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## 150 sex assault survivors send government $7M in 'invoices'

CBC News
Kate McGillivray
March 14 2017

Mandi Gray, survivor of 2015 assault, launches protest on same day her attacker appeals conviction

More than 150 sexual assault survivors are sending $7 million worth of invoices to Prime Minister Justin Trudeau and Ontario Premier Kathleen Wynne.

Their goal? To demonstrate just how expensive it is to be attacked.

"Often we talk in terms of trauma, emotional harm, but we don't think about the actual logistics of, 'Can I actually afford to be sexually assaulted right now,'" said Mandi Gray, a York University PhD student who was sexually assaulted in January 2015.

Gray put out an online survey asking survivors to attach dollar amounts to costs they have shouldered. The answers that came back were "heartbreaking."

"Tuition costs were huge," she said. Many of the respondents said they dropped out of school after being assaulted. Also substantial were "legal fees, paying for therapy, paying for medication and other medical procedures."

Gray is intimately familiar with the heavy cost of being attacked, citing major delays in her PhD studies and "thousands of dollars" worth of therapy, as well as the cost of hiring her own lawyer during the trial of the man who assaulted her.

On Tuesday, Gray was among a group some 20 survivors and allies demonstrating at a downtown Toronto courthouse, bringing with her a novelty cheque made out to "all the J. Doe's" and printed with a replica of Justin Trudeau's signature.

"Who's the boss of my body? I am," the demonstrators chanted.

Superior Court to hear appeal today

The timing of the demonstration was no coincidence.

On Tuesday, Mustafa Ururyar, the man found guilty in July 2016 of sexually assaulting Gray, appealed his conviction at the Superior Court of Justice.

Ururyar was ordered to pay $8,000 in restitution to Gray to cover a portion of the money she spent on her own lawyer.

"I felt that everybody else had lawyers … I was the only one who was unrepresented, and I was the most vulnerable," she said.

The $8,000 restitution order has proved "controversial," said Gray, with a national criminal lawyers' association joining the appeal case as interveners to argue that Ururyar should not have to pay.

Anthony Moustacalis, president of the Criminal Lawyers' Association, told CBC Toronto that his group felt strongly that the section of the Criminal Code that pertains to restitution should be interpreted "narrowly" and not be "stretched" to put defendants on the hook for the legal costs incurred by a victim.

He also said victims have the support they need already — without hiring their own lawyer — because the Crown attorney provides a "wide range of services."

Gray disagrees, arguing that having her own lawyer provided an essential source of support. She said her lawyer advocated for her rights in the courtroom while she was being cross-examined.

More financial support needed

Moustacalis and Gray agree on one thing: more support is needed from the government to help survivors in the months and years after they are attacked.

"If the federal [government] and indeed the province chose to fund that better, there would be more money available for victims of crime," said Moustacalis.

Gray cited Ontario's Independent Legal Advice for Survivors of Sexual Assault Pilot Program, which provides four hours of free legal advice to victims, as a step in the right direction, though

she'd like to see it expanded and made permanent, because "four hours is not anywhere near enough."

Unsure of how Ururyar's appeal will turn out, Gray said she wanted to demonstrate on Tuesday to make the point that change needs to come to the way survivors are supported.

"Either it's going to happen through the courts or it's going to have to happen through legislative changes," she said.

"The $8,000 ordered to me through restitution was really inconsequential compared to the other costs I've taken. Those costs add up, and they add up quickly."

## Juristes de l'État: compte à rebours de l'ultime négo, après la loi spéciale

La Presse Canadienne
14 mars 2017

Le compte à rebours vient de commencer pour les juristes de l'État, qui ont amorcé mardi une ultime négociation en vue de tenter d'arracher quelques gains au gouvernement... après l'adoption de la loi spéciale.

La loi spéciale qui avait forcé leur retour au travail, le 28 février dernier, donnait aux parties 45 jours pour négocier une nouvelle convention collective, à défaut de quoi le gouvernement du Québec leur imposera des conditions de travail.

La loi avait aussi mis fin à une grève qui avait commencé le 24 octobre dernier, qui avait ralenti le processus législatif à l'Assemblée nationale et causé maints reports devant divers tribunaux - même si les services essentiels étaient assurés.

C'est donc avec "le fusil sur la tempe" que ces ultimes négociations ont débuté, mardi matin, a indiqué au cours d'une entrevue avec La Presse canadienne le président du syndicat Les Avocats et notaires de l'État québécois, Me Jean Denis.

"On a comme une obligation de résultats. C'est du jamais vu! Non seulement on a parlé de négociation de mauvaise foi, dans la dernière grève - et on en a eu un exemple dans les deux

dernières semaines qui ont précédé la loi spéciale - mais là, on enlève la liberté de négocier; c'est encore pire. On nous dit: 'vous ne négocierez pas ça; vous allez négocier ça. Et si vous n'avez pas une entente; vous allez avoir moins que tous les autres ont obtenu dans la fonction publique au niveau des augmentations salariales'", a critiqué Me Denis, qui ne décolère pas.

LANEQ avait deux revendications principales: la reconnaissance de l'indépendance de ses membres, de leur statut professionnel, ainsi que la parité avec les procureurs aux poursuites criminelles et pénales.

Elle avait proposé un mécanisme d'arbitrage qui lierait les parties et était prête à laisser tomber son droit de grève en contrepartie, mais le gouvernement avait refusé. Le gouvernement, de son côté, affirme qu'il ne peut laisser une tierce partie décider d'une question aussi importante, qui implique aussi des déboursés gouvernementaux.

Quand on lui a demandé s'il était tout de même raisonnablement optimiste pour ces 45 jours d'ultimes négociations, Me Denis a lancé: "raisonnablement optimiste? Je vous dirais que non. Est-ce qu'on va travailler pour avoir le meilleur pour nos membres? Oui."

Les 1100 avocats et notaires membres de LANEQ travaillent au sein de plusieurs ministères et organismes gouvernementaux.

LANEQ a déjà fait part de sa volonté de contester la constitutionnalité de la loi spéciale devant les tribunaux et a déposé une plainte contre le gouvernement pour négociation de mauvaise foi. Elle s'adresse également au Bureau international du travail et conteste diverses décisions qui ont été rendues par des tribunaux durant sa grève.

## Longs délais judiciaires pour les victimes de la route

Radio-Canada
Esther Normand
14 mars 2017

Les accidentés de la route risquent de souffrir encore longtemps de la récente grève des juristes de l'État. Le conflit a forcé la remise de près de 2000 dossiers. Cela exacerbe un problème criant d'accès au Tribunal administratif du Québec.

En 1986, Emmanuel Dumais a 20 ans et des rêves plein la tête, mais un grave accident de voiture les fait voler en éclats. Il a de lourdes séquelles. Quatorze ans plus tard, il subit un deuxième accident qui aggrave sa condition.

Manon Whissell est aussi victime de la route en 2009. Elle a des blessures majeures et développe la fibromyalgie.

Bras de fer avec la SAAQ

Depuis des années, ils sont tous les deux engagés dans un bras de fer avec la Société de l'assurance automobile du Québec (SAAQ). M. Dumais a déjà été reconnu inapte au travail, mais il estime que la SAAQ lui doit beaucoup d'argent.

Mme Whissell, pour sa part, ne reçoit plus ses indemnités depuis neuf mois. La SAAQ a cessé de les lui verser parce qu'elle considère que ses séquelles sont minimes, donc qu'elle est apte au travail. C'est la deuxième fois qu'elle perd ses indemnités.

«C'est la catastrophe, c'est la fin de ta vie. On ne veut pas reconnaître les preuves médicales qui sont là. Je veux dénoncer; je ne veux pas faire pitié.» - Manon Whissell

Les répercussions d'un conflit

Les accidentés de la route qui ont un litige avec la SAAQ peuvent demander au Tribunal administratif du Québec (TAQ) de trancher.

Après une longue attente, Manon Whissell et Emmanuel Dumais devaient enfin se présenter devant le TAQ. Mais la grève des juristes de l'État, qui a duré quatre mois, a forcé la remise de leur audience.

« Je ne pourrai pas me rendre, je suis à bout de souffle. » C'est ce qui a traversé l'esprit d'Emmanuel Dumais quand celui-ci a appris la nouvelle.

M. Dumais et Mme Whissell ne sont pas les seuls à souffrir. Entre le 24 octobre et le 3 mars dernier, 1888 cas ont été remis à cause du conflit.

L'avocate Sarah-Jeanne Dubé Mercure, qui défend les accidentés de la route et du travail ainsi que les victimes d'actes criminels, confirme que les 188 clients de son cabinet sont touchés de plein fouet par les contrecoups de la récente grève.

