Crowns, defence counsel warn bail proposal would create huge trial delays

Lawyer's Daily
Cristin Schmitz
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Proposed *Criminal Code* reforms that prosecutors and defence counsel warn will "exponentially" add to court delays by turning bail hearings into lengthy "mini-trials" are expected to be scotched by the majority Liberals — despite so far garnering significant cross-party support in both houses of Parliament.

This is the second successive week that the Commons Justice Committee is studying Bill S-217, which would amend s. 518 (1) of the *Criminal Code* to require (rather than simply permit, as the law stands now) Crowns, or police officers acting in their stead, at bail hearings to lead evidence proving an accused's criminal record before the presiding justice.

The impetus for the bill (known as Wynn's Law) was the 2015 death of RCMP officer David Wynn in Alberta, who was shot by a career criminal out on bail after a police officer representing the Crown in bail court did not place the accused's long record of violent crime before the court.

"I think [the proposed legislation] is well intentioned but terribly counterproductive," Toronto's William Trudell, chair of the Canadian Council of Criminal Defence Lawyers, said of the Conservative private member's bill which aims to prevent the release on bail of violent criminals because their prior criminal records are not placed before the court.

Halifax Crown counsel Rick Woodburn, president of the Canadian Association of Crown Counsel, agreed the bill "comes from a good place." But he said the problem it purports to address — human error — has already been fixed. Police no longer represent Crowns in Alberta's bails courts, and Crowns routinely place evidence of an accused's criminal convictions before the court, he said.

Moreover Bill S-217 would lead to an "exponential increase in the size of bail hearings and cause delay in other hearings before the court" because it would put Crowns to the proof of an accused's criminal record — a very lengthy process — rather than simply allowing the prosecution to put in a synopsis of the criminal record, he explained.

"There's a big difference between 'may' enter evidence. … and 'shall prove,'" he stressed. To prove the record, Crowns would have to obtain certified copies from each jurisdiction where the accused is convicted — among other things. "All of that would lengthen bail hearings exponentially and turn bail hearings into mini-trials," he predicted.

Crowns run hundreds of bail hearings, noted Woodburn. "If you double or triple those in size, that of course is going to eat up more court time, which in turn is going to decrease the amount of court time for other trials, and other matters are going to be stayed because of [*R. v.*] *Jordan*,"

2016 SCC 27, the Supreme Court decision which requires trials to be completed within a reasonable time.

Trudell said that, in his view, introducing legislation in reaction to tragic, or even topical, events (like proposing sexual assault training for candidates for the bench) is not really a proper use of private member's bills.

"Mistakes are human," he said by e-mail. "The *Criminal Code* should not be used as a fix-all tool kit."

Preventing violent criminals from causing further harm by being mistakenly released on bail because their criminal records are not disclosed to bail courts is the avowed purpose of Bill S-217, introduced last year by Conservative Senator Bob Runciman, a former Ontario solicitor general. The bill sailed speedily through the Senate with cross-party support last year, including from Liberal constitutional expert Serge Joyal.

However the defence bar and Crown counsel — who both oppose the bill — did not appear before the Senate. Last month Bill S-217 also won cross-party support from MPs in the Commons (but not from the Liberal government), with the Conservatives, NDP, Bloc Quebecois and Green Party, along with some two dozen Liberal backbenchers (including the Liberal chair of the Commons Justice Committee, Anthony Housefather) voting 154-128 to give the bill second reading and send it for study.

However the Liberal cabinet, and most Liberal MPs, voted against the bill's principle, at second reading — making its passage into law unlikely — particularly in the face of warnings from both the Crown and defence bar that to do so would exacerbate the existing massive delays in the criminal justice system.

"Bail hearings don't take five minutes. They take somewhere between half an hour and two hours on average," Woodburn told the Commons Justice Committee April 6. "When you're calling evidence at a bail hearing for more serious matters — aggravated sexual assaults, sexual assaults, homicides — those take up to two days. That's when we do call evidence. This is not something that … might happen. This is what will happen if [the bill] passes," he said.

"I can tell you in no uncertain terms, when we're put to the test by the defence, bail hearings will double and triple in time — and it's not necessary."

In his testimony to the committee April 4, Trudell agreed that the bill would have the effect of turning bail hearings into trials.

"I see this as absolutely weighing down a bail hearing. Right now in this country, it is very strained in the bail court, absolutely strained," he emphasized. "Counsel from across the country, when they looked at this they said, 'My God, how is that ever going to happen now with the

pressures on the system?’”

Trudell argued “we don’t have a legislative failure here in [the Wynn] case. We have a systemic failure. … The failure to pass information down the line is a mistake. It’s a human mistake. ... You can’t legislate the failure to communicate, and that’s what happened here.”

Fears of widespread trial dismissals not borne out, says law professor

Toronto Star
Tonda MacCharles
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OTTAWA—Fears that a Supreme Court of Canada decision would lead to thousands of cases being tossed out of court nationwide dominated the Canadian political stage Monday, but they have not been borne out in reality according to a new analysis by a Dalhousie University law professor.

Stephen Coughlan and Jessica Patrick, a student at the Schulich law school, took a hard look at the criminal court decisions reported in legal databases for the six months prior to last July’s Jordan decision, and the six months after it.

They found Canada’s judges are not tossing out cases left, right and centre, rather they are halting trials under the new legal framework that would have been halted under the old framework, too.

Their analysis generated a list of 69 cases pre-Jordan, where a court was asked to issue a stay of proceedings due to unreasonable delay. Of those, only 26 were granted, or 38 per cent.

The analysis shows that post-Jordan, there were 101 cases where a judge was asked to decide on an unreasonable delay application by an accused. Of those, 51 applications were granted, or 50 per cent. It’s a higher rate overall, said Coughlan, but it’s not the tidal wave that many feared.

“Jordan has made everybody involved in the criminal justice system worried about delay and doing things in order to make sure cases that are brought to trial quickly and that there will not be successful stay applications,” said Coughlan. “But it hasn’t resulted in very many successful stay applications.”

“So from my point it’s done exactly what it should: it’s given us the benefit of making everybody work to speed up the system, without the cost of lots of cases being thrown out.”

In the Jordan ruling, the Supreme Court of Canada rewrote the ground rules for expectations about what a speedy trial looks like, and what constitutes an unreasonable — and therefore unconstitutional — delay.

In a 5-4 decision it said most trials in lower provincial courts should be wrapped up in under 18 months, while charges in superior trial courts should be completed in 30 months. That decision comes up for review in a separate appeal this month at the high court. The high court anticipated

a period of transition. For cases already in progress when the new expectations were suddenly set out, the high court provided transitional considerations or exceptions — in effect directing judges to look at the cases under the old framework, said Coughlan.

