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Justin Trudeau's Court: The Force Awakens?

The unexpected retirement of Supreme Court Justice Thomas Cromwell presents the Prime Minister with an opportunity to make a bold move when he fills the vacancy.

Adam Dodek, Policy Options Magazine, April 5 2016

Over the next three years, Prime Minister Justin Trudeau will have the opportunity to do what eluded his predecessor for almost a decade: to remake the Supreme Court of Canada in his image.

The surprise announcement on budget day by Justice Thomas Cromwell that he will retire from the high court on September 1st of this year has thrust the Supreme Court onto the government's agenda much earlier than expected. No judge was scheduled to retire until September 2018 when Chief Justice Beverley McLachlin will reach the mandatory retirement age of 75.

While we it is said that crises present opportunities so to do surprises. The 63 year-old Cromwell could have stayed on the court for another 12 years, until he reached the mandatory retirement age of 75 in the year 2027 (when Justin Trudeau will be closer to 60 than to 40). The centrist Cromwell was widely touted as a possible successor to Chief Justice McLachlin in 2018.

Instead, Cromwell may be the catalyst for the sort of change that eluded Justin Trudeau's predecessor.

Stephen Harper tried to remake the Supreme Court. He had the opportunity to appoint 7 of the current 9 justices. Those made no appreciable impact on the court; no insurgency let alone counterrevolution to the *Charter of Rights* revolution ever materialized. The judges of the "Harper Court" ruled unanimously against their patron on Senate reform. In arguably Harper's worst defeat, 4 Harper appointees joined with two other colleagues against one lone Harper appointee to reject Harper's selection of federal court judge Marc Nadon for a seat on the Supreme Court.

Harper also failed to change the way Supreme Court justices were appointed. He initiated unparalleled but questionable transparency to the appointment process by instituting public hearings for Supreme Court nominees in 2006. He instituted a panel of MPs to create a shortlist from which he would choose the nominee. But after the self-inflicted injury of the Nadon fiasco, Harper scrapped that whole process. His legacy was thus one of failed reforms.

But as one of the wisest sages of our generation once said, "Do or do not. There is no try." What will Justin Trudeau try? And what will he succeed in doing?

He has the safe way and the bold way.

The safe way is to stick closely to the general promises made in the 2015 Liberal platform: make the Supreme Court appointment process more transparent; consult with authorities throughout the legal profession, including the Chief Justice of the Supreme Court of Canada; and ensure that all those appointed to the Supreme Court are functionally bilingual.

It's the last point that gets some people excited, but it is likely less challenging that it sounds. It would likely exclude some candidates (see "the bold way" below).

The safe way is to follow the regionalist distribution on the Court that has existed since its creation in 1875. Since the Court expanded to nine judges in 1949 it has followed a familiar pattern: 3 judges from Quebec, 3 from Ontario, 2 from the West and one from Atlantic Canada (or more specifically one from the Maritimes since Newfoundland and Labrador have not had a judge on the Supreme Court since it joined Canada in 1949). Since Justice Cromwell held the "seat" for Atlantic Canada, his replacement is supposed to come from one of those four provinces. The speculation and the lobbying has already begun. Newfoundland and Labrador has never had a judge on the Supreme Court and has staked their claim, issuing a press release. Prince Edward Island has actually been waiting longer than Newfoundland and Labrador; it has not had a judge on the high court since 1924. New Brunswick's supporters will claim it is their turn after the Nova Scotian Cromwell. Etc. Supreme Court appointment politics as normal.

Then there is the bold way. It involves Justin Trudeau turning his back on the strict regionalism that has predominated since Confederation in consideration of other values embraced by Canadians in 2016.

The most obvious is reconciliation. If Prime Minister Trudeau wanted to make his mark on the Supreme Court now, nothing is likely to have more enduring impact than appointing the first Aboriginal justice to that Court. Teaching Aboriginal Law for the first time this past year has convinced me of the necessity of having an Aboriginal "perspective" on the Court. If he wanted to "do", Prime Minister Trudeau could appoint a top Aboriginal jurist, regardless of where he or she hails from.

Such a move could potentially clash with Trudeau's promise of appointing only judges who are functionally bilingual; although many Aboriginal jurists are likely bilingual, but not necessarily in English and French.

Given Aboriginal demographics, a number of such candidates hail from the West. Trudeau could appoint an Aboriginal jurist from the West in 2016 with the promise of giving Atlantic Canada back its 'seat" in 2018 when Chief Justice McLachlin of British Columbia retires. To the delight of the legal profession, there is actually precedent for such a move.

At the end of 1978, Justice Wishart Spence of Ontario retired. Instead of appointing an Ontario judge, Prime Minister Pierre Trudeau tapped BC jurist William McIntyre, perhaps hoping the appointment might shore up the Liberals electoral prospects in the West. Considering that the Liberals won exactly a single seat in the 1979 federal election, it is safe to say that was a failed electoral gambit. In 1982 when Alberta justice Ronald Martland stepped down from the Supreme Court, Trudeau replaced him with an Ontario judge: Bertha Wilson – the first woman on the Supreme Court of Canada. Thus, restoring order in the force or at least the historical regional distribution on the high court.

This precedent provides a potential pathway for Justin Trudeau should he chose to take it. It would be hard for Atlantic Canada to complain: they have had more than their fair share of judges on the Supreme Court since Confederation, including three Chief Justices.

On election night, Justin Trudeau famously invoked the "sunny ways" of Wilfrid Laurier. He may also want to consider the advice of another Prime Minister, Mackenzie King who said that while some countries have too much history, "Canada has too much geography."

L'arrivée du système de paye Phénix inquiète l'AFPC

Paul Gaboury, Le Droit, le 7 avril 2016

En raison des nombreux problèmes liés à l'implantation du nouveau système de paye Phénix, l'Alliance de la fonction publique du Canada (AFPC) demande au gouvernement fédéral de repousser son déploiement.

Au début mars, 124 000 fichiers d'employés avaient été transférés à Phénix, mais les nombreuses plaintes reçues jusqu'à maintenant ont poussé l'AFPC à intervenir pour demander qu'on reporte la phase deux, et le transfert de 170 000 comptes additionnels prévu le 21 avril.

«Nous avons reçu plus d'une centaine de plaintes de nos membres, travaillant dans différents ministères, disant qu'ils n'ont pas été payés correctement depuis la mise en oeuvre du système en mars. Pour nous, la situation sera aggravée si l'on poursuit avec la deuxième phase tel que prévu», a indiqué au *Droit* Chris Aylward, vice-président exécutif national de l'AFPC.

«Le ministère ne semble pas voir les choses de la même façon que nous, et ne voit pas pourquoi il reporterait la phase deux. Tout ce qu'on nous a dit, c'est qu'on ajouterait 40 personnes pour répondre aux appels de plaintes», a indiqué le dirigeant syndical après sa rencontre avec les représentants du ministère des Services publics et de l'Approvisionnement, responsable de Phénix.