«Les répercussions de cette grève vont se faire sentir très, très, très longtemps. [C'est] très inquiétant, parce qu'on a des personnes vulnérables qui n'ont pas d'accessibilité à la justice en ce moment.» - Sarah-Jeanne Dubé Mercure, avocate

Deux ans d'attente pour le Tribunal

Au cours des cinq dernières années, le délai moyen de la première audience au TAQ était d'environ deux ans. Le Tribunal explique qu'il a de la difficulté à recruter des juges administratifs médecins. C'est ce qui cause notamment les délais, souligne le Tribunal.

Résultat : 5377 victimes de la route attendaient le règlement de leur dossier en 2016. « C'est quoi ce délai? Qu'est-ce que le gouvernement ne comprend pas? » se demande Mme Whissell.

Le professeur Pierre Noreau, chercheur au Centre de recherche en droit public de l'Université de Montréal, déplore que « la dimension dont on parle le moins, [ce sont] les coûts humains de la justice ». Il ajoute que le système de justice est sous-financé au Québec.

«Le budget du ministère de la Justice, c'est moins de 1 % du budget de l'État. Lorsqu'on veut régler un problème, il faut augmenter les ressources qu'on met dans ce système.» - Pierre Noreau, professeur

Sarah-Jeanne Dubé Mercure reconnaît que ses clients retardent parfois le processus parce qu'ils n'ont pas d'argent pour payer une expertise. Mais elle estime que la SAAQ ne devrait pas en profiter. « Les tribunaux administratifs sont complaisants à leur accorder les mêmes délais que nous par souci d'équité, alors que le rapport de force entre les victimes et les organismes est de toute façon inéquitable. »

«C'est comme si la SAAQ avait le droit de faire ce qu'[elle veut] avec moi, mais il n'y a personne sur [ses] épaules pour dire : "Wo, wo, wo, là."» - Manon Whissell

Mesures mises en place par le TAQ

Le TAQ mentionne qu'il a mis en place des mesures pour contrer les effets de la grève. Entre autres, six juges administratifs ont été nommés au Tribunal, dont quatre à la Section des affaires sociales, qui s'occupe des dossiers d'assurance automobile. Ces juges administratifs avocats viennent tout juste d'entrer en fonction.

De plus, le Tribunal assure qu'il a convenu, en priorité, de dates d'audiences pour les personnes touchées par le conflit. Ainsi, il a fixé une nouvelle date d'audience ou de conciliation pour près de 800 dossiers.

Une réforme s'impose

Le professeur Noreau croit qu'il faut mettre davantage l'accent sur la médiation et la conciliation. À son avis, le temps est venu d'entreprendre une nouvelle réforme de la justice administrative après celle réalisée au milieu des années 90.

«L'expérience judiciaire est une expérience souvent traumatisante. Dans beaucoup de cas, les délais qui courent n'ont pas la même signification pour les individus que pour les institutions.» - Pierre Noreau, professeur

Aujourd'hui, Manon Whissell vit de l'aide sociale et de la générosité de sa fille de 19 ans. Emmanuel Dumais, quant à lui, doit s'organiser avec 15 000 $ par année.

«Je dois avoir gain de cause. Ils ne peuvent pas faire autrement que de payer, ils doivent payer.» - Emmanuel Dumais

Le mauvais sort a voulu qu'il soit frappé par la sclérose en plaques il y a quelques années. Ainsi, s'il gagne sa bataille, il s'offrira, entre autres, des soins spécialisés

## Briseur de grève au Bureau du coroner: le tribunal donne raison à LANEQ

La Presse Canadienne
15 mars 2017

Le Tribunal administratif du travail vient de donner raison au syndicat des juristes de l'État, qui alléguait que le Bureau du coroner avait embauché une employée de bureau membre d'un autre syndicat pour remplir des tâches d'une avocate alors en grève.

Le tribunal ne blâme toutefois aucunement la salariée en question, qui n'avait fait que respecter les consignes données par l'avocate, juste avant le déclenchement de la grève. Il juge même que le geste qu'on lui reproche, à savoir d'avoir signé un accusé réception au nom de l'avocate en grève, est « très marginal ».

Toutefois, le tribunal juge qu'il appartenait à l'employeur gouvernemental de veiller au respect de la loi. Le Code du travail du Québec interdit en effet d'utiliser un employé de remplacement pour remplir les fonctions d'un salarié en grève ou en lock-out.

Le Tribunal administratif du travail ordonne donc au gouvernement du Québec et au Conseil du trésor de cesser d'utiliser au Bureau du coroner les services de l'employée en question pour remplir, en tout ou en partie, les fonctions d'un salarié en grève.

Depuis, la grève du syndicat Les Avocats et notaires de l'État québécois a pris fin, le gouvernement ayant adopté une loi spéciale.

## « L'accès à la justice doit être revu», dit la nouvelle juge en chef

Droit-Inc
Jean-Francois Parent
16 mars 2017

L'honorable Lucie Rondeau l'avoue d'emblée : ses premières semaines de nouvelle charge ont été prenantes.

« On a passé du temps à éteindre des feux », dit-elle, avec la grève des juristes de l'État, l'arrêt Jordan, la protection des sources journalistiques, l'injection de 175 M$ pour désengorger le système de justice… « Je n'ai pas eu de période de transition, l'actualité nous rattrapait », exigeant d'elle de parer au plus pressant.

Tout cela, cependant qu'elle devait s'installer dans sa nouvelle chaise.

De nouveaux juges

Il n'empêche que plusieurs dossiers ont exigé d'intenses réflexions, explique celle qui a rendu ses premières décisions en Chambre de la jeunesse.

Ainsi, prendre le temps de bien répartir les 16 nouveaux postes de juge octroyés dans la foulée des annonces ministérielles de la fin de l'année 2016.

La Cour du Québec comptera donc neuf juges de plus à Montréal, quatre dans les districts de Laval, Lanaudière et Laurentides, 2 en Montérégie et 1 à Gatineau.

L'important défi de la réduction des délais l'occupe beaucoup : « Nous réfléchissons à des façons de favoriser la gestion des instances », dit-elle.

L'honorable juge Rondeau insiste sur l'importance de « moyens novateurs » pour améliorer cette gestion, citant l'exemple de la gestion faites par les magistrats dans leur cabinet.

Toujours dans la perspective d'endiguer les délais, elle estime que l'enquête préliminaire est « modernisable. Les gens se questionnent sur la pertinence du processus, on se demande si la présence de l'accusé est toujours nécessaire ».

Plus de pouvoirs aux juges

Lucie Rondeau croit que les juges peuvent en faire davantage pour forcer le jeu lorsqu'il est enlisé, et « obliger certains avocats à révéler plus tôt leur stratégie », par exemple.

Il faudrait également « amener les avocats à se parler davantage entre eux », ce qui permettrait idéalement de réduire le temps—et l'argent—nécessaires à la conclusion de causes.
Sans compter que cela pourrait aussi permettre d'éviter qu'un accusé plaide coupable le matin du procès. Dans ces situations, la cour vient de perdre une journée d'audience qu'elle ne peut attribuer à quelqu'un d'autre dans l'heure.

Chose certaine, « on ne peut pas faire la gestion de l'instance sans connaître les positions de la défense et de la poursuite ».

Avis aux praticiens…

Tout ne se règlera pas demain

Néanmoins, « les choses ne changeront pas du jour au lendemain, cautionne-t-elle. Mais on est rendus à un moment où l'accès à la justice doit être revu », une situation qu'on ne peut tout simplement plus ignorer.

D'autant que le retour récent au travail des juristes de l'État va taxer le système encore un plus. « Je ne veux pas dire que je crains un enlisement, mais c'est certain qu'on a été proactifs pour voir comment on allait gérer » tout le travail supplémentaire que la fin de la grève apporte.

Elle juge « préoccupante » la tendance—lourde—voulant que de plus en plus de justiciables ne soient pas représentés par un avocat. Lucie Rondeau explique que les juges en tiennent compte, « mais on est toujours sur une glace mince », alors qu'il faut constamment faire l'arbitrage entre l'efficacité judiciaire et le droit des citoyens d'être entendus. Outre une plus grande sensibilisation face à ce phénomène, elle voit mal cependant comment la magistrature, par elle-même, peut s'attaquer à ce problème.

Sources journalistiques

Enfin, alors que la commission sur la confidentialité des sources journalistiques tourne à plein régime, elle réitère son dépit face à la tournure des événements. Des journalistes ont été mis sous écoute à la suite d'une autorisation judiciaire. La profession journalistique estime que cela met en danger la confidentialité des sources, alléguant que les juges ayant autorisé les mandats ont, dans les faits, permis des expéditions de pêches qui mettent en danger le lien de confiance entre les journalistes et leurs informateurs.