It was precisely to avoid what happened in the 1990s when another ruling on unreasonable delays, known as Ascov, led to thousands of cases being withdrawn by Crown prosecutors, or stayed by judges.

“And judges have taken that to heart,” said Coughlan. Based on their analysis of all the cases decided in the first six months after Jordan, he said there has not been a single decision where a trial judge has granted a stay solely because of Jordan.

Defence counsel are “more emboldened to bring delay applications,” said Coughlan, “because it seems worthwhile again, but there’s not all that much more in terms of successful applications.”

Most of the successful efforts to have criminal charges stayed because of unreasonable delay were in Ontario. Coughlan said of 49 undue delay applications in this province, the number of stays granted was 23, or 47 per cent. Coughlan’s analysis takes account of cases up to Jan. 8, 2017. (Their national analysis omitted 13 cases that were available only in French, they said.)

The picture Coughlan paints is similar to what Ontario said it has found in its internal reporting.

In Ontario, the attorney general’s office said its internal reporting from its criminal law division, between July and Dec. 31, 2016 shows there were approximately 250 applications filed, with 48 stays granted — a success rate of 19 per cent. That’s even lower than Coughlan’s analysis.

Coughlan said the difference may be explained by a lag in judicial decisions being reported in the case law database that they relied upon for their analysis.

What is surprising is the federal Justice Department is not tracking the impact of the ruling. Justice Minister Jody Wilson-Raybould said she’s trying to work closely with provincial and territorial counterparts to understand its impact.

But an accurate up-to-date national picture is almost impossible to come by.

When the Jordan ruling was handed down, the dissenting minority of high court judges warned that the majority decision “risks thousands of judicial stays.” The four judges who signed the minority decision pointed to a “limited record” before the court that “indicates that, in the British Columbia Provincial Court, as of March 31, 2010, there were over 2,000 adult criminal cases pending for over 18 months. As of 2011, this represented 13 per cent of the caseload of the Provincial Court.”

However, a spokesperson for B.C.’s attorney general told the Star only seven B.C. criminal cases have been stayed since the high court’s Jordan ruling.

Alberta's attorney general provides an updated online tracking of Jordan's impact in that province, where seven applications were granted.

It said from Oct. 25, 2016 to April 6 (slightly overlapping the time period of Coughlan's analysis) there were 79 so-called Jordan applications filed in Alberta courts. Of those, 20 were dismissed, seven were granted, 19 were abandoned by the defence, nine were proactively stayed by the Crown (on the basis that they wouldn't survive a Jordan application), and 14 are still pending. Another 10 were resolved in ways unrelated to Jordan.

A similar picture emerges for Manitoba, where the attorney general's office told the Star that defence counsel brought 48 motions to halt proceedings because of undue delay, as of April 7, only one of which was successful.

Of the rest, 13 were dismissed by the court (three of which are under appeal), nine were withdrawn by counsel, 13 are still outstanding, and in the others, matters were "resolved without a determination made on the delay motion."

Justice Ministers to meet in Gatineau to discuss court delays

Ottawa Citizen
Tyler Dawson
April 10, 2017

The speed of Canada's court systems is going to be up for discussion on April 28 as the provincial and territorial justice ministers meet in Gatineau with their federal counterpart, Jody Wilson-Raybould.

"Meaningfully addressing delay in our criminal justice system requires all levels of government to work together," said an emailed statement Monday from Ontario Attorney General Yasir Naqvi.

Since a July 2016 Supreme Court of Canada ruling, R v. Jordan, set out time limits on how long criminal trials can take, charges in thousands of cases have been at risk of being stayed in Ontario alone. The Crown in Alberta has been "triaging" cases so that more serious ones aren't stayed.

In Ottawa, a first-degree murder charge was stayed last November, as was a case in which a father was accused of breaking his two-week-old baby's ankles.

The court ruling has prompted action in several provinces; Naqvi, who's also an Ottawa MPP, had in February called on Wilson-Raybould to convene the meeting. In a speech at Toronto's Empire Club, Naqvi also suggested that preliminary inquiries should be scrapped to save time and asked the federal government to fill 11 vacant Superior Court seats. Both are options, the government believes, for speeding up the trial process.

Some requests for stays, based on the Jordan decision, brought forward by defence lawyers have been rejected by judges.

Meanwhile, another case is set to come before the Supreme Court this month. James Cody v. Her Majesty the Queen is expected to go over some of the ground set out by Jordan. While it might not prompt a wholesale overhaul of the Jordan rules, it could help to mitigate some of the fallout by suggesting other ways of compensating the accused for trial delays.

L’accusé de meurtre de l’arrêt Jordan libéré dès jeudi?
Droit-Inc.

Jean-François Parent
11 avril 201
L’homme pourrait profiter d'un imbroglio juridique pour demeurer au pays... et en liberté...

Et Sivaloganathan Thanabalasingham a toutes les chances de retrouver sa liberté. Rappelons que l’homme de 31 ans a bénéficié d'un arrêt de procédures, la semaine dernière, mettant fin à son procès pour meurtre. Le jugement, conséquence de l’arrêt Jordan, a déclenché une série de réactions politiques et mis à mal la confiance des citoyens envers le système de justice. Thanabalasingham était accusé d’avoir égorgé sa jeune épouse, Anuja Baskaran, en août 2012.

Il doit maintenant faire face à l'Agence des services frontaliers.

Cette dernière réclame son expulsion, s'appuyant sur une première condamnation du prévenu, trouvé coupable de violence conjugale en 2013. Il n’était alors pas citoyen canadien. Mais c'est là une procédure hérissée d'obstacles.

Au point où « si on regarde objectivement la situation, il a toutes les chances d'être libéré jeudi », explique Stéphane Handfield, avocat spécialisé en immigration.

D'abord, pour la Commission de l'immigration et du statut de réfugié, qui entend l'affaire, le recours à l'incarcération est une mesure de dernier recours. On ne la privilégie que rarement.

En outre, malgré la grogne populaire, M. Thanabalasingham a encore plusieurs recours à sa disposition, lesquels prendront plusieurs années à s'épuiser.

Le Sri lankais d'origine a obtenu le statut de réfugié en 2005. « Le principe de non-refoulement s'applique donc dans son cas, explique Me Salif Sangaré. Comme il a fait appel de la décision, il ne sera donc pas expulsé immédiatement », explique le spécialiste du droit de l'immigration. Un principe du droit de l'immigration, c’est qu’on ne refoule pas automatiquement un réfugié.

L'appel est une procédure dont les délais seraient de 24 mois. En tant que réfugié, il bénéficie également de l'examen du risque, ce qui lui permet de plaider contre son expulsion pour des motifs de sécurité.

