Phoenix: 'They keep telling me it's all fixed, and I keep telling them no, it's not. This is still wrong.'
Ottawa Citizen
Bruce Deachman
March 5, 2018

When your child is born two months prematurely by emergency C-section and spends his first month in the neo-natal intensive care unit at the hospital, your sole focus as a parent ought to be on his well-being.

Unfortunately, as a result of the Phoenix pay system, Sebastienne Critchley wasn't afforded that luxury.

The Edmonton woman's son, Logan, was born on Nov. 26, 2016, at just 32 weeks. Instead of being with him in the ICU, the Employment and Social Development employee says she was often out in the hallway, on her phone with someone at the Phoenix pay centre in Miramichi, N.B., trying to get her record of employment, the form the government is required to provide within five days of a change in pay.

"At that point they were telling me that it could be six months to get an ROE and, of course, you can't get maternity benefits without the ROE and you can't get the top-up that the federal public service provides without the EI. And I'm saying, 'I can't go six months with no income. That's not going to work.'

"It certainly can't be proven," she adds, "but some of the staff at the hospital were speculating that the ongoing long-term stress of the pay situation could have contributed to Logan's premature delivery."

For this was hardly Critchley's introduction to Phoenix's morale-crushing quirks. Six months earlier, in April 2016, after her department hopped aboard the ill-fated Phoenix train, she continued to be paid through a six-week medical leave she took.

At the time, though, she wasn't unduly concerned. "It was a brand-new system," she recalls thinking. "There were going to be a few kinks here and there." It wasn't a big deal, she told herself; it would all be fixed when she returned.

It wasn't, not then and not in July when she needed another leave, this one for family reasons. She was anxious to get it fixed before her maternity leave, expected to begin in December, kicked in. But she was told that, as she was still being paid, her file was a low priority, and that it wouldn't even be considered before October.

In October, meanwhile, one of her paycheques was withheld entirely, without notice. She was told that it was being applied to her overpayment — which she had been putting away in order to repay it.

"I said, 'I appreciate that you're finally trying to do a recovery, but you haven't told me how much I owe, and you can't just suddenly not pay me.'

"Their response? 'We'll get it figured out with you next pay.'"

That didn't happen. Her son arrived and her pay didn't, not until January. The compensation adviser she was dealing with told her that she owed about $15,000, a figure she agreed was close to correct. Then her compensation adviser stopped responding to her altogether. One pay centre worker told her she owed $7,500. Another said the figure was $22,000. None, however, could tell her how the figures were calculated.

Her T4 slip for 2016, though, suggested the opposite: that she was underpaid by about that amount. As a result, she was unable to use certain credits that her husband, a civilian with the RCMP, used instead. Critchley, 40, says it cost the couple $1,200 to have their taxes prepared last year, a far cry more than the $200 that the government has offered Phoenix-affected employees.

Her return from maternity leave last September marked the return of her paycheque woes. "Every pay period I have two or three paycheques with adjustments for prior year this, that and the other thing. Sometimes I get two pays showing up."

When her final pay stub of 2017 arrived, she looked at the total deductions listed for the year — about $9,300. She then added up the year-to-date deductions by individual line item — income tax, EI, CPP, union dues and such — to discover a total of slightly more than $7,200, about $2,000 less than the $9,300.

"Where is that $2,000?" she asks. "They say, 'Oh, well, it's all right.' No, it's not. They still will not answer me. They just keep telling me it's right, if I just look at the pay stub.

"Every day I have to chase people down. I am running myself ragged trying to repay money.

She's discovered numerous discrepancies in her pay stubs, and when she received her T4 for 2017, Box 22, which shows her income tax deducted, was blank. "In addition to the missing income tax, amounts for CPP, EI, and union dues all don't add up, either," she says. "I'm happy to report that the $19.47 for my health care premium appears correct, though.

She knows she owes the government money, but she's not convinced it's the $43,000 she was recently told. "I said, 'You know what? Put a hold on everything. You are not recovering anything until you can give me a detailed breakdown, line by line, of exactly what I owe and why, that I can take to an accountant of my choice to have verified.'"

A subsequent letter indicates she owes $28,500. She believes it's more in the $22,000 to $23,000 range.

"It may be that when I do my taxes I may owe some of that $5,000 (difference) to CRA, but I'll take that up with them. I have no issue repaying what I owe, but I should not have to put in this many hours fighting to say, 'Do the job right.'"

Some nights she's up until 2 a.m. trying to sort out her finances based on inaccurate pay stubs, while lack of sleep is a trigger for her anxiety and depression. "And at this point I don't trust what I'm getting

from the pay centre. I need to make sure that I have my thumb on what I actually owe, so that when they DO send me something like this $28,000, I can look at it and say, 'No. Here's why it's wrong.'

"I'm done with this. I just want to give up. I've been beaten down to that point. They keep telling me it's all fixed, and I keep telling them no, it's not. This is still wrong."

Last fall, the Phoenix problems drove her to withdraw her name from consideration for a new position. She's still in the running for another, but says she'd be nervous about accepting it. "I wonder 'How many more screw-ups is this going to generate?"

Last fall, she estimated that she'd spent more than 200 hours trying to resolve her Phoenix issues, and the number keeps climbing. Yet as she enters just her fifth year in the federal public service, she's not ready to abandon her position.

"I could not ask for better managers, team leaders or co-workers," she says, "and I'm not going to find that anywhere else. The people are what keep me going back every day."

Additionally, she says, her job makes a difference in Canadians' lives. "There are times that I'm able to keep people from living on the street, or I'm able to keep people in a position where they can get the medications they need to live. I'm making a difference for people, and that's something that matters to me."

(A spokesperson for Public Services, which is responsible for Phoenix, said privacy legislation prevents the department from discussing details of the employment and pay of individual federal government employees.)

Settle in for six more years of Phoenix Pay misery
Ottawa Sun
Rick Gibbons
March 5, 2018

Happy birthday, Phoenix. Two years on, the Phoenix pay system is the nightmare with no end. It is now generally considered to be unfixable and most certainly impossible to fully replace for probably another six years.

If you expected anything better in last week's federal budget, you were sorely disappointed.

The best the government can do is toss hundreds of millions more dollars at it and add hundreds more staff in hopes of keeping the system afloat while it begins the long search for a replacement.

"We didn't create this mess,'' Prime Minister Justin Trudeau told the House of Commons last week. "But we're going to fix it." I doubt anyone believed him. Not after two years of problems.
For anyone still counting, the cost of a system that was supposed to save taxpayers' money is now approaching $1 billion. And that represents only some of the costs associated with the Phoenix disaster.

Far more difficult to quantify is the damage to public service morale from possibly six more years of pay problems that have already turned lives upside down for many government employees. Here's one:

"In the end, I decided to leave the public service entirely (major stress about my pay issues being one of the major reasons). My pay issues are still ongoing but I was told by the pension centre that it wouldn't affect my pension and that I could at least take care of that. I asked to have a full value transfer done. Today, I received a letter from them telling me that they cannot proceed with cashing out my pension as they have to wait for the pay centre to finalize my pay file before they can do anything. I pretty much broke down and cried for a couple of hours. I know that I am owed at least $3,000 in pay not to mention my severance and vacation day payout. For two years, I've been waiting, when does it end?"

Canada's top public servant, Michael Wernick, says Phoenix worries him more than any other issue on his desk. It certainly should. He is ultimately responsible for public service morale, which has been devastated by never-ending problems with the pay system.

Some public servants believe the problem is magnified by a lack of sympathy among many Canadians for the plight of public servants, that there is a belief they have easy jobs or are overpaid and therefore have little to complain about. One poster on a Facebook site reserved for public servants with pay problems wrote: "The general public doesn't support fixing it because they believe there are too many overpaid public servants so they have limited sympathy for us."

Poor morale is causing public servants to question why they should remain in the government's employ at all. It could also become a major hurdle in attracting a new generation of millennials into government. Who wants to work in a place where they can't even get your pay straight?

Last month, a new study found a strong correlation between organizational stress and employee retention. The study was released by Morneau Shapell, the human resources consulting and technology firm once led by Finance Minister Bill Morneau.

"It's unacceptable. It's not working. It's causing a lot of stress, and in some cases, real hardship for public servants," Wernick, the Clerk of the Privy Council, told a public service magazine last month.

Wonder if he's had problems with his pay. I'd bet a lot of public servants would like to know if political and government leaders are receiving different treatment when it comes to being compensated properly and whether their problems are fixed in a more timely manner.

The Senate already announced that Senators would abandon Phoenix in favour of a more reliable internal system. What about the others on Parliament Hill or in the most senior ranks of government? Are they having problems, too? Or are there different procedures in place to manage their issues? I think rank and file public servants have a right to know.

Retired Crown calls for overhaul of Quebec justice system to better serve Indigenous communities
Justice minister proud to have appointed Quebec's 1st Indigenous judge but admits province must do more
CBC News
Sudha Krishnan
March 5, 2018

Justice Minister Stéphanie Vallée cites the appointment of the first Indigenous judge in Quebec as one of her political accomplishments.

But in a province where more than 182,000 people identify as Aboriginal, Judge Mark Philippe, who sits on the bench of the Quebec court in Gatineau, is the only one who is Indigenous. There is also one Indigenous Crown prosecutor.

With the Viens commission underway, examining ways of improving government services for Indigenous citizens — and with mounting calls for judicial reforms in light of not-guilty verdicts in two recent high-profile murder cases elsewhere in Canada — Vallée knows the province must do better.

"We have to recruit," said Vallée.
Retired prosecutor: 'Legal system a failure'
Quebec's Justice Ministry has already adopted alternative measures such as piloting Community Justice Committees in seven Indigenous communities, and Vallée is looking into creating two posts for permanent judges in northern Quebec.

A retired Crown prosecutor who spent years in the north say those initiatives are a promising start but says justice will never fully be served if the legal system doesn't undergo more radical changes.

"It's not by tinkering with it that you will find that it's going to work," said Pierre Rousseau, who travelled from Sooke, B.C., to appear before the Viens commission in Val-d'Or last month.

Rousseau worked with Cree and Inuit communities in northern Quebec in the late 1980s.

At the time, he says, he thought he was helping people make their way through the court system. But he later realized he was reinforcing mainstream ways that were alien to those communities.

He found that Quebec court workers, with the exception of lawyers in Kuujjuaq, had little knowledge of the communities they were serving.

Rousseau later worked in the Northwest Territories and found more emphasis there on meeting the needs of Aboriginal people caught up in the judicial system. There were, for example, more interpreters to help victims and the accused understand court proceedings.

However, he says little has changed for Indigenous people, as evidenced by incarceration rates.

'Decolonization necessary for reconciliation'
Indigenous men represent 25.2 per cent of all men in custody in Canada, while Indigenous women represent 36.1 per cent of all women behind bars, according to a 2016 report.

By comparison, census data from that year shows that five per cent of Canadians are Indigenous.

