreement) when Montreal Crowns who deal with immigration cases were required by their employer, a few times a year, to be on-call, without pay, to deal with infrequent after-hours emergency stay applications in Federal Court (thus constraining their personal activities and whereabouts during their off hours. They are however

compensated if they actually have to work.). The appeal court held that the employer's policy was not unreasonable.

"This is not a compensation case," AJC president Ursula Hendel told The Lawyer's Daily in a prepared statement. "This is about the right to privacy and has far-reaching implications for all workers, in every field, whether they are unionized or not. This really goes to the question of where do we draw the line on how an employer can impede on the privacy of their employees?"

The issue arises for Crowns in other contexts as well. Last year the AJC grieved, and went to court, to challenge the PPSC's move to require more than 50 Crowns in Edmonton and Calgary to staff bail courts by phone on a 24/7 basis.

Other noteworthy questions the Supreme Court will consider in its spring sittings include: •Did a 35-year-old woman charged with sexually assaulting an underage friend of her 17-year-old son take "reasonable steps" to ascertain that the complainant was at least 16 — as she believed when they had sex — i.e. over the age of consent: George v. The Queen (April 28)?

•To what lengths should a court go to make sense of a self-represented litigant's unclear legal position, and is the law of civil contempt of court equally applicable to self-represented and lawyer-represented litigants: Pintea v. Johns (April 18)?

•What is the scope of judicial review of decisions from the Specific Claims Tribunal, which opened its doors in 2011 to address First Nations' historic land use and treaty grievances against the federal Crown? The April 26 hearing of Williams Lake Indian Band v. The Queen marks the first time the top court will consider the new tribunal's mandate.

•Are the former Conservative government's 2008 changes to the Criminal Code's dangerous offender provisions — including their reduction of judicial discretion —overbroad and/or cruel and unusual punishment, contrary to ss. 7 and 12 of the Charter: Boutilier v. The Queen (May 23)?

•What is the proper test for proprietary estoppel in the context of a wills and estates case where the respondent faces a claim that she must keep the promise she made to her brother to sell him her contingent one-third future share of their elderly mother's home (which the respondent later inherited when their mother died) if he gave up his law practice and looked after their mother until her death: Smith v. Morgan, to be heard May 26.

The problem with the Trudeau government's 18-month maternity leave plan

Canadian Business
March 31, 2017

Last week, Prime Minister Justin Trudeau released his 2017 federal budget. With it came the news of an extension to our already pretty dreamy parental benefits in Canada—at least compared to the mere 12 weeks our neighbours to the south get (if they're lucky). As Americans looked longingly at our generous mat leaves, many Canadians rejoiced. Eighteen months off! A protected job! Because it's 2017, right?!

But take a closer look and this proposal isn't all it's cracked up to be. Right now, eligible parents are entitled to up to 35 weeks of parental leave, on top of the 15 weeks of maternity leave new moms can take. You get 55 percent of your income, up to a maximum of $51,300 (this amount increases slightly each year). With the new proposed 18-month parental leave, you'll instead get 33 percent over 18 months instead of 12.

Same same? Nope. Let's do some number crunching: Say you want to take your 15 weeks of maternity leave and all 35 weeks of parental leave, and let's say that pre-baby, you earned more than $51,300. At the end of your 12-month mat leave you'd collect about $27,150, or about $2,263 per month. Under the new 18-month plan, you'd collect about $24,450, or about $1,358 per month.

One of the big "Justin-fications" for this proposal is that it'll help parents deal with expensive and hard-to-find childcare, which is often cheaper and easier to find for toddlers (partly because staff-to-child ratios are looser after 18 months, so daycares are less inclined to hire additional staff to accommodate more infants). If parents can stay home with their kids until they're 18 months, they could end up finding daycare more easily—and paying less for it.

In a city like Toronto, where daycare costs are the highest in the country, that might make some sense. But if you look at the 2016 childcare cost survey by the Canadian Centre for Policy Alternatives, that's not the case across the country. In Toronto, the median cost for infant daycare is $1,649 per month. For toddlers, it's $1,375. In Vancouver, however, infant daycare is about $1,321, while the median toddler rate is actually four dollars more. At my daughter's daycare in Vancouver, the cost is the same for any kid between one and five. In Ottawa, toddler care costs $84 more.