Le syndicat souligne qu'il a sommé le gouvernement d'embaucher plus de personnel au centre des services de paye de Miramichi s'il ne peut retarder le transfert de nouveaux fichiers. Selon M. Aylward, il y aurait présentement un cumul de 120 000 comptes ou fichiers qui n'ont pas encore été traités.

«Nos membres de Miramichi font preuve de dévouement et d'ardeur au travail malgré l'immense pression qu'ils subissent. Ce n'est pas leur faute. Les problèmes viennent du système Phénix ou des ministères qui n'entrent pas les bonnes informations dans le système. Mais avant d'ajouter d'autres comptes, il faudrait régler les problèmes actuels», estime M. Aylward.

Après la première phase d'implantation en mars dernier, le ministère avait indiqué au *Droit* que «seuls quelques problèmes mineurs avaient alors été signalés» et corrigés rapidement.

Le ministère avait aussi indiqué qu'il avait mis en place les équipes nécessaires pour intervenir en cas de problèmes.

Le projet Phénix a nécessité cinq ans de préparatifs et des investissements de 300 millions $.

Tribunal sides with public servant late for work because of snow-filled driveway

Don Butler, Ottawa Citizen, April 10 2016

A federal tribunal has upheld a grievance by a public servant who was denied paid leave after she had to clear a snow-filled driveway and was three hours late for work.

But it dismissed another grievance by a co-worker who also asked for paid leave when a flight cancellation caused her to miss a day’s work following a European vacation.

The Public Service Labour Relations and Employment Board (PSLREB) considered the two grievances together because Cecilia Close and Andrea Stevens both work as service delivery agents for the Department of Citizenship and Immigration in Sydney, N.S., and their grievances concerned the same provision in their collective agreement.

That provision states that the employer may grant, at its discretion, leave with pay "when circumstances not directly attributable to the employee prevent his or her reporting for duty." It also says such leave shall not be unreasonably withheld.

The tribunal heard that Close lives in a "somewhat rural" area about 12 kilometres from her workplace in Sydney, with few neighbours.

On the morning of Feb. 9, 2011, she discovered that more than 24 centimetres of snow had fallen overnight, filling in her 35-foot-long driveway. Her husband would normally have used their snowblower to clear the driveway, but pain from an old back injury had flared up overnight, and he could barely walk.

Though she'd never operated the snowblower before, Close decided her best option was to use it herself to liberate her car. It took her several hours to complete the job because she had to stop frequently to rest her arthritic hip. She arrived at work shortly before 10 a.m., nearly three hours after the scheduled start of her shift.

At the hearing, her employer argued that Close was late not because of circumstances beyond her control but because of choices she made. She chose not to get up earlier to clear the driveway, call a snowplow operator, seek help from neighbours or call a cab, her bosses said.

But PSLREB board member Kate Rogers said Close didn't fail to plan for snow removal. "She did not simply sit back and make no effort. Her usual and reasonable arrangements for snow removal failed, and considering all her options, she decided that the best course of action was to clear the snow herself."

Rogers upheld Close's grievance and ordered her employer to credit her with the hours of leave she had requested and compensate her for three extra hours she was required to work to make up the missing time.

Rogers reached a different conclusion, however, when considering the grievance filed by Stevens.

In May 2011, Stevens was returning from a holiday in France. Her flight from Marseille to Halifax involved connections in Frankfurt and Philadelphia. Had everything gone according to

plan, she would have arrived back in Sydney less than six hours before the start of her shift at 8:30 a.m.

But Stevens' flight from Philadelphia to Halifax was cancelled, and she wasn't able to get on another flight until the following morning. By the time she reached Halifax, it was 5 p.m. and her scheduled workday was over.

Even when she reached Halifax, her trials weren't over. Her car keys were in her luggage, which didn't arrive on the flight with her, and she had to wait in the airport for her husband to drive from Sydney with another set of keys.

At the hearing, Stevens argued that she was prevented from reporting to work by circumstances that weren't attributable to her.

It's impossible for employees to plan for all problems that may arise, she asserted. Things happen unexpectedly, which was one of the reasons that the collective agreement provision existed.

Stevens asked for more than five hours of unpaid leave but her bosses refused. Instead, she had to use vacation leave to cover her absence.

Rogers was unsympathetic. She said Stevens had scheduled her return flights in such a way as to leave no margin of error.

"She left no room to deal with any of the problems that accompany air travel, such as adverse weather conditions or mechanical difficulties or even lost luggage," she wrote in her decision. "The employer should not have to pay for the risk and the lack of foresight that Ms. Stevens demonstrated."

Aide à mourir: compte à rebours entamé et toujours pas de projet de loi

Lina Dib, La Presse Canadienne, le 10 avril 2016

Le compte à rebours est bien entamé mais le gouvernement de Justin Trudeau demeure persuadé qu'il y aura une loi sur l'aide à mourir avant la date limite imposée par la Cour suprême du Canada.

Pourtant, en fin de journée vendredi, le feuilleton des avis du Parlement n'annonçait toujours pas le dépôt du projet de loi sur l'aide à mourir.

Et six semaines - le nombre de semaines où le Parlement siège entre le 11 avril et le 6 juin -, c'est déjà bien peu pour passer l'éventuel document par les trois lectures aux Communes, les trois lectures au Sénat, ainsi que l'examen d'un comité parlementaire et d'un comité sénatorial qui, chacun, peut entendre des témoins.

Les partis de l'opposition avertissent qu'il n'est pas question de limiter le temps des débats. Le nombre d'heures dont ils auront besoin pour débattre dépendra, disent-ils, du contenu du projet de loi qu'ils n'ont pas encore vu.

«La loi, c'est le plus petit dénominateur moral commun d'une société», fait remarquer le leader parlementaire du Bloc québécois, Luc Thériault. Il attend donc de voir si le projet de loi éventuellement livré par la ministre de la Justice, Jody Wilson-Raybould, aura cette qualité de dénominateur commun.

Ce serait le cas, d'après lui, si la ministre se contentait de se coller aux paramètres contenus dans l'arrêt Carter et évitait d'aller beaucoup plus loin, comme l'a fait le comité spécial formé de députés et de sénateurs. Ce comité a conseillé, entre autres, d'étendre à certains mineurs le droit à l'aide médicale à mourir.

M. Thériault n'a pas oublié que les élus bloquistes n'ont pu participer à ce comité spécial.

«Nous, on a été exclu de ce processus de réflexion-là et on nous a dit qu'on aurait la chance de pouvoir contribuer au débat en chambre. J'espère qu'on va avoir tout notre temps pour le faire», a-t-il averti au cours d'une entrevue téléphonique.

Chez les néo-démocrates, on estime que la seule limite de temps de débat acceptable serait celle convenue à l'unisson par les leaders parlementaires des partis. Pas question d'accepter un «bâillon» imposé unilatéralement par le gouvernement libéral.