Rousseau says since 1988, various jurisdictions across Canada have produced more than half a dozen reports and commissions which show the many ways that the criminal justice system is failing Indigenous people.

"The court system is foreign. It is not something that matches their culture," he said.

He said the adversarial nature of the justice system runs against the focus of Indigenous cultures, which is on restoring relationships.

"They are trying to restore peace, but the system is dividing people again," said Rousseau.

Rousseau told the Viens commission that Indigenous communities must be allowed to develop their own system with their own legal traditions.

He said unless that happens, simply adding more judges to the roster in northern Quebec won't change anything.

"Decolonization is necessary for reconciliation, and more judges and more of the same courts is anything but decolonization," he said.

Rousseau believes things get more complicated in cases like the trial of white farmer Gerald Stanley, who was charged and acquitted in the death of an Aboriginal man, Colton Boushie, in Saskatchewan.

In such cases, Rousseau believes a hybrid system could work, and he says it's been done in countries such as Greenland, where legal systems incorporate Indigenous traditions.

Our declining faith in the justice system
Times Colonist
Lawrie McFarlane
March 5, 2018

A new Angus Reid poll contains a message for our justice system, if read carefully. When B.C. residents were asked if crime rates in their communities had risen over the past five years, the majority replied yes. Only five per cent thought rates are down.

Technically speaking, the majority is correct. Minor offences have risen slightly, and since they’re the most common infraction, that drove the overall total up.

Yet most categories of crime are down. Violent offences dropped 15 per cent.

Take a longer time frame, and the picture is even more striking. Nationwide, crime rates peaked in 1990 at just over 10,000 per 100,000 population. By 2016, the incidence rate had fallen nearly 50 per cent.

So are our concerns unwarranted? Not necessarily. What the poll doesn't mention is that law-enforcement data show the vast majority of "minor" crimes are never solved. In B.C., only 13.5 per cent are successfully cleared.

Moreover, it's generally believed the actual number of these incidents is far higher than the figures reported. Many victims, realizing that the thief is unlikely to be caught, don't bother calling the police.

But that doesn't mean no harm was done. While our justice system treats minor offences as relatively trivial, that's not how we experience them.

A home break-in might net only a few items of value, yet it traumatizes the victim. A stolen wedding ring can cause more heartbreak than a physical attack.

In other words, what British Columbians are reporting is a heightened sense of insecurity. The issue isn't the absolute incidence of crime, but the extent to which we feel protected. A 13.5 per cent clearance rate isn't much protection.

Here, we come to the second poll finding. Only 28 per cent of B.C. residents have confidence in our provincial court system — the lowest score of any province.

And nearly two-thirds of Canadians say our courts are overly lenient in their sentencing. Only four per cent believe they are too harsh.

These numbers also have to be read carefully. Yes, our provincial court system is a mess.

Lengthy trial delays, chronic congestion, the ridiculous spectacle of hearings being placed on hold because a sheriff's officer couldn't be found to bring the accused to court, have damaged public confidence.

Yet it would be a mistake to blame this entirely on our judiciary. Resources are visibly inadequate. And sentencing policies are set by the Supreme Court of Canada, not local judges.

Nevertheless, behind these numbers a dangerous reality glimmers through. Regardless of where the fault lies, British Columbians have lost faith in the provincial court system. That demands our attention, whatever the reasons might be.

In short, while poll results suffer the many failings we've come to recognize, read properly, they still have value. Indeed, they are often the only measure of our confidence in major public services, the justice system among them.

A political party that put such findings down to ignorance or lack of information would pay for it at the next election.

If we look carefully at the Angus Reid data, two messages stand out. Our law-enforcement agencies have to pay more attention to minor offences.

I realize that staff time is limited. But it's the underlying mindset that needs attention. Burglaries and break-ins are not a trivial matter to those victimized.

We need to know that someone out there is listening. A 13.5 per cent clearance rate doesn't build trust.

As for our courts, there is some heavy lifting ahead, for officials in the Attorney General's Ministry and provincial court judges.

As things stand, we lack confidence that our courts can dispense justice in a timely manner. And a gap has opened between sentencing policy and traditional values. Some serious rethinking is needed.

Mandatory-minimum sentencing rules unravelling into patchwork
The Globe and Mail
Sean Fine
March 5, 2018

Canada's web of mandatory-minimum jail terms is coming apart, leaving an uneven set of penalties for offenders, as judges in several provinces declare many such sentences grossly excessive and abhorrent.

In dozens of cases, most of them in the past three years, judges have declined to apply the minimum sentences required in a variety of gun and drug crimes and sexual offences against children, The Globe and Mail has found in a review of the Canadian Legal Information Institute (CanLII) national database of court rulings.

Instead, they are setting aside these obligatory sentences for specified crimes, describing them as a form of "cruel and unusual punishment" prohibited by the Constitution. That has left the judges free in some instances to use house arrest as an alternative to jail.

Only higher-level courts, such as superior courts of provinces and the Supreme Court of Canada, may strike a law down.

Such courts have done so on more than 25 occasions involving more than a dozen different minimum sentences.

The result is a patchwork of sentencing rules across the country. Although sentencing patterns normally vary somewhat in different regions, the Criminal Code is supposed to set out the basic ground rules uniformly across Canada. That is no longer true for sentencing in many drug, gun or sex crimes. Some

mandatory minimums no longer exist in some jurisdictions, having been ruled unconstitutional, but are still being applied in others.

Taken together, the actions at multiple levels of court, and in several provinces and territories, amount to a judicial rejection of a key component of the former Conservative government's tough-on-crime agenda.

They also pose a political challenge for the Liberal government. It promised nearly 18 months ago to eliminate some mandatory minimums, or change the way they work so judges have more discretion. Now, more than halfway through its term in office, the government has taken no legislative action, and opponents of the minimums fear it won't because it sees no political gain in taking the issue on.

Instead, while the government mulls the issue over in a series of 14 "justice round tables" with judges, lawyers and academics, the judiciary has been dismantling the minimums; usually (although not always) federal or provincial prosecutors fight to uphold them.

The judges say mandatory minimums are "grossly disproportionate" in a wide variety of cases, such as those involving Indigenous people, the mentally ill, the cognitively impaired, the suicidal, the previously law-abiding and even "a reasonable hypothetical" – an imaginary offender.

Rob Nicholson, the Conservative Party's justice critic, said he is disappointed by the judges' actions. "We always stood up for victims," he said in an interview. "We wanted people to be responsible for the crimes they committed. We wanted to maintain public confidence in the judicial system."

The Globe reviewed constitutional rulings on mandatory minimums after an Ontario judge struck down a two-year minimum jail term last month for trafficking large amounts of hard drugs such as cocaine, citing the jail term's impact on Indigenous offenders.

In British Columbia, the province's highest court, the Court of Appeal, has ruled mandatory minimums unconstitutional in five cases in the past two years. Its rulings have to be followed by all judges in the province. But there is no uniformity across the country. The B.C. Court of Appeal has upheld the four-year mandatory minimum for firing a gun recklessly in a public place, while superior-court judges in Northwest Territories have struck down a related minimum, and Quebec provincial court judges have ruled the reckless-firing minimum invalid. (Provincial-court judges can't strike down a law, but they can set it aside and use their discretion to set an appropriate sentence.)

"When you think we have a Criminal Code of Canada, it's absolutely shocking," Richard Fowler, a Vancouver criminal-defence lawyer, said in an interview. "You think of something as central to criminal justice as sentencing, it's pretty extraordinary that it's been allowed to develop in this way."

In some cases, prosecutors have tried to fight for a mandatory minimum in one court after losing in another court at the same level. One Ontario judge said that is the wrong approach.

"If it was possible for another Superior Court judge to uphold the constitutionality of a law after it has been struck down … by another Superior Court judge, then there would be the potential for inconsistent findings on the same law," Superior Court Justice Robert Smith wrote last March in R v. Sarmales. (The case involved a one-year minimum for sexual interference – sexual touching between an adult and a child under 16.)

Of late, some of the shorter mandatory-minimum sentences – those requiring just a few months in jail – have been struck down.

"These cases, this new breed of mandatory minimums, they're like a year, six months," Eric Purtzki, a criminal-defence lawyer who practises in Vancouver, said in an interview.

"That's what jumps out at me as a surprising trend. It shows how robust the constitutional protection is."

The steady unravelling of mandatory-minimum cases has come mostly after the Supreme Court of Canada struck down the three-year minimums for illegal gun possession, in R v. Nur (2015), and then the one-year minimum for a second drug trafficking offence in R v. Lloyd (2016).

A harsh or excessive punishment is not enough to show a violation of Section 12 of the Charter – the protection against government-imposed cruel and unusual punishment. The Supreme Court established what it described as a "high bar:" a sentence that is "grossly disproportionate," and "so excessive as to outrage standards of decency."

Making it more difficult for prosecutors to defend mandatory minimums, however, judges have the authority to decide a jail term is grossly disproportionate for a "reasonable hypothetical" offender, even if the term is fair to the actual offender in front of them.

Ontario Superior Court Justice Bruce Glass used a hypothetical offender when he struck down the six-month minimum two years ago for paying to obtain sexual services from someone under 18, in a case called R v. Badali. He said an 18-year-old might pay for a kiss and be ensnared by the sentence.

The threading of sentencing law with mandatory minimums is a relatively new feature in Canada, echoing a trend in the United States. In 1982, the Criminal Code had just six mandatory minimums; by 2006 there were 40, and as of 2016, there were nearly 80, plus another 26 in the Controlled Drugs and Substances Act, according to Justice Del Atwood of the Nova Scotia Provincial Court. He made the comment in his ruling in R v. Deyoung, a 2016 case in which he ruled the mandatory minimum of one year for the sexual assault of a person under 16 to be invalid. (The Conservatives came to power in 2006 and established or increased mandatory minimums in 60 offences.)

In that case, the provincial prosecution did not present an argument in support of the law's constitutionality, prompting Justice Atwood to wonder if governments are simply giving up on them.

"If those mandatory minimums are circling the drain, from an executive-branch-law-reform perspective, it would be good to know it," he wrote.

Prime Minister Justin Trudeau's mandate letter to Justice Minister Jody Wilson-Raybould instructed her to ensure that "our work demonstrates the greatest possible commitment to respecting the Charter of Rights and Freedoms." He told her to review sentencing revisions from the previous decade, with an eye to reducing the rate of incarceration among Indigenous people.

As far back as October, 2016, the Justice Minister told the Criminal Lawyers' Association in a speech that she would change the minimum sentencing laws "in the near future." Days later, she told The Globe that new legislation would be coming soon, "certainly in the early part of next year."

In an e-mail to The Globe this past September, Ms. Wilson-Raybould took a strong position against mandatory minimums, saying they add to court delays (fewer people plead guilty because there is less chance of a reduced sentence in return), are not necessary to keep Canadians safe, rarely have a deterrent effect (except for impaired drivers) and harm minorities.

"There is absolutely no doubt that [mandatory-minimum penalties] have a disproportionate effect on Indigenous people, as well as other vulnerable populations."