La façon pour les autorités de contourner le problème est d'émettre un avis de dangerosité contre la personne. « Mais encore là, on parle de délais moyens de deux ans pour que le ministère de la

sécurité publique émette un tel avis », ajoute Me Handfield, qui pratique au sein du cabinet éponyme à Montréal.

Si l'avis est finalement émis, par contre, il le bénéfice de l'examen du risque.

Pas de « grande criminalité »

La situation actuelle permet non seulement à M. Thanabalasingham de surseoir pendant quelques années à son expulsion, mais également à son incarcération. « Il fait face à l'expulsion pour un crime qui lui a valu une sentence de cinq mois de prison », échappant de ce fait au qualificatif de « grand criminel », explique Stéphane Handfield.

Ceci expliquant cela, Me Handfield estime que tout semble indiquer que la Commission est sur le point de le libérer. « Son frère se porte garant de lui et donne sa maison en garantie, il n'est pas coupable de grande criminalité. »

S'il avait été condamné à six ou plus de prison pour un acte criminel, le maintien de l'incarcération serait alors plus facile à plaider.

Me Sangaré pense au contraire que plusieurs éléments militent contre une libération rapide de M. Thanabalasingham. « Il est certain qu'on va faire valoir le fait qu'il a tout de même été accusé de meurtre, qu'il comporte un risque de fuite et qu'il représente un danger pour la société », croit le praticien qui a souvent plaidé devant la Commission.

Il reste que la Commission, si elle entretient des doutes sur le prévenu, « peut imposer des conditions de liberté draconiennes», rétorque Me Handfield : bracelet électronique, obligation de se rapporter plusieurs fois par semaine, privation de documents de voyage...

Un appel du DPCP?

Tout cela se déroule en parallèle de l'action du DPCP, qui peut encore faire appel de la décision du juge Boucher.

Mais considérant les délais du système de justice, il y a fort à parier que M. Thanabalasingham a encore de beaux jours devant lui, croit Me Handfield. Car il ne sera retourner en prison que si la Cour d'appel ordonne la tenue d'un nouveau procès.

« Et encore là, cette décision peut faire l'objet d'une demande d'appel devant la Cour suprême, qui est quand même le tribunal qui a statué sur les motifs qui ont permis à l'accusé d'être libéré », fait remarquer Me Handfield.

Ce dernier estime que l'Agence des services frontaliers à tenté un coup de poker qu'elle a perdu. Si elle avait entamé les procédures d'expulsion dès 2013, quand il s'est retrouvé une première fois devant la Commission, à la suite de sa condamnation pour violence conjugale, « on aurait alors pu faire tout le travail dans les délais et aujourd'hui, on n'en serait pas là ».

Crown prosecutors need more training in sexual assault law, MPs hear

'I didn't get training until I was at least 5 years in and by then it was a little late,' lawyer tells MPs

CBC News

Alison Crawford
April 11, 2017

MPs studying a bill proposing to make legal training on sexual assault mandatory for prospective judges have heard that federal Crown prosecutors also feel they need more education on the law.

The House of Commons committee on the status of women is studying a private member's bill introduced by interim Conservative Leader Rona Ambrose.

It proposes making comprehensive sex assault legal training mandatory for anyone applying to be a federally appointed judge and requiring written decisions in all cases that involve sexual violence.

Among those who testified this morning in Ottawa is Ursula Hendel, president of the Association of Justice Counsel, which represents 2,600 federal lawyers and prosecutors. She supports more education for judges but says they're not the only ones who need it.

"The truth of the matter is that no training of any kind is actually mandatory for Crown prosecutors," she told MPs.

Hendel was speaking for federal prosecutors, who handle sexual assault cases in all three territories. Hendel estimated that in the first 10 years of her career, she prosecuted more than 500 such cases — roughly one a week.

"I'd like to see training made mandatory for prosecutors, and particularly for prosecutors who conduct sexual assault cases — and early in their career. I didn't get training until I was at least five years in and by then it was a little late," she said.

Federal Crowns get most of their training from the Public Prosecution Service of Canada's "prosecutors school," which is a five-day course offered once a year. However, a spokesperson for the PPSC told CBC News it doesn't offer any courses on sexual assault because it isn't in its mandate.

Those who choose to take such training can receive it from the provincial government in B.C.

Making it mandatory, according to Hendel, would make a big difference.

"If it's not mandatory, it's very difficult to get it done. So the year goes by and even though you had the best of intentions to go off on training, or your manager had the best of intentions to send you on training, you're on back-to-back trials," she said.

Written judgments

As for judges, the Canadian Judicial Council last week decided to make its two-week introductory seminar for all new federally appointed judges mandatory.

While that news was welcomed by MPs and legal experts who testified today, they all said more needs to be done.

"We are at a crisis point in terms of the public's confidence in the justice system's ability to respond to allegations of sexual assault," said Dalhousie University law professor Elaine Craig, who is widely regarded as an expert in sexual assault law.

Craig is among those who support one of the main pillars of Ambrose's bill.

"Requiring written decisions also has the potential to ensure more thorough, careful and well-reasoned judgments in what is undoubtedly a very sensitive and difficult area of law," she said.

Craig noted that now, most decisions on sexual assault cases are oral and transcripts are difficult and expensive to obtain, making it difficult for researchers, the public and legislators to understand how well judges are applying the law or employing outdated "rape myths" in their decision-making.

"There's several recent examples of cases which involve conduct or reasoning by trial judges that is problematic but that only came to light because a reporter happened to be in the room," she told the committee.

Requiring judges to reserve their decisions, write them out and somehow make them accessible to the public comes with its own set of challenges.

Justice Adèle Kent, who heads up the National Judicial Institute, told MPs that would lead to delays for litigants. Ottawa University law professor Carissima Mathen noted it would also be expensive for courts, given their already tight resources.

There are also jurisdictional headaches given that most sexual assault cases are heard at provincial court.

But NDP MP Jenny Kwan said it's all about priorities.

"Is access to justice for women who experience sexual violence a priority for us as Canadian society? If it is, then our government should put the resources in place. It needs to be in place for every single step of the process."

Arrêt Jordan: le DPCP fait appel!

Droit-Inc.

Jean-Francois Parent
12 avril 2017

La Couronne allègue que le juge a erré dans l'application de l'arrêt Jordan lorsqu'il a libéré un accusé de meurtre...
Le Directeur des poursuites criminelles et pénales (DPCP) fait appel du jugement prononçant l'arrêt des procédures contre le Sri lankais d'origine, libéré la semaine dernière d'une accusation de meurtre au second degré, provoquant une tempête politique.

Un avis d'appel a été déposé à la Cour d'appel de Montréal.