Une commission d'enquête a été mise sur pied.

« Je trouve déplorable de qualifier les juges de paix de magistrats de ''petits juges''. Ils ont les mêmes devoirs et obligations que les autres. C'est insultant. »

Estimant que les médias se sont épanchés en faussetés quant aux raisons qui ont amené l'émission d'un mandat d'écoute électronique visant certains journalistes, elle insiste : « Personne n'a eu accès aux informations qui ont été présentées au juge pour obtenir le mandat ! » Elle comprend donc mal comment on a pu, autrement qu'en transmettant des informations « fausses » au public, conclure que le juge n'avait pas fait son travail.

« Est-ce qu'il doit y avoir un débat sur la nécessité d'élargir la notion des sources ? Oui ! »

Mais un débat n'est pas une licence pour dire n'importe, conclut-elle.

Lucie Rondeau succède ainsi à Élizabeth Corte, dont le mandat a pris fin le 20 octobre dernier.

En mai 1995, Lucie Rondeau a été nommée juge à la Chambre de la jeunesse à la Cour du Québec avec résidence à Québec. Elle a également été juge coordonnatrice adjointe de cette chambre pour les districts judiciaires de Québec, de Beauce, de Charlevoix, de Frontenac et de Montmagny sur des périodes totalisant près de huit ans.

## More urgency needed on court delays

Ottawa Citizen
Editorial
March 17, 2017

Canada's criminal courts have long been plagued with unreasonable delays – so much so that, last summer, the Supreme Court of Canada used a case known as R v. Jordan to set hard limits on how long trials can take. This promptly spiralled into a major crisis, as hundreds of cases across Canada, including some involving serious allegations such as murder, were stayed – meaning those charged were freed without trial.

In Ottawa, judges have already pulled the plug on some high-profile cases, and more than 1,000 are at risk of being stayed. Hundreds of applications for stays have been made countrywide; and in Ontario, the Crown attorney association worries as many as 6,000 cases could ultimately be affected.

Justice authorities are scrambling for solutions. Ontario Attorney General Yasir Naqvi wants the federal government to eliminate preliminary hearings in all but the most serious criminal cases. But the Canadian Bar Association opposes this.

In Alberta, prosecutors are now "triaging" cases – that is, abandoning some, in hopes that the most violent and serious offences won't be stayed for delays.

Others urge that certain criminal cases – such as drunk driving – be treated as "administrative" charges, removing them from the criminal court system.

This problem is the responsibility of everyone in the justice system, but the federal government, based on what Justice Minister Jody Wilson-Raybould told a Senate committee recently, seems to be pinning its hopes on a case that will come to Canada's top court in April. Wilson-Raybould said the case, James Cody v. Her Majesty the Queen, will be followed "very closely" by her office.

What could happen in it is unclear, however.

Benjamin Perrin, a University of British Columbia law professor and former counsel in Stephen Harper's PMO, said the Supreme Court might decide to use Cody, a drug-trafficking and weapons case, to clarify how lower courts should assess delays for the criminal trials that were already in the system before the fateful Jordan ruling last summer. The Jordan decision, after all, was a 5-4 split ruling by the top court.

"All it takes is one of those majority judges to go 'Oh boy, actually this was a big mistake,' and have a completely different approach taken, so you could see a really quick reversal from the court itself," said Perrin.

Sen. Vern White, on the Senate committee, doubts the court will even partially reverse itself. "I don't think they see the problem. They were trying to shake up a system, and they've certainly done that."

Anne London-Weinstein, president of the Defence Counsel Association of Ottawa, noted that the Cody case is unique (for complex reasons we need not review here), which could mean its broader application is limited. But, she said, there could be some clarity on how the old rules on

assessing delay – rules that were in place before Jordan – should be used to provide context in the current era.

Maybe the Cody case will help. But there's no silver bullet for fixing court delays. Meanwhile, public outrage will only mount if more cases involving serious crime are tossed because trials take too long. The federal government, which is making judicial appointments at a glacial pace, shouldn't pin its hopes on this one judgment. It should work on an urgent basis with the provinces to clear backlogs under the ruling that now exists.

Anything else is unfair to victims and the accused.

## Supreme Court throws out drugs and guns conviction over lack of warrant

The Globe and Mail
Sean Fine
March 17, 2017

In a strong defence of privacy rights in the home, the Supreme Court of Canada has thrown out convictions against a man caught with four loaded guns and a large stash of ecstasy, cocaine and methamphetamine in his apartment because police entered the man's home without a warrant.

The case highlights the demands on police to make prompt decisions in complex areas of law, and the high stakes when they do so. And it echoes a case from 20 years ago in which police entered a man's trailer shortly after a murder and found Michael Feeney in a bloody shirt and with the victim's money under his mattress. Mr. Feeney was found guilty of second-degree murder, but the Supreme Court set aside the conviction, saying police should have obtained a warrant.

The current case, as with the earlier one, highlights an important but little-known role of judges. Under the Charter of Rights and Freedoms, evidence that police obtain from an illegal search may still be used in a trial, but the judge must decide whether allowing it or keeping it out would do more harm to public confidence in the justice system.

Justice Russell Brown, writing for the majority in the 5-2 ruling and citing the Feeney case, said the law was long settled on such warrantless home entries. "If, as the Crown says, the situation was not serious enough to arrest and apply for a warrant, then it cannot have been serious enough to intrude into a private residence without a warrant." Police should have known better, he said, and the evidence had to be excluded.

But the two dissenters, while agreeing with the majority that the search had been illegal, said police had done what they had thought was legally allowed in a case that raised novel questions of law, and that the evidence should therefore be allowed. After all, said the dissenters, both the trial judge and the British Columbia Court of Appeal had ruled the search of Brendan Paterson's apartment in Langley to be legal. So how could police be expected to know?

"In other words, the police should have known what the trial judge and three judges of the Court of Appeal did not know," Justice Michael Moldaver, joined by Justice Clément Gascon, wrote in dissent, summing up, with a touch of sarcasm, their view of the majority's argument.

Justice Moldaver then lectured the majority on "the function of the Court:" to clarify the law for police, prosecutors, judges and defence lawyers, rather than "to judge the police conduct against a standard that exceeds the wisdom and training of experienced trial and appellate judges."

The case began with a chain of circumstances 10 years ago that led the police, in good faith, according to all the judges on the Supreme Court, to enter Mr. Paterson's apartment without a warrant. First, a woman called 911, crying and hurt. Next, the woman's mother told police to go see the woman's boyfriend, Mr. Paterson. (The woman herself said she had fallen.) Police knocked at his door, and when he answered, they smelled marijuana; asked about it, he said he would fetch three roaches and turn them over. Police said they would not charge him if he did so, in what is known as a "no-case" seizure.

But because the woman's mother had told police the man owned a shotgun, and because they were worried he would destroy the marijuana, two officers refused to let him close the front door, and instead entered his apartment, where they saw guns and drugs. (In his dissent, Justice Moldaver listed the seized items: cocaine valued at $31,200 wholesale; $5,800 of methamphetamine; 9,000 ecstasy pills valued at $17,466; a loaded Smith and Wesson .38 special revolver, which is prohibited even to gun-club members; and three other loaded guns.) They arrested him, and obtained a warrant by telephone to search his home.

Justice Moldaver said there had not been a single precedent involving a "no-case" seizure, leaving the police to try to work out matters on the spot. He also suggested that, some day, the courts could discuss whether, instead of taking the drastic step of throwing out the evidence that led to a conviction, courts could reduce the sentence.

Justice Brown was prime minister Stephen Harper's last, and most conservative, appointee to the court. The ruling provides a clue to where he will stand on some criminal matters. As a law professor, he had written strongly, from a conservative perspective, against government expropriations of private land; and now he seems to be extending the defence of civil liberties and the private sphere to criminal law.

Steven Penney, who teaches law at the University of Alberta, has studied the issue of exclusion of evidence; in about two-thirds of illegal-search cases, courts toss out the evidence, he said in an interview. The Paterson case "sends a message to the police that if you're going to enter somebody's home without a warrant, then you have to have very strong reasons to believe there's either a safety issue or that if you take the time to get a warrant, valuable evidence will be lost or destroyed."

## 'Canadian criminal justice system is failing victims of crime,' says UBC prof. Victim crime expert says additional training needed for all levels of the justice system

CBC News

Matt Humphrey,
March 17, 2017

A UBC law professor is calling for mandatory training in victim's rights for all Canadian judges, police and criminal prosecutors.

Prof. Benjamin Perrin's recommendation is a key takeaway from a three-year study he conducted into victims of crime.

He believes every single criminal justice participant, at all levels, needs to understand the complicated issue of victim rights — and currently the knowledge is lacking.