She added that she supports judicial discretion in sentencing. "Judges are well-equipped to assess the offender before them and ensure that the punishment fits the crime."

In an e-mail she sent to The Globe on Friday for this story, she said, "The courts have made it clear that MMPs present serious challenges from a constitutional perspective." But she declined to say whether her government will take legislative action.

Recent cases resulting in a sentence different than the mandatory minimum

The case: R v Cardinal, Feb. 14, 2018, Northwest Territories Supreme Court, Justice Louise Charbonneau

The mandatory minimum: Five years for the intentional discharge of a prohibited firearm in a public place, or while being reckless about the safety of another person.

Summary: Suicidal and intoxicated, Corey Cardinal, 33, broke into his stepfather's gun closet, took out a shotgun, put it to his chin. As he was pulling the trigger, his friend pushed the gun away, causing it to fire through a door. In frustration, Mr. Cardinal fired a second shot through the door and later, out in the street, a third shot into the snow. He conceded that five years would not be grossly disproportionate for him, but would be for a "reasonable hypothetical" offender: a young aboriginal person, suffering the effects of "intergenerational trauma," who shoots through a door in circumstances similar to Mr. Cardinal's, and has no previous criminal record. (Mr. Cardinal had a criminal record.)

Judge's comment: "This hypothetical, tragically, is very realistic. … It is beyond dispute that consideration of the circumstances of aboriginal offenders is mandated even when dealing with serious offences." The same law has been struck down twice in Quebec in cases involving suicidal people.

The sentence: Not set yet.

The case: R v S, Jan. 23, 2018. British Columbia Supreme Court, Justice Gary Weatherill

The mandatory minimum: One year in prison for sexual interference (sexual activity between an adult and a person under 16).

Summary: A 22-year-old man had sexual relations with two 15-year-old girls. Justice Weatherill said they suffered emotional harm. One needed therapy and stopped going to school. But the man had an IQ of 59, no criminal record and through counselling understood that what he had done was wrong. Justice Weatherill ruled the law a violation of the Charter's Section 12 guarantee against cruel and unusual punishment.

Judge's comment: Sending him to jail for a year "would be asking me to close my eyes to the effect that [his] cognitive deficits had on the commission of these offences. … In my view, a reasonably informed member of the public, aware of all the circumstances of this case, would agree that sending [him] to prison for one year would be 'so excessive as to outrage standards of decency.' Even more so as the public is becoming more informed about the impact that mental-health issues and cognitive challenges can play in the criminal justice system."

The sentence: Yet to be set.

The case: R v Swaby, Nov. 8, 2017, B.C. Supreme Court, Justice Leonard Marchand

The mandatory minimum: 90 days for possession of child pornography (since the time of Matthew Swaby's offence, the minimum has been increased to six months)

Summary: Police discovered two hard drives containing 480 video files of child pornography, with some of the victims toddlers. Mr. Swaby was then 23. He suffered from an intellectual impairment, depression and social isolation. He said he knew what he had done was wrong but said he watched out of boredom and for shock value.

Judge's comment: A clear majority of Canadians, if informed of the circumstances, would find jailing Mr. Swaby for 90 days "abhorrent and intolerable."

The sentence: Upheld a sentence from a lower-court judge of four months living under conditions in the community (half under house arrest, half under curfew), followed by two years of probation. Mr. Swaby will be on a sex-offender registry for 10 years and must provide a DNA sample.

The case: R v Dickey, Apr. 25, 2016, B.C. Court of Appeal, Justice P.D. Lowry, Justice Nicole Garson and Justice Lauri Ann Fenlon. Three cases were heard together.

The mandatory minimum: Two years in prison for drug trafficking (two of the cases involved trafficking near people under 18, and one involved using a child in trafficking).

Summary: All three cases involved a Dial-a-Dope operation: telephone ordering of drugs for delivery. The three convicted men were first-time drug offenders. Chad Dickey was 27, and a cocaine addict. But in the two years while he waited to be sentenced, he had beaten the addiction and become a mill worker. Erin Bradley-Luscombe was 20, and had left an abusive family as a teenager. He had used a 17-year-old as a driver. Marco Trasolini was 37, had a steady job and a family, but sold cocaine to support his cocaine addiction. After being charged, he had stopped taking drugs. Lower-court judges in each case had ruled the mandatory minimum unconstitutional.

Judge's comment: "Given that more than two years had elapsed since [Chad] Dickey committed the offences which, in the circumstances, were of no consequence to any young person, and during that time he had overcome his addiction and turned his life around," Justice Lowry wrote in the unanimous ruling, "it would not appear any purpose was to be served in imposing a prison sentence on him."

The sentence: Mr. Dickey received a suspended sentence and 20 months probation; Mr. Bradley-Luscombe and Mr. Trasolini received eight-month jail terms.

The case: R v Harriott, June 2, 2017, Ontario Superior Court Justice Antonio Skarica

The mandatory minimum: Three years for weapons trafficking

Summary: Under the control of a violent drug trafficker, who had threatened O'Neil Harriott's family in Jamaica, Mr. Harriott offered to sell a gun to an undercover officer, though he had no access to a gun to sell, Justice Skarica said.

Judge's comment: Because a fit sentence in his case would be 3-6 months, the three years was grossly disproportionate.

The sentence: Six months in jail.

The case: R v Hood, Dec. 14, 2016, Nova Scotia Provincial Court Justice Del Atwood

The mandatory minimum: One year for sexual luring of children

Summary: An exemplary female teacher was convicted of sexting with a former student under 18, and engaging in a single sexual act with a former student under 16, and using telecommunications devices to lure the two youths in order to commit a sexual offence. At the time, Amy Hood was suffering from a serious mood disorder, despite never having had mental illness until then.

Judge's comment: "Her mania rendered her profoundly disinhibited and prone to risk taking, elevated by a sense of invincibility, and impaired by defective insight and inhibition; Ms. Hood regarded herself as a peer of her victims, and looked to them for approval and acceptance."

The sentence: A community-based conditional sentence (the conditions are redacted from the decision). And she is not to go near a public park or other places in which children are found for 10 years.

The case: R v Friesen, Nov. 13, 2016, Alberta Court of Queen's Bench, Justice Vital Ouellette

The mandatory minimum: Three years for selling firearms without a licence

Summary: Store owner John Friesen had a licence to sell ammunition, not firearms. A family asked him not to sell a gun to their father, a childhood friend of Mr. Friesen's, fearing he might harm himself. Mr. Friesen sold the father a .22 calibre rifle, but did not ask whether the father had the appropriate licence for the gun. The father shot and killed himself with the gun.

Judge's comment: Mr. Friesen had no criminal record and broad community support, including from the family of the man who killed himself. His crime, said Justice Ouellette, was in "failing to obtain the appropriate business licence," and being reckless as to whether the father had the appropriate licence to possess a firearm. The judge said the law was aimed at gangs and drug traffickers, and was grossly disproportionate for Mr. Friesen.

The sentence: Six months of house arrest, and a $5,000 fine.

Legal system needs efficiency, more justice, says Storrow
Vancouver Sun
Ian Mulgrew
March 5, 2018

Renowned Vancouver lawyer Marvin Storrow wanted to be a brain researcher.

“I ran the electroencephalogram at St. Paul’s Hospital for a bit and got to know a little about the brain, not a lot,” he quips with a laugh.

But the law drew him in.

Storrow was president of the legendary UBC law school class of 1962 that included former Supreme Court of Canada Justice Frank Iacobucci, B.C. Chief Justice Lance Finch, Justice Bill O’Leary, Justice Robert Hunter, Justice Vaughan Hembroff, David Anderson …

And he became a star in the national legal firmament, made more than a score of appearances before the Supreme Court of Canada, was named a life bencher of the Law Society of B.C., and is an elder statesman of the profession.

He has tales of defending bookies, bootleggers and bombmakers, anecdotes about kindly kidnappers and Satan’s Angels, bawdy stories about the late Chief Justice John Farris and Happy Hooker Xaviera Hollander.

Today, however, he is lamenting the legal system’s woes.

“When I started practising law 55 years ago, the length of trials was infinitely shorter than it is today,” he said. “Civil trials are taking too long, and so are criminal cases. Months and years can go by before a case really gets going in the court system. This is absolutely wrong. What kind of a system is a justice system that has a court but doesn’t allow people to use it?”

Storrow pointed out that, when he started in his career, a 50-day trial was almost unheard of. Now, they are extremely common, and trials lasting 300 or 400 days are “now known to our system.”

“No ordinary person can afford that,” he added. “This is absolutely wrong, and we have got to do something about it or our system will break entirely.”

At 83, he should know — it’s hard to think of someone with more experience or insight into the legal system.

Storrow articled at Cowan, Twining & Collins before becoming a prosecutor with the City of Vancouver until 1967.

He became a partner at Dumoulin, Storrow & Co., spent a stint at the Department of Justice in Ottawa as a senior counsel from 1971 to 1975, and then became a partner at Davis & Co. until 1988 when he formed Jordan, Gall and Storrow, the predecessor firm of today’s Blake, Cassels & Graydon.

Born in 1934 and reared on the city’s gritty Eastside, Storrow remains a senior litigation partner involved in arbitration, mediation, civil and criminal law.

His expertise includes general commercial litigation, personal injury, First Nations claims, white-collar crime, anti-dumping and international trade cases.

Storrow has done trials at all court levels in the Northwest Territories and in every province except Prince Edward Island.

He was counsel on the leading First Nations cases of Guerin, Sparrow, Roberts, Apassin, Gladstone, Delgamuukw and Ermineskin.

His cases are cited some 500 times in various legal reports, and three are ranked among the top 15 most important in Canadian history.

“I think the system has become too complicated to be a justice system almost — we are getting there,” he warned. “I want the system to improve — it’s getting worse. I did a trial in Alberta that lasted 369 days. We cannot have it. It’s disgraceful. And I think we have to talk more about how to fix it.”

He said that means culturally, as the Supreme Court of Canada has stated, and in practice.

“There is a very, very big change taking place in our profession — we’re becoming too much of a business and too little of a profession,” Storrow suggested. “Lawyers have to keep in mind that they practise law not as a right, but with the permission of a statute. To me this means that the public is enabling us to practise law and to me that means that we should give something back to the public.”

He hates that law firms advertise.

“In my opinion, we shouldn’t allow that as a profession,” Storrow said. “It is not up to lawyers to tell the world how wonderful they are. I tried to persuade the Law Society to establish a rule prohibiting lawyers from advertising. I feel very strongly about lawyers and advertising. We have to always keep in mind that the legal profession is just that — a ‘profession.’”

But the man who was considered among the best cross-examiners of his generation said better trial management by judges and better training for lawyers is key.

“A lot of young people coming out of law school don’t really know what the court system is all about, how to deal with it efficiently,” Storrow said. “They haven’t been trained to do that. It’s hard to learn how to be a barrister. The most important ingredient of a good barrister is judgment, and that is very, very hard to teach.”

