New Judges Appointed to the Ontario Court of Justice
Ministry of the Attorney General
Newswire
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Ontario has appointed three new judges to the Ontario Court of Justice effective April 25, 2018.

Justice Kevin Kells McCallum was called to the bar in 1988. For over 25 years he has worked as a sole practitioner specializing in criminal law, appearing before both the Ontario Court of Justice and the Superior Court of Justice. Most recently, he has been an agent for the Public Prosecution Service of Canada (PPSC), prosecuting Controlled Drugs and Substance Act matters in Halton Region. Justice McCallum was a local defence counsel representative for the Brampton Criminal Justice Coordinating Committee, Alternative Resolution Court Committee and Daily Case Management Court. He has also been a speaker at various high schools in Peel Region to discuss the practice of criminal law and the justice system.

Chief Justice Lise Maisonneuve has assigned Justice McCallum to preside in Brampton.

Justice John North was called to the bar in 1991. He has worked as Crown counsel for the Public Prosecution Service of Canada (PPSC) and Department of Justice (Canada) since 1993, and was promoted to senior Crown counsel in 2002. He has been an active member of the National Prosecution Policy Committee, a group that serves as an advisory and decision-making body on matters that affect the PPSC nationally which are not related to a specific ongoing prosecution or appeal. He has also been a member of the PPSC Ontario Regional Office Appeals Committee, which reviews and makes recommendations on all proposed appeals by the PPSC in Ontario. Justice North served on the board of directors of Alzheimer Society Peel from 2010 to 2016, later becoming the chair of the policy committee and a member of the organizing committee for the 2017 Walk to End Alzheimer's and Unforgettable Run.

Chief Justice Lise Maisonneuve has assigned Justice North to preside in Toronto.

Justice Glen Scott Donald was called to the bar in 2002. After nine years with Seabrook, Epstein, Miller & Trudell in London, he took over his mentor's place in the practice, continuing to focus on criminal law and acting as counsel for police associations. Justice Donald served on the board of directors for Childreach, a non-profit organization that assists parents and educators by providing educational programming and support services. He also has served on the board of directors for London District Distress Centre, which provides supportive listening to those suffering from mental health crises. Previously, he has given presentations on policing's impact and relationship with the justice sector.

Chief Justice Lise Maisonneuve has assigned Justice Donald to preside in St. Thomas.

Chasing an elusive consensus on justice reform

Finding common ground among Canadians on criminal justice reforms will be a challenge, in an era of competing visions and a lack of performance data.

Policy Options

Yvon Dandurand

April 16, 2018

No one disputes that the criminal justice system is in need of major improvements. It requires fundamental change, and this requires not only a clear vision but also political courage. The minister of justice, Jody Wilson-Raybould, has embarked on a project to transform the criminal justice system and ensure that it reflects the "kind of country we want Canada to become." One would be hard-pressed to define criminal law reform in more ambitious terms. The reform process will have to address many challenges. On March 29, as a first instalment, the minister introduced legislation to improve the efficiency of the system and reduce court delays. The proposed legislation does not address every important issue, but it proposes daring and potentially controversial measures to transform key aspects of the criminal justice process.

With respect to what sort of justice system would reflect the "kind of country we want Canada to become," one may doubt very much that a consensus really exists or is even possible around a system that would reflect every aspiration of Canadians. Proposed reforms will have to find a way to reconcile or at least find a middle ground among competing Canadian visions of the future of the criminal justice system. Among these visions, one recognizes a bureaucratic/technocratic version of law reform (with a focus on improving the system's efficiency, shortening the process or finding alternatives to it, and cutting costs); a more idealistic version (improving fairness, buttressing the rule of law and protecting the rights of vulnerable people and groups); a systemic approach; a more aspirational view; and a resolutely more populist version (aiming to respond to expressions of public fear and a view based on the supremacy of the role of punishment and deterrence). Which will it be?

With respect to what sort of justice system would reflect the "kind of country we want Canada to become," one may doubt very much that a consensus really exists or is even possible around a system that would reflect every aspiration of Canadians.