Dans un très bref communiqué, le DPCP interjette appel de la décision du juge Alexandre Boucher, qui a ordonné un arrêt des procédures contre Sivaloganathan Thanabalasingham, accusé d'avoir égorgé sa jeune épouse, Anuja Baskaran, en août 2012.

La Couronne allègue que le juge Boucher a commis des erreurs de droit dans l'application de l'arrêt Jordan.

Le juge aurait « erré »

Prenant appui sur l'arrêt Jordan, le juge Boucher, de la Cour supérieure, avait estimé qu'un délai de 55 mois entre la mise en accusation et la tenue d'un procès est inconstitutionnel, et ainsi ordonné au ministère public de libérer l'accusé.

Le DPCP estime plutôt qu'il a erré en droit en ne déduisant pas du délai la période de l'enquête préliminaire, qui a dépassé ce qui était prévu, ce qui constituerait une « circonstance exceptionnelle ». Le juge Boucher aurait aussi erré en ne déduisant pas la différence entre la date retenue pour le procès et la date plus hâtive qui avait été offerte, un délai attribuable à l'accusé, selon le DPCP.

Il affirme aussi que le juge aurait dû « reconnaître le caractère moyennement complexe de l'affaire dans un district judiciaire renommé pour être aux prises avec des délais institutionnels problématiques ».

Le DPCP pointé du doigt par le juge

De son côté, le juge Boucher blâme le DPCP.

« Le temps démesurément long requis pour l'enquête préliminaire n'échappait pas au contrôle de la Couronne. Bien au contraire », écrit le juge Boucher, dans sa décision, vendredi. Il relève que le DPCP est en partie responsable des délais qui ont permis à l'accusé de bénéficier de l'arrêt de procédures.

Le juge a rejeté l'argument du DPCP voulant que les délais aient étés exceptionnels.

En fait, la Couronne n'a pas fait grand chose « pour réduire les longs délais institutionnels » inhérents à la justice criminelle et faire subir son procès à l'accusé dans des délais raisonnables, a constaté le juge.

L'avocat de l'accusé juge l'appel «normal »

L'avocat Joseph La Leggia, qui a défendu Sivaloganathan Thanabalasingham, juge normal que le DPCP fasse appel de la décision du juge Boucher. « Ils trouvent que le juge a erré, c'est leur droit », dit-il.

Comme la cause en question ne s'est pas conclue par un verdict, mais par arrêt de procédures, Me La Leggia (littéralement "la loi" en italien) ne voit que deux issues possibles: « Humblement, la Cour d'appel a le choix entre refuser l'appel ou ordonner un nouveau procès. »

N'ayant pas une grande expérience des appels, il doute qu'il sera celui qui représentera M. Thanabalasingham pour la suite des choses.

Quant au potentiel que le prévenu soit repris en charge par les services correctionnels, rien n'arrivera à moins que la Cour d'appel n'ordonne un nouveau procès.

« La règle de droit applicable en ces cas-là c'est que l'intimé bénéficie du statut qu'il avait au après le jugement », et donc il ne sera pas incarcéré par les Services correctionnels canadiens.

Ordre d’expulsion

Sivaloganathan Thanabalasingham n'a cependant pas goûté longtemps à l'air libre, puisque l'Agence des services frontaliers l'a incarcéré le jour même de sa libération, jeudi, le temps de statuer sur son éventuelle expulsion.

Il fait l'objet d'un ordre d'expulsion décrété lundi par la Commission de l'immigration et du statut de réfugié. Son dossier doit être réévalué jeudi pour savoir s'il demeurera détenu en attendant la suite des procédures.

En rendant sa décision, la commissaire Diane Tordof a souligné le manque de collaboration de M. Thanabalasingam et son absence de remords en lien avec son historique de voies de fait et de violence conjugale.

MPs hear prosecutors, not just judges, need more sexual assault training

Committee studying bill to mandate training for judges hears from prosecutors who feel unequipped for sex assault trials.
Ottawa Metro
Ryan Tumilty
April 12 2017

Federal judges may not be the only ones in need of training to better handle sexual assault cases.

A group that represents Crown prosecutors told MPs on Tuesday that they could use the training as well.

"We do not get adequate training and we particularly do not get training on the trauma of sexual assault," said Ursula Hendel, president of the Association of Justice Counsel.

The committee is studying a private member's bill from interim Conservative leader Rona Ambrose that would require that lawyers receive training on sexual assault before being eligible for federal judicial appointments.

Hendel represents federal Crowns, who only prosecute sexual assault cases in the territories, but she said provincial Crowns in her experience have many of the same challenges.

She said when she worked as a provincial prosecutor in Ontario it took years for her to get training specific to sexual assault. She said the training has to go beyond just the law, but training to understand how victims experience the system.

"You need to have survivors. You need to have professors. You need to have people who have studied the experience of sexual assault survivors," she said.

Committee vice-chair Sheila Malcolmson, the NDP MP for Nanaimo-Ladysmith in B.C., said the testimony showed that there is need for a broader plan.

"This takes me back to the commitment that the Canadian government made to adopt and implement a national action plan to end violence against women," she said. "This is just the kind of thing that would get caught in a national action plan."

Malcolmson said that, for now, Ambrose's bill focusing on judicial training will likely remain as it is, but the government should take a leadership role and look at the bigger picture.

"I would be surprised, pleasantly surprised, if we were able to get support for including training of prosecutors in the bill as well."

Prosecutors also need mandatory training on sexual assault, says senior Crown

Lawyer's Daily
Cristin Schmitz
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Prosecutors are not adequately trained in the law and social context of sexual assaults, especially sexual assault trauma, says a senior Crown whose views about the crime changed after she experienced a traumatic incident as a student.

Ursula Hendel, president of the Association of Justice Counsel (AJC) which represents 2,600 federal prosecutors and government lawyers, agrees with mandatory sexual assault law and

context training for judges, but argues such training should extended, on a compulsory basis, to Crowns as well — including providing overstretched prosecutors with the time and resources to attend training sessions.

"I believe that it continues to be our reality that we do not get adequate training, and we particularly do not get adequate training on the trauma of sexual assault," Hendel testified before the Commons Status of Women Committee April 11.

The committee is studying Bill C-337, Conservative interim leader Rona Ambrose's private member's bill which would make sexual assault law training mandatory for lawyers who apply for the federal bench. The committee recently recommended that prosecutors be given resources to take such training.

Hendel endorsed that recommendation. "Since it's our job as prosecutors to present the evidence to the trier of fact in the most logical, persuasive and coherent way, [and] we are also the link between the criminal justice system and the complainant ... if we don't understand the experience of the victims, we are going to fall short," she stressed.