It needs to be done, though, he insists.

“If our system is only one that the wealthy can use, it’s not a justice system,” he said. “I think we have to sit down as a profession as well as the learned judges of the court systems and find a way to make the system more efficient. It ain’t science, kid, I can tell you that — and the older I get, the more I realize that.”

Indigenous youth say justice-system reforms are necessary to achieve reconciliation
The Ontario First Nations Young Peoples Council says the verdicts in the deaths of Colten Boushie and Tina Fontaine highlight the "systemic racism that is pervading the Canadian justice system."
Toronto Star
Kelly Geraldine Malone
The Canadian Press
March 5, 2018

WINNIPEG—Recent acquittals in the high-profile deaths of two young Indigenous people have some of their peers across Canada questioning whether reconciliation is possible.

"I feel scared. I feel scared for urban Indigenous young people who are affected by too many systems that fail them," said Michael Redhead Champagne, 30, an organizer with Aboriginal Youth Opportunities in Winnipeg.

"I am nervous for all of my relatives who are wrapped up in a justice system that doesn't know what that word means."

Last month, a jury found Raymond Cormier not guilty in the 2014 death of 15-year-old Tina Fontaine. Her body was found wrapped in a duvet cover and weighed down with rocks in Winnipeg's Red River.

Less than two weeks earlier, a Saskatchewan jury found Gerald Stanley not guilty in the 2016 killing of 22-year-old Colten Boushie, who was shot after the vehicle he was in drove onto Stanley's farm.

Both verdicts brought people into the streets to protest.

The Ontario First Nations Young Peoples Council said the verdicts highlight the "systemic racism that is pervading the Canadian justice system." The Canadian Roots Exchange, a group of Indigenous and non-Indigenous youth dedicated to reconciliation, posted a statement saying "racism, colonialism and white supremacy continue to thrive."

Champagne said it's hard to have faith in a justice system that ignores countless reports and recommendations, including the Aboriginal Justice Inquiry from 1991, the Royal Commission on Aboriginal Peoples from 1996 and calls to action by the Truth and Reconciliation Commission.

It's time for action, he said.

"I want the justice system in Canada in general to quit asking Indigenous people what we need, because we have already told you," he said. "Right now, we can't have a conversation about reconciliation in this country until we feel that there is justice."

Brendin Beaulieu, an 18-year-old Winnipeg high school student, is preparing for graduation. The six-foot-five teenager who likes to make music in his spare time said he has to deal with a "broken heart" as he grapples with "knowing there are things we can do but it's going to take time."

Vitriol online shows there's a lot of talking about Indigenous youth but not nearly enough listening to them, Beaulieu said.

Jada Ross, 17, goes to a different high school across the city, but is having similar conversations with her friends and family. She said they are scared and saddened but determined to make change.

Lauren Chopek, 21, knows all too well how vulnerable Tina was on the city's streets.

Chopek was sexually exploited as a teenager. Now, she runs the Midnight Medicine Walk to help others in the same position. She said it feels as if Indigenous people have been asking for justice for a long time, but it's essential Canada hears it.

"I've been there in her shoes, and also misjudged and just ignored as a person on the street, being a child that needs to be somewhere safe. I needed help and I just got judged," she said.

"Why are we always the ones standing up for ourselves? How come there is no one else vouching for us?"

Yukon, N.W.T. at bottom of justice system report card, Nunavut fares better
High rates of violent crime, high costs of justice system mean poor marks for territories
CBC News
Paul Tukker
March 5, 2018

High crime rates, high costs and limited access to legal aid have put Yukon and the N.W.T. at the bottom of a list ranking criminal justice systems in the provinces and territories.

The MacDonald-Laurier Institute on Monday issued its second report on criminal justice in Canada. It's based on Statistics Canada data on crime and the legal system.

The think tank's first such report came out in 2016, and since then N.W.T. has dropped from 11th to 12th in the rankings of Canada's 13 provinces and territories. In both reports, Yukon is at the bottom of the list.

Nunavut, meanwhile, has improved since 2016 — going from 10th in the rankings to eighth this year.

"It's a pretty remarkable jump," said Benjamin Perrin, a University of British Columbia law professor and one of the new report's co-authors. "Nunavut has actually pulled ahead of a number of provinces [that have] significant resources ... to tackle their crime rate."

Yukon, meanwhile, has made little progress.

"It's really unfortunate," Perrin said. "There are major concerns and major problems with the justice system in the Yukon."

Yukon crime 'off the charts'

Yukon scored poorest when it came to the cost and use of resources by its justice system. Part of that is attributable to the territory's geographic size and its sparse population and, in part, to its relatively high rates of violent and property crime.

"There are just astronomically higher rates of all types of crime," Perrin said. "They're actually off the charts — we had to limit how much of an effect that would have on the grade, because it was so disproportionate."

Yukon also has high rates of probation breaches, failure to comply with court orders and relatively high numbers of accused persons on remand.

At the same time, Yukon spends relatively little on legal aid, compared to other jurisdictions. Perrin argues that legal aid can make the justice system more fair, efficient and less expensive.

"If governments are trying to save money by cutting legal aid, they actually end up paying probably much more in the end," he said.

On the plus side, the report found that Yukon has relatively few unsolved crimes and the median length for criminal cases is lower than average.

Victim support poor in N.W.T.

The N.W.T. received failing marks for the cost and use of resources by its justice system and its support for victims. The report says victims receive one of the lowest proportion of restitution orders in Canada.

The N.W.T., like the other territories, has high rates of crime. It has the second-highest rate of violent crime (after Nunavut) and the highest rate of property crime (although, that's declined since 2016).

Like Yukon, the N.W.T. also has relatively high rates of breach of probation and failure to comply with court orders. The territory also spends little on legal aid, compared to other jurisdictions.

The N.W.T. also sees a relatively high proportion of criminal charges stayed or withdrawn. According to Perrin, that can reduce the system's efficiency.

"The Northwest Territories is charging more people than they probably need to be," he said.

At the same time, though, the N.W.T. has the second-highest rate of solved crimes. The other territories also did well on that score.

"So, while the crime rates up North are just dramatically higher than in the rest of Canada, the police up North are doing quite a good job at ... solving crime up there," Perrin said.

Nunavut scores high for access to justice

Nunavut has made marked improvements since the 2016 report, Perrin said, despite it continuing to have some of the highest crime rates in the country.

He says Nunavut has seen a decline in federal statute violations, such as drug crimes. There are also fewer accused offenders failing to appear in court, the lowest rate of accused persons at large and more support for victims.

Perrin says Nunavut scored high for fairness and access to justice, as it spends more on legal aid, per crime, than any other jurisdiction. Those expenditures have been steadily increasing in recent years, he says.

"What Nunavut has seen, is by investing in legal aid, they're actually having some positive potential impacts in addition to making the system fairer," Perrin said.

Learning from each other

Perrin said even though the three Northern territories are all in the bottom half of the rankings, they can learn from each other. For example, Nunavut's investments in legal aid might inspire the other jurisdictions to review the issue.

"I think it would be a real benefit to having, at the territorial level, some ongoing discussions on improving the criminal justice system up north," he said.

Perrin also hopes the territorial governments take his group's report to heart. He says it's based on Statistics Canada data provided by police and courts and it's all been adjusted for population differences, "so we're able to compare apples to apples."

He says after the last report came out in 2016, the previous Yukon government chose to "nitpick and criticize the methodology of the report, rather than trying to learn from it and taking real steps for reform."

He hopes that doesn't happen again.

"I'm a professor. Students come in after an exam and I see one of two things — one is, students want to fight over a mark, and the others want to learn and improve."

Perrin would also like to see Statistics Canada begin to collect data on public confidence in the police and the justice systems in the territories. That data is factored into the provinces' rankings on the report card, but is not available for the territories.

Grading Trudeau on justice reform
Canadian lawyer Magazine
Shannon Kari
March 5, 2018

While the Liberal government has moved forward with some reforms, many promises remain unfulfilled.

The Supreme Court of Canada will hear arguments this spring on the appropriate punishment for a number of petty offenders living on fixed incomes, including a 58-year-old man with heart disease and a 56-year-old woman who is a legally blind, recovering alcoholic with a bi-polar disorder.
Are the normal sanctions imposed by the trial judge sufficient or should these individuals, barely able to pay their monthly expenses, also be required to pay financial penalties for their offences?

The court will jointly hear appeals from rulings by the Quebec and Ontario appeal courts on whether the imposition of mandatory victim fine surcharges for every criminal offence are cruel and unusual punishment under the Charter. The provisions, which require fines of $100 for every summary conviction offence and $200 per indictable offence such as murder, attracted controversy immediately after they were enacted five years ago.

Provincial court judges tried to find ways to avoid imposing the fines on indigent defendants who usually had mental health or addiction issues and were unlikely ever to be able to pay. “It is a cruelty in some measure to tell an offender that they must discharge an impossible sentence before their debt is expunged,” wrote then-Ontario provincial court Justice David Paciocco in his 2014 decision in R. v. Michael, where he found that the mandatory fines were a breach of the Charter (Paciocco was elevated last year to the Court of Appeal).

The critics of these provisions included the newly elected Liberal government of Justin Trudeau. In the fall of 2016, Justice Minister Jody Wilson-Raybould introduced a bill to return discretion to trial judges on whether to impose the fines.

That bill was never moved forward by the Liberals even as litigation over whether it was constitutional moved forward in Ontario and Quebec. Both provincial appeal courts concluded that the provisions did not violate the Charter — unanimously in Ontario, but with a dissent in Quebec.

The Public Prosecution Service of Canada was an intervener in both provincial appeal courts, supporting the argument that the existing legislation was valid and complied with the Charter. Late last fall, after the Supreme Court of Canada granted leave, the federal government suddenly withdrew as a party and will not be participating in the hearing this spring.

For legal organizations that assist disadvantaged individuals, the actions of the Liberal government are puzzling. “It is not that easy to show that the surcharge is unconstitutional. That is why it is so important for the legislation to come in,” says Jonathan Rudin, program director of the Aboriginal Legal Services clinic in Toronto, which is an intervener in the upcoming Supreme Court hearing. “If you are unable to pay, it does nothing to support victims,” Rudin adds.

In fact, according to data released by the Ontario Ministry of the Attorney General, more than 90 per cent of its annual revenue from victim fine surcharges comes from provincial offences, such as speeding tickets, not from those convicted under the Criminal Code.

The night of his election victory, Trudeau promised a change in the way his party would govern. The sentiment was repeated in the mandate letters sent to cabinet ministers a few weeks later in the fall of 2015, which were released to the public. One of the most ambitious of these letters was the one directed to Wilson-Raybould.

“Canadians do not expect us to be perfect — they expect us to be honest, open, and sincere in our efforts to serve the public interest. Our platform guides our government. Over the course of our four-year mandate, I expect us to deliver on all of our commitments,” the prime minister stated.