These visions sometimes contain grounds for agreement. This is the case for arguments in favour of reducing delays in criminal proceedings, as exemplified by the report last year of the Standing Senate Committee on Legal and Constitutional Affairs, Delaying Justice Is Denying Justice; the need to address these delays was rendered urgent by the 2016 Supreme Court decision in R. v. Jordan. More often, however, visions clash, as was the case when a previous government inspired by a more populist vision adopted mandatory minimum penalties for several types of crime in the name of promoting public safety. More recently, the verdict in the trial of Gerald Stanley, found not guilty in the death of young Cree man Colten Boushie, divided Canadians pretty evenly and raised concerns once more about the process of jury selection.

It does not help much to turn to public survey data to tease out what might be the basis of an improbable consensus on the future of the criminal justice system. Surveys, such as the 2016 National

Justice Survey commissioned by the Department of Justice, reveal how fragmented public opinion is on key criminal justice issues. Public expectations of that system are steadily increasing and not always very realistic. These days, public safety is a commodity in high demand, and the criminal justice system struggles to define its own responsibilities and limitations in that regard.

Canadians do have a fairly high level of confidence in their justice system, yet that trust is not unassailable. It matters that Canadians who have had contact with the system.

Improving confidence in the criminal justice system is another key challenge. Minister Wilson-Raybould, when she unveiled her most recent reform proposal, explained that "Canadians deserve a justice system that reflects their values and in which they can have confidence." According to data from the General Social Survey published in 2015, Canadians do have a fairly high level of confidence in their justice system, yet that trust is not unassailable. It matters that Canadians who have had contact with the system, as revealed by the National Justice Survey, express less confidence than Canadians with no contact.

A survey conducted earlier this year by the Angus Reid Institute suggests that public confidence in the justice system overall might have declined recently and confirms that that level is even lower among visible minorities. The same survey revealed that more than 6 in 10 Canadians (62 percent) believe that the justice system is "too soft" on offenders. Public trust in institutions is hard earned but easily dissipated. Is that trust particularly at risk in a "post-truth" world, where the opinions of experts matter much less than they used to and where, to paraphrase John F. Kennedy, everyone can enjoy the comfort of an opinion, without the discomfort of having to confront it with logic or evidence? How relevant, for example, is the advice of University of Toronto criminology professor Anthony Doob on the need for a "values and evidence approach to sentencing" when the public debate around sentencing remains at an entirely different and simplistic level?

Restorative justice, a case in point, is expected to be highlighted in the proposed reforms. It was included in the mandate letter of the minister of justice. Its advocates present it, albeit not always very convincingly, as a means to fundamentally transform the justice system, and as a way to bridge the divide with Indigenous communities, to better address the needs of victims, to respond to some serious crimes, including domestic violence, and to provide a more direct and satisfying path to access justice — or simply as a way to reduce costs.

Can we assume that Canadians are ready to rely on nonretributive alternatives to the current system? Research in many countries shows that public knowledge of restorative justice is limited, but that public attitudes about it and its core elements of reparation and participation are quite positive. Still, support for restorative justice programs is not universal. In the recent National Justice Survey, over one-third of respondents expressed concerns about the use of these processes in the criminal justice system.

Canadians can hardly be blamed for entertaining various misgivings about criminal justice. They really do not know much about how the system functions. There is a baffling lack of good performance data on its functioning and on the outcomes of the criminal justice process. The system is complex and opaque, and the public is constantly exposed to sensationalized and fear-mongering depictions of crime and justice.

This is one of the most persistent challenges of criminal law reform. Efforts are required to develop valid, credible and publicly accessible data on the system and its performance and efficiency as a foundation for public discourse and debate and for criminal justice policy development.

Late last year, the Department of Justice launched a consultation on the development of a transparent performance measurement framework for the criminal justice system. In the context of the federal government's commitment to deliver measurable results in all sectors, one can only applaud these initiatives, even if they may not immediately contribute to informing the debate on the merits of the expected reform proposals.