«Ce ne serait pas pratique d'exiger la clôture après quelques semaines de débats surtout que, chez nous au moins, ça va être un vote libre des députés et les députés vont vouloir consulter leurs concitoyens», a souligné Peter Julian, leader parlementaire néo-démocrate, au téléphone depuis Edmonton où se déroulait le congrès de son parti.

«Le ministre LeBlanc va discuter avec les leaders en chambre de l'opposition afin d'assurer que ce projet de loi soit étudié de façon adéquate, tout en respectant le délai imposé par la Cour

suprême», a assuré, dans un courriel, le bureau du leader du gouvernement en chambre, Dominic LeBlanc.

«Nous n'avons aucune raison de croire que les discussions avec l'opposition seront infructueuses», a-t-on également écrit.

Le premier ministre Justin Trudeau, lui, a cité en exemple le travail du comité spécial qui a réuni députés et sénateurs pour conclure qu'il sera possible d'avoir un «débat approfondi et responsable qui entendra toutes les voix nécessaires» dans les temps.

M. Trudeau omet de se souvenir que les députés conservateurs qui ont siégé à ce comité spécial ont pondu un rapport dissident.

Un des signataires de ce rapport dissident, le député conservateur Gérard Deltell, a refusé de partager ses opinions sur le sort qui attend l'éventuel projet de loi. Même silence chez le sénateur conservateur Claude Carignan, qui contrôle la majorité au Sénat.

Ces dernières semaines, des sénateurs conservateurs faisaient savoir qu'ils ne se laisseraient pas bousculer par le calendrier du gouvernement... quel que soit le projet de loi.

Et puis, il faudra aussi tenir compte de la pression exercée par la multitude de groupes opposés à toute aide médicale à mourir, groupes qui n'ont pas abandonné la lutte et multiplient sorties médiatiques et conférences de presse à Ottawa.

Class actions, military justice are among novel cases SCC to weigh

Can judges work collectively outside their provinces?
Cristin Schmitz, The Lawyers Weekly, April 15 2016

Class action and military justice appeals raise issues of particular note to lawyers on the Supreme Court of Canada's spring docket.

At press time, the top court's spring session was not fully booked, with just 14 cases slated for argument beginning April 21 and none scheduled for June.

Questions on the court's menu include whether a three-year wait for trial violates the *Charter*'s s. 11(b) prohibition against unreasonable trial delay, and whether judges can rectify corporate records to reflect that a commercial transaction was intended to occur on a tax-free basis.

Among the scheduled appeals that break new ground are twin hepatitis C class action settlement cases out of British Columbia and Ontario, to be heard together May 19: *Endean et al. v. British Columbia* and *Parsons et al. v. Ontario*.

The novel issue: In order to enhance fairness, efficiency and consistency, can superior court judges from different jurisdictions sit together outside their provinces in order to jointly administer multi-jurisdictional or national class action settlements?

The judges supervising the national hepatitis C settlement in Ontario, Quebec and B.C. agreed they had inherent jurisdiction to do so, but those provinces' attorneys general disagreed, with Ontario threatening to go to court to block the supervising Ontario judge from sitting outside the province, if need be.

The Supreme Court's pronouncement on the legality of extraprovincial hearings is expected to affect a number of class actions.

"Class actions have introduced multi-jurisdictional issues in a different way in Canada than we have seen before, and they call for new solutions," explained *Endean* class counsel Sharon Matthews of Vancouver's Camp Fiorante Matthews Mogerman. "There are many cases in class actions…where more than one court is involved in making important rulings, and a high-level of co-operation — both a spirit of co-operation and a practical co-operation — among the courts is necessary for the effective and efficient adjudication of multi-jurisdictional class actions."

The dispute arose because the provinces have failed for nearly two decades to enact laws governing how to iron out the procedural wrinkles of the growing number of pan-Canadian settlements.

"Although the courts have invited legislation to deal with appropriate processes to facilitate multi-jurisdictional and national class actions, this has not happened and it is therefore left to the courts to fashion these processes," said Matthews' co-counsel J.J. Camp. "We contend that the three chief justices who were case-managing this multi-jurisdictional class action got it right, and that the Court of Appeal of British Columbia and the Ontario Court of Appeal got it wrong," he said by e-mail.

In 2012, the three then-chief justices of Ontario, British Columbia and Quebec, who were jointly supervising the administration of the $1.1 billion national hepatitis C settlement, were scheduled to meet in Edmonton to attend a Canadian Judicial Council meeting. They decided to take advantage of that occasion by sitting together to hear concurrent motions from class

counsel from Quebec, Ontario and B.C. Class counsel were seeking to extend the deadline to file claims under the 1999 agreement which compensated thousands of people infected, via the Canadian blood supply, with hepatitis C between 1986 and 1990. (The judges were to hear arguments together, but each was to decide separately the motion over which he had jurisdiction).

However, Ontario Attorney General John Gerretsen balked at the joint hearing, objecting that superior court judges are barred from sitting outside their provinces by statute, the common law, the Constitution and the open court principle. The late-claims motions were therefore adjourned and argued later at separate court hearings that culminated in conflicting decisions and the suspension of the late-claims process.

In deciding class counsel's motions for directions from each supervisory judge, in 2013 Ontario Chief Justice Warren Winkler, B.C. Supreme Court Justice Robert Bauman and Quebec Superior Court Chief Justice François Rolland ruled that their inherent jurisdiction to control the court processes for hearing matters over which their courts had personal and subject-matter jurisdiction entitled them to sit together, outside their home provinces, when the interests of justice required it. The three supervising judges rejected the assorted opposing submissions of the attorneys general of Ontario, Quebec and B.C. — which included an argument that because the English common law dating back hundreds of years prohibited judges in England from sitting outside English borders, that law, as received in B.C. in 1858, prohibits Canadian provincial superior court judges from sitting outside their provinces.

Matthews said "we take issue with the…point that there is a common law prohibition. But if there is one, it's from very ancient practices in the United Kingdom which are not suitable to modern-day Canada, and…the Supreme Court of Canada has said that when old rules — particularly old jurisdictional rules — are not suitable to modern-day Canada the courts can, and should, change them."

The attorneys general of Ontario and B.C. appealed their first-level defeat, while Quebec did not. The Ontario Court of Appeal concluded that the Superior Court's inherent jurisdiction does allow a judge to sit outside the province, but that that hearing must be video-linked to an Ontario courtroom (which can be devoid of counsel or the judge) to satisfy the open court principle. For its part, the B.C. Court of Appeal held that the common law bars a judge from sitting extra-provincially. However the appeal court went on to create a legal fiction to facilitate joint extra-provincial hearings. Thus a hearing would be deemed to "take place" in B.C. — even when the judge, the lawyers, and witnesses, are physically located outside B.C. — so long as the extra-provincial elements of the hearing are electronically linked to an open and staffed (but otherwise empty) courtroom in B.C.