"You can have the best victim services team, the best police officers, the best Crown prosecutors ... But if just one of them drops the ball, the whole case falls apart," he said.

Perrin is the author of Victim Law: The Law of Victims of Crime in Canada and he said his research has uncovered a trend of victims not reporting crimes to law enforcement.

Speaking with guest host Angela Sterritt on B.C. Almanac, Perrin said victims are often hesitant to report crime because they do not trust police in their community, they are afraid of publicity or they don't have faith in the criminal justice system.

His research includes a report from Statistics Canada that showed less than one-third of alleged offences are reported to police.

"When we look at the 2.2 million Canadians who suffer violent crime every year, it's overwhelmingly marginalized groups," said Perrin.

"Aboriginal Canadians, members of the LBGTQ community, young people, women ... Traditionally politically disenfranchised groups — so their interests really have been given no notice," he said.

'An issue of trust'

Perrin said a reworking of the justice system needs to happen so victims feel confident reporting crimes to law enforcement. This includes educating law enforcement officials about the obligations they have to victims.

He said a huge issue is victims thinking justice will not be served, whether from cases being thrown out because of long delays — or by questionable views such as the one that led to the resignation of Federal Court Justice Robin Camp.

Perrin cited cases from his research where proper forensic analysis had not been done because officers had lacked necessary knowledge surrounding rape kits. He also pointed to critical flaws in the way sexual assault trials are carried out.

Perrin said respecting the rights of an accused person is integral to the criminal justice process in Canada, but it can't be done in a way that excludes and alienates a victim.

## Bar association urges feds not to eliminate hearings
## Manitoba and Ontario called for the move to reduce court backlogs

Kevin Rollason and Mia Rabson
Winnipeg Free Press
March 17, 2017

The national organization representing the country's lawyers — including Crown prosecutors and defence counsel alike — is urging the federal justice minister to reject a call by Manitoba and Ontario to eliminate preliminary hearings.

In a four-page letter sent to federal Justice Minister Jody Wilson-Raybould, Saskatchewan Crown prosecutor Loreley Berra — the chairwoman of the Canadian Bar Association's criminal justice section — said ditching preliminary hearings would not reduce court backlogs and could lead to even more cases thrown out because of undue delays.

"If preliminary inquiries were eliminated or severely curtailed, counsel would inevitably argue that superior court trials should be conducted within a shorter time frame (e.g. 18 months)," Berra wrote in the March 14 letter. "This would imperil more serious cases currently in the system."

Berra also said the delay issues brought up recently by the Supreme Court is not new, but "highlighted the need for a thorough, evidence-based approach to criminal justice law reform, rather than suggesting a need to simply 'lop off' important aspects of the criminal justice system with proven utility, like the preliminary inquiry."

Ian Carter, the criminal justice section's vice-president, said the association's position against scrapping preliminary inquiries is important because the organization "is made up of both Crown and defence lawyers.

"It is not simply a defence organization... we discuss all of the issues and, on this, we had concerns. We don't see the benefit here."

Preliminary inquiries are held in cases involving indictable offences — serious crimes including murder, for example — in order for a judge to determine whether there is enough evidence to send the case to trial.

The bar association's position is that there are other ways to reduce court delays, including appointing enough judges, providing more legal aid, eliminating mandatory sentencing and using alternatives to court to deal with minor charges.

Last summer, the Supreme Court set time limits for criminal matters to make their way through the justice systems across the country.

Provincial court matters must now be completed within 18 months after charges are laid. Superior court cases — Court of Queen's Bench in Manitoba — have a 30-month limit. Cases that take longer are now presumed to have violated an accused person's right to a trial in reasonable time unless the Crown can prove exceptional circumstances.

The bar association's letter comes in response to a push from Manitoba's three chief judges and provincial Justice Minister Heather Stefanson for permission to scrap preliminary hearings.

"The status quo will not improve the court backlogs experienced in Manitoba's justice system," Stefanson told the Free Press in a statement.

"A way forward identified by our government and many stakeholders in the justice system, including the Supreme Court of Canada, is to reconsider the utility of preliminary inquiries in light of court delays. This specifically was identified by the Supreme Court in the Jordan ruling.

"Recognizing the need for major system changes, I, with Chief Justice Richard Chartier, Chief Justice Glenn Joyal, and Chief Judge Margaret Wiebe, suggested a balanced and responsible approach to the Attorney General of Canada. Our suggested approach is a pilot project which would replace preliminary inquiries with an out of court discovery process for more serious indictable offences.

"Our proposal would also reduce the burden that victims and their families face when testimony must be given in both a preliminary inquiry hearing and the subsequent trial."

Last month, Joyal told the Free Press the proposal is for a four-year pilot project to see if cutting preliminary hearings makes the system function more efficiently.

"A pilot project by definition is temporary... but one plus one is two. If you take away half the time that is being spent on cases now, there is time to reprioritize other matters," Joyal said. "If people don't deserve to be in custody they deserve to know that earlier than later."

In the Globe and Mail Wednesday, Joyal said the bar association is taking a "one dimensional, absolutist" position on the issue, adding he sees up to 25 cases each month go to a preliminary hearing and then take another 18 to 24 months to get to trial.

"That means for me to be able to comply with the presumptive ceiling and timelines, I have six months to schedule a very, very serious case."

Last week, Wilson-Raybould told a Senate committee she is open to the suggestion to adjust the Criminal Code to eliminate preliminary inquiries, but said she wants more data and research to show what it would do.

"There isn't consistency within all the jurisdictions in the country in terms of whether or not they should be eliminated," she said. "There is often rigorous discussion and debate about that. I will say, as I indicated in my direct conversation with minister Stefanson and (Ontario Justice Minister Yasir) Naqvi, I remain open to their suggestions."

The Senate's legal affairs committee is studying the issue of justice system delays.

Wilson-Raybould said there are internal discussions in her department looking at the idea of eliminating the hearings as well, but she won't be making any decisions until more research is done and until reports from the Senate committee and a working group of federal-provincial justice ministers are delivered.

## Supreme Court to hear 'honour killing' extradition case
## Mother, uncle accused of killing 25-year-old Jassi Sidhu because she married rickshaw operator

CBC News
Kathleen Harris
March 19, 2017

A long-running legal battle heads to the Supreme Court on Monday as two B.C. residents accused of arranging the honour-killing of a young relative in India continue to fight the federal government's efforts to extradite them.
Jaswinder (Jassi) Sidhu was found dead in a canal in India in 2000.

India has been trying for years to extradite Malkit Sidhu and Surjit Badesha, both of Maple Ridge, B.C., to face trial.

They are the mother and uncle of Sidhu, a B.C. woman whose body was dumped after her throat was slashed in Punjab. Her young husband, Sukhwinder (Mithu) Sidhu, was badly beaten and left for dead.

She was allegedly targeted for secretly marrying the rickshaw driver, a man of much lower social status, instead of the older man her family had arranged for her to wed in Canada.

Sidhu and Badesha were arrested in Canada in 2012, suspected of orchestrating the so-called "honour killing."

Indian courts asked to have the pair extradited to face trial, but a surrender order signed by former Justice Minister Peter MacKay was challenged and ultimately struck down by a B.C. appeals court last year.

The ruling said the pair could be subject to violence, torture or neglect based on India's human rights record.

Badesha's lawyer Michael Klein says the pair could be in danger if sent to India, and Canada is obliged to protect them.

"Both of these people are elderly and both have health issues and that makes them more vulnerable in an Indian prison system, especially one which has been characterized as quite brutal," he told CBC News.

But in a 46-page submission to the court, the attorney general of Canada said the B.C. appeal court "erred" and called its decision an "unwarranted interference" with the minister's order to return alleged perpetrators in the "brutal and notorious 'honour' killing of a Canadian citizen." It said the ruling jeopardized Canada's ability to live up to its obligations to extradition treaty partners.

"The need to fulfil Canada's obligations in relation to extradition is always a crucial factor precisely because of the objectives of the extradition regime including the importance of seeing justice done in the jurisdiction in which crimes are committed and the need to prevent Canada from becoming a safe haven for criminals," it reads.

Canada has received diplomatic assurances the two won't be executed, tortured or mistreated in India and that they will have access to Canadian officials.

But human rights lawyer Adriel Weaver says that's not enough.

"The prohibition on torture is absolute, and diplomatic assurances are inherently ineffective and unreliable," she said.

Human rights and justice

A number of human rights groups have intervened in the case, including Canadian Lawyers for International Human Rights, Canadian Centre for Victims of Torture, Canadian Council for Refugees, David Asper Centre for Constitutional Rights Intervener Active and the South Asia Legal Clinic of Ontario.