The minister of justice and her officials may prefer the rational approach and may hope that improving public knowledge of the criminal justice system and carefully explaining the proposed reforms will be sufficient to build consensus around them. But it will probably not be that easy to develop the necessary support, within and outside the justice system, to effect the proposed transformation. More information and consultations may not be enough. In fact, the politics of criminal law reform may have profoundly changed. When knowledge and understanding are generated by distributed and unaccountable sources and when pseudo-facts are repeated with little regard for their veracity in the echo chambers created by social media, how can the brave law reformer manage the debates that are so essential to fundamental reform?

This article is part of the Widening the Lens on Criminal Justice Reform special feature.

High time to do away with the mandatory victim surcharge
The Province
Andrew Stobo Sniderman and Vincent Larochelle
April 16, 2018

There is a long tradition of legislators leaving hard questions to judges. When convenient, politicians facing a problem can dodge or delay. By contrast, when a judge is thrown a hot potato, hands must burn – and, hopefully, justice gets done.

Prime Minister Justin Trudeau's government stalled for 18 months after introducing a draft law to abolish the requirement of a so-called "victim fine surcharge" on those who commit any kind of criminal offence.

The mandatory surcharge imposes minimum fines on offenders, at $100 or $200 per offence, regardless of the seriousness of the crime, whether the offender can afford the fine, or even whether or not there is a victim.

Each fine may not seem like much, unless you are destitute, in which case a number of petty offences can indefinitely saddle you with the crushing burden of debt and the stigma of criminality.

In 2013, Stephen Harper's Conservatives made the fine mandatory on all offenders, indigent or otherwise, because apparently being tough on crime requires indiscriminate punishment, and so be it if

the most vulnerable bear the greatest burden. One judge in Ontario called the mandatory surcharge "a tax on broken souls."

In the Yukon, where administration of justice offences are five times higher per capita than the Canadian average, alcoholics are racking up thousands of dollars of fines for violating parole or bail conditions that require sobriety and avoiding bars.

The cycle is predictable, common, and, yes, victimizing.

It is also a great waste of time and resources, in the Yukon as across Canada, because our justice system spends so much energy chasing after people who will never be able to pay.

When the victim surcharge was created in 1989, judges had discretion on whether to impose it, and the laudable goal was fundraising for victim services. Which is great, unless attempts to enforce the fine on people who can't afford it costs even more.

Here as always, blind vengeance makes bad policy.

It is trite and true to say that politicians of all stripes historically have a hard time producing rational criminal justice legislation. It is all too easy for blowhards to campaign on maximum punishment for the most guilty. Judges face a different reality in the day-to-day operation of the system, which is clogged by offenders who are not so much evil as poor, desperate and addicted.

Inflexible, harsh laws make no sense for these people.

Tomorrow, the Supreme Court will hear arguments on whether the mandatory surcharge is constitutional. We will be among those arguing the court should strike it down.

Fairness demands punishment that is proportional to the circumstances of each case.

Interestingly, the court will not hear from the attorney general of Canada, who withdrew a planned intervention in the case.

Presumably, this has something to do with Minister of Justice Jody Wilson-Raybould's comment in 2016: "Imposing a victim fine surcharge on somebody that is a marginalized person that has an absolute inability to pay because of their financial circumstances, whether that be homelessness or not being employed, does not bolster a fair justice system."

Lawyers may be experts at polishing turds, but clearly the Liberal government knows how much this law stinks. In this case, rightly, the attorney general's silence is the opposite of complicity.

It is evident that Wilson-Raybould cares deeply about the ongoing injustice of the mandatory surcharge, and wants the law changed. In October 2016, she introduced a paragraph-long statute, C-28, to do just that.

But that draft bill just collected dust and went nowhere. Then, late last month, she introduced a new law proposing broad criminal justice reform, C-75, which includes provisions to deal with the pernicious effects of the mandatory surcharge.