Matthews argues a video link "can be a means to have greater participation across the country" but "it's not a lawful jurisdictional foundation. It's an artifice. And artifices shouldn't be the basis on which you are doing it, because they are very vulnerable. And then if someone calls you on it, you have had hearings that were jurisdictionally unsound. So we want a correct ruling…[that] this can be done and, if so, it should be done, we say, in very rare circumstances, and we set out…a threshold test, and then if that threshold is passed, a series of balancing considerations as to whether it should be done."

Another pair of appeals of first impression, to be heard by the top court April 25, has the potential to shake up the military justice system, by striking down, as contrary to the s. 7 *Charter* principles of fundamental justice, separate provisions in the *National Defence Act* which empower the minister of National Defence to appeal acquittals, stays and sentences to the Court Martial Appeal Court (CMAC) and to appeal CMAC decisions to the Supreme Court of Canada: *R. v. Cawthorne* and *R. v. Gagnon*.

The cases are about "the recognition of prosecutorial independence as a principle of fundamental justice," said Lt.-Col. Jean-Bruno Cloutier, deputy director of Defence Counsel Services. "Is a minister of the Crown, who is not the attorney general…sufficiently independent to prosecute a crime in Canada?" explained Lt.-Cmdr. Mark Létourneau, co-counsel with Cloutier for the three respondent military members prosecuted for sexual offences under the *Code of Service Discipline*.

If the top court agrees with the defence and the CMAC that the minister of Defence is not independent, it "will remove the last quasi-judicial power of the minister,…and that's consistent I think, to my knowledge, with the role of all ministers of the Crown who have an executive role, not a quasi-judicial role," said Létourneau.

Last December in *Gagnon*, [2015] CMAC 2, the CMAC struck down the Defence minister's power to launch criminal appeals to the CMAC on the basis that reposing that quasi-judicial power in a politician, and a member of the executive bound by Cabinet solidarity, violates the *Charter*'s s. 7 prohibition against depriving people of their liberty, except in accordance with the principles of fundamental justice — which include prosecutorial independence.

"The minister has simply no objective institutional independence required for the independent exercise of a function that can lead to imprisonment of one of his employees or [the employee's] dismissal," the CMAC reasoned, although it suspended its declaration of invalidity for six months.

The court recognized that it is crucial "to make sure that the discretion of the prosecution is protected from political interference and judicial supervision," Cloutier said.

However, the prosecution contends that the court struck down the minister's right of appeal by extending the principle of prosecutorial independence beyond anything previously recognized in case law, academic writing or international norms.

"Properly understood, the principle of prosecutorial independence requires that prosecutorial decisions be made free from partisan political considerations, as well as any other improper motives," Col. Bruce MacGregor, the Canadian Armed Forces' director of military prosecutions, acknowledges in the appellant's factum. But that principle is protected "by a number of regimes, including applications for abuse of process and the tort of malicious prosecution. Both the principle, and the regimes which guard the principle, apply equally to the minister of National Defence in the exercise of his powers under ss. 230. 1 and 245(2) of the NDA, as they do to all public officials who exercise a prosecutorial function."

Feds ban asbestos in construction, renos at government sites

Toxic material still being used at government buildings as recently as February
Julie Ireton, CBC News, April 10 2016

CBC News has learned a federal government department has banned the use of asbestos in all new construction and renovation projects at buildings it operates — a new policy that was suppose to come into effect on April 1.

In February, CBC revealed that building products containing the toxic material was still being used in new construction of federal buildings in Canada.

Now it appears the government is taking a step to end that practice.

CBC has obtained an asbestos management brief prepared by Public Services and Procurement Canada and presented to an occupational health and safety session on March 29.

"Effective April 1, 2016, there will be a new departmental ban on the use of asbestos-containing materials in all new construction and renovation projects," the document dictates.

Public Services and Procurement Canada, formerly referred to as Public Works, serves as the central purchasing agent and property manager for government departments and operates

buildings used by 265,000 federal workers. It's not clear whether the department's ban on the use of asbestos will extend to the entire government, as some federal property is managed by other departments.

'Best news we've had in many years'

"It basically means that all new federal buildings that are still in the planning stages will be built asbestos free," said Denis St-Jean, national health and safety officer at the Public Service Alliance of Canada, who was at the meeting.

"For many of our health and safety activists across Canada, this is the best news we've had in many years."

Health and labour groups are calling for a total ban of the use of asbestos in Canada. This country still imports cement pipes and automotive brake parts that contain asbestos.

By contrast, Australia, New Zealand and all 28 members of the European Union already have bans in place.

Every year thousands of Canadians die of asbestos-related diseases. In February, New Democrat MP Sheri Benson called the fibre "the greatest industrial killer the world has ever known."

'Clear tone that this is not acceptable'

Hassan Yussuff, president of the Canadian Labour Congress, said this new policy is a step in the right direction for Canada.

"Asbestos is a carcinogen and given that we're spending tons money on our infrastructure, if you don't set a clear tone that this is not acceptable anymore, knowing what we know about asbestos, it would have been really remiss of the government to allow this to continue."

Yussuff himself was exposed to asbestos during his years working in a General Motors plant.

He said he hopes this policy affects the rules around the billions of dollars of construction projects the federal government is planning to help fund across Canada.

"I think the federal government can say, without any contradiction, 'We'll not fund projects that are using asbestos products, as we're trying to renew our infrastructure.' I think they can insist on that."

But Infrastructure Canada stated in an email: "The use of asbestos as it relates to health and safety is governed by provincial and territorial standards, which our project proponents are required to meet."

Public Services and Procurement Canada is also developing a national inventory of both owned and leased buildings containing asbestos.

Hundreds of properties

The department currently operates hundreds of properties, many of which contain asbestos.

"Hopefully they're going to establish a public registry of all Crown-owned buildings across Canada," said St. Jean.

He said for the past decade, the union has campaigned for such a registry.

- **Asbestos registry needed says cancer patient**
- **Registry needed for all federal buildings with asbestos**

"We had a Canadian food inspection agency worker, his name was Howard Willem, who actually passed away Nov. 8, 2012. Even on his dying bed, he was still trying to have a public registry of all asbestos-containing buildings," said St Jean.

Federal government workers — especially those who work in the trades — have long complained they weren't aware their workplaces contained asbestos until they'd already been exposed.

- **CBC investigation reveals IT workers didn't know about asbestos**

Yussuff agrees the registry is needed, but said there's much more the federal government should do.

"There is a big gap though, in terms of their policy which we have to address. The importation of asbestos products in our country is simply unacceptable and the federal government can bring in a comprehensive ban to stop those products from coming into Canada and that has to be part of this."

David Boyd, an environmental lawyer and adjunct professor at Simon Fraser University. said several federal departments need to be part of new policies concerning asbestos, not just Public Services and Procurement Canada.