Juda Strawczynski, president of Canadian Lawyers for International Human Rights, said alternatives to extradition are available in cases when Canada isn't satisfied with a recipient country's human rights record is spotty, including a trial in absentia or prosecution in Canada.

But he said Canada cannot forego human rights in the pursuit of justice.

"We have to look at what we can fully consider as justice, and here we have to be mindful of Canada's reputation and trying to avoid injustices as much as possible," he said.

Seven men were convicted of the crime in India, but several of those convictions have been overturned on appeal.

## Justice in turmoil: Part one of a three-part series.
## How an 'invented' Supreme Court ruling has rocked the Canadian justice system
## The Supreme Court of Canada’s decision to put time limits on criminal trials has angered victims and left lawyers and politicians scrambling.

Jacques Gallant
Toronto Star
March 19th 2017

Eric Gottardi had been on his feet for about 10 minutes in front of the nine justices of the Supreme Court of Canada, talking about his client and trial delays, when Justice Michael Moldaver posed a question.

The judge, sitting on the nation’s top court since 2011, wanted to know about “drop dead numbers or ceilings.” In other words, just how long should it take to bring an accused to trial?

"I said, 'Having thought about it for two minutes, it's probably better than what we have right now,' " Gottardi, a Vancouver-based lawyer, told the Star in a recent interview. "He said, 'What do you think about 30 months?' I said 'I don't know, what about 24?'

"So I got the sense they were thinking of doing something creative, but when they came out and did it, it was actually a bit of a surprise, and I still don't know if the decision is a good one or not."

That decision, released last year, was R v. Jordan, which takes its name from Gottardi's client, Barrett Jordan, a Surrey, B.C., man who was arrested on drug charges and whose case took four years to get to trial.

It was good news for Jordan himself, as the top court's 5-4 decision stayed the charges against him, finding his constitutional right to a trial in a reasonable time, enshrined in section 11 (b) of the Charter of Rights and Freedoms, had been violated.

But a good decision for the country? It depends on who you ask.

Along with staying the charges against Jordan, the majority went further and completely revamped the legal framework that guides judges in deciding if a person has been tried within a reasonable time.

They implemented new so-called "numerical ceilings" after calling out what they described as a "culture of complacency" in the Canadian justice system.

The five judges found that the period between an accused person's arrest and the anticipated conclusion of their trial in provincial court should not exceed 18 months, and should not go over 30 months in Superior Court, which handles the most serious crimes such as murder.

Once those ceilings have been breached, the delay is considered "presumptively unreasonable" and the case is tossed unless the Crown can prove there are exceptional circumstances, such as the complexity of the case. Delay caused by the defence does not count in the calculation.

Already, dozens of cases in Ontario alone have been stayed under the Jordan framework, with the public becoming particularly familiar with the name when an Ottawa judge threw out a first-degree murder charge against ex-soldier Adam Picard, who was accused of killing 28-year-old Fouad Nayel, after it took four years to bring his case to trial.

The Crown has appealed the Picard decision, seeking clarity on how to properly evaluate delay in so-called "transitional cases," meaning cases that were already in the system before the release of the Jordan decision.

"A presumptive ceiling is required in order to give meaningful direction to the state on its constitutional obligations and to those who play an important role in ensuring that the trial concludes within a reasonable time," Moldaver, along with Justices Andromache Karakatsanis and Russell Brown, wrote for the majority.

"It is also intended to provide some assurance to accused persons, to victims and their families, to witnesses, and to the public that s. 11(b) is not a hollow promise."

Almost anyone who regularly toils in courthouses across Ontario — judges, prosecutors and defence lawyers — would say that despite previous rulings on delays from the Supreme Court and judicial warnings from lower courts, successive federal and provincial governments have failed to properly resource the justice system in a way that would ensure its fairness and efficiency.

"It is time for our senior levels of government to commit to a strategy that will ensure that these constitutionally guaranteed objectives are met," Judge Peter Wright of the Ontario Court of Justice wrote in a decision in January 2010, staying drug charges due to delay.

"Government has had more than 20 years to improve upon the systemic deficiencies which continue to erode the constitutional rights protected by s. 11(b) of our Charter — for the benefit of persons charged and for our society alike. Yet the situation only grows worse by the day."

So Jordan was, in principle, a necessary jolt to the system, legal observers say. The resulting stay of charges, particularly in the Picard case, has in turn incensed the public, which has pushed politicians into action.

"If victims are mad at anybody, they should not be mad at the courts, they should be mad at governments, which have consistently made business decisions to underfund the system in the expectations that judges will let them off the hook," said lawyer Frank Addario, who represented Ontario's Criminal Lawyers' Association as an intervener in the Jordan case.

"All the Supreme Court of Canada has done is say that when you continually violate the constitution, we're obliged to give the defendant a remedy. It's not a reward. It's a remedy for a past violation . . . It's easy to avoid if you don't make the business decision to violate the right to a speedy trial."

In the aftermath of Jordan, provincial governments have poured millions of dollars into beefing up the justice system. In Ontario, Attorney General Yasir Naqvi announced that the government would appoint 13 new judges to the Ontario Court of Justice and 32 new Crown prosecutors, among other changes, though critics say that still falls short of what is needed.

Naqvi is also pleading with federal Justice Minister Jody Wilson-Raybould to fill the 11 judicial vacancies in the under-resourced Superior Court.

He told the Star that he's hearing more and more stories of it taking much longer now to schedule civil and family matters in Superior Court — cases which do not carry the same constitutional right for a trial in a reasonable time.

"All because resources are being diverted to deal with criminal matters in response to Jordan timelines," Naqvi said. "The issue has a domino effect. As much as we are focused on the criminal justice system, we also have a responsibility to civil and family law. That's why I feel it's even more imperative that we find an expedited way of filling those vacancies."

Jordan's lawyers, along with the Criminal Lawyers' Association and others, had asked the Supreme Court to "recalibrate" the rather flexible legal analysis around delay, arguing that far too often cases were still going to trial despite having spent years in the system.

And while the court certainly did proceed to recalibrate, they also came up with their own numbers: 18 and 30.

Therein lies the problem, experts say, not to mention the four Supreme Court judges who did not agree with Moldaver and company. None of the lawyers proposed those numbers. None of the lawyers were asked for submissions on those numbers.

"They invented them," Addario said of the numerical ceilings.

The majority explained that they reached the new framework after conducting a "qualitative review" of almost every reported decision on delay from appeal courts in the last 10 years, and many rulings from trial courts.

"By reading these cases with the new framework in mind, we were able to get a rough sense of how the new framework would have played out in some past cases," the majority wrote. "Indeed, we note that in the seminal case of Askov, the delay was in the range of 30 months, as it was in Godin some 19 years later, and in both cases, this court found the delays to be unreasonable."

The now-retired Justice Thomas Cromwell, writing for the minority, which included Chief Justice Beverley McLachlin, pulled no punches in calling out the majority for swooping in with

the new numbers without any debate. (The minority also concluded that in Jordan's case, specifically, the delay was unreasonable and they agreed his charges should be stayed.)

Cromwell said he "fundamentally" disagreed with the approach of the majority, calling it "both unwarranted and unwise."

"Based on the limited evidence in the record, the presumptive time periods proposed by my colleagues are unlikely to improve the pace at which the vast majority of cases move through the system while risking judicial stays in potentially thousands of cases," he wrote.

"One of the themes that appears throughout the court's jurisprudence on the right to be tried within a reasonable time is that reasonableness cannot be judicially defined with precision or captured by a number. The proposed ceilings are deeply inconsistent with this constant in our jurisprudence."

The focal point of Cromwell's reasons is that determining whether an accused has been tried within a reasonable time is "inherently case-specific," and should take into account a balancing of several factors, including society's interests in bringing a case to trial, especially when a very serious offence has been committed.

"If there are exceptionally strong societal interests in the prosecution of a case against an accused which substantially outweigh the societal interest and the interest of the accused person in prompt trials, these can serve as an 'acceptable basis' upon which exceeding the inherent and institutional requirements of a case can be justified," Cromwell wrote.

The Supreme Court majority noted that the ceiling is not an "aspirational target," and that the public should expect that most cases are still resolved before coming close to 18 or 30 months.

They left the door open to the defence to still argue unreasonable delay even if the ceiling has not been breached, as long as the defence can prove they took "meaningful steps that demonstrate a sustained effort to expedite the proceedings" and that the case took "markedly longer" than it should have. But the majority also admitted that stays in such cases would be "rare."

Defence lawyers, as well as the Supreme Court minority, took issue with this, as the onus to bring an accused to trial in a reasonable time has always been on the Crown.

"It's the Crown's obligation, and yet the defence lawyer needs to essentially participate or take a significantly active role in bringing their own client to trial," said Toronto criminal defence lawyer Daniel Brown.