The new bill is a significant though incomplete move toward the necessary systemic changes this government has promised for our criminal justice system. We hope the government shows the requisite urgency to get it passed before the next election.

Legislative time is relatively short, and the surcharge continues to wreak systemic havoc in the lives and communities of the most vulnerable.

Perhaps the Supreme Court will strike down this unjust law. If the court doesn't – and it may not, because not every unfairness is unconstitutional – we will need legislators to make things right.

Vincent Larochelle is a criminal defence and appellate lawyer in the Yukon and former law clerk at the Supreme Court of Canada.

Andrew Stobo Sniderman is a visiting researcher at the University of Ottawa's Human Rights Research and Education Centre, and former policy adviser to two Liberal cabinet ministers.

After 40 years, federal government removes barriers to disabled immigrants
National Post
Teresa Wright
The Canadian Press
April 16, 2018

OTTAWA — After four decades, the federal government is getting rid of rules that turned away would-be immigrants with intellectual or physical disabilities, Immigration Minister Ahmed Hussen said Monday.

The government will no longer be allowed to reject permanent resident applications from those with serious health conditions or disabilities.

Most of those impacted by the policy have been economic immigrants already working and creating jobs in Canada, but whose children or spouses may have a disability, Hussen said.

"The current provisions on medical inadmissibility are over 40 years old and are clearly not in line with Canadian values or our government's vision of inclusion."

He cited the case of a tenured professor at York University who was denied permanent residence because his son had Down syndrome and another case of a family that came to Canada and started a business, but were rejected because of a child with epilepsy.

“These newcomers can contribute and are not a burden to Canada,” the minister said. “These newcomers have the ability to help grow our economy and enrich our social fabric.”

The changes will amend the definition of social services by removing references to special education, social and vocational rehabilitation services and personal support services.

Ottawa is also tripling the cost threshold at which an application for permanent residency can be denied on medical grounds.

This will allow immigrants with minor health conditions that have relatively low health and social services costs to be approved for permanent residency, such as those with hearing or visual impairments.

Of the 177,000 economic immigrants admitted to Canada every year, about 1,000 are affected by the medical inadmissibility policy. The changes are expected to dispense with a majority of these cases.

There have been calls to repeal the policy entirely, including from the House of Commons citizenship and immigration committee, which studied the issue last year.

Liberal MP and committee chair Rob Oliphant said he had hoped government would announce a full repeal. But more work must be done to determine the full cost implications to the provinces, he said.

“We at committee could not get good cost data,” Oliphant said.

“Right now (Hussen) is going to have to look at this, the minister of health will have to look at this, the provinces and territories are going to have to look at this and hopefully in a year or two they are going to recognize that this is not a significant cost.”

But Conservative immigration critic Michelle Rempel says she believes the costs could indeed be high. She was critical of government’s decision to move ahead with changes before any concrete data has been developed to determine the costs to the provinces and territories.

“My concern is that the federal government is downloading costs to the provinces without a real plan to deal with that and that seems like something they should have done and considered before they made this announcement.”

Hussen told reporters Ottawa will pay the costs of the changes announced Monday, but remained unclear about whether this would mean additional money in health or social services transfers.

“We will reflect on these changes to see the impact that they will have. We have to wait and see what the numbers will be before I can answer that question, ” Hussen said.

Meanwhile groups that have been advocating for a full repeal of the policy are expressing disappointment over the changes, which they say don’t go far enough.

James Hicks, national director of the Canadian Council of Canadians with Disabilities (CCD), called the changes mere “tweaks.” His organization wanted a full repeal of the medical inadmissibility provisions.

“While today’s announcement should make it easier for some persons with disabilities to come to Canada, it falls far short of legislative reform that we had expected.”

Felipe Montoya, the university professor whose case was cited by Hussen, welcomed the changes, but added he feels they fall short of what many advocates and individuals have pushed for:

“We recognize this timid move in the right direction, but will be relentless in calling for what should have been done today and not in some indefinite future — full elimination of this discriminatory policy.”