Hendel noted that law school prepares lawyers well for knowing the rules of evidence, the burden of proof and ethical responsibilities, "but it does not teach us very much about human behaviour."

She recalled her own experience when, as a young, confident "privileged" woman studying feminist legal theory, she found herself powerless to do anything when someone she thought was a friend made unwanted sexual advances to her. "I did not react in a way that I would expect," she recounted. "I froze. And I needed my friends to come and rescue me.

"I spent many years thinking about that experience," remarked Hendel. "And I think it helped me as a prosecutor to present the facts to a judge or a jury, because I understood that unless it happens to you, you actually have no idea how an ordinary person would behave when something completely out of the ordinary actually happens to you. We think that we do, but ... I don't think that we do."

Hendel believes the justice system can "improve a lot" on how sexual assault cases are handled. "There is a lot of work to do," she advised. "I think there's a resistance among certain elements of the bench and bar to the sort of soft psychology [in relation to sexual assault]. We're evidence lawyers. We're supposed to be Charter experts. We're supposed to be *Criminal Code* experts, and we're supposed to know the rules of criminal procedure and the rules of criminal evidence. That's a lot, and that's the sort of hard stuff that we consider erudite as opposed to the, what I'll call 'touchy feely' [skills]. I think it's changing and I think there is more of an openness ... [but] I think we're really busy and not given enough incentives, if I can put it that way, to really learn about human behaviour in some problematic areas."

Hendel estimates she prosecuted more than 500 sexual assault cases in her first 10 years as a Crown, but for at least the first five years she did not receive any training at all in relation to sexual assault. And when she eventually did, the training was more about the evidentiary rules, and not about the psychology of being subjected to unexpected trauma.

“The trier of fact is supposed to assess credibility and reliability using common sense and ordinary experience and that isn’t anything that any of us are taught in law school — it’s supposed to come to us naturally,” she observed. “That’s a 500-year-old approach, and I think we’ve gotten better at recognizing that it’s deficient, particularly when you are asked to judge somebody who has a very different background, and a different perspective, maybe a different culture, but certainly comes from a different place than you do. It’s not that easy to crawl under somebody’s skin necessarily when you are sitting on the bench, or when you are in your prosecutor’s robes.”

Hendel noted that her employer, the Public Prosecution Service of Canada (PPSC), is “very committed” to the idea of training for prosecutors, but “our reality is that the service has too little money and we, as prosecutors, have far too little time.”

The PPSC has only one formal training session called the School for Prosecutors, which is offered once a year for five days, she said. Only a fraction of Crowns can attend, and sexual assault training was not on the agenda in 2016.

If training in respect of sexual assault law and context is not made compulsory, “the resource reality means that training won’t happen to the degree that you want it to happen, even if you strongly recommend training,” Hendel told the Commons committee. “We don’t get trained until we’re forced to, and even then we’re all scrambling to try to meet our mandatory requirements. [But] we meet them. So making it mandatory is a way to have it happen.”

Les juges ne veulent pas de formation sur les agressions sexuelles

Droit-Inc.
Delphine Jung
12 avril 2017

La chef du parti conservateur veut obliger les futurs magistrats à suivre une formation avant leur assermentation...
Les juges ne veulent pas de la proposition de la chef du Parti conservateur, Rona Ambrose.

Le directeur exécutif du Conseil canadien de la magistrature (CCM), Norman Sabourin, estime que « le Parlement ne peut contraindre la magistrature à un comportement particulier sans compromettre leur indépendance », a rapporté Le Devoir.

Ce qui expliquerait la volonté de Rona Ambrose de proposer une formation aux futurs juges, et non aux juges déjà en poste.

Il a aussi rappelé que l'administration de la justice est une compétence provinciale et non fédérale.

Dans sa proposition de loi, la chef de file des conservateurs voudrait contraindre les juges aspirants à suivre une formation sur les agressions sexuelles et ses stéréotypes. L'idée a été portée devant le Parlement après qu'un magistrat albertin, Robin Camp, a demandé à une victime pourquoi elle n'avait pas serré les cuisses face à son agresseur présumé.

Les juges devraient aussi motiver par écrit leurs décisions en matière d'agression sexuelle. Le Conseil canadien de la magistrature devrait compiler le nombre de juges qui ont suivi cette formation et le nombre d'affaires d'agressions sexuelles entendues par des juges qui ne l'ont pas suivie.

Problème, pour Marc Giroux, sous-commissaire à la magistrature fédérale : « Notre bureau reçoit plus de 500 candidatures par année en moyenne. Et cette année, nous en avons reçu 700 en moins de six mois. Si la formation devait être prodiguée pendant le processus de sélection, à un si grand nombre de candidats, nous nous demandons si la formation serait adéquate et exhaustive », rapporte Le Devoir.

M. Giroux et M. Sabourin proposent plutôt que les aspirants juges signent un engagement à suivre une formation une fois qu'ils siègent.

Une promesse toutefois symbolique, puisque l'Association du Barreau canadien a rappelé, dans un rapport rendu hier, qu'il « existe déjà de nombreux programmes de formation pour les juges ». En plus, « le budget fédéral de 2017 a augmenté les crédits affectés aux formations de sensibilisation aux disparités entre les sexes et aux réalités culturelles destinées aux juges », toujours selon ce rapport.

L'ABC, tout en soulignant « l'intention louable », a elle aussi mis en avant le danger qu'une telle loi représenterait pour l'indépendance de la magistrature, « un des piliers de notre système judiciaire et de notre démocratie ».

Les dix solutions de l'ABC pour «résoudre une crise alarmante»

Droit-Inc

Martine Turenne
12 avril 2017
La solution à la crise actuelle passe par « l'augmentation, le plus rapidement possible, des effectifs judiciaires là où les besoins sont pressants »...

L'arrêt Jordan a exacerbé une grave crise qui existait déjà, celle des délais judiciaires. Mais elle a pris des proportions alarmantes, dit le président de l'Association du Barreau canadien (ABC), René Basque.

L'Association réagit à l'arrêt des procédures contre un accusé de meurtre, Sivaloganathan Thanabalasingam, en raison de l'arrêt Jordan.

«Soyons clairs, dit René Basque: l'arrêt Jordan n'est pas la cause de cette situation, mais il a jeté la lumière sur une grave crise qui existait déjà. Maintenant, avec l'annulation de procédures judiciaires contre ceux visés par des chefs d'accusations sérieux, cette crise a pris une tournure alarmante.»

L'ABC insiste sur l'importance du droit d'un accusé d'être jugé dans un délai raisonnable, garanti par la Constitution, mais « s'inquiète aussi des incidences que la situation de crise a sur les victimes et les témoins, et vient miner la confiance que voue le public à notre système de justice», dit M. Basque.