"That wasn't the law before, it said we can't forget that it's the Crown's duty to bring an accused to trial, and as long as the defence lawyer wasn't standing in the way of that, there wasn't this obligation imposed on them."

Criminal defence lawyers in Ontario have said the 18-month ceiling in provincial court is too high, saying the average time in the Ontario Court of Justice is closer to the 12-month range.

As for Superior Court — where the seriousness of offences, jury trials and other factors add to the complexity — some have voiced concern the 30-month ceiling may be too low.

While the Supreme Court majority may have said the ceilings are not "aspirational targets," that would not appear to be the actual reality in the lower courts post-Jordan, as defence lawyers have spoken of the prosecution and the courts putting off dealing with their cases in a quicker fashion because they're not close to the ceiling.

Brown said the new reality is that an accused person who isn't nearing the ceiling can actually be penalized for taking every step to get to trial as quickly as possible.

"You're the first case to get bumped," he said. "Because their case is no longer in jeopardy of being delayed, they're easily moved to a new court date, meaning the accused has to re-prepare their case, their life remains on hold, the defence lawyer has to charge an extra fee."

For example, Brown spoke of a client charged with sexual assault two years ago who was set to go on trial last month, but the case got pushed to August. "They said there are other cases that have taken longer than yours," Brown said.

Defence lawyers have also complained of important procedural rights for their clients being bypassed to save time, such as the Crown seeking what are known as "preferred indictments" to send an accused straight to trial without first having a preliminary hearing.

"My view is that the (Jordan) decision is going to do far more harm than good for accused individuals," said Toronto criminal defence lawyer Sean Robichaud. "Protections that accused persons would otherwise enjoy are being sacrificed, or waived under coercive circumstances, to avoid a problem they often did not contribute towards."

The lasting impact of R v. Jordan may not be known for several years. Appeals of stays of proceedings, such as the Picard murder case, are moving through the courts. One or more of them will likely end up before the Supreme Court, where the majority said that the numbers they imposed may need to be revisited one day.

"I still don't know what to think of it," Gottardi, Jordan's lawyer, told the Star.

"I really do think it took some courage to write it. Whether they're right or wrong, time will be the judge of that. It threw out 20 years of jurisprudence and we need a better way. This might not be a better way, but it's thinking outside the usual box, and courts don't often do that. They get credit for that in my books."

## Preliminary inquiries: Let judges make the call

The Globe and Mail
David Butt
March 19, 2017

David Butt is a Toronto-based criminal lawyer.

With the Supreme Court of Canada having recently imposed hard-cap deadlines on criminal cases, beyond which they must be thrown out, the debate now consuming legal circles is whether we should save time by getting rid of something called the preliminary inquiry. Predictably, those for and against preliminary inquiries are pitching their respective versions of how the sky will fall if they don't get their way. And, like so many debates in professional and personal life, this one is unproductively adversarial because it embraces the false dichotomy of absolutism: get rid of preliminary inquires altogether, or do nothing. The real issue, however, is neither abolition nor retention of the preliminary inquiry, but rather its intelligently constrained use.

Preliminary inquiries are creatures of the Victorian era. Evolved from the ancient system of grand juries, they were designed as a means of courtroom vetting of criminal allegations to ensure there existed enough evidence to put an accused person on trial. They also gave an accused person early disclosure of the case against them before a trial. There is no doubting the importance of these objectives. But we no longer need a preliminary inquiry to achieve them.

Police expertise and investigative best practices are light years beyond where they were in the 1800s, when preliminary inquiries began. Furthermore, Crown prosecutors across Canada routinely vet criminal charges, screening out the weak ones. And budget constraints on police and prosecutors help ensure that scarce resources are not squandered on hopeless cases. The result of these three developments is that preliminary inquiries have long since ceased to serve a meaningful screening role in any but the exceptional case.

Then, in 1991, the Supreme Court institutionalized the practice of what is called Crown disclosure: the accused person must promptly receive virtually the entire police investigative file, subject to few exceptions, such as the identity of confidential informants. So, every defence lawyer now routinely receives DVDs and downloads of everything even marginally relevant that

was gathered by investigators. Thus the preliminary inquiry no longer serves a legitimate disclosure function.

Having outlived its initial purposes, does the preliminary inquiry retain any residual utility? Sometimes, yes. Some cases – typically more complex ones – can be resolved more quickly if the body of evidence, assembled in police-interview videos and documents, is mounted in real life on the stage that is the preliminary inquiry courtroom. There, with live witnesses interacting in real time with lawyers, both prosecution and defence can see how the case withstands courtroom scrutiny. These courtroom insights, harbingers of a trial to come, assist both sides in assessing whether to fight on, or negotiate a compromise plea bargain.

But if preliminary inquiries only sometimes help streamline justice processes, how do we separate the wheat from the chaff, and avoid those that are time-consuming exercises in redundancy? The answer is simple, but requires willingness to embrace change – not a lawyerly strong suit.

Right now, an accused person has a right to a preliminary inquiry in most serious cases. This right exists independently of the utility of the preliminary inquiry in any given case, which means it can become a right to squander limited justice resources. On the other hand, equally perversely, the prosecutor has the right in any case to unilaterally dispense with the preliminary inquiry, again regardless of its utility in that case. So we have, at present, a silly compromise – a defence right to waste court time, and a prosecutorial power to take away something useful.

The intelligent compromise is this: since they have limited residual utility, there should be no preliminary inquiries unless whoever wants one first convinces a judge it is necessary in the interests of justice, following which it cannot be taken away. Judges know best when their courtroom is used well or poorly. Given the chance, judges will manage courtroom time effectively. With intelligent use of preliminary inquiries as the touchstone, intransigent abolitionists and status quo preservationists alike can step off their soapboxes, dispense with their heated absolutist rhetoric and engage in the more productive efforts of demonstrating precisely what justice requires in each individual case.

## Why marijuana legalization could mean more workplace scrutiny for employees

## 'The employer really has no business with what they've done on the weekend'

CBC News
Cory Correia
March 19, 2017

Workers in safety sensitive workplaces will likely see increased scrutiny of marijuana impairment by employers once the drug is eventually legalized by the federal government, says labour lawyer Julie Menton.

Legislation is set to be introduced by summer 2017.

But, a Calgary-based oil and gas safety group recently raised concerns over workplace safety risks associated with increased use of marijuana.

"I think what the concerns are is that [the] impairment at work that [employers are] already experiencing is going to grow, and that may be the case that they have more cases of people attending work impaired under the influence of marijuana than they had previously," Menton told guest host Gloria Macarenko on CBC's On the Coast.

Menton says the issue is broken down into two areas, safety sensitive workplaces, and the rest.

"Safety sensitive employers absolutely cannot tolerate any degree of impairment at work from alcohol or drugs and that's a huge issue. They have a legal responsibility to ensure a safe workplace under workers compensation legislation," says Menton. "But for employers who are not safety sensitive they're concerned about performance issues and attendance issues, and people being impaired at work and not able to do their job or coming in late, missing a lot of work."

A December 2016 federal task force report on cannabis legalization and regulation identified concerns from employer groups regarding appropriate drug use and drug testing policies in the workplace.

However, no hard recommendations were made, save for encouraging more consultations with the provinces and research on impairment.

Patty Hajdu, the minister of employment, said the federal government is working with the provinces and territories on a framework to address substance abuse in the workplace, but said those are broadly based consultations.

Balancing rights

Some safety sensitive employers in the oil and gas industry have tried to introduce mandatory testing for drugs and alcohol, but have been challenged by unions in the Supreme Court of Canada, says Menton.

"The Supreme Court of Canada recognized that there is some conflicting rights, so the right for employees to have a safe workplace, the right for employers to require a safe workplace, but also employees' privacy rights," said Menton.

"When you require all employees to submit to randomized testing regardless of the reason, for no reason at all possibly, that is an invasion of their privacy under the charter because they have to do a saliva test, or the urine test, or a blood test."

Menton says that the Supreme Court of Canada ruled that employers can only require drug testing if a person works in a dangerous workplace, has a history of drug or alcohol abuse, and there is reasonable suspicion that they are impaired at work.

"I think that employers have reasonable concerns about impairment in the workplace, particularly in safety sensitive workplaces, but it is this complicated balancing of rights issue."

Menton says effective drug testing will be problematic though, as the science is not yet accurate enough.

"If they're not impaired, and if they're able to do their job, then the employer really has no business with what they've done on the weekend," said Menton.

She says that until testing practices improve, employers and employees should plan to deal with marijuana in the workplace in much the same way as they've done with similar substances like alcohol.