On average, across the country, toddler care is about $107 cheaper than infant care. So if you take 18 months of parental leave and hold off on daycare until 18 months, you'll save about $642. But you'll also miss out on up to $2,700 of parental leave benefits.

As for the accessibility of infant spots, I can only speak anecdotally. In Vancouver, I put myself on multiple wait lists that I never heard a peep from, and created a spreadsheet of nearby group centres and licensed in-home daycares. I called them relentlessly for months. As the end of my 12-month mat leave drew closer, I started to panic. Three weeks before I was scheduled to start working again, I was offered three different full-time spots. I took one.

I hear that story a lot: You search and search and at the eleventh hour, you find a daycare. I don't know a single parent who has been unable to find something.

That last-minute panic is one of the challenges with the new 18-month option. Although the details are still unclear (the budget is expected to pass in the House of Commons, but we may not see these changes enacted until next year), it's likely that you'll be required to choose between a 12-month leave or an 18-month leave at the outset, when you first make your claim right after your baby is born. If you choose 18 months but then decide you want to go back to work sooner, you'll be missing out on the higher benefit rate. If you plan to return to work after 12 months and at 11.5 months you realize you still don't have daycare arranged, you probably won't be able to extend your benefits at that point because you've already been claiming benefits at the higher, shorter-term 55 percent rate.

Financially, you'd actually be better off taking 12 months at 55 percent and then six months off completely unpaid—that's just the math. But taking that kind of time off from your career is a luxury few have, especially if it comes at a cost. Even with job protection (which will be extended along with the benefits), 18 months away from your career could prove risky in terms of skill development, opportunities for advancement, department or company restructuring or even just your mat leave replacement getting chummy with your boss. A lot can change in a year and a half. Plus, many parents don't want to stay home for a full 18 months.

To suggest that parents take more time off to address systemic childcare woes is just passing the buck. If the government truly wants to fix some of the problems with daycare in Canada, maybe they can start with, um, fixing the problems with daycare in Canada. Costs are skyrocketing (especially once you factor in the cost of childcare for a second or third kid). The final months of mat leave or pat leave are often spent in a frenzy trying to secure a daycare spot, and families are put in the difficult position of choosing any daycare that will take them—licensed or not—at a time that's already pretty emotional for some parents as they transition back to work.

What would really help is an increase to the maximum insurable earnings. If the government is on board with lower benefits over a longer period, how about also offering higher benefits over a shorter period? Give me 75 percent for six months. Fix daycare the right way: by creating more spots and by subsidizing costs for daycares and families.

In British Columbia, a childcare advocacy group is pushing for $10-a-day daycare, a plan the B.C. NDP has embraced in the lead-up to the provincial election this spring. This is modelled after Quebec, where affordable, subsidized daycare was implemented 12 years ago. Advocates argue that subsidized daycare pays for itself (and is better for the economy): More women are able to enter or re-enter the workforce, increasing families' purchasing power and the amount of taxes paid.

Choice is good. Choice is empowering. And I think it's great that women may soon have the chance to choose a longer parental leave if it works for them, and that we'll have the backing of

the federal government to make that decision. But it's not really a choice if you simply can't afford it—financially, professionally or emotionally. For example, how could a single-parent household survive on $24,450 for 18 months?! Under the guise of Canada's first gender-sensitive budget, our self-proclaimed feminist prime minister is essentially asking women and families to shoulder more burden for less payoff, for longer.

Supreme Court of Canada to revisit trial delays ruling in upcoming session

Unusually swift revisiting of a contentious 5-4 decision offers high court chance to clarify ruling that could see serious cases tossed.

Toronto Star
Tonda MacCharles
April 3, 2017

OTTAWA—The Supreme Court of Canada will have a chance this spring to clarify its controversial ruling last July that led to scores of criminal cases being tossed for unreasonable trial delays and hundreds more set aside to save the more serious prosecutions from collapse.