The changes are expected to come into effect immediately.

Justice system not living up to 1999 promise to Indigenous offenders, say N.W.T. advocates
'Problems are getting worse but it's what we do next that everyone is still struggling with,' says lawyer
CBC News
Emily Blake
April 16, 2018

Almost two decades after a landmark Supreme Court of Canada decision stressed the importance of restorative justice, advocates say the Northwest Territories' justice system still isn't doing enough for Indigenous offenders.

The court ruled in the 1999 case R v. Gladue that judges should consider alternatives to incarceration when sentencing Indigenous offenders and take into account their unique life circumstances.

That's now known as Gladue factors, which can include family history of substance abuse and intergenerational trauma from the residential school system.

The 1999 Gladue decision was intended to address the overrepresentation of Indigenous people in the criminal justice system.

Many Indigenous justice advocates across the country, however, say the justice system has failed to live up to that promise, including in the North where there are higher rates of Indigenous incarceration.

Among those with concerns is N.W.T. defence lawyer Caroline Wawzonek, who said there are few meaningful alternatives to probation or jail time in the territory and that there's not a full understanding of traditional Indigenous laws and approaches to justice among judges and lawyers.

"We could do a better job," she said, explaining that both federal and territorial governments are responsible for Indigenous people's Gladue rights.

"It is an excuse to wait for someone else to fix the problem, both levels of government need to show some action," she said.

One issue Wawzonek highlighted is how Gladue factors — information about an Indigenous offender's background — are gathered and presented to the court. While some jurisdictions in Canada like Yukon have separate Gladue reports, in the N.W.T. this information is incorporated into regular pre-sentence reports, which are written by probation officers.

Wawzonek said there is a question of whether this should be done by an Indigenous person from the community.

She said she wants to see more restorative justice options, better integration between health and social services and the justice system, and for communities to be able to contribute more to the court process.

"People will start to be more respectful of the justice system generally when they feel like it's actually something that is theirs," she said.

Dene chief concerned, wants prevention

Bill Erasmus also said the Gladue decision is not being implemented to the effect that it should. Erasmus is the chief of the Dene Nation and regional chief to the Assembly of First Nations for the Northwest Territories.

One of his concerns, he said, is that it's difficult to get people out of the criminal justice system, which they are often coming into contact with at a young age. He said he would like to see greater prevention efforts and more flexibility in the system because each community is different.

"You want people to do well, you want them to contribute and you want their children to also be able to be good citizens," he said.

Erasmus also said for him the solution goes hand in hand with self-government, the right to self-determination and the ability for First Nations to have their own justice systems in place.

"That's going to be the answer because it provides an opportunity for people to develop something from the ground up, rather than adopting a system that was designed, really, not with their needs in mind," he said.

The N.W.T.'s Justice Department said it includes Gladue principles in many services like specific training for probation officers. It also said the territory has one of the longest-running community-based restorative justice programs in Canada that can offer diversion and land programs.

The government also highlighted the wellness court and domestic violence treatment option court as alternatives which focus on an offenders' underlying reasons for offending rather than the offence.

In the 2017-18 year, the department said it provided $1.4 million for community justice programs and projects, along with $315,000 from the federal government for Indigenous justice programs. It said 30 communities accessed the funding.

Wawzonek said community justice committees have been doing great work, and that since the Truth and Reconciliation Commission released its calls to action, there has been greater recognition in the justice system and more meaningful conversations on the issue.

But she noted there are still challenges, including that many community justice coordinators are only funded for part-time work, lawyers often have high volume case loads and there may be a level of distrust from some community members who have been failed by the justice system.

"Clearly what we've been doing for 20 years ... hasn't worked, hasn't fixed the problem. Problems are getting worse but it's what we do next that everyone is still struggling with," she said.

Supreme Court to hear arguments on constitutionality of victim surcharge
The Globe and Mail
Sean Fine
April 16, 2018

A rare judicial rebellion against a criminal law passed by Parliament will receive unusual backing at the Supreme Court this week – from the prosecution.