## Abandon des accusations contre 36 proches de la mafia montréalaise

La Presse
Daniel Renaud
20 mars, 2017

Dans un geste sans précédent, la Couronne fédérale abandonnera demain le processus judiciaire contre 36 individus arrêtés dans la plus importante enquête antimafia depuis Colisée, a appris La Presse.

Ces personnes, accusées principalement de trafic, d'importation et de production de drogue, de possession d'armes, d'incendies criminels et d'enlèvement, ont été arrêtées en 2014, 2015 et 2016 dans l'enquête Clemenza de la Gendarmerie royale du Canada (GRC). Celle-ci avait ciblé les clans de la mafia qui avaient pris de l'importance à Montréal à la suite de l'opération Colisée qui avait sensiblement affaibli la famille Rizzuto en 2006.

Quelques accusés concernés sont détenus, mais la plupart sont en liberté sous caution.

Vendredi dernier, tous les avocats de la défense des individus concernés ont reçu une lettre de leurs homologues de la poursuite fédérale leur annonçant l'intention de ces derniers de déposer des suspensions du processus judiciaire en vertu de l'article 579 du Code criminel (nolle prosequi) dans la plupart des dossiers demain, au palais de justice de Montréal.

Les techniques d'interception

Selon nos informations, la divulgation de la preuve relative aux techniques d'enquête et à l'interception des communications privées n'est pas étrangère à cet important rebondissement judiciaire.

La grande majorité de la preuve recueillie durant l'enquête Clemenza - qui s'est déroulée en 2010 et en 2011 - repose en effet sur des millions de messages textes (pin to pin) que les suspects ont échangés sur leurs appareils de type BlackBerry et que les enquêteurs ont interceptés.

Durant l'enquête, la GRC a utilisé un appareil de surveillance appelé Mobile Device Identifier (MDI) pour prouver avec certitude que les messages textes qu'elle interceptait provenaient bien des téléphones des suspects. Il s'agit d'un émetteur-récepteur radio qui imite la signature d'une antenne cellulaire légitime, faisant ainsi en sorte que les téléphones cellulaires des environs s'y connectent.

L'avocat de l'un des accusés a présenté une requête pour savoir précisément quelle technique d'interception et d'identification a été utilisée par les enquêteurs. La poursuite a depuis repoussé la divulgation jusqu'à la date de demain. Mais vendredi, elle a annoncé une suspension du processus judiciaire pour 36 accusés. Un nolle prosequi donne tout de même à la poursuite la possibilité de porter de nouvelles accusations d'ici un an.

Des avocats n'excluent pas non plus que cette volte-face de la poursuite soit motivée, en partie du moins, par la décision de la Cour suprême (arrêt Jordan) qui limite les délais du processus judiciaire.

«À la poubelle»

«Ce sont six ans d'enquête jetés à la poubelle», a déploré une source hier à La Presse. Selon nos informations, des discussions viriles seraient survenues ces derniers mois entre la direction de la GRC et les procureurs de la poursuite sur l'éventualité de ce dénouement.

D'après des policiers, l'enquête Clemenza aurait pu déboucher sur des condamnations et des impacts pour la mafia montréalaise encore plus importants que Colisée, qui a décapité en 2006 le clan des Siciliens, qui ne s'en est jamais véritablement remis.

Mais le meurtre de l'aspirant parrain Salvatore Montagna à Charlemagne en novembre 2011, qui a eu lieu alors que les enquêteurs de la GRC captaient des messages textes incriminants, est venu tout compromettre. Les enquêteurs fédéraux ont en effet dû remettre les preuves du complot à leurs collègues de la Sûreté du Québec qui devaient élucider le meurtre, ce qui a éventé l'enquête Clemenza. Ainsi, le coup de massue anticipé au départ est devenu un coup d'épée dans l'eau, croient des policiers.

La majorité des individus qui bénéficieront demain d'un arrêt du processus judiciaire sont liés aux clans du défunt Giuseppe De Vito, empoisonné au cyanure au pénitencier de Donnacona à l'été 2013, et de Vittorio Mirarchi - protégé de Raynald Desjardins -, toujours en attente de sa peine pour le meurtre de Salvatore Montagna.

Soulignons toutefois que la poursuite maintient des accusations contre 11 individus arrêtés pour trafic de cocaïne et gangstérisme dans la dernière phase de l'enquête Clemenza en mai 2016. La poursuite demandera demain de remettre de nouveau à une date ultérieure la divulgation sur la technique d'interception des messages.

Davide Barberio... (Photo Archives La presse) - image 2.0

Agrandir

Davide Barberio

Photo Archives La presse

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DAVIDE BARBERIO

37 ans

Surnom : Baldy

Détenu depuis 2014, Barberio devrait être libéré mardi. La police le considère comme l'un des individus les plus importants parmi ceux qui bénéficieront d'une suspension des procédures.

Barberio est l'un de ceux qui ont été accusés à la suite de la découverte d'un véritable arsenal de guerre dans un entrepôt de la rue Pascal-Gagnon, à Montréal, en février 2011. Il est perçu par les

policiers comme un successeur éventuel au défunt chef de clan Giuseppe De Vito, dont le fief était le quartier Rivière-des-Prairies.

LIBORIO CUNTRERA

48 ans

Surnom : Pancho

Il est le fils d'Agostino Cuntrera, le « seigneur de Saint-Léonard », assassiné devant son entreprise en juin 2010. Arrêté en mai 2016 dans la dernière phase de l'enquête Clemenza et accusé de trafic de cocaïne, Liborio Cuntrera est l'un de ceux qui profiteront d'un arrêt du processus judiciaire demain. Il était en liberté en attendant son procès qui ne viendra pas. Il serait impliqué dans des négociations de paix en cours au sein de la mafia montréalaise.

MARCO PIZZI

47 ans

Surnom : Pizz

Il est considéré par la police comme un important importateur de cocaïne lié à la mafia. Une des accusations de trafic de cocaïne portées contre lui à la suite de son arrestation dans la phase 3 de Clemenza en mai 2016 tombera demain, mais il demeure toujours accusé de trafic et de complot dans d'autres dossiers. Il est lui aussi en liberté. Pizzi a échappé à une tentative de meurtre l'été dernier, et plusieurs de ses biens immobiliers ont été la cible d'incendies criminels depuis l'automne dernier.

***Individus toujours accusés

•Franco Albanese
•Antonio Ciavaglia
•Erasmo Crivello
•Claude Ducharme
•Antonio Guido
•Frank Iaconetti
•Hansley Lee Joseph
•Carlemo Marsala
•Marco Pizzi
•Ricardo Preteroti
•Andreas Tasci

# Justice in turmoil: Part two of a three-part series.
# Scrapping preliminary hearings 'not going to solve' problem of court delays

**Defence and Crown lawyers say Attorney General Yasir Naqvi's proposal to greatly limit the use of preliminary hearings ignores the real problems causing delays in the justice system.**

Jacques Gallant
Toronto Star
March 20th 2017

It was the speech that felt like a slap in the face to criminal defence lawyers.

Ontario Attorney General Yasir Naqvi, speaking to the Empire Club of Canada in Toronto last month, said he had written to his federal counterpart asking for reforms to the Criminal Code that would greatly limit the use of preliminary hearings as a way to speed up the justice system.

The hearings are typically held before trials in Superior Court, which handles the most serious cases, such as murder, where witnesses testify under oath and allow for a lower court judge to determine if there is enough evidence to send the accused to trial.

"We need to make bold changes to speed up and simplify the criminal court process," Naqvi wrote to federal Justice Minister Jody Wilson-Raybould.

The speech came as a surprise to the criminal defence bar, some of whom took to Twitter to vent their frustration, denouncing Naqvi's idea as short-sighted and nothing more than a political move that won't lead to real change. They also criticized the lack of consultation on the issue with the Criminal Lawyers' Association.

"Like many knee-jerk reactions on the part of the attorney general, it makes for nice headlines but will do little to address the underlying problem of insufficient judicial resources and insufficient funding for the infrastructure (Crowns, staff, space, legal aid)," lawyer Michael Lacy told the Star.

Naqvi's idea was not radical. It has been floated for decades by governments, think-tanks and even the Supreme Court as a way to combat chronic delays in the court system, with proponents saying that historic rationales for preliminary hearings no longer exist.

Opponents, particularly defence lawyers, are adamant that prelims still have value. They say they allow both sides to narrow the issues ahead of trial and, in a small number of cases, reveal that the evidence is so weak that the case cannot proceed to trial. Prelims also allow the defence to

hear directly from police witnesses, and can help lawyers decide if they should bring constitutional challenges relating to their client's arrest.

The renewed push to scrap most preliminary hearings, which is backed by several other provinces including Manitoba and Alberta, comes in the wake of the Supreme Court of Canada's landmark 2016 ruling, R v. Jordan.