"I keep saying to people in Ottawa this isn't something you can dither about. This is something that has to be done as soon as humanly possible to save lives and to prevent terrible diseases."

Fraser: Pearson's dream of bilingualism, 50 years later

Graham Fraser, Ottawa Citizen, April 6 2016

Fifty years ago, Prime Minister Lester Pearson rose in the House of Commons to articulate his government's language policy. It was a remarkable statement, delivered a year before the first volume of the report of the Royal Commission on Bilingualism and Biculturalism was published and three years before the Official Languages Act was passed.

Pearson began by framing the issue of bilingualism in the public service in terms of attracting the most competent and qualified Canadians, stressing what he called "the fundamental objective of promoting and strengthening national unity" by establishing the equality of rights and opportunities for both English-speaking and French-speaking Canadians.

"In a diverse federal state such as Canada it is important that all citizens should have a fair and equal opportunity to participate in the national administration and to identify themselves with, and feel at home in, their own national capital," he said.

Then Pearson moved directly to the heart of the policy. He said that "the government hopes and expects that, within a reasonable period of years," the federal public service would reach a state of affairs in which:

"(a) it will be normal practice for oral or written communications within the service to be made in either official language at the option of the person making them, in the knowledge that they will be understood by those directly concerned;

"(b) communications with the public will normally be in either official language, having regard to the person being served;

"(c) the linguistic and cultural values of both English speaking and French speaking Canadians will be reflected through civil service recruitment and training; and

"(d) a climate will be created in which public servants from both language groups will work together toward common goals, using their own language and applying their respective cultural values, but each fully understanding and appreciating those of the other."

That was 50 years ago today. Anyone parsing that statement can see the framework – and the spirit– of the Official Languages Act and, later, parts of the Canadian Charter of Rights and Freedoms.

At times, I think that the language policies of the federal government would be better understood if, instead of talking either admiringly or dismissively of "Trudeau's dream" or referring to Part IV and Part V of the Official Languages Act, which remain abstract and technical even for public servants, people asked themselves the questions that Pearson's speech still evokes.

Do English-speaking and French-speaking Canadians feel equally at home in Ottawa? Do public servants communicate with the public in the official language of their client's choice? Is it normal practice for public servants to speak and write in the official language of their choice, knowing that they will be understood? Are linguistic and cultural values of both official language groups reflected in public service recruitment and training? Is there a climate that encourages English- and French-speaking public servants to work together, using their own language and applying their own cultural values, but fully understanding and appreciating those of the other?

Huge progress has been made over the past half-century in the area of language policy. But my office continues to get complaints from citizens who have not been served in the official language of their choice. Public servants usually use the majority language in meetings and in their written work. The culture of the federal public service is often the culture of the majority. And the manager or executive who actively encourages public servants to use the official language of their choice in meetings, briefing notes and performance evaluations is too often the exception rather than the rule.

As Canadians prepare to celebrate the 150th anniversary of Confederation, we should remember that the ideals that Lester Pearson articulated so clearly a half century ago today are still a challenge to achieve. But in striving to meet the goals that Pearson set, we are building a stronger, fairer and more inclusive country.

Graham Fraser *is Canada's Commissioner of Official Languages.*

Here's how Canada should vet its Supreme Court nominees

Emmett Macfarlance, National Post, April 4 2016

The unexpected announcement that Supreme Court Justice Thomas Cromwell will retire this September throws another important item onto the Liberal government's already bloated reform agenda: what to do with the Supreme Court appointments process?

Appointments to Canada's highest court have historically been conducted entirely behind-the-scenes, with the public's only knowledge of an appointment coming when it is announced. Given the importance of the Court as a governing institution, especially in light of its policy-making power under the Charter of Rights and Freedoms, the opacity of the process is unacceptable in the modern era.

Reforms brought in under prime ministers Paul Martin and Stephen Harper effectively sought to add a *post hoc* transparency to the selection. In 2004, then-justice minister Irwin Cotler appeared before a committee of parliamentarians to explain his selection criteria. Then in 2006 the Harper government initiated the practice of having the appointee appear before a committee of MPs to answer questions about themselves, an innovation that was inconsistently applied to subsequent appointments. After the selection of Marc Nadon was overturned by the Court itself in 2014 (it turned out Nadon did not meet the eligibility requirements for judges from Quebec), prime minister Harper abandoned the reforms entirely.

On top of these efforts, Parliament was given more of a role in appointments by having the bipartisan committee of MPs narrow the prime minister's list of seven nominees to a shortlist of three, from which the PM would then make the final selection. The superficiality of this process was superseded only by the detrimental effect it had on accountability: when questions about Nadon's eligibility were raised in 2013, the committee members, regardless of party affiliation, refused to say who supported his inclusion on the shortlist, or even if the committee was unanimous. This lack of transparency allowed the government to point to the committee's bipartisan composition when defending Nadon's selection, in effect diluting any accountability for his failed appointment.

The public interviews of the appointees, when the government bothered with that part of the reform, suffered from terrible execution. Given mere days to prepare for the interview, and

under guidelines that limited the types of questions asked, parliamentarians posed inquiries that ranged from the mundane to the vacuous. We got to watch as future Supreme Court justices were asked to name their personal heroes or invited to tell childhood anecdotes. Hardly an edifying exercise for members of the public who may have benefited from an opportunity to learn about how someone intended to do their job at one of the most powerful institutions in the country. When things did get interesting, it was only because an MP went entirely off-the-rails, as NDPer Joe Comartin did in 2011 when he repeatedly questioned Michael Moldaver about his lack of fluency in French, to the point that it could only be interpreted as an attempt to embarrass.

These problems, if addressed properly, can be rectified, and to do so I propose the following:

First, pick up on the 2004 innovation, only implemented once, of having the justice minister appear before the committee to explain and justify her selection.

Second, parliamentarians should be given weeks, not days, to prepare for the public interview. Allow MPs (and the media, and the public) the time to examine prospective justices' records, whether that includes judgments from their time on lower courts, their academic writing, or public statements.

Third, do more to ensure MPs ask better questions. The public deserves to know how a future judge will approach the role, how they understand the Court's relationship with Parliament and the government, how they understand rights and their limits, or conceptions of deference and the limits of the Court's power, etc.

Fourth, eliminate restrictions on what MPs can ask. Judicial candidates tend to be intelligent, capable people. In some contexts, such as in relation to how they might decide potential future cases, they can simply refuse to answer a question.

Finally, and most significantly, make the appointee a *nominee* instead. No, I am not calling for a parliamentary confirmation vote, which risks turning the appointments process into a partisan circus and blurring lines of accountability. Instead, allow the prime minister to put forward the name of a nominee, with the understanding that the formal appointment will follow the public vetting process. If public vetting or the public interview turn up serious questions about an individual's record or approach to his or her role on the Court, the prime minister should be free to select a different nominee.