The question for the court is whether the “victim surcharge,” a mandatory financial penalty for convicted offenders, is an unconstitutional form of cruel and unusual punishment against the poor.

The surcharge is $100 for each minor offence, and $200 for each serious one; for multiple offences, the penalty can amount to hundreds of dollars. The Conservative government of Stephen Harper made the charge mandatory in late 2013. The money is supposed to go to victim services, and is aimed at holding offenders accountable, the government said.

A group of offenders is challenging the law.

Denied the discretion to waive the penalty for impoverished offenders such as a homeless Ottawa man with a monthly income of $250, judges refused to impose it as written. One judge said it was “embarrassing” to be part of a system with such laws.

Some judges gave offenders 25, 50, even 99 years to pay. The law allows judges to use a fine as an alternative to the fixed penalties, and some have given fines as low as $1, which would include a surcharge of 30 cents.

In two days of hearings at the Supreme Court beginning on Tuesday, the Ontario Attorney-General’s department, which prosecuted some of the cases, will argue that the availability of those methods to

evade the surcharge demonstrates why the law should be upheld: Because the judges retain their discretion to fit the penalties to the offender.

“A lengthy extension – years or even decades where reasonable on the facts – can be given to account for the actual anticipated income and expenses of an offender,” the province says in a filing at the Supreme Court.

As for the minuscule fines, it said judges cannot set out to “neutralize the surcharge.” But “that said, in a case where a small fine that the offender can afford is fit, having regard to relevant principles of sentencing, the surcharge would be 30 per cent of that fine.”

A lawyer for some of the offenders, however, argues that the judges’ evasive tactics show why the law should be struck down as unconstitutional.

“It’s not appropriate to have to do an end-run around the law to avoid unconstitutional consequences,” Delmar Doucette said in an interview. At the Supreme Court, he will represent four convicted offenders ordered to pay surcharges of hundreds of dollars.

“The law is requiring trial judges to do something that they know is unjust, and they bristle at that. They should have the discretion to do what is just.”

The surcharge was a central part of the former Conservative government’s plan to rebalance the justice system in favour of victims. A surcharge created in 1989 had allowed judges to exempt the poor. Last month, the Liberal government introduced a bill that would restore that discretion. However, a similar law the Liberals introduced earlier was not passed.

Mr. Doucette and intervenors that include the Criminal Lawyers’ Association and Aboriginal Legal Services of Toronto, argue in written briefs that the surcharge does not help victims or hold offenders accountable because some people cannot pay. Some offenders are jailed because they cannot pay, which the Supreme Court has said should not be allowed. The aboriginal services group says the surcharge violates the equality rights protected by the Charter because it disproportionately affects impoverished Indigenous people.

The hearings at the Supreme Court involve four offenders from Ontario and one from Quebec. In separate challenges in the appeal courts of Quebec and Ontario, all said the surcharge is unconstitutional, either because it is cruel and unusual punishment or a violation of their right to liberty and security of the person. Both courts of appeal upheld the constitutionality of the law, essentially because those subject to it may apply for extensions.

In a chart of 24 surcharge cases Mr. Doucette and his co-counsel Daniel Santoro have put together for the Supreme Court, 12 of the offenders have mental illness, six are aboriginal, five suffered neglect and serious abuse as children, 18 have addictions and seven are homeless. Their income ranges from $100 to $1,200 a month.

Whether the case settles the question of the judges continuing to evade the law as written will depend on how the Supreme Court writes its ruling. But judges have not been punished for rebelling. Two lower-court judges who wrote detailed rulings, one striking the law down and the other setting out why $5 fines make sense, have been promoted by the Liberal government to the top courts of Ontario and Quebec.

Quebec Bar Association says all the province's laws are unconstitutional
iPolitics
Kevin Dougherty
April 16, 2018

QUEBEC – The Quebec Bar Association has called on the Quebec Superior Court to declare all of the province's laws, regulations and decrees unconstitutional.