Nearly two-and-a-half years after the federal election, the Liberal government has followed through on pledges to legalize the possession of small amounts of cannabis and established the inquiry into Missing and Murdered Indigenous Women and Girls — although its work has been plagued by delays and resignations of senior staff.

In many other areas, though, especially with respect to reforms to the judicial system and increased transparency, the promised changes are moving along very slowly or, if there is ongoing litigation, there exists a seeming disconnect between public statements by politicians and what government lawyers argue in court.

Even small changes such as restoring the Court Challenges Program have not yet been fully implemented. In areas such as family law, reforms and modernization of relevant statutes still appear to be on the backburner.

Given that the Liberals have a majority government and are well over halfway through their mandate, the apparent inaction is disappointing, says Michael Lacy, a Toronto defence lawyer and president of the Criminal Lawyers’ Association of Ontario. “The Liberals put forward a proactive agenda for criminal justice reform. But there does not seem to be a lot of action,” says Lacy, partner at Brauti Thorning Zibarras LLP in Toronto.

The focus instead has been on discussions with interested parties and seeking feedback from the public through consultations posted on government websites. “Consultation is obviously laudable. But at some point, the government of the day has to make decisions,” Lacy says.

One of the areas where there has been significant consultation is whether to rescind changes to the record suspension (pardon) process made by the former Conservative government that increased fees and retroactively doubled the period before an individual could apply.

In the meantime, the British Columbia Supreme Court ruled last year that the retroactive changes violated the Charter. In a similar challenge in Ontario after the B.C. decision was issued, the federal government conceded the invalidity of this part of the legislation.

Until the federal government enacts a new law, though, the existing provisions apply everywhere in the country except B.C. and Ontario. Lacy, who acted for one of the individuals in the Ontario litigation, says ensuring the rules are the same across the country should be a priority. “Why would you require applicants [in other provinces] to go through the necessity of a Charter challenge?” he asks.

While there is still a commitment to amend the rules around pardons, the federal government is not indicating when these changes will be introduced.

Another issue that has been subject to Charter challenges and has arguably received a higher public profile is the rules around solitary confinement in federal prisons.

The Canadian Civil Liberties Association in Ontario and the B.C. Civil Liberties Association, along with the John Howard Society, initiated proceedings challenging the constitutionality of indefinite “administrative segregation” of inmates in federal institutions.

Public Safety Minister Ralph Goodale introduced legislation last June that would impose an initial cap of 21 days at a time for this type of confinement. The maximum would be reduced to 15 days within 18 months after the measures became law. That bill also did not advance beyond first reading after it was introduced.

Once the bill was introduced, though, lawyers for the federal government unsuccessfully argued that this was sufficient reason to adjourn the B.C. proceeding, which was larger in scope and had more evidence that was going to be presented to the court than the Ontario proceeding. In both cases, the existing rules for placing inmates in solitary confinement for non-disciplinary reasons were vigorously defended by the federal government.

One of the arguments, rejected both by B.C. Supreme Court Justice Peter Leask and Ontario Superior Court Justice Frank Marrocco, was that, when the Correctional Service of Canada decided to put an inmate in administrative segregation, that did not meet the legal test of “solitary confinement.”

Both judges stated that under the “Nelson Mandela rules” — the name for the United Nations Standard Minimum Rules for the Treatment of Prisoners — the conditions for these inmates in Canadian prisons was solitary confinement.

During the B.C. proceeding, an expert witness for the federal government suggested that the maximum cap for segregation should be 60 days.

Alison Latimer, co-counsel for the plaintiffs in the B.C. case, says the federal government was sending a “conflicting message” in terms of its position on solitary confinement. She notes that the mandate letter issued by Trudeau to the Justice minister suggested it would implement the recommendations of the Ashley Smith inquest. The jury in the inquest looking into the death of the young woman in 2007 in an Ontario prison called for strict limits on solitary confinement.

“There was a conflict between what was said publicly and how the legislation was being defended in court,” notes Latimer, partner at Arvay Finlay LLP in Vancouver.

The impugned sections in the Corrections and Conditional Release Act were found to be unconstitutional in both cases. The judges also suspended their declarations of invalidity for 12 months to give the federal government time to amend the statute.

The CCLA has filed an appeal of the Ontario ruling because it concluded that reviews of decisions to keep inmates in solitary could still be considered independent if conducted by an outside individual within the correctional service.

Leask, in his ruling, disagreed with his Ontario counterpart and found that any reviews must be done externally and also have enforcement power.

Scott Bardsley, a spokesman for the Public Safety minister, says the Liberal government has been committed to reforms within the correctional system. “We are reviewing all recent court judgments; we will identify any further and better ideas that need to be incorporated in our reform package. But we have been proactive from the beginning and our work is already well advanced,” said Bardsley in a statement released on behalf of the minister.

The legislation introduced by the Liberal government to amend the regulations around solitary confinement was a positive start, suggests Lisa Kerr, a criminal law professor at Queen’s University in Kingston, Ont. and an authority on prison law. “For 30 years, no one has done a thing. No government has touched it,” says Kerr, who also provided legal assistance to the BCCLA in the B.C. case.

At the same time, the ruling by Leask makes it clear that, as the legislation stands now, it is “not Charter compliant,” she explains. The external review provided for in the proposed legislation is not binding on the warden of a federal institution. As a result, there is only a “soft cap” on the maximum days permitted in solitary, notes Kerr.

The review process is just one area where the proposed bill will have to be amended so that the solitary confinement framework does not breach the Charter, the law professor observes. She does not fault the Liberal government, though, for the way it is tackling the issue. “Governments are complex things. You need the bureaucracy as well to move things forward,” says Kerr.

Corrections officials have been very resistant to change and she says the Liberals are taking the right steps to try to get them onside. “In the history of prison reform, it is not helpful to come up with a new set of laws if you don’t take the time to get institutional buy-in and try to ensure that the correctional officers on the ground will respect the rules,” says Kerr.

One of the central themes in reforms promised by the Liberal government has been to try to address inequalities facing indigenous peoples, especially those within the criminal justice system. One of the many areas where they were impacted by the policies of the former Conservative government, says Rudin, was through its increase in the number of offences with mandatory minimum sentences.

If an offence includes a mandatory minimum, then a court has no right to impose a conditional sentence. The Supreme Court of Canada has struck down some of these provisions as unconstitutional, but the federal prosecution service continues to argue to maintain the ones that remain.

Aboriginal Legal Services is an intervener in an ongoing challenge to mandatory minimums for importing drugs. The Ontario Superior Court case involves a 21-year-old indigenous woman and single mother, caught as a "drug mule" with cocaine in a checked bag on a flight from Trinidad. The young woman had a troubled upbringing including being sexually assaulted by two men when she was 13.

Federal prosecutors in their written submissions agreed the woman had a difficult life with a serious history of violence in her family and financial problems. But if the mandatory minimum were struck down because of the circumstances of an offender, it could lead to more drug importing. "Imposing very lenient sentences on vulnerable female Aboriginal drug couriers may counterproductively serve to increase their utility to drug importers," they wrote.

Striking down mandatory minimums only means that trial judges have more discretion so that, in rare instances, there may be a more lenient sentence if circumstances warrant, notes Rudin, in response to the position taken by the federal Crown in this case.

"This is not the previous government. We know this government understands the issues and is sympathetic. That makes it doubly frustrating," he says.

While declining to comment on any specific case, a spokesperson for the Department of Justice stressed that the Public Prosecution Service of Canada is an independent organization. "The relationship between the attorney general and the director is premised on principles of respect for the independence of the prosecution function and the need to consult on important matters of general interest," the spokesperson wrote in an email.

REPORT CARD

FAMILY LAW REFORM: F

The pledges included in the mandate letters issued by Prime Minister Justin Trudeau included the expansion of the unified family court system.

The first unified family court was initiated as a pilot project in Hamilton in the late 1970s. There are now seven provinces with unified family courts in a total of almost 40 municipalities.

Given the shared jurisdiction over family law, the unified model is aimed at streamlining the process for couples who are separating or in divorce proceedings. Last fall, the chief justice of the Superior Court of Ontario called on the federal government to support the expansion of the unified family court model in the province.

So far, though, there is very little movement on this issue or other areas of concern to the family bar in the country, says Wayne Barkauskas, partner at Wise Scheible Barkauskas in Calgary. “I don’t think there is any political reason. It is just not on their list of priorities,” says Barkauskas, a past chairman of the family law section of the Canadian Bar Association.

“Unified family courts pop up their head every few years,” he notes. While the concept is widely praised, there is likely going to be a debate between the provinces and the federal government over who is going to pay, he says.

A spokesperson for the federal Department of Justice says it is “working with” provinces and territories to gauge the interest in expanding the number of these courts. Any expansion, though, would require an agreement on a “funding formula” and amendments to permit the appointment of more judges.

Modernizing the federal Divorce Act should also be a priority, says Barkauskas, noting that there have been no substantial amendments to the statute in more than 30 years.

The most significant and pressing issue in Alberta in the family law field, however, is not the creation of new courts or statutory reform but filling up the existing vacancies on the Court of Queen’s Bench.

The provincial government and even senior members of the judiciary in Alberta have repeatedly called on the federal government to move more quickly to fill vacancies. The website of the Office of the Commissioner for Federal Judicial Affairs indicates that there were 12 vacancies in the province as of Jan. 1. “They say it is Alberta yelling again. There is a reason we are yelling; the delays are egregious,” says Barkauskas.

A date for a seven-day trial, which is not unusual if there are custody issues, is now being set for the spring of 2021. “People with money are having disputes heard by arbitrators. This is two-tiered justice,” he says.

REPORT CARD

ACCESS TO INFORMATION: C

The federal government introduced long-awaited changes to the Access to Information Act, which were passed by the House of Commons last December.

The legislation, the responsibility of Treasury Board president Scott Brison, was later than promised, but the Liberal cabinet minister said at the time that it was a matter of getting it right.

However, the reaction from freedom of information advocates has been less than positive.

At best, the impact of the amendments is “neutral,” says Mary Francoli, a professor at the school of journalism and communications at Carleton University, who focuses on open government issues.

“It is perplexing. There was so much rhetoric about openness and transparency. This was a real opportunity,” Francoli suggests.

Instead, the legislation includes “additional grounds” for federal agencies to decline access to information requests and does not clarify what kind of total fees might be imposed beyond that of the initial application charge, she says.

“No one thinks that everything in government should be 100-per-cent open. But there is so much information that is not made public,” says Francoli. She adds that she does not believe the changes will result in more access to government records or administrative institutions.

The right of government departments or agencies to seek a review in Federal Court of an order by the Information Commissioner may negatively impact its work. “Resources have always been an issue,” Francoli says.

Toby Mendel, a lawyer and president of the Centre for Law and Democracy in Halifax, says the legislation (which was in the Senate at press time) are not the “quick wins” the Liberal government promised. “This law is woefully in need of improvement,” says Mendel.