La solution à cette crise passe par « l'augmentation, le plus rapidement possible, des effectifs judiciaires là où les besoins sont pressants », ajoute René Basque.

Dix solutions

L'ABC suggère, globalement, dix manières de réduire les délais judiciaires au pays.

1- Nommer un nombre suffisant de juges

Dans de nombreuses régions, des postes à la magistrature demeurent vacants depuis des années, souligne l'ABC. En les pourvoyant rapidement, notamment avec un plus grand nombre de juristes expérimentés en droit criminel, « cela produirait des effets tangibles ».

2- Fournir de l'aide juridique adéquate

Toutes les personnes accusées d'infractions autres que très mineures ont besoin d'un avocat, soutien l'ABC. « Seules, elles se débattent avec difficulté devant les tribunaux, prenant davantage de temps et plaçant les juges et les procureurs du ministère public dans une situation inextricable. » Sans mentionner « l'injustice qui en résultera probablement ».

3- Mettre l'accent sur un règlement dès les premières étapes

« Un processus robuste préalablement au procès permet une meilleure évaluation du temps d'audience qui sera nécessaire », soutient l'Association, ce qui permet d'économiser du temps et des ressources aux étapes suivantes. Elle prend pour exemple le critère de la « probabilité marquée d'obtenir une déclaration de culpabilité », actuellement appliqué en Colombie-Britannique, « et qui pourrait contribuer, dans une large mesure, à une présélection pour écarter les dossiers peu solides ».

4- Utiliser les technologies

Il faut moderniser les comparutions ordinaires devant les tribunaux, soutient l'ABC. « Le cas échéant, permettre aux avocats et aux avocates d'intervenir par téléphone, courrier électronique ou vidéoconférence. »

5- Régler la question de la surreprésentation des autochtones

La présence des Autochtones au sein du système de justice pénale est disproportionnée, et ils en sont affectés plus sévèrement et pour de plus longues durées. « Le fait d'agir sur les recommandations de la Commission de vérité et de réconciliation du Canada aiderait à remédier à ce problème. »

6- Retirer des rôles les accusations mineures

On y consacre inutilement du temps. L'Association suggère de « procéder à l'expansion de programmes de déjudiciarisation », et que des tribunaux alternatifs se chargent de ces accusations mineures, notamment celles reliées à des problèmes de toxicomanie et de santé mentale.

7- Affecter les ressources nécessaires

Des retards sont souvent occasionnés lorsque les procureurs du ministère public, le personnel des tribunaux, les salles d'audience et leurs équipements ne sont pas adéquats ou disponibles, note ABC. « Afin de régler le problème des retards dans les tribunaux, nous devons nantir notre système de justice des ressources appropriées. »

8- Améliorer les pratiques de communication de la preuve

« L'objectif est de faire en sorte que les avocats de la défense disposent de tous les éléments de preuve nécessaires, en un format uniformisé et lisible, dès la première comparution», dit l'ABC, qui estime que si les services de police disposaient de ressources afin d'évaluer les éléments de preuve, « ceux-ci seraient mis à la disposition des procureurs du ministère public, et ensuite aux avocats de la défense, plus tôt dans le processus ».

9- Conserver les enquêtes préliminaires

L'ABC croit que les enquêtes préliminaires ne font pas perdre de temps, bien au contraire, car elles « mènent généralement à une résolution du dossier à un stade plus précoce ».

10- Abroger les peines obligatoires

Lorsqu'il est impossible de négocier, davantage de dossiers sont portés jusque devant les tribunaux en raison des peines obligatoires et de l'élimination quasi totale des ordonnances de peines avec sursis, note l'ABC. « Il faut compter sur les procureurs du ministère public pour décider des accusations, et sur les juges pour décider des peines les plus appropriées dans chaque affaire. »

Ontario looks for 'clarification' to top court's ruling on trial delays

Ontario says the new strict timelines for cases that were already in progress shouldn't apply in isolation of other considerations, like "fairness" and the seriousness of the charges at play.
Toronto Star
Tonda MacCharles
April 13th 2017

OTTAWA—The Ontario government is pointing to a judge's dismissal of an Ottawa murder case because of a four-year delay in getting to trial as an example of how a Supreme Court of Canada constitutional ruling over delays has gone awry.

Ontario, one of several provinces intervening in a Newfoundland appeal to clarify the Jordan decision, says the new strict timelines for cases that were already in progress shouldn't apply in isolation of other considerations, like "fairness" and the seriousness of the charges at play.

In a written brief to the high court the Ontario government says the ruling needs "clarification" because some judges are not giving adequate consideration to what the high court said were "transitional" exceptions to the strict new time frame.

In Ottawa, a judge stayed a first-degree murder charge against former soldier Adam Picard, arrested in the June 2012 killing of Fouad Nayel, ruling four years was a breach of Picard's constitutional right to a trial within a reasonable time.

Ontario's attorney general said if that judge had properly calculated some delays as neutral or inherent in the complexity of the case — as they would have been before the recent Supreme Court of Canada ruling in Jordan — and more accurately attributed defence delays "caused by the accused having failed to retain counsel for the trial, firing what counsel he did have when he did not receive bail, and to conflicts with new counsel," the court would have found the Picard trial was just one month over the new guidelines.

Ontario says the high court set out an exception for these cases to avoid a recurrence of what happened after a 1990 Askov decision when Crown attorneys withdrew charges and judges halted proceedings in about 47,000 criminal cases. But the message hasn't gotten through in some instances.

When the Supreme Court of Canada in July called out a "culture of complacency" that had once again taken hold in the criminal justice system, it ruled that trials in lower provincial courts should take no more than 18 months, while trials in superior courts should be completed within 30 months.

Some provinces like Ontario are struggling with the fallout.

The Ontario attorney general's argues that looking at delays as "a strict function of the passing of time" without considering the presence or absence of prejudice against either side, the seriousness of the charge before the court, and "previously tolerated delay in a given jurisdiction" means the administration of justice could be brought into disrepute.

Ontario says it's not arguing to preserve the status quo, but says the courts' and the public's "measure of what is reasonable will self-calibrate over time."

Once again, there were loud calls in Parliament this week for the Liberals to fill federal judicial vacancies on a timely basis.

NDP Leader Tom Mulcair has slammed the Liberals for negligence and incompetence, saying "but it's especially dangerous for the public" when accused killers are let go "free as a bird."

Wilson-Raybould defended her record again Tuesday, saying she will meet at the end of the month with provincial and territorial justice ministers to find solutions, adding she has already appointed 47 superior court justices and moving to fill the other vacancies.

"I think that we need to be very clear that simply appointing judges is not going to resolve the delay problems that we have. There's no one single solution and it's going to require all of us to come up with those solutions to resolve delays," said the justice minister.