In its spring session of oral hearings which kicks off April 18 the high court will hear a Crown appeal of a Newfoundland drug trafficking case that took more than five years to get to trial.

It's an unusually swift revisiting of a contentious and narrowly split 5-4 decision known as the Jordan ruling that the high court handed down in the dog-days of summer. In that case, the court said four years was too long for drug charges against a Surrey, B.C. man to get to trial, and found a violation of his Charter right to a trial within a reasonable time.

The latest appeal — to be heard by the Supreme Court of Canada on April 25 — was not fast-tracked but comes "as of right" because the Newfoundland and Labrador Court of Appeal was split in an October ruling that set out to interpret the new law on trial delays.

It conveniently offers the Supreme Court of Canada judges a unique opportunity to explain, or dial back, their widely-criticized Jordan decision.

That decision got little attention at first but it threw a wrench in the works of hundreds of criminal cases working their way through the system at the time.

In it, the highest court in the land blasted a "culture of complacency" in the country's criminal justice system and said delays, from charge to conclusion of a trial, should not exceed 18 months in provincial court, or 30 months in a superior court. It upended how judges should calculate delays, and allowed even the most serious charges, such as murder, to be tossed if the trial couldn't be concluded in a reasonable period

Since then, governments — federal and provincial — have scrambled to fill judicial and prosecutorial vacancies and to hustle cases to court, sometimes bypassing preliminary hearings. The Jordan ruling outlines situations in which defendants are also held to account for actions that lead to delays. But confusion — and anger — reigns.

Later this month, the Supreme Court will consider arguments by James Cody, one of six arrested after a drug investigation known as Operation Razorback. Cody faces charges of marijuana and cocaine trafficking, prohibited weapons possession and breach of probation.

Documents in the case show the prosecution team was dealing with several lawyers acting for six defendants, juggling disclosure of some 20,209 pages of evidence, 89 warrants of various types and, according to a lower court ruling, took 1,700 hours of police overtime to prepare.

However, even before the Jordan ruling, Cody's lawyer had challenged delays in his prosecution under the old regime, arguing that five years was too long for a five-day trial. Cody's case was already before the Newfoundland Court of Appeal when last summer's Jordan ruling landed, prompted the appeal court to ask all sides to weigh in again.

Last October, after reconsidering Cody's case, the Newfoundland appeal court ruled 2-1 against Cody. But his lawyers say the Newfoundland court "disregarded the spirit of the decision."

At issue before the high court now is how much blame to assign to the Crown, how much can be attributed to "exceptional circumstances" as outlined by the Supreme Court of Canada — for example the appointment of Cody's former counsel to the bench — and how much delay should, in the end, be deemed unreasonable.

The spring session will also see the Supreme Court of Canada sit on appeals that will:

Clarify whether documents that outline personal information of Indian residential schools survivors must be kept as government records or whether they should be destroyed to protect individual privacy. The records, compiled as part of an independent claim assessment process set up to provide compensation to survivors, contain deeply personal accounts of physical, sexual, and emotional abuse of former students. The federal government argues there are ways to protect individual privacy without destroying records that are an important historical archive of that terrible era. About 38,000 former residential school students applied for compensation under that non-litigation process, and more than $3 billion in compensation was paid out.
Establish how much leeway courts must give self-represented litigants when they fail to pursue their civil cases in timely fashion.

Clarify how the Charter guaranteed right to freedom of association applies in the case of government lawyers and notaries in Quebec who, as essential service providers, found themselves frustrated in efforts to conduct an ongoing strike when ordered to appear for routine hearings by the Quebec Court of Appeal

Clarify whether the government of Canada is liable for pre-Confederation laws and policies enacted by 19th century B.C. governments to manage lands sold to settlers that are claimed by aboriginal groups

Establish whether, in a Quebec gas price-fixing case, federal investigators for the Competition Bureau can be compelled to disclose evidence from their investigation to a group of civil litigants claiming they were victims of the price-fixing.