Critics will complain that this might "politicize" appointments to the Court, but this complaint fails to recognize that Supreme Court appointments are inherently political; the fact that the process has been shrouded in secrecy does not mean it has somehow been apolitical historically. Pierre Trudeau, for example, actively sought reformist judges for the Court, and succeeded several times in making those types of appointments.

It matters who sits on the Court, not only from a merit-based perspective but also from a political one. Judges bring with them the baggage of life experience, including an ideological worldview, which, while constrained by legal rules and institutional norms, nonetheless makes a difference in how the complex, often moral-laden issues the Supreme Court routinely faces are ultimately resolved. Transparency and public vetting of the prime minister's selection will serve to improve the public's understanding of the Court's work, including its political elements, something that has been ignored for far too long.

Cotler calls for changes to Supreme Court selection process

Gabrielle Giroday, Canadian Lawyer Magazine, April 4 2016

Following news of the impending retirement of Supreme Court of Canada Justice Thomas Cromwell, former Liberal minister of justice and attorney general Irwin Cotler is calling for change in the way SCC justices are appointed.

Based on his own times as AG, Cotler has recommended a four-stage process be implemented to select the next justice for the top court.

"Regretfully, the judicial appointments process for the Supreme Court of Canada has been effectively dismantled," says Cotler, the former MP for Mount Royal and attorney general from 2003 to 2006. Cotler was in Toronto for an event for the Pearson Centre for Progressive Policy last week.

"What we need to do . . . is to return to what I once enunciated as the four stages for a comprehensive, and representative and inclusive judicial appointments process for the Supreme Court of Canada, that will be anchored in merit, that will reflect our diversity, and will end up in having not only the best people appointed but achieving the best process for that purpose," said Cotler.

Based on his experiences, Cotler recommends a first stage where a protocol would be established, spelling out the people the minister of justice would consult in her search for a new justice, and the personal and professional qualities the new justice would hold.

In stage two, a nine-person advisory group would look at the list, and report back on their top three picks. Depending on the region the retired justice hailed from, this group would include a representative of the corresponding law society, a representative from the Canadian Judicial Council, a representative of the Canadian Bar Association, and parliamentarians, as well as two "eminent" public citizens.

"They would engage in their own independent consultation process, and take that group of five to eight that they got, and winnow it down to three," said Cotler. "They were also able to suggest somebody that might not have been part of the initial five to eight, if there were compelling reasons that a person was overlooked or should be considered."

In the third stage, Cotler says the minister would "re-enter the consultative process" after receiving the short list and discuss the results.

In the fourth stage, a parliamentary hearing would take place to discuss the choice.

Cotler didn't mince words, stating Prime Minister Justin Trudeau should take a look at making what's old new again.

"I'm saying that [Trudeau] bring back the four-staged process, as I outlined it. I think each stage can be refined and improved, and that we have a process that is open, transparent, comprehensive, inclusive and accountable," said Cotler. "The public is part of that transparency and accountability process."

Cotler's calls for change aren't new. In 2014, he suggested the Conservative government then in power "adopt a more representative and inclusive approach similar to that which I employed as minister of justice, in consultation with Parliament

"That approach could include a more broadly representative and inclusive judicial advisory selection panel, where no political party has a majority (as the government now gives itself), parliamentarians as a whole are in the minority, and the provincial attorney general and provincial bar are represented, along with the Canadian Bar Association and the Canadian Judicial Conference; a protocol of consultation published by the minister of justice, setting out whom the minister intends to consult and with whom the advisory panel will meet; a public announcement by the minister of the criteria by which each candidate will be evaluated; and a final hearing at which the minister of justice – and not only the nominee – answers questions

from parliamentarians, notably regarding how the nominee meets the established criteria," he wrote then.

But with a new government, perhaps Cotler's calls for change have newly empowered listeners. Last week's event to honour Cotler was attended by Liberal supporters like Minister of Indigenous Affairs and Northern Development Carolyn Bennett, Minister of Natural Resources Jim Carr, and Minister of Environment and Climate Change Catherine McKenna. Ontario Attorney General Madeleine Meilleur was also in attendance.

Time to rethink the Supreme Court Appointment Process

Parliament's attempts at reviewing Supreme Court appointees have been ineffective, but Canada should look beyond the United States for a new model.

David Schneiderman, Policy Options, April 6 2016

With retirement of Justice Thomas Cromwell Justin Trudeau's government has an opportunity to rethink the ways in which appointments to the Supreme Court of Canada are given a public airing. It is likely that we will hear calls to reinstate the process Stephen Harper eventually abandoned, but which he used for his first five Supreme Court appointments: appearance by nominees before a House of Commons committee for polite questioning. This would be a mistake. Though that process unquestionably is better than the archaic system to which Harper reverted for his last three appointments, it is seriously flawed.

The public hearing process has its genesis in Reform Party proposals for a reformed Senate. A revamped Senate would provide advice and consent to the prime minister regarding Supreme Court appointments and other high office appointments, just like the United States Senate. It seems pretty clear that the interview process was intended to be a warmed-over version of US Senate judicial confirmation hearings. Following upon the heels of the Supreme Court's 1988 *Morgentaler* decision striking down the Criminal Code abortion provisions, the Reform Party wanted to more closely scrutinize, and thereby politicize, the Supreme Court appointment process.

This did not happen. The hearings were described in the press as a "love-in," overly "genteel," and akin to a "meet and greet." The questioning was tepid and uninformative. The press mostly lost interest. My own research suggests that little was revealed about judicial decision-making or about the relationship between law and politics. What we did learn from each nominee, echoing Conservative talking points, was that they would not "create" law but only "apply" it.

The press, nevertheless, liked what they saw. What they observed were smart and eloquent jurists, very unlike the politicians that the same journalists covered on Parliament Hill.

Despite the insistence from the bench that judges do not make law, it is naïve to think otherwise. There are many contentious constitutional questions for which legal tools (such as text and precedent) provide no obvious answers. It is in these areas, ones that are open to interpretation, that a judge's preferences, experience and ideology come into play. Committee members were not willing to enter into this domain. In fact, they were instructed not to do so by their legal advisers. Only "general questions" were permitted. Their task was confined to determining, in a roundabout way, whether the nominee had the "right stuff" to be a Supreme Court judge.

As in US confirmation hearings, nothing could be asked that would "forecast opinions about future or controversial cases." Unlike US hearings, nominees could not even be questioned about earlier precedent decided by the Supreme Court. For instance, when asked whether there were limits to constitutional growth associated with the "living tree" doctrine, Justice Richard Wagner refused to answer the question. Doing so could disqualify him from sitting in some future case. Canadians would learn little from these hearings other than each justice's hardscrabble existence and their unanticipated rise to judicial heights.