The provincial bar, joined by the Montreal bar, argues in a 21-page brief that the Quebec National Assembly does not respect the requirement in the Canadian Constitution that all Quebec laws must be adopted in French and English.

The bar, representing 22,500 lawyers, filed its demand for a declaratory judgment in court last Friday, naming assembly Speaker Jacques Chagnon and Attorney General Stéphanie Vallée as defendants. On Monday, Vallée said the government would contest the bar's position.

"The laws are presented, they are adopted, they are sanctioned in the two official languages," Vallée told reporters.

"The Quebec government respects its constitutional obligations and we do not at all share the opinions of the Quebec bar," she added.

Véronique Hivon, the Parti Québécois justice critic, said the Quebec assembly "respects to the letter" the requirement that laws be adopted in French and English, adding she was "completely flabbergasted" that the bar has resorted to the "nuclear option" in suing the Speaker and the government.

Hivon said the Canadian constitution also guarantees the right of parliamentarians in Quebec to use French or English, but that Quebec is the only jurisdiction in Canada where French is the only official language.

She said the logic of the Bar's position is that Quebec legislators "should master perfectly French and English," a position that leaves her "very troubled."

The bar argues that all Quebec laws are unconstitutional but specifically in its brief, uses the example of revisions to the Code of Civil Procedure, a key Quebec law setting out the rules courts in the province must follow.

The bar says the bill revising the procedure code was adopted in French only.

All the more than 300 amendments to the bill were written and debated in French only and when the bill was adopted in 2014 by the Parti Québécois government, opposition Liberals objected there was no English version, the brief notes.

The bill adopting the revised Code of Civil Procedure was sanctioned on Feb. 21, 2014 and the English version was not available until March 14, 2014.

In its brief, the bar notes that the English version of the Code of Civil Procedure "is not the work of the legislator, but rather the fruit of the interpretation by the translators of the National Assembly."

There were complaints from the beginning that the English version of the Code was not the same as what was written in French.

As a result, the bar said, there were three "administrative revisions" of the new Code in May 2014, December 2015 and December 2016.

The law revising the Code of Civil Procedure was adopted under the PQ, but the process began under the Liberals.

In 2011, the bar proposed to the assembly that the bar could work on the English version, an offer that was rejected.

The bar also submitted in 2011 a legal opinion by former Supreme Court of Canada justice Michel Bastarache who said the assembly was not respecting Section 133 of the 1867 British North America Act, requiring Parliament and the legislatures of Quebec, Manitoba and New Brunswick to adopts all laws in both languages.

The bar raised the issue again in 2013, but the government did not change its procedures regarding the use of English.

The bar suggested to the justice minister in 2015 that the National Assembly hire lawyers with a perfect mastery of English to assist in the legislative process.

There is no requirement that Quebec government laws speak English.

In response the assembly established a committee on the translation of bills to English, which recommended the hiring of two English-speaking lawyers.

The bar notes in its brief there was no follow up on this proposal.

In a final attempt to settle the issue, the bar met with representatives of the attorney general and the assembly speaker on March 14, 2018.

There was no agreement and the bar then commissioned the Montreal firm Jeansonne Avocats to seek a declaratory judgment.

The bar proposes that the assembly be given an 18-month period of grace to rectify the situation.

Before Bill 101, Quebec's Charter of the French Language was adopted in 1977, bills presented in the Quebec legislature were drafted in French and English, as is the practice the federal Parliament.

Bill 101 initially proposed that the French version of laws was the official version.

A 1979 ruling by the Supreme Court overturned that provision.

But the assembly continues to publish bills in French, with a separate English version.

Ground zero in the battle to stop the Phoenix pay virus from spreading
Ottawa Citizen
James Bagnall
April 16, 2018

No one thought it would come to this.

Miramichi and Shediac should have been working in tandem. Instead, two years after the launch of the unfortunate Phoenix pay system, these New Brunswick towns find themselves in an awkward embrace of technology and management gone wrong.