Emilie Smith, a spokesperson for Ontario's attorney general office, said Ontario has launched a comprehensive plan to address the needs, appointing 13 more judges to the Ontario Court of Justice, with the chief justice already having assigned two new judges to Ottawa.

"We are also hiring 32 assistant Crown attorneys, providing funding to Legal Aid Ontario for 16 duty counsel, and hiring 26 new court staff. Some of these positions have already been filled.

Ottawa appoints four new judges as pressure mounts to help clogged courts

The Globe and Mail
Sean Fine
April 12, 2017

Federal Justice Minister Jody Wilson-Raybould appointed four more judges on Wednesday, making a small dent in the near-record vacancy list of 59, as pressure mounts on Ottawa to help clogged courts meet new deadlines for criminal trials.

The appointments reflect the government's continuing emphasis on making the federal bench more diverse, and include a Japanese-Canadian whose father was interned during the Second World War.

They come as Ottawa and the provinces prepare for an emergency meeting of justice ministers scheduled for April 28 on the issue of court delays. Since a Supreme Court of Canada ruling last July setting time limits for criminal proceedings (18 months in Provincial Court, 30 months in Superior Court), judges have thrown out murder charges against three men in separate cases in Alberta, Ontario and, last week, Quebec. All three cases are being appealed. Lawyers across the country have brought more than 1,000 applications to dismiss cases over delay. And Ms. Wilson-Raybould has appointed just 12 judges since October, when she announced a plan to revamp the appointment process.

The group of four judges – two in Ontario and two in British Columbia – mark the Liberal government's first set of judicial appointments in which men outnumbered women (in this case, three to one). In total, the government has appointed 30 women and 21 men as judges since it came to power nearly a year and a half ago. By comparison, under the previous government, 30 per cent of judicial appointments were women, as were 30 per cent of applicants.

Just one of the three men appointed Tuesday, Justice John Hunter of Vancouver, is a white male, and the government suggested he did not come from an advantaged background, describing him in a brief biography as the first member of his family to graduate from university. He was appointed to the province's highest court, its Court of Appeal, straight from private practice in a variety of areas, including commercial, administrative, constitutional and aboriginal law.

Of the other three appointments, Justice Andrew Mayer, general counsel for the Prince Rupert Port Authority, joins the B.C. Supreme Court; his biography describes him as Indo-Canadian. Justice Shaun Nakatsuru, promoted to the Ontario Superior Court from Provincial Court, is a Japanese Canadian whose father was interned during the Second World War, according to the government biography. Justice Robyn Bell, the lone woman appointed, will join the Ontario Superior Court in Ottawa.

Earlier on Wednesday, two Conservative senators published an open letter to Ms. Wilson-Raybould (and Quebec Premier Philippe Couillard) accusing her of being “preoccupied” with the selection process for judges, while Canadians lose confidence in the justice system.

Senators Pierre-Hugues Boisvenu and Jean-Guy Dagenais, both from Quebec, spoke in apocalyptic terms of a threat to communities – likening the delay problem to a tsunami or nuclear bomb – and said Ms. Wilson-Raybould should treat it as an emergency by passing legislation that would enable Quebec to exempt itself from court rulings dismissing criminal charges. The Parti Québécois made a similar demand last week that Mr. Couillard use the Charter’s notwithstanding clause. The Premier rejected the call as a “constitutional nuclear bomb.”

“How can a justice minister ignore such a major crisis, which clearly jeopardizes the safety of our communities by releasing dangerous offenders who have not been brought to trial?” the two senators said in their letter.

“When a dam risks wiping out an entire village and its population, we don’t spend weeks and months consulting, we take action.”

In an e-mail to The Globe and Mail, Ms. Wilson-Raybould said that, “Using the notwithstanding clause is not a substantive solution” to the problem of delay.

Système de paye Phénix : demande de recours collectif

Radio-Canada
Catherine Lanthier
13 avril 2017

Une demande de recours collectif contre le gouvernement du Canada s'invite dans la saga du système de paye Phénix. Un cabinet d'avocats de Québec vient formellement d'en faire la requête à la Cour supérieure du Québec, visant tous les employés fédéraux touchés par les ratés du système.

L'action collective vise à représenter un groupe qui « serait composé d’environ 295 000 membres », selon la demande déposée lundi au palais de justice de Québec.

Cette requête d’action collective en dommages-intérêts contractuels vise à compenser les dommages moraux subis par les employés, et à réclamer les sommes dues par le gouvernement « avec l’intérêt et l’indemnité additionnelle prévue par la loi ».

La demanderesse, Ezmie Bouchard, occupait un emploi étudiant chez Passeport Canada jusqu’en août 2016.

Le document déposé en cour allègue qu'elle a subi de nombreux problèmes de paie liés au système Phénix, ayant notamment reçu moins de la moitié de son salaire lors de quatre périodes de paie.

Mme Bouchard réclame le paiement de ses arrérages de salaire, évalués à 4818 $, et un total de 2200 $ pour le préjudice moral, le stress, la frustration et les pertes de temps causés par ces erreurs.

Selon l'un des procureurs au dossier, Me Julien Fortier, l'ensemble des dommages moraux liés aux ratés de Phénix ne sont pas nécessairement couverts par le système de griefs, ce qui justifie une action en justice.

Une page sur Internet a d'ailleurs été mise en ligne, où les employés fédéraux intéressés peuvent s'inscrire et détailler leurs déboires avec Phénix.

Saraïlis Avocats y précise que l'autorisation du recours peut prendre « plusieurs mois » et qu'elle « sera conclue par le jugement qui permettra ou refusera que l'action puisse aller de l'avant ».

Un recours collectif est-il possible?

La demanderesse, qui souhaite obtenir l'autorisation d'exercer une action collective au nom des employés visés, n'était pas une employée syndiquée

Le cabinet Saraïlis souhaite cependant inclure tous les fonctionnaires touchés, qu'ils soient syndiqués ou non, à l'action collective.

Or, la Loi sur les relations de travail dans la fonction publique interdit aux fonctionnaires syndiqués de poursuivre leur employeur en justice lorsque survient un différend lié à l'emploi.

Absence de droit d'action - Différend lié à l'emploi
236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits - actions ou omissions - à l'origine du différend.

Application
(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.
(Source : Loi sur les relations de travail dans la fonction publique)
De plus, selon le professeur de relations industrielles de l'Université du Québec en Outaouais (UQO), Jean-François Tremblay, le « véhicule du recours collectif n'est certainement pas adapté » dans les circonstances.

Chaque salarié risque d'avoir des particularités dans les manquements ou les erreurs qui ont été commises au niveau de la paye. Ça devrait faire l'objet de représentations individuelles.