"Rather than reverting back to flawed, and not very rewarding, processes, the time is ripe for a rethink"

There might be a temptation to return to the process initiated by Paul Martin's government, where the minister of justice personally appears before a House Committee to speak to an appointee's credentials. This model does not serve well the transparency and educative functions that public processes are expected to deliver. Rather than reverting back to flawed, or not very rewarding, processes, the time is ripe for a rethink. We might look elsewhere than to a dysfunctional US confirmation process for inspiration.

There are a variety of models operating in the world that could provide guidance. In South Africa, a widely representative committee solicits applications for appointment to the Constitutional Court. Transcripts of interviews with potential candidates are made publicly available and the appointment is made by the president in consultation with political party leadership in the National Assembly. In the United Kingdom, vacancies on the new Supreme Court are filled by the lord chancellor from a list of nominees identified by a five-member commission that is top heavy with lawyers and judges. Neither of these appointment processes

is without its problems – the first is more overtly political and the second under the control of legal elites.

Canadians may want to strike a different balance between independence from politicians and judges and accountability to the public, with more transparency. It is also an opportunity to think about enhancing public understanding about constitutional decision- making, an outcome that so far has been lacking.

Cour suprême : la juge Côté se retire d'une cause sur les cigarettiers

Hugo De Grandpré, La Presse Canadienne, le 6 avril 2016

La juge de la Cour suprême du Canada Suzanne Côté a dû se retirer d'un dossier qui porte sur les poursuites contre les cigarettiers puisqu'elle a été, jusqu'à sa nomination à la Cour, l'une des avocates principales d'Imperial Tobacco dans les recours collectifs intentés au Québec.

Le nom de la juge Côté, inscrit au dossier de la Cour suprême sur la demande d'autorisation d'appel de JTI-Macdonald, a fait sursauter des membres du lobby antitabac au cours des derniers jours. L'entreprise tente de faire déclarer inconstitutionnelle la loi du Québec sur le recouvrement du coût des soins de santé et des dommages-intérêts liés au tabac.

Cette loi change certaines règles de preuve pour faciliter la poursuite contre ces entreprises. Bien qu'elle ne soit pas partie à cette demande d'autorisation d'appel, Imperial Tobacco a elle aussi soulevé cette inconstitutionnalité dans le passé, alors que Suzanne Côté la représentait.

Hier, l'adjoint exécutif juridique de la Cour suprême a indiqué à La Presse que la juge avait décidé de se retirer du dossier mardi, lorsque ce possible conflit d'intérêts a été porté à son attention. « Quelqu'un a contacté la juge pour lui faire savoir qu'il y avait ce conflit potentiel », a déclaré Gib van Ert.

« Elle n'a jamais regardé le dossier, elle n'a rien lu du tout », a-t-il affirmé.

M. van Ert a précisé que la juge avait voyagé pour le travail au cours des dernières semaines et ce n'est que lorsqu'elle est retournée au bureau cette semaine que cette situation lui a été signalée. Elle a alors décidé de se retirer et « a averti le greffe qu'il fallait trouver un autre juge ».

Le porte-parole a expliqué que les demandes d'autorisation d'appel sont examinées par un panel de trois juges, qui sont eux-mêmes choisis par le greffe de la Cour. Ce choix est fait après les vérifications d'usage sur les conflits d'intérêts potentiels. Mais comme JTI-Macdonald n'est pas parmi les anciens clients de la juge et qu'aucune partie n'a soulevé de préoccupations, le mandat lui a été confié le 21 mars, de même qu'aux juges Richard Wagner et Thomas Cromwell.

En après-midi hier, son nom a été remplacé dans le dossier de cour par celui du juge Russell Brown.

Cette décision a été accueillie avec un soupir de soulagement par le directeur québécois de l'Association pour les droits des non-fumeurs : « Ça n'avait pas de bon sens, il fallait absolument qu'elle se récuse de cette démarche-là, a lancé François Damphousse. Il faut que ce soit trois juges impartiaux qui n'ont pas été impliqués du tout dans des causes liées au tabac. »

Plusieurs recours

Les deux recours collectifs d'ex-fumeurs contre des entreprises de tabac ont été intentés en 1998. En juin 2015, la Cour supérieure du Québec a condamné Imperial Tobacco, Rothmans, Benson & Hedges ainsi que JTI-Macdonald à payer 15 milliards de dollars en dommages.

Ce jugement a été porté en appel. Parallèlement, le gouvernement du Québec a adopté une loi en 2009 pour faciliter les poursuites contre les cigarettiers, et intenté son propre recours pour 60 milliards en 2012.

Les entreprises de tabac, dont Imperial Tobacco, ont contesté la validité constitutionnelle de la loi québécoise. Elles ont été déboutées en Cour supérieure et en Cour d'appel. JTI-Macdonald demande maintenant à la Cour suprême de l'autoriser à porter de nouveau cette contestation en appel.

Directement du barreau

Suzanne Côté a été nommée à la Cour suprême du Canada par Stephen Harper en novembre 2014. Elle est devenue la première femme nommée directement de la pratique privée à la Cour suprême dans l'histoire canadienne.

Louise Arbour agissait comme procureure en chef du Tribunal pénal international pour le Rwanda et pour l'ex-Yougoslavie lors de sa nomination en 1999, et elle avait auparavant siégé à la Cour d'appel de l'Ontario.

Me Côté s'était fait connaître du grand public entre autres lors de la commission Bastarache sur la nomination des juges au Québec, où elle représentait le gouvernement de Jean Charest.

Trudeau suggests assisted-dying may be limited to competent adults in new law

Ian MacLeod, Ottawa Citizen, April 8 2016

Looming government legislation on physician-assisted dying may be limited to competent adults and exclude people with dementia, other mental conditions and minors, Prime Minister Justin Trudeau suggested Friday.

Speaking to reporters in Sault Ste. Marie, Ont., Trudeau hinted the government might reject recommendations by a special joint parliamentary committee to extend the controversial practice to “mature minors” under 18 and those with advancing dementia who want to pre-arrange their deaths.

“We know that this is an issue that touches Canadians and their families deeply,” Trudeau said. “As Liberals, we stand to defend individuals’ rights but we also need to make sure we’re protecting the most vulnerable and any legislation that we put forward will be based on that.”

His comments follow public opinion polls suggesting a majority of Canadians do not want doctor-assisted death granted to people with mental illnesses and psychological suffering.

A Nanos Research poll of 1,000 adult Canadians this week also found 58 per cent oppose assisted dying for 16- and 17-year-olds. But an Angus Reid survey of 1,517 Canadian adults last week found 58 per cent supported assisted suicide to terminally ill teens under 18.

The Canadian Press, citing an unnamed source, reported Friday the proposed legislation is expected to stipulate that only competent adults should be eligible to receive a doctor’s help to end their lives. It also will not allow people diagnosed with competence-impairing conditions such as dementia to make advance requests for medical help to die, the source was quoted as saying.