His organization is involved in compiling a global “right to information” rating for countries with respect to its legal framework for access to information and a number of other factors. Canada ranks 49th out of 111 countries in the survey, Mendel notes.

The exceptions to access in the legislation are “massively overbroad,” says Mendel. “Every exception should have a public interest override.”

The one area of faint praise is in comparison to the former Conservative government. “The previous government was horrible on access to information. It is better than the previous government,” Mendel says.

REPORT CARD

LIBERAL PROMISES

Mandatory victim fine surcharge: D

Justice Minister Jody Wilson-Raybould introduced legislation in October 2016 to restore discretion to judges to waive the mandatory victim fine surcharge of $100 per summary conviction offence and $200 per indictable conviction. It has not progressed past first reading. The Supreme Court of Canada will hear a joint appeal from Ontario and Quebec decisions on whether the mandatory fines breach the Charter when imposed on individuals without the financial means to pay.

Cannabis: B

The Liberal government passed legislation to follow through on a campaign promise to legalize the possession of small amounts of cannabis for recreational use. It is still not clear if this will take place by the target date of July of this year.

Solitary confinement: C

Public Safety Minister Ralph Goodale tabled Bill C-56 in June 2017 to amend the Corrections and Conditional Release Act with the aim of reducing how often inmates in federal correctional facilities are held in solitary confinement. The bill has not moved forward. Judges in Ontario and British Columbia have since found aspects of the existing legislation to breach the Charter.

Pardons: D

A review of higher fees and other measures that made it harder for individuals to be granted record suspensions of prior criminal offences was undertaken. In Ontario and Quebec, courts struck down Conservative amendments that retroactively increased the time period before an individual could apply for a record suspension. To date, no legislation has been introduced to amend the existing provisions.

Court Challenges Program: B

The November 2015 mandate letter to the Justice minister called for the resumption of the Court Challenges Program, which would provide funding for disadvantaged groups to bring forward equality and other constitutional challenges. The Department of Canadian Heritage is responsible for the program. It has not committed to a date as to when it will be up and running.

Judicial vacancies: C

The federal government revamped the appointment process for federally appointed judges, as well as the advisory committees to assist in this task. According to the Office of the Commissioner of Federal Judicial Affairs, as of Jan. 1, there are still 57 unfulfilled vacancies for Superior Court or provincial Court of Appeal level positions across Canada.

Judicial diversity: A

The Trudeau government promised more diversity in the judiciary. Since it took office, 53 per cent of new federal judicial appointments have been women. The percentage is much higher than the previous government. There is also an increase in diversity of background of those appointed to the bench.

Access to information: C

Bill C-58 was passed last fall in the House of Commons after a lengthy review process. Access to information advocates have said there is little in the way of substantive changes to make federal government departments and agencies more transparent.

INDIGENOUS CHILDREN-FAMILY SERVICES

The Canadian Human Rights Tribunal ruled in January 2016 that the more than 160,000 First Nations children on reserves were discriminated against because the federal government failed to provide anywhere near the same level of funding for child welfare services that existed off-reserve.

The decision culminated a nine-year-long legal battle that began when Cindy Blackstock, executive director of the First Nations Child and Family Caring Society of Canada, filed a complaint in 2007 against the federal government.

The proceeding and all arguments before the tribunal took place while the Conservatives were in power.

The day the ruling came out, a few months after the Liberals were elected, Indigenous and Northern Affairs minister Carolyn Bennett and Justice Minister Jody Wilson-Raybould issued a joint statement. "The Tribunal has made it clear that the system in place today is failing. In a society as prosperous and as generous as Canada, this is unacceptable. This Government agrees that we can and must do better," they pledged.

The federal government did not appeal the ruling. However, the legal disputes continue over the implementation of what the tribunal originally ordered more than two years ago.

"When the ruling came out, it was one of the best days of my life," says Anne Levesque, an Ottawa-based lawyer for the Caring Society. "We thought there was going to be real change."

Since its initial decision, the tribunal has issued three non-compliance orders against the federal government. Primarily, the disputes involve the scope of the definition of Jordan's Principle, which is that when there is a government service available to all other children, the government of "first contact" should pay for this service for a First Nations child and seek reimbursement later if there is a dispute over jurisdiction.

In a September 2016 ruling, the human rights panel noted that it had already issued an order for the federal government to move more quickly to address the funding inequality. "Deferring immediate action in favour of consultation and reform at a later date will perpetuate the discrimination the First Nations Child Family Services program has fostered for the past 15 years," the panel wrote.

Last spring, the tribunal issued a decision that faulted the federal government for trying to limit the scope of the panel's original ruling, such as applying it only to children with multiple disabilities. "Despite the findings in the Decision [January 2016], Canada has repeated its conduct and narrow focus with respect to Jordan's Principle," it wrote.

This time, the panel issued a number of orders on how to assess and pay for services for First Nations children. The government filed a judicial review of this decision, although a settlement was eventually reached among all parties, says Levesque. However, there is still an ongoing dispute over whether the federal government's long-term financial commitment complies with the tribunal's original decision.

“Rather than taking action, it still says it needs to consult. This is a stalling tactic,” says Levesque. “Discrimination is not a valid policy choice.”

For its part, Indigenous and Northern Affairs Canada says the government has worked diligently to implement the tribunal’s orders. “Since 2016, more than 99% of the requests received under Jordan’s Principle have been approved, totalling over 33,000 requests for services and supports. This includes mental health supports, medical equipment, speech therapy, educational supports and more,” says Stephanie Palma, a spokeswoman for the department.

Trudeau’s efforts at justice reform
Canadian Lawyer’s Magazine
Tim Wilbur
March 5, 2018

Has Justin Trudeau followed through on his promises for justice reform? Now that he is more than halfway through his elected term, we decided to give him a report card. We were not passing judgment on his promises per se but determining whether he did what he said he would do.

As you may have guessed, he received mixed grades. Trudeau made many promises before he was elected, and he has followed through with some more than others.

Like any good teacher, however, we also feel it is important to talk about effort along with performance. Does he deserve an “A” for effort despite his mixed results? To determine that, one must look at the factors that may be beyond his control.

One of the biggest obstacles for any government is limited resources. While the federal government has expended a huge amount of time and money on some promises, such as legalizing recreational cannabis and more recently a new environmental assessment regime, other initiatives such as the expansion of the unified family court system and the launch of a Court Challenges Program have languished. All these reforms take time and money, so he can’t do all of it at once with limited resources.

Another reality with many areas of justice reform is that things take time. With many stakeholders, vying interests and complex problems, there is rarely a quick fix. Judicial vacancies are still a problem, but, sometimes, finding the right candidate takes time, and ensuring diversity at the higher courts requires a pool of candidates at the trial level. For access to information, the legislation was later than promised, but the Liberals said when it was finally announced that it was a matter of “getting it right.”

But one of the biggest obstacles for any new government is institutional, i.e., the bureaucracy. While solitary confinement reform is being championed by civil libertarians across the country, Correctional Service Canada and the unions need to be onside as well. If Trudeau pushes too hard for reforms, there is risk that they will stall at the implementation.

Finally, politics can be unpredictable and events can overtake any political leader. Perhaps it should be simpler to get a pardon, but all you need is one case of a notorious criminal who got a pardon and any reforms could be stalled in their tracks.

This is not to say that we are giving Trudeau an "A" for effort. For some areas where there is a lack action — mandatory victim fine surcharge, for example — there seems to be no excuse. Neither Crowns, judges nor defence lawyers think they are working.

So, the jury is still out on Trudeau's final grades. And many of our readers will no doubt disagree with our assessments. But like any good teacher, we are using the opportunity to send a message. We have high expectations, but if you make an effort, we know we will see results.

EDITORIAL
Parliament needs to cut back Canada's excessive minimum-sentencing laws
The Globe and Mail
March 6, 2018

When the first edition of Canada's Criminal Code was published in 1892, a grand total of six crimes carried minimum sentences.

Engaging in a prize fight (three months in jail) and interfering with the mail (three years for stealing a post-office bag) were evidently serious preoccupations of the day.

In 1982, when the Constitution Act passed, there were still a half-dozen mandatory minimums, albeit for very different offences. But since then, our country has become drunk on the measures. Today there are roughly 100 on the books, among the highest in the world.

No one is arguing minimum penalties shouldn't exist for murder and other serious crimes. But is it sensible to impose them for things like injuring a police dog, selling illegal tobacco or committing mischief against a war memorial?

There was a time when the Trudeau Liberals thought not. After taking power in 2015, they repeatedly promised to reduce the number of mandatory minimums in force.

But, as a Globe and Mail analysis reveals, the government has instead been content to let judges handle the heavy lifting of bringing sanity back to Canada's sentencing laws.

This is wrong. Parliament, not judges, should be the one to pare the legislative overkill of mandatory minimums.

After all, the problem was caused by politicians in the first place. The former Harper government was especially guilty on that score, creating or expanding some 60 minimum sentences for gun, drug, sex and other high-profile offences as part of its tough-on-crime Conservative brand.

Since then, the Supreme Court has struck down two of them, including one last year that set a minimum sentence of one year for drug traffickers who have a previous trafficking conviction. The Court called it cruel and unusual punishment, and therefore unconstitutional.

In that ruling, former chief justice Beverley McLachlin said other legislated minimums were vulnerable to the same sort of ruling, and made it plain what the problem is.

“Mandatory minimum sentences that, as here, apply to offences that can be committed in various ways, under a broad array of circumstances and by a wide range of people are vulnerable to constitutional challenge,” she wrote.

It’s not like no one saw this coming. Everyone from civil libertarians to the Canadian Bar Association to provincial justice ministers to federal government experts raised the dubious constitutionality of massively expanding the use of minimum sentences.

Mandatory minimums elide much-needed context from individual sentencing decisions, constrain judicial independence and, as the courts have said, can amount to cruel and unusual punishment.

Justice Minister Jody Wilson-Raybould said last year the government supports mandatory minimums for serious crimes, as long as they are consistent with the Charter of Rights. So why hasn’t she acted, as she said she would, to get rid of them for lesser crimes?

Perhaps politics is involved in the government’s reluctance to keep its promise. No one wants to risk being seen as soft on crime.

But it’s that sort of craven calculation that has brought us to this point. It’s time the government found the courage to prune Canada’s overgrown mandatory minimum sentences.

Yukon’s justice system ranked worst in Canada for second year in a row
One of the report’s co-authors encouraged the territory to reflect instead of ‘nitpicking’
Yukon News
Jackie Hong
March 7, 2018

The co-author of a “report card” that grades Canada’s provincial and territorial justice systems says that the Yukon should take a look in the mirror instead of getting defensive after the territory’s justice system was ranked the worst in the country for a second year in a row.

Ottawa-based think tank the Macdonald-Laurier Institute released its second annual report comparing Canadian criminal justice systems March 5. Based on annual data collected by Statistics Canada, the report grades and scores provinces and territories on criteria like violent crime rates, median length of criminal cases, public confidence in police and how much funding legal aid receives.