Système de paie Phénix: des primes de 5 millions, malgré le fiasco

LaPresse
Maxime Bergeron
5 avril 2017

(OTTAWA) Malgré les nombreux ratés du système de paie Phénix, qui ont pénalisé des dizaines de milliers de fonctionnaires fédéraux, 340 cadres de Services publics et de Approvisionnement Canada (SPAC) se sont partagés des « primes au rendement » de 4,8 millions de dollars dans la dernière année.

Pendant une conférence de presse à Ottawa, mardi matin, la sous-ministre responsable de ce ministère, Marie Lemay, a aussi confirmé qu'aucun employé du ministère n'avait été sanctionné dans ce dossier, qui coûtera des dizaines de millions au trésor public.

« À ma connaissance, il n'y a personne qui a perdu son emploi, a indiqué Mme Lemay. Mais il y a des gens qui ont souffert personnellement, probablement, de sentir le poids de Phénix sur leurs épaules. Ce sont des humains aussi. »

Enjeu majeur

La mise en place du système de paie Phénix en février 2016 s'est révélée un véritable fiasco pour le gouvernement fédéral. Des milliers d'employés de l'État ont été privés de paie pendant plusieurs mois, alors que d'autres ont été trop ou pas assez payés pendant une longue période.

L'affaire est encore loin d'être réglée, a admis mardi la sous-ministre, qui informe régulièrement les médias de la progression du dossier.

Les coûts encourus par SPAC pour gérer cette crise se sont élevés à 50 millions, et Ottawa ignore quelle somme devra être déboursée par l'État pendant la prochaine année. Qu'à cela ne tienne, 340 cadres, dont plusieurs ont travaillé directement à l'implantation de Phénix, se sont partagés des primes totalisant 4,8 millions l'an dernier.

Primes « méritées »

SPAC estime que ces primes étaient pleinement justifiées. « Soyez assurés qu'on a regardé chaque évaluation de rendement, et on a évalué (les primes) en conséquence, a indiqué Marie Lemay. Les gens ont eu ce qu'ils méritaient. »

Mme Lemay a souligné qu'un « petit nombre » de cadres supérieurs, directement responsables de Phénix, ont vu leur prime de rendement « retardée ». Elle a refusé de préciser combien de dirigeants du Ministère sont touchés par ce report.

« On l'a retardé parce qu'on veut attendre d'avoir toute l'information pour être capables de prendre une décision qui sera la bonne, a-t-elle dit. C'est très rare. Ça n'a pas été fait souvent de reporter des primes comme ça. C'est un message assez clair. »

Ces cadres supérieurs pourraient toutefois toucher leur prime de façon rétroactive, si jamais une évaluation révélait qu'ils n'étaient pas responsables de la débâcle de Phénix, a précisé la sous-ministre.

Mulcair scandalisé

Le versement de primes à 340 cadres de SPAC promet de soulever des vagues toute la journée à Ottawa.

À la sortie d'une rencontre avec ses députés, Thomas Mulcair, chef du Nouveau Parti démocratique, a rappelé les nombreuses situations problématiques vécues par des fonctionnaires. Plusieurs ont été incapables de payer leur hypothèque, tandis que des femmes ont été privées de revenus pendant leur congé de maternité.

« Je pense que le public a le droit le plus strict d'être scandalisé qu'on soit en train de payer des bonis à des gens qui sont responsables du plus important cafouillage administratif dans l'histoire du gouvernement du Canada », a lancé M. Mulcair.

Le député conservateur Erin O'Toole, candidat à la direction du PCC, s'est pour sa part dit « dégoûté » par les versements de primes. « L'argent n'aurait pas dû être versé. C'est clairement un gros problème. Ils appellent cela une prime à la performance ou un bonus, pour un travail qui n'a pas été fait correctement. »

Executives in department overseeing Phoenix pay system took home $4.8M in performance pay

Global News
Monique Scotti
April 5th 2017

Executives in the department overseeing the beleaguered Phoenix pay system received just under $5 million in “performance pay” over the past year, even as thousands of public servants were dealing with ongoing pay problems.