Miramichi of course is the epicentre of the government's frantic effort to fix Phoenix — the deeply flawed decade-long project to modernize and consolidate a pay system that affects 300,000 government employees, about two-thirds of whom have their pay processed through the Miramichi office.

Nearly 700 pay administration workers there are struggling to whittle down a backlog of some 600,000 pay queries and transactions, most dealing with incorrect amounts on employees' pay stubs.

Now these errors are threatening the government employees' pension plan, run by a staff of 730 plus in nearby Shediac.

The Shediac employees are well placed to watch the drama unfold. They operate a call centre and handle the intricate details of a system that includes more than 850,000 government employees, pensioners and beneficiaries.

The centre's basic mission is to calculate retirees' pensions using multiple pieces of software including a calculation engine known as Penfax. Before Phoenix launched on Feb. 24, 2016, the job was relatively straightforward. Pension administrators collected pay data from human resources colleagues throughout government, and combined it with information about employees' pensionable service. Then they applied a formula to determine the pension to be paid out.

But for the past two years, pension administrators have watched with mounting concern as pay errors piled up in Miramichi and began infecting the pension system as well.

“This would be our worst nightmare,” says the administrator of a pension system for provincial government employees, “to be importing polluted salary data into our system.”

The extent of the pollution is unclear. But the resources devoted to cleaning it up are both significant and growing. Prior to February’s federal budget the government had hired nearly 400 extra staff to deal with public servants’ salary errors. About 100 pay specialists were hired at Miramichi, the rest at temporary satellite offices in Ottawa and elsewhere. The government this year is adding another 500 pay employees, which would bring the total to 1,500 compared to the originally targeted 550.

The goal is to fix salary errors before they are forwarded to Shediac. However, pension administrators there can’t yet count on a clean stream of salary data — not when pay administrators have yet to make an appreciable dent in the backlog at Miramichi.

In response Shediac has added staff as well. Two months before Phoenix went live, the pension centre employed 650. It has since added 85 people. Significantly, 55 of the new hires have been assigned the job of “validating data received from Phoenix”.

This is intensive work. The LinkedIn job description of one Shediac employee notes he has been tasked to “review and correct all incongruencies in Penfax generated by Phoenix pay system.” This exercise involves recording all pension account activity “for future reference and to keep track of errors and patterns causing the inconsistencies.”

Correcting mistakes is labour intensive. To verify a pension, administrators often must track a career through multiple federal departments and collect pay and pension documents going back more than 30 years. The pension calculations must take account of career interruptions triggered by training courses or maternity leave.

The good news, if it can be called that, is that the number of government workers potentially affected so far seems manageable.

While a majority of the 300,000 federal government employees who rely on Phoenix have received incorrect salaries since 2016, fewer than 30,000 have so far entered the pension system. This includes 20,800 public service employees, 1,650 RCMP members and 5,460 members of the Canadian Armed Forces.

Equally fortunate, military and non-civilian RCMP personnel had not yet switched their pay systems to Phoenix when problems with the latter became apparent. The result: their salary data is not plagued with the same kinds of errors as that of other federal government employers.
Public Services and Procurement Canada, the federal department responsible for both the pay and pension centres, said a recent audit of pension payments revealed an error rate of just two per cent — about the same as during the two years prior to Phoenix’s launch.

However, this statistic doesn't tell us much about the extra effort now being expended — such as assigning extra staff to double-check Phoenix data — before sending out pension cheques to new retirees.

Through spokesman Pierre-Alain Bujold, Public Services confirmed that in the case of workers employed by the federal government before Phoenix went live, the number of records requiring a pay correction has increased 25 per cent. (For government workers hired in the past two years, there's been a 60-per-cent jump in the amount of effort required to correct pay records but since these employees won't be retiring anytime soon, their experience has little bearing on the pension system).

"The situation was fine until Phoenix came along," said an industry official familiar with the inner workings of the new pension system.

There is also a side issue whose importance will only become clear in the months ahead. It concerns the quality of