Nor will it include mature minors, to whom the committee majority recommended extending the right to choose assisted death within three years.

A dissenting report by some of the parliamentary committee’s Conservative members said such a move would contravene last year’s Supreme Court of Canada ruling in the Carter case. It

declared Canadians have a constitutional right to arrange their deaths with physicians, provided they are "competent adults who clearly consent to die and have grievous and irremediable medical conditions that cause enduring and intolerable suffering."

The much-anticipated legislation must be enacted by June 6, when the existing law against physician-assisting dying will cease to be valid.

The bill, which could be introduced in the House of Commons as early as next week, must realign existing criminal laws against assisted suicide and culpable homicide to reflect the court's unanimous judgment, which also exempted willing doctors from criminal liability for helping eligible Canadians to die.

But the court left it to the federal and provincial governments to devise, if they wish, a regulated assisted-dying regime that conforms to the judgment. Quebec, which has been examining the issue for years, is the only jurisdiction so far to enact comprehensive regulations.

Related

- Majority rejects assisted suicide for mentally ill, poll finds
- Some Quebec doctors let suicide victims die though treatment was available: college
- Deciding on assisted death in context of mental illness highly complex: experts

If the government does adopt a restrictive approach, legal and human rights experts warn that individuals left outside the eligibility requirements will almost certainly launch a future constitutional challenge.

Trudeau was asked Friday whether the government, faced with the approaching deadline, will limit Commons debate on the bill.

"On an issue such as this, there is tremendous capacity for mature, reflective debate, engaging with the issues in substantive and sensitive ways," he said. "I'm very optimistic that we're going to be able to meet the deadline imposed by the Supreme Court while having a fulsome, responsible debate that involves the voices that need to be heard on this issue."

Liberals MPs have been told they must vote in favour of whatever legislation the government proposes. Conservative and New Democrat MPs will be allowed to vote as they see fit, as has traditionally been the case for issues of conscience.

Gay public servants fired during Cold War could get PM's apology

Matthew Pearson, Ottawa Citizen, April 8 2016

The Liberal government is considering whether to officially apologize to hundreds of people fired from positions in the public service or military during the Cold War simply because they were gay.

Prime Minister Justin Trudeau might also pardon gay men who were convicted of gross indecency and buggery before homosexual acts were decriminalized in 1969.

“All of these questions about discrimination in the past to individuals who did or did not work for the government are matters that are currently being reviewed by the government,” said Cameron Ahmad, Trudeau’s press secretary.

The Prime Minister’s Office has previously said Trudeau intends to recommend a pardon for Everett George Klippert, the only Canadian man to be declared a dangerous sexual offender because he was gay. Trudeau decided to recommend the pardon in February after a Globe and Mail story about Klippert’s conviction.

But a group called We Demand an Apology — a network that includes people directly affected by the government’s campaign to purge homosexuals from the public service, RCMP and military — wants to see the government’s pardon extended to all people who participated in consensual homosexual activity before and after the laws were relaxed, as the persecution of gays and lesbians in Canada continued throughout 1970s and 1980s.

The group is also pushing for an apology.

“There’s been no recognition that the Canadian government did anything wrong,” spokesman Gary Kinsman said Friday.

“We need a timeline for action. Recognizing injustices done is not difficult — it’s a question of a political will of the government to actually respond to these very legitimate grievances,” he said.

Asked if Trudeau is considering both the pardon and an official apology, Ahmad said: “That is part of what is being examined, but I can’t speak to what the outcome will be at this stage.”

At the height of the Cold War, the prevailing view was that homosexuals suffered from a character weakness that could make them disloyal and easy to manipulate. In the United States, which was in the grips of McCarthyism, homosexuals were often seen as communist sympathizers.

The Canadian government spied on men, hired informants and ultimately compiled a list of 9,000 names of alleged, suspected or confirmed homosexuals in the Ottawa area. Hundreds of others were fired, demoted or forced to inform on friends and acquaintances.

It was not an accidental campaign dreamed up by a few "nasty" people, Kinsman says, but rather something that came from the highest echelons of power. Careers were destroyed. Some men killed themselves.

But there's a chance now for redress, he said.

"It's really important for the Canadian state to take responsibility for what it did, to say that it was wrong and to apologize to all the people who were affected by this campaign."

Because surveillance was costly and time-consuming, the government hired Robert Frank Wake — the chair of Carleton University's psychology department at the time — to come up with an easier method for determining a person's sexual orientation.

What he devised came to be known as the "fruit machine." There wasn't an actual machine, though, just a collection of psychological tests, including one designed to detect how a subject's pupil responds to images of naked or semi-naked men and women.

It never worked, and the project was eventually abandoned. But its existence was emblematic of the discrimination gays and lesbians faced.

Now, more than half a century later, some Carleton students want the school to acknowledge its role in this dark chapter of Canada's history and issue a public apology for what Wake did. The students also want the university to erect a small monument on the campus so people will learn about and discuss what happened back then.

"You shouldn't be able to hide bad things that happened in the past and forget about them because that just sets a precedent for being able to do terrible things now and have this expectation that later on, if it comes out, no one will care anymore," said Skyler Gubbels, a fourth-year criminology student.

Gubbels learned about the fruit machine's existence in a law class, but continued working with fellow students Farzana Bashar and Helen Zan on a campaign to convince the university to take action.

"This is not a smear campaign," Zan said. "We just want there to be an acknowledgement."

Kinsman's 2010 book The Canadian War on Queers, which he co-wrote with Carleton professor Patrizia Gentile, has a chapter on Wake's fruit-machine research.

"There was a concerted, organized, orchestrated campaign against homosexuals, and the fruit machine was just one aspect of that," Gentile said.

"It's pretty extraordinary they felt such desperation that they would go to these lengths, which in the end was just quackery."

She admits it's hard to know exactly how many lost their jobs – it was not the kind of thing a person might openly share in that era. Many who did may have had wives and children.

"We're never going to get the real number because people are not going to come forward necessarily and would have not come forward at the time," Gentile said.

She provided the Carleton students with government documents she and Kinsman obtained through a freedom-of-information request and says she's "delighted" by their efforts.

"Their disbelief that one of the professors at this university would have had anything to do with the fruit machine is a testament to how, in our context, the idea that homosexuals would have this kind of persecution is unthinkable," she said.

Whether the university will take action remains to be seen.

Carleton president Roseann Runte said Friday that she's looking into it.

The university's records don't indicate Wake ever conducted research for the federal government. He may have done so while on sabbatical, but Runte says there's not even mention of such work in the sabbatical report he filed.

Faculty members are also free to do what they want outside of the university.

But, Runte said, it's good in general to acknowledge the errors of the past.

"Should we as citizens today apologize for the past? Of course we should. We must always try and make the world a better place and make sure that only good and honourable things happen," she said.

"However, the question is, if that had no relationship to Carleton, is Carleton the right body to apologize or should it be the government?"

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