According to documents tabled in the House of Commons this week in response to a written question from Conservative MP Kelly McCauley, the $4,827,913 was divvied up between 340 executives at

The average performance payment for the 2015-16 fiscal year was $14,199.74.

Not all those executives would have been working on Phoenix, but Deputy Minister Marie Lemay confirmed some of the executives who received performance pay "absolutely" worked on issues linked to the pay system.

"Executives who received performance pay are executives who are at a lower level, and these are people who are not necessarily 100 per cent dedicated to the project … it's a part of their work and these people were all evaluated as such."

Executives across the whole department also waited an extra few months last year to get their performance pay (receiving it in December instead of the summer) because of the debacle, Lemay said.

More performance pay coming?

The deputy minister went on to say that the top executives in charge of Phoenix have not yet received any performance pay for the 2015-16 fiscal year, representing the months leading up to the system's ill-fated February 2016 launch.

They may still receive that money belatedly when the work to fix Phoenix is finished, she noted, depending on a review to be conducted this spring and summer.

Meanwhile, performance pay for the 2016-17 fiscal year — which just ended — has not been deferred or cancelled. Those additional checks may also go out this summer to PSPC executives, including the top people in charge of Phoenix.

Lemay said her entire department has been working hard to put things right over the past 14 months.

"I've seen them at work … and they have been extraordinary."

The Phoenix pay meltdown has resulted in tens of thousands of federal government employees being overpaid, underpaid or — in a few hundred cases — receiving no pay at all.

Most performance pay went out in December

According to the government's disclosure in the House this week, most of the $4.8 million in performance payments at PSPC were deposited on Dec. 14 and Dec. 28, 2016, respectively, although the total covers all payments made between April 1, 2015 and March 31, 2016.

"The majority of executives are eligible for performance pay, including at-risk pay, in-range increase, and potentially a bonus," said Steven MacKinnon, parliamentary secretary to the minister of Public Services and Procurement, in the answer tabled in the House.

“The amounts depend on the performance rating. Executive pay is a responsibility of the deputy minister and the clerk, and not the minister.”

Globe editorial: Take your pick: Speed or fairness in the courts?

The Globe and Mail
April 5th 2017

The unforeseen consequences of R. v. Jordan, the Supreme Court of Canada’s decision on trial delays, are getting curiouser and curiouser.

In principle, the Jordan decision is meant to protect accused people from having serious criminal charges hanging over their heads for too long – by setting hard time limits on criminal proceedings.

But an accused also has the right to choose his or her lawyer. What happens if that lawyer’s schedule causes a case to take too long to come to trial? The Supreme Court didn’t fully think such conundrums through.

Which brings us to the case of Curtis and Corey Murray, two brothers accused of first-degree murder. The men were promptly charged; there was a preliminary inquiry, and last fall, they were committed to trial. A six-week trial was proposed for September or October, or January, 2018. So far, so within the Jordan time limits.

However, Curtis Murray’s lawyer says she is not available until March. If the trial is postponed until then, that would appear to violate the Supreme Court’s hard deadlines. A deadline violation could mean that charges would have to be dropped.

The Criminal Lawyers Association says the state shouldn’t get in the way of the client-lawyer relationship, and Ontario Superior Court Justice Todd Ducharme agrees. Fair enough. But what about the Crown’s legitimate concern, and society’s, that a murder case risks being thrown out because of a delay?

The case against the Murray brothers has not yet gone on too long, and the charges have not been dropped. The Jordan deadline in this case isn’t yet past – but a schedule is being proposed that appears to ensure it will be. The Crown is worried, and with reason. Given the large number of criminal charges that have already been throw out, the Jordan ruling has created a big, difficult problem.

Of course an accused should be able to hire the lawyer he wants. And of course the Crown should let him have that lawyer, even if it results in a delay of a few months. How did the Supreme Court turn this into something potentially unconstitutional?

New Crown attorneys, sheriff's officers added to justice system in N.L. budget

Funding earmarked for HMP replacement planning and new court complex in St. John's
CBC NEWS
Ariana Kelland
April 6th, 2017

Three Crown attorneys will be hired to deal with new trial timelines set out by a recent Supreme Court of Canada decision.