The 5-4 ruling set new timelines to bring an accused person to trial which have sent politicians and the legal community scrambling: 18 months in provincial court and 30 months in Superior Court.

The top court's majority even included this line at the end of its judgment: "Parliament may wish to consider the value of preliminary inquiries in light of expanded disclosure obligations," referring to the Crown's obligation to turn over its evidence to the defence to prepare for trial.

Naqvi had already announced last year that the provincial government would appoint more judges to the Ontario court of justice and prosecutors following the Jordan decision, but his request regarding preliminary hearings is so far his most notable attempt at reducing delay. He called it a necessary "structural change" in an interview with the Star.

"We cannot just agree on status quo anymore," he said.

"I think the Supreme Court has told us very clearly that being complacent is no longer the option. So it's important from my perspective that we have a national conversation so that we can look at that idea about preliminary inquiries and others in the view of structural change, so that we have timely delivery of criminal justice in our country and in Ontario."

By way of justification, Naqvi told Wilson-Raybould in his letter that there are now "more effective and efficient procedures in place to assess the sufficiency of charges," saying that the Crown's screening standard on pursuing charges is already higher than the preliminary hearing test on whether an accused should stand trial.

He also noted that the Supreme Court has previously said the discovery function of the preliminary hearing, where the accused hears the case against them, has "lost much of its relevance" given a landmark 1991 ruling from the top court, R v. Stinchcombe, which found the Crown already must provide all evidence to the defence.

"In recent months, Ontario has been conducting detailed analysis regarding the effectiveness of preliminary inquiries in criminal cases destined for the Superior Court," he wrote.

"We have found that the vast majority of preliminary inquiries result in the accused being committed to stand trial, yet this step in the process typically adds many months to the length of a criminal case."

Wilson-Raybould has yet to formally reply. Naqvi asked her for a special meeting that would include all provincial and territorial justice ministers to consider what other steps should be taken now. Naqvi also reiterated his plea that Wilson-Raybould move to fill the 11 judicial vacancies in the understaffed Superior Court.

The fact Naqvi asked that preliminary hearings be limited to the most serious of cases such as murder came as a bit of a head-scratcher to defence lawyers, seeing as most of the hearings are already only happening in serious cases.

According to Statistics Canada, preliminary hearings were requested or held in only about 3 per cent of completed adult criminal cases in 2014-2015, which StatsCan said has been a "consistent trend" over the past 10 years.

Defence lawyers point out the actual percentage may be even lower because the data do not distinguish between hearings that are scheduled and held versus scheduled, but not held — for example, an accused person showing up for the first day of the preliminary hearing, but who ends up pleading guilty instead.

Of the 9,179 completed adult criminal cases that involved a preliminary inquiry in 2014-2015, about 80 per cent were completed before the 30-month ceiling in Superior Court that was set by the Supreme Court in Jordan.

"Preliminary hearings are a low-hanging fruit that provides a political solution and the appearance of action," said Ottawa defence lawyer Michael Spratt. "(Naqvi's) letter was a political letter, it's why it was released publicly. I have no doubt that Minister Naqvi has ways to communicate discretely his concerns with (Wilson-Raybould), but he didn't do that this time.

"If he really wanted to write to the federal government to provide real solutions, he could have asked for speedier action on reforms to minimum sentences, to restore elements of conditional sentences. He could have urged the federal government to decriminalize marijuana while we wait for this long-anticipated legislation."

Lawyers are quick to point out that the Supreme Court set a 30-month timeline in Superior Court, versus 18 months in provincial court, for a reason: It takes into account that there may be a preliminary hearing. Without the prelim, the 30-month ceiling would probably be knocked down by the top court.

Although no changes have yet been made to the Criminal Code regarding prelims, defence lawyers in Ontario have already complained of Crowns increasingly seeking what are known as "preferred indictments" post-Jordan to bypass the preliminary inquiry and head straight to trial. (There is no constitutional right to a preliminary inquiry, although lawyers say it is an important procedural right for the accused.)

The Criminal Lawyers' Association president, Anthony Moustacalis, said it is not unusual for "interested parties" not to be consulted on inter-government proposals ahead of time, but said he did with meet with Naqvi soon after the letter was made public.

"Importantly, he agreed to keep an open mind, but wanted to start the inter-government dialogue right away," Moustacalis said. "I explained that prelims are necessary, are generally two days or less, and save time in Superior Court. Also, they allow the parties to assess the viability of their case better than untested statements to police."

On the prosecution side, there are still times when Crown attorneys are grateful for the preliminary hearing because it gives them an opportunity to assess their case in advance of a trial, said Kate Matthews, president of the Ontario Crown Attorneys' Association.

"There are times when you finish a prelim and think, 'Do I really want to take this to a jury? Are there weaknesses in the case that have been revealed?' " she said. "You can't always see the strength of the case on the paper disclosure you have."

Matthews explained that the vast majority of cases are known as "hybrid offences," where the Crown can elect to proceed summarily or by indictment. If they proceed summarily, the case is heard in provincial court, where the maximum penalties are lower and the cases are often dealt with quicker. Another result of proceeding summarily is that there is no preliminary hearing.

"Increasingly, this was happening long before the Jordan decision came down. Crowns were already well aware of delays, especially in Superior Court," Matthews said. "Where possible, if it was still a legitimate route to take without offending other principles, we were trying to elect summarily to keep cases out of Superior Court."

Matthews said she doesn't believe abolishing prelims will be helpful in the long run.

"It's a complicated issue, but what I would say is this: when you're looking at the tools to solve trial delay, preliminary inquiries are a small, small part of why we have trial delay. To the extent that governments are looking to changes of the preliminary inquiry rules to solve this problem, it's not going to solve this problem."

If the concern is clogging up the courts, Toronto criminal defence lawyer Daniel Brown has suggested that in some cases where both sides agree there should be a trial, a preliminary inquiry could be held in a boardroom without the need for a judge or courtroom, similar to the discovery process used in civil proceedings.

“There are cases where we agree the case should go to trial, we just need to hear from certain witnesses,” he said.

“Often times, waiting for a courtroom and a judge to be available is what leads to a lot of the delay. When we go into court and they say we can give you a judge or courtroom six months from now, well, how long will it take to get a boardroom? And what it does is that those cases that do require a judge can be heard sooner.”

It’s true that most accused persons are sent to trial after a prelim, but some charges are modified at the end of the prelim, such as a first-degree murder charge being dropped down to second-degree based on the evidence presented.

In a small number of cases, the accused is “discharged” when the judge rules there isn’t sufficient evidence for a trial. Even if they might have been acquitted at trial, being discharged means the accused person no longer has criminal charges hanging over their head along with bail conditions, and in some cases, no longer has to stay in jail pending trial.

“People who want to get rid of the prelim will say we don't have that need for discovery anymore because we have full disclosure, but the preliminary inquiry has two purposes, a discovery purpose and a screening purpose,” said Ottawa criminal defence lawyer Anne London-Weinstein.

She raised the case of Susan Nelles as an example of the preliminary inquiry’s screening purpose.

The young Hospital for Sick Children nurse was accused in the early 1980s of murdering four infants, a sensational story at the time, only for the case to collapse at the preliminary inquiry and for Nelles to be discharged. (Questions have been raised about whether any of the babies were actually murdered, or were inadvertently exposed to a toxin in medical equipment.)

The case against Nelles is now considered to have been bogus. The provincial government later paid her $190,000 in compensation.

## Mafia: la Couronne abandonnerait de graves accusations contre 17 suspects

La Presse Canadienne

20 mars 2017

La Couronne fédérale demanderait mardi l'abandon de plusieurs accusations graves portées de 2014 à 2016 contre une multitude d'individus liés à la mafia de Montréal.

Le nombre de personnes qui profiteraient d'une telle procédure varie selon les sources qui rapportent la nouvelle lundi. Leurs avocats auraient été avisés par écrit vendredi dernier des intentions de leurs homologues du ministère public.

Il s'agit de suspects accusés notamment de trafic, d'importation et de production de stupéfiants, de possession d'armes, d'incendie criminel et d'enlèvement. Ils ont été arrêtés lors du déploiement de l'enquête policière Clemenza de la Gendarmerie royale du Canada (GRC), l'une des plus importantes menées contre la mafia lors des dernières décennies.

Les sources qui rapportent la nouvelle précisent que la décision de la Couronne repose sur la preuve recueillie et les techniques d'enquête qui ont été utilisées. La grande majorité de la preuve serait constituée de millions de messages textes que les suspects auraient échangés et que les enquêteurs ont interceptés.

Il semble que la défense ait contesté avec vigueur la validité de cette preuve.