The Yukon again ranked 13th with an overall "C" grade in this year's report, which focused on data from 2017. Among the areas the territory's justice system performed most poorly in were crime rates, breach of probation rates and legal aid funding — in fact, the territory did worse in those last two categories in 2017 than the year before.

Report co-author Benjamin Perrin, an associate professor at the University of British Columbia's Peter A. Allard School of Law and senior fellow in criminal justice at the Macdonald-Laurier Institute, said the jurisdictions' responses to the report card "really make a big difference."

"For example, when we put out this report card, the first one, in 2016, the Yukon was sort of concerned with the methodology and they said, 'Well, we're a large territory, it's not really fair to compare us against provinces,' and they had a number of other issues," Perrin said in an interview March 6. "Other jurisdictions said, 'Wow, we really performed poorly, we actually kind of need to take a hard look at this, and why is this happening?'"

Manitoba, in response to being the lowest-ranked province, launched a full review of its criminal justice system, Perrin said, and the provincial government has also announced that it will be introducing reforms to modernize the system.

"I mean, they're looking at what they can do to make things better instead of, you know, nitpicking with the report itself, so I think the same thing needs to happen in the Yukon," Perrin said.

"This is a major challenge, but I think there needs to be a real commitment from the Yukon government to improve their criminal justice system and to learn from the other two territories."

Properly funding legal aid services is particularly important, Perrin said, because having a lawyer not only increases the likelihood of someone getting a fair, just outcome in criminal proceedings, but also speeds up the legal process and therefore, in the long run, saves money.

Despite being ranked last, the Yukon's justice system does have some strengths, the report noted. Even with the high crime rates, the territory has the third-highest crime clearance rates in the country, receiving an A+ grade, a shorter-than-average criminal case length of 85 days and relatively low rates of failing to appear or being unlawfully at large. The Yukon also received an "A+" when it comes the the number of Criminal Code incidents per police officer.

Like the other territories though, Statistics Canada did not collect data in the Yukon on the public's confidence in police, confidence in the justice system and perception of police being fair, data which is available for the provinces. It's unknown how that data, if it existed, would have influenced the Yukon's ranking and overall grade.

Perrin said the goal of the report isn't to drive reforms in every area, but to serve as a diagnostic tool.

"Really, it's an objective, independent look at how your justice system is doing and it's highlighting a few concerns and the question then is, what do you do in response to those concerns? Do you agree with

those concerns or not?" he said. "If you do, there needs to be some kind of follow-up on that and some kind of action taken."

The justice department did not respond to a request for comment before press time.

Contact Jackie Hong at jackie.hong@yukon-news.com

Les juristes de Québec peuvent se désaffilier de leur syndicat
La Cour suprême donne raison aux juristes de Québec, en confirmant un appel qu'ils avaient gagné l'an dernier
Droit Inc
Jean-François Parent
8 mars 2018

Le plus haut tribunal du pays refuse ainsi d'entendre l'appel logé par l'Alliance des professionnels et professionnelles de la Ville de Québec.

Ce syndicat s'opposait à la désaffiliation de la trentaine de juristes, lesquels souhaitent rejoindre un organe qui serait plus à même de les représenter, disent-ils. Ils cherchent à obtenir une accréditation auprès du Syndicat des juristes du secteur municipal, affilié à la CSQ.

À Ottawa, Mes Matthew Gapmann et Claudine Morin, de Barabé Casavant, représentaient la CSQ. Mes Bernard Philion, Claude Leblanc, et Katherine-Sarah Bouffard-Larouche, de Philion Leblanc Beaudry, interjetaient appel pour le compte de l'Alliance des professionnels.

Me Claude Leblanc de Philion Leblanc Beaudry En juin 2012, le Syndicat des juristes déposait une requête en accréditation pour représenter les avocats et notaires à l'emploi de Québec. On motivait la démarche en invoquant notamment « une perception d'une représentation inadéquate » des avocats et des notaires québécois par l'Alliance des professionnels et professionnelles de la Ville de Québec.

Pour l'essentiel, on craint que le sentiment de « solidarité syndicale » avec les autres professionnels de l'Alliance ne constitue une variable dans relation avocat-client portant à conflit. Évoquant une possible apparence de conflit d'intérêt, étant redevables à la fois à leur client et à leurs collègues syndiqués.

Me Katherine-Sarah Bouffard-Larouche de Philion Leblanc Beaudry « Ce conflit de loyauté, qu'il soit apparent ou réel, donne lieu à un malaise déontologique qui ne peut être réglé, selon le Syndicat des juristes, que par l'accréditation d'une unité distincte de négociation. »

En juin 2014, la Commission des relations de travail, devenue depuis le Tribunal administratif du travail, estime que « les manquements au devoir de représentation de l'Alliance invoqués par le Syndicat ne sont pas suffisants pour justifier un fractionnement de l'unité de négociation de l'Alliance ». La Cour supérieure confirme la décision administrative l'année suivant.

Mais la Cour d'appel, l'an dernier, concluait que tant la CRT que la Cour supérieure ont erré.

Malaise déontologique

La Cour d'appel, sous la plume du juge Robert Mainville, a donné raison aux juristes dans une décision partagée. Un sentiment de « solidarité syndicale » avec les autres professionnels regroupés au sein de la même unité pose problème. « Ce conflit de loyauté, qu'il soit apparent ou réel, donne lieu à un malaise déontologique », donnant ainsi raison au syndicat de vouloir une unité distincte de négociation pour les juristes de Québec.

Le juge Robert Mainville Quant à la juge Dominique Bélanger, il insiste sur le besoin, pour le TAT de revoir « les critères qu'il (et ses ancêtres) applique depuis plus de 40 ans ».

Le juge Guy Gagnon, dans son opinion dissidente, estimait quant à lui que « la question de la solidarité syndicale me semble ici être un faux débat ».

Le TAT devra donc réexaminer l'affaire « en tenant compte de l'évolution du droit constitutionnel à la liberté d'association, tout en tenant compte des préoccupations déontologiques des juristes », concluait la Cour d'appel.

'If I work somewhere, I want to get paid' says victim of Phoenix owed $5,650
Ottawa Citizen
Jacquie Miller
March 8, 2018

Two years after the Phoenix pay system was rolled out, Canada's public servants are still being affected by overpayments, underpayments and other errors. In a special series, the Citizen tells the stories of those affected by the pay system debacle.

Stéphane Legault recently finished a contract position with the Canada Revenue Agency. He won't be looking for another position with the federal government any time soon.

As long as the Phoenix pay system is in place, it's just not worth it, says the Gatineau resident. He estimates he is owed about $5,650 in vacation payout, severance and bilingual bonuses.

"If I work somewhere, I want to get paid," Legault says with unassailable logic. "Not more, not less."

Legault's last day of work processing income tax forms was Nov. 17, 2017. It's a job he'd done for six years, working under two different contracts.

After the first contract ended in 2013, he had no problem collecting vacation pay and other money that was owed to him. In fact, Legault says he'd never had any problems with his pay cheque.

Then Phoenix arrived, the centralized, automated pay system that was supposed to be more efficient. "I figured this will be great, it might save some time, but the opposite is happening."

Legault says he has filed complaints online and has phoned the compensation office in an attempt to get the pay he is owed. During his last conversation in December, after being put on hold for 25 minutes, an official told Legault to expect his vacation pay before the end of January; the severance would take four months to process. He's still waiting.

"I'm not starving or anything, but they owe me," he says. "I'm just eager to get it. I'm just shocked that it would take so long."

Legault says he blames the Liberal government for throwing good money after bad on the Phoenix project, which was begun when the federal Conservatives were in power. "They are trying to fix something that will never work."

L'Ontario cherche des juges bilingues
Le commissaire aux services en français a reçu des plaintes sur le manque de juges bilingues à Toronto
Droit inc
Martine Turenne
8 mars 2018

Il manque de juges maîtrisant le français et l'anglais en Ontario, rapporte L'Express de Toronto.

Trois postes bilingues sont à combler à la magistrature, annonce le Comité consultatif sur les nominations: un juge en droit criminel à Brampton, un juge en droit criminel à Guelph et un juge en droit familial à Toronto.

C'est ce qu'a indiqué le juge Martin Lambert, de la Cour de justice de l'Ontario, lors d'une rencontre informelle le 1er mars à l'intention des membres bilingues du Barreau. Elle était organisée par l'Association des juristes d'expression française de l'Ontario (AJEFO) dans les locaux du Commissariat aux services en français à Toronto.

Le poste bilingue en droit familial à Toronto est très attendu, estime le commissaire aux services en français de l'Ontario, François Boileau: il a reçu des plaintes sur le manque de juges bilingues dans ce domaine à Toronto.

Pour pouvoir poser sa candidature, il faut être membre du barreau depuis au moins 10 ans, « avoir une solide connaissance du droit », « une compréhension des problèmes sociaux actuels» et « un entendement de la diversité culturelle de l'Ontario».

Rappelons que les avocats ontariens ont désormais l'obligation de promouvoir « l'égalité, la diversité et l'inclusion en général ainsi que dans leur comportement envers leurs collègues, les employés, les clients et le public », une obligation qui en dérange plusieurs.

Supreme Court to hear case on constitutionality of military justice system
CTV News
The Canadian Press
March 8, 2018

OTTAWA -- The Supreme Court of Canada will hear a case that challenges the constitutionality of the military court martial system.

The appeal is under the name of Master Cpl. C.J. Stillman, but includes eight other appellants who also argue that their rights were infringed because under the military system, they are not entitled to have their cases heard by a jury.

In 2015, the Supreme Court dismissed an appeal against the court martial system under Sec. 7 of the Charter of Rights and Freedoms, but left open the question of whether the system violated Sec. 11.

The latter section protects the right to a jury trial for anyone charged with an offence punishable by five or more years in prison, but contains a specific exemption for an offence under military law tried by a military tribunal.

In 2016, the Court Martial Appeal Court rejected a challenge based on Sec. 11.

As usual, the Supreme Court gave no reasons for hearing the appeal.

La justice militaire sous la loupe de la Cour suprême
Le plus haut tribunal du pays a accepté d'examiner la cause des membres des Forces armées canadiennes qui déplorent ne pas avoir eu droit à un jury
Droit Inc
Julien Vailles
9 mars 2018

La cause risque de créer des remous dans la justice militaire.

Le caporal-chef Clarence Stillman, ainsi que huit autres membres ou anciens membres des Forces armées canadiennes, en ont contre la Cour martiale, qui ne leur permet pas d'avoir un procès devant jury. Après un rejet de leur cause par la Cour d'appel de la cour martiale, le pourvoi à la Cour suprême est donc leur dernière avenue. Or, celle-ci a accepté qu'ils soient entendus, écrit La Presse canadienne.

Le système de justice militaire est particulier. La Cour martiale juge le personnel militaire pour les infractions au Code de discipline militaire contenues dans la Loi sur la défense nationale. Cela englobe donc les crimes du Code criminel et ceux de la Loi réglementant certaines drogues et autres substances, entre autres.