Jean-François Tremblay, professeur de relations industrielles, UQO
Selon le professeur Tremblay, la procédure de grief est la voie privilégiée pour les fonctionnaires syndiqués.

« Il y a tout lieu de croire que les salariés syndiqués vont trouver l'ensemble des sommes qui sont dues et peut-être même certaines compensations s'il y a eu des préjudices, du fait que le salaire n'a pas été payé », ajoute-t-il.

Opinion: The Jordan ruling and Charter rights in Canada

The Montreal Gazette
Ralph Mastromonaco,
April 13, 2017

A recent judgement granting a stay of proceedings in a second-degree murder trial has prompted calls for the Quebec government to invoke the notwithstanding clause to override the "Jordan judgement" of the Supreme Court of Canada. But such calls reflect a shallow understanding of charter rights in general and the specific challenges facing courts tasked with ensuring the right of an accused to a trial within a reasonable delay.

If the stay of proceedings ordered by the court in the Sivaloganathan Thanabalasingham case is so objectionable, why not opt out of all charter rights that can potentially lead to ‘’accused criminals going free," to paraphrase a recent populist sound bite?

The howls of indignation generated by the Thanabalasingham case will largely be ignored because the Quebec public is not an angry mob. We respect the rule of law and individual rights.

In addition to the right to be tried within a reasonable delay, since 1982 the Canadian Charter of Human Rights and Freedoms guarantees persons the presumption of innocence, the right to remain silent, to be secure from unreasonable search and seizures, to not be arbitrarily detained or arrested, to immediately consult a lawyer upon detention or arrest, to full and timely disclosure of all prosecution evidence.

To ensure that constitutional rights are more than just high minded words on paper, Section 24 of the Charter mandates our courts to issue appropriate orders, including a stay of proceedings, acquittals and the exclusion of evidence in the event of charter violations.

Everyone believes in the idea of respecting human rights but that belief falters for some when our courts do what they are legally obliged to do — enforce the Charter.

These same persons would, of course, expect a defence attorney to vigorously defend them if they were ever accused of a crime — including presenting charter motions.

Judges do not grant charter motions lightly. When a judge comes to the conclusion that a person's charter rights have been violated, he or she is obliged to order the appropriate remedy.

The Charter motion has loomed large in our criminal justice landscape for decades. In that time our courts have excluded evidence, stayed proceedings or ordered acquittals in cases ranging from shoplifting to murder. These judgments are rendered with little fan fare and hardly ever garner press coverage.

The Supreme Court has rightly decided that the law on what constitutes a reasonable delay required reform. Going forward an accused is entitled to have a trial completed in 18 months for a summary conviction offence or 30 months for cases in which a preliminary inquiry is held.

This reform concomitantly assures persons alleging to be victims of crime to be heard in a timely manner. Our courts have begun the work of applying the new framework generating jurisprudence helpful to defence attorneys and prosecutors.

The ominous tone taken at news conferences about the hundreds of motions being filed with our courts is disingenuous. Complaining about too many people filing charter motions is as valid as complaining that too many people are going to our hospitals.

Defence lawyers file Jordan motions because they are duty bound to do so. Some politicians may consider the Jordan motion a nuisance or worse, but judges think otherwise.

There is no media coverage of or political interest in the many Jordan motions that have been dismissed by our courts or that have resulted in mutually acceptable plea bargains.

The Jordan ruling requires us to examine how we are using the resources already dedicated to the criminal justice system. More judges, prosecutors and support staff may be needed. This is a public policy debate no different than re-evaluating whether we need more doctors and hospitals to respond to the health needs of our population.

But overriding the Charter of Rights and Freedoms?

Please.

Ralph Mastromonaco practises criminal law in Montreal.

Senate blocks Liberals' plan to repeal 'anti-union' law

The Globe and Mail
Bill Curry
April 14th 2017

In one of its first acts after winning the 2015 federal election, Prime Minister Justin Trudeau's government moved to reverse two Conservative laws that Canada's labour leaders viewed as an attack on unions.

When the House of Commons passed the legislation last fall, Mr. Trudeau boasted of this accomplishment to a large and appreciative gathering of the Canadian Labour Congress.

Now that pledge is suddenly in jeopardy after the Senate voted to keep one of those two laws in place.

The Senate has amended the government's Bill C-4 in a way that reverses part of its original intent, meaning the House of Commons must now vote on whether to accept or reject the Senate's changes. The government is already signalling it will oppose the Senate amendments, setting the stage for a standoff between the two Houses of Parliament.

The back story of this long-running parliamentary drama dates back to the later years of the Harper Conservative government, when two private members' bills from backbench Conservative MPs – C-377 and C-525 – managed to become law.

C-377, which received royal assent in 2015, required labour organizations to make a series of public financial disclosures, including all transactions of more than $5,000. C-525, which passed in 2014 and came into effect in 2015, forces a secret-ballot vote for any decision to certify or decertify a union.

That replaced the previous practice – known as the card-check system – in which workers could unionize by collecting union membership signatures from a majority of workers. Union leaders said the Conservative change makes it much harder to form a union, because secret-ballot votes tend to be held on the premises of a workplace and the campaigns can lead to intimidation from management.

Critics of the card-check system – including the Fraser Institute – argue a secret ballot protects workers from intimidation from pro-union organizers.

The Trudeau government introduced Bill C-4 in January, 2016. The bill's original intent was to repeal both C-377 and C-525. The House approved the bill in October and sent it to the Senate.

But in a 43 to 34 vote, the Senate voted on Tuesday to amend the Liberal government's Bill C-4 in a way that keeps C-525 and its secret-ballot voting requirements intact. The change was mostly supported by Conservative senators, with the support of some Liberals and independents.

"The Senate and senators have the duty and responsibility to correct this bill, which was written by the government for the sole purpose of benefiting the powerful union groups that helped it get elected in 2015 in exchange for the measures contained in Bill C-4," Conservative Senator Jean-Guy Dagenais told the Senate in advocating for the amendments.

A spokesperson for federal Labour Minister Patty Hajdu signalled that the government would be voting to reverse the Senate changes.

Senators would then have another chance to vote on the bill when it is returned to them by the House of Commons. Traditionally, the Senate would defer to the will of the elected House, but the Red Chamber has become increasingly unpredictable since Mr. Trudeau began appointed senators who sit as independents.

Hassan Yussuff, President of the Canadian Labour Congress, said he has received assurances from the government that the Senate changes would be rejected.

"For the 60 years that the [card-check] system has been in place, nobody has ever shown any evidence that there were problems with the system that required change," he said. "It prevents employers from intimidating and interfering. … Every time there is a vote, employers do interfere. They express their opinion. They threaten to close the workplace."