The Newfoundland and Labrador budget tabled Thursday contained $390,000 in new spending to bring the total number of Crown attorneys in the province to 51.

Justice and Public Safety Minister Andrew Parsons said it has not yet been determined where the new hires will be based.

R v Jordan sets out stricter timelines for provincial and supreme courts, and has resulted in some cases being thrown out in this province because of unnecessary trial delays.

About $370,000 will be spent on hiring three sheriff's officers for Happy Valley-Goose Bay and a court manager to oversee scheduling and administration.

Parsons said there is pressure on sheriff's officers because the practice of RCMP officers travelling to remote circuit courts is "no longer there."

New court complex

Money has also been set aside for further plans for a new penitentiary.

The Tory government provided funding in its last budget to begin a plan and design for a replacement for Her Majesty's Penitentiary, sections of which date back to the 1800s.

Parsons said the province will also provide $500,000 to begin planning for the construction of a new court complex in St. John's.

The new building, which has no timeline for opening, would likely encompass provincial, family and supreme courts, as well as the sheriff's office.

In the meantime, the over 100-year-old Supreme Courthouse in St. John's will undergo renovations, with $195,000 earmarked in the budget for that work.

And $450,000 has been budgeted to address increasing demand at family court in St. John's.

Meanwhile, no money has been set aside for the creation of a serious incident response team that would investigate complaints against police.

Parsons said the first step will be making legislative change in the fall to allow for the province to have its own SIRT team. Now, the province relies on agencies outside the province to probe police forces.

Money was also announced for a liaison unit for families participating in the Inquiry into Missing and Murdered Indigenous Women and Girls, a feasibility study for a drug court, and a sexual assault support program which would provide legal support to victims.

First murder case in Quebec placed under a stay of proceedings because of Jordan ruling

Montreal Gazette
Paul Cherry
April 6th 2017

Canada's justice system apparently failed Anuja Baskaran a second time as the Montreal man charged with her murder saw his case placed under a stay of proceedings on Thursday after a Superior Court judge ruled it took too long for the Crown to prosecute him.

Baskaran, 21, was killed, on Aug. 11, 2012, after her throat was slit. Her estranged husband, Sivaloganathan Thanabalasingham, had been released from custody two months earlier despite heaving pleaded guilty in three cases involving conjugal violence.

Thanabalasingham was charged with second-degree murder in the case. But on Thursday, Superior Court Justice Alexandre Boucher ruled, at the Montreal courthouse, that it had taken the Crown too long to prosecute the case.

It is the first time in Quebec that a murder case has been placed under a stay of proceedings following the Jordan decision delivered by the Supreme Court of Canada last summer. The decision set limits on how long a person accused of a crime should expect to wait for a trial. In Superior Court cases the limit was set at 30 months. Boucher's decision was made orally and a written version is expected to be made public at a later date.

Thanabalasingham was returned to the Montreal Detention Centre Thursday afternoon to collect his personal belongings but he should be released soon, said his defence lawyer Joseph La Leggia.

"Each case is based on its own merits. Each case lives and dies on its own facts," La Leggia said when asked if the decision might send a message to prosecutors who also have murder cases that have been pending for years

Crown prosecutor Catherine Perreault said she was unable to comment on the decision and referred interview requests to the provincial prosecutor's bureau. A spokesperson for the bureau said they will consider filing an appeal.

According to a story published by La Presse in December 2012, Thanabalasingham was awaiting his sentence in three conjugal violence cases involving Baskaran when he was charged with her murder. Following one of the incidents, Anuja, who was from Sri Lanka, told police she wasn't even sure why she was married to Thanabalasingham. She described their union as an arranged marriage based on how her family owed money to his. The couple were married a year before Baskaran was killed. According to the article, Baskaran first reported that she had been assaulted by Thanabalasignham in December 2011 and told police he had struck her on the head about 10 times.

The first court in Canada to place a stay of proceedings on a murder case, following the Jordan decision, was last year in Ontario.

La Leggia explained that the judge reached the decision made on Thursday because the Crown failed to convince the Court that delays in the case were justified.