Dans ce contexte, il y a deux types de Cours martiales : la Cour martiale générale et la Cour martiale permanente. La première est composée d'un juge militaire et d'un comité de cinq personnes

sélectionnées au hasard, et la deuxième est régie par un juge seul. Tous les appels sont entendus uniquement par la Cour d'appel de la Cour martiale.

Or, la Charte canadienne des droits et libertés garantit à tous le droit à un procès avec jury pour une infraction passible d'une peine de cinq ans ou plus, sauf dans le cas d'infractions relevant de la justice militaire. C'est cette exception que le caporal-chef Stillman et ses collègues jugent discriminatoires, d'où leur combat judiciaire.

En 2013, Clarence Stillman avait été condamné à six ans de prison et à un renvoi de l'armée, relativement au décès par balle d'un militaire au Manitoba. C'est cette affaire qui a mené à sa contestation du système judiciaire militaire.

Canada nabs U.S. digital services co-founder to head its tech fix-it team
iPolitics
Kathryn May
March 9, 2018

The Trudeau government has hired the former head of the U.S. government's digital services agency to head Canadian Digital Services, the federal in-house swat team created to help improve services to citizens.

Treasury Board announced the appointment of Aaron Snow as the first chief executive officer of Canadian Digital Service (CDS), effective in early April. The government launched a search in September and attracted candidates from around the world.

Snow has held various senior posts in agencies helping to improve the government's use of technology and the way it serves citizens. He was the co-founder and executive director of 18F, U.S. digital services agency.

As CEO, Snow will be responsible for helping departments to think digital in coming up with ways to improve services for users. He will work with Chief Information Officer Alex Benay, who took over the CIO job about a year ago, with marching orders to shake things up and drive the Liberal's digital agenda.

The CDS was set up last summer, housed in Treasury Board, with $25.5 million in funding over three years.

The CDA was inspired by U.S. Government Digital Services' 18F, a group of private and public sector 'innovators' — in-house designers, developers and product people — whose job is to make government services simple and easy to use in the digital age.

18F is part of the U.S. government's Technology Transformation Services, which is within the General Services Administration.

Snow, who graduated from computer science at Harvard University and law at Columbia Law School, became co-founder and executive director of 18F created in the aftermath of the catastrophic rollout of Obamacare's healthcare.gov website.

More than 4.7 million Americans tried to register on healthcare.gov the day it launched in October 2013 and only six people were successful.

In speeches, Treasury Board President Scott Brison often compares the disastrous rollout to that of the Phoenix pay system fiasco. He says he followed the example of then President Barack Obama who claimed "never waste a good crisis" and embedded 18F within government to come up with better ways to use technology to provide service.

The group shook up the system with its software development and an open approach to everything, using open source and the methods of 'start-up' companies. (The name referred to its office location in Washington, D.C. in the General Services Administration at 1800 F Street.)

After 18F, Snow became a senior adviser for the government's Technology Transformation Service before leaving government in February 2017. He then became chief operating officer at cBrain North America where he helped public sector organizations adapt their services digitally to solve process problems and better serve the public's needs.

Snow is the latest member of the 18F team to come to Canada. CDS previously nabbed Lena Trudeau, who worked at 18F, and Hillary Hartley another 18F founding member is now the Ontario government's chief digital officer.

In launching CDS, Brison acknowledged he wanted to 'disrupt' the way things have always been done in a risk-averse and constrained public service.

Snow had indicated in previous interviews that 18F's biggest challenge was making "space for risk taking and unapproved initiatives in a place that expects planning, rigidity and predictability. "

U.S. news reports indicate that Snow was among the several General Services Administration executives who were singled a report by the Inspector-General last year for management and oversight failures.

The CDS's focus is not on saving money but rather on delivering services to Canadians in the way that works best for them as users. Governments have long been criticized for providing services around their departments and processes rather than users.

The group tackles small departmental projects and, if they're successful, the project could 'scale up' to help solve similar problems for other departments.

"We are thrilled to have Aaron join us at CDS, where he will play a pivotal role helping departments make better use of digital technology, agile methods, and user-centred design to better serve everyone who uses federal services," CDS executive director Anatole Papadopoulos wrote in a blog post.

Prior to 18 F, Snow as a Presidential Innovation Fellow assigned to improve how the government buys technology and services.

Snow also served as a senior adviser on voter protection to former president Barack Obama during his presidential campaigns and as a member of the OpenGov Foundation's Board of Directors.

Why hiring more judges won't necessarily speed up the justice system
Some judges in Ontario are routinely warning that cases are in jeopardy if more judges aren't hired. But is boosting the ranks of the judiciary really the answer?
Toronto Star
Betsy Powell Courts Bureau
March 9, 2018

The under-resourcing of the backlogged criminal justice system has become a courtroom battle cry in Ontario, with some judges routinely calling on the government to loosen the purse strings so more of them can be hired.

Superior Court Justice John McMahon was the latest to issue a warning that a multimillion-dollar alleged financial fraud case might get tossed due to delay because there isn't a Toronto-area judge available to preside over the trial before next January.

The hope is that more judges will ensure people accused of crimes receive their constitutional right to a timely trial. That, in theory, will lessen the risk of potentially serious cases collapsing, denying victims justice and defendants the right to clear their names.

That concern was heightened after the Supreme Court of Canada, in a 2016 case known as Jordan, imposed new limits on the amount of acceptable pretrial delay. In response, senior levels of governments have appointed more judges to, the province has said, "help speed up the justice system."

Yet not everyone agrees that increasing judicial numbers will solve what is a very complex problem.

"They always say more judges, yeah, if there's more judges, there's going to be more cases, if there's more police, there's going to be more charges. More is not the right word in trying to increase the efficiencies. I just find it very myopic," said Osgoode Hall law professor Alan Young.

Judges are expensive. As of last April, Ontario Superior Court judges earn $315,300 annually, in addition to generous benefits and a pension equivalent to two-thirds of their salaries. Provincially appointed judges receive $292,829 yearly, along with benefits and pensions based on years of service and age.

Rather than boosting judicial ranks, Young would like to see the expansion of alternative measures, with more disputes being resolved through negotiations and mediation, and the decriminalizing of minor offences to free up court resources.

“We try to use criminal justice for every social evil and as a result we can’t have an effective system,” he said.

Toronto defence lawyer Gary Grill agrees that a streamlined justice system, especially when crime rates are at historic lows, makes more sense than throwing additional judges at the problem, which “is a short-term solution at best.”

“We are likely overlooking the real problem: over prosecution, over charging, and an institutionalized fear of letting any prosecution go because we have become so risk adverse,” Grill wrote in email.

“A cost-benefit analysis must be employed. Crowns should have enhanced discretion to resolve charges. Marginal charges should not be prosecuted. Yet our courts continue to be clogged with marijuana prosecutions, weak cases where the Crown lacks the discretion to withdraw.”

Toronto defence lawyer Greg Lafontaine agrees “too much stuff” goes through the system that should be resolved with a plea arrangement but can’t because the prosecution won’t come to “reasonable terms” with the defence.

“Nobody is willing to use the discretion that they have to nip cases in the bud,” he said.

Laurie Gonet, president of the Ontario Crown Attorneys Association, said she’s disappointed by that suggestion, “because the numbers just don’t bear that out, we’re resolving stuff left, right and centre.”

At least 90 per cent of criminal charges in the Ontario Court of Justice are resolved, whether by way of plea or the withdrawing of charges, leaving 10 per cent which tend to be the most serious cases, she said.

Still, prosecutors must still prepare every file as if it is going to trial and “we’re being crushed under the workload of trying to do that. There simply aren’t enough of us ... to make it go faster.”

Cases are also much more labour intensive than they used to be due to a number of factors including the way criminal offences are investigated and the volume and nature of disclosure.

While it would be great if new provincial Crowns were hired, “why can’t we have more civilian staff ... to help us with the administrative things, so it frees us up to actually do the pretrials that will hopefully resolve things,” Gonet said.

Michael Spratt, who practises criminal law in Ottawa, says there are delays there of between 12 to 18 months for even simple trials, and longer delays for complex trials. Still, he thinks the delay problem has been exaggerated in some circles.

Digital evidence and investigative techniques have contributed to lengthier, more complicated trials, so while there might be room to appoint more judges “that’s not necessarily a good thing.”

“It’s easy to think the solution is just hiring more people, throwing more money at the problem, when I think the criminal justice system is really a pit that will swallow all of that up and offer diminishing returns,” he said.

If the federal government wants a leaner justice system it should follow through on some of its election promises, such as repealing some mandatory minimum sentences. “They contribute to court delays by incentivizing people to not resolve matters and go to trial.”

Federal NDP health critic Don Davies, who helped draft the party’s new decriminalization policy, said ending the unwinnable war on drugs would go a long way to solving the glut of cases clogging up the courts.

“Maybe we don’t have enough judges as long as we’re pursuing a criminalized approach to drug use because we keep feeding an interminable, endless supply of sick people into the justice system,” said Davies, who is a lawyer and MP for Vancouver Kingsway.

“One of the many happy benefits of a decriminalized approach, when you take the crime out of drug use and drug addiction, is you take those people out of the court system and that frees it up for issues that are properly in our justice system.”

Des enchères pour la bonne cause
Avocats sans frontières Canada organise une vente aux enchères silencieuse afin de récolter des fonds pour ses projets.
Droit Inc
Delphine Jung
12 mars 2018

L’événement « Art sans frontières » aura lieu le 22 mars, de 18h30 à 22h, au Hall Sherbrooke du Loft Hotel, situé au 314 rue Sherbrooke Est à Montréal.

Une vingtaine d’œuvres, principalement des aquarelles et des photographies, réalisées par des artistes canadiens, seront proposées aux enchères, à l’occasion d’un encan silencieux.

Ge L’Heureux, Aquil Virani, Julie Bélanger, Claudine Ascher, Fanny Achache et Armelle Falliex sont les artistes qui ont fait don de leurs œuvres.

Elles auront pour thème l’accès à la justice et la défense des droits humains. « Les artistes partagent nos valeurs », précise Mme Anastassiadis.

« Tous les invités pourront faire leur offre. À la fin de la soirée, nous les remettrons aux plus offrants », détaille Daphné Anastassiadis, présidente, ASF Université McGill.

Tous les fonds récoltés à l’occasion de cette soirée seront dédiés aux missions d’Avocats sans frontières Canada. L’organisme est présent au Mali, au Guatemala, en Colombie et en Haïti.

Avocats sans frontières Canada vise à l'édification d'un monde où les droits humains et les libertés fondamentales, telles que définis par le droit international, sont respectées, sont mises en œuvre et promues.

Une centaine de personnes sont invitées à cette soirée. Ils pourront profiter du bar du Loft Hotel et des bouchées seront également servies.

Le prix d'entrée est de 20$ et de 15$ pour les étudiants. Les billets sont disponibles via ce lien ou à la porte le soir même.