The Supreme Court of Canada decision made last summer anticipated such scenarios would arrive and established guidelines for judges to follow.

“(T)he delay may exceed the ceiling because the case is of moderate complexity in a jurisdiction with significant institutional delay problems,” the Supreme Court wrote in its decision. Quebec’s Superior Court system has been plagued by delays for years because of a lack of judges and available courtrooms.

“On the other hand, the rights of all accused persons cannot be held in abeyance while the system works to respond to this new framework. Breaches will still be found and stays of proceedings will still be entered for cases currently in the system. For example, if the delay in a simple case vastly exceeds the ceiling because of repeated mistakes or missteps by the Crown, the delay might be unreasonable even though the parties were operating under the previous framework.”

La Leggia said one thing he argued after having filed his motion was that the Crown caused an unnecessary delay when it used court time in an effort to have the second-degree murder charge changed to first-degree murder.

Qui est le juge Boucher, celui qui a fait libérer un accusé de meurtre?

Droit-Inc.
Martine Turenne
7 avril 2017

L’honorable Alexandre Boucher était avocat du bureau du Directeur des poursuites criminelles et pénales à Montréal, lorsqu’il a été nommé juge puîné de la Cour supérieure du Québec, district de Montréal, en mai 2015. Il comblait ainsi un poste créé dans le cadre du projet de loi C-31.

Jeudi, le bachelier en droit de l’Université de Montréal en 1994, reçu au Barreau du Québec en 1995, a fait l’histoire en devenant le premier juge québécois à libérer un accusé de meurtre, invoquant l’arrêt Jordan.

Et pas n’importe quel accusé. Il s’agit d’un homme aux nombreux antécédents de violence conjugale, qui devait subir son procès pour avoir poignardé à la gorge, à de nombreuses reprises, son épouse, Anuja Baskaran. Le corps de la jeune femme, âgée dans la vingtaine, a été retrouvé sans vie, en août 2012, dans leur appartement de la rue Millien, dans le quartier Ahuntsic à Montréal.

Après 56 mois derrière les barreaux, Sivaloganathan Thanabalasingam a quitté la prison de Bordeaux, sans avoir subi de procès, libre comme l’air.

Avant de joindre le bureau du Directeur des poursuites criminelles et pénales en 2010, et après une maîtrise en droit criminel de la Osgoode Hall Law School, le juge Boucher a exercé en pratique privée de 1995 à 2010.

C'est durant sa pratique privée qu'il a représenté, lors de son appel, Francis Proulx, condamné à la prison à vie pour le meurtre de Nancy Michaud, en mai 2008 à Rivière-Ouelle.

Alexandre Boucher a été mandataire du Service des poursuites pénales du Canada de 2006 à 2009.

Il a été vice-président et membre du conseil d'administration du Conseil exécutif de l'Association des avocats de la défense de Montréal, et ancien président et membre du conseil d'administration de l'Association du Barreau canadien.

« Pas de circonstances exceptionnelles »

Le procès devant jury de Sivaloganathan Thanabalasingam devait commencer le 10 avril et durer sept semaines. L'accusé était représenté par Me Joseph La Leggia.

Le juge Alexandre Boucher a conclu qu'aucune circonstance exceptionnelle ne pouvait justifier le délai de 56 mois, et il a ordonné l'arrêt des procédures. Son jugement a été rendu de façon orale, et une version écrite est attendue dans les prochains jours. En principe, le Directeur des poursuites criminelles et pénales peut porter cette décision en appel.

Plusieurs autres accusés ont réclamé l'arrêt de leurs procédures judiciaires en invoquant l'arrêt Jordan. Certains l'ont obtenu: des Hells Angels de l'opération Vautour, l'ex-patron de la firme BCIA Luigi Corretti, des conducteurs accusés d'ivresse au volant...

Mais aucun accusé de meurtre, comme Juan Fermin Palma, qui en avait fait la demande, en vain. Reconnu coupable en décembre du meurtre non prémédité de sa conjointe Paméla Jean, Juan Fermin Palma ne pourra obtenir de libération conditionnelle avant 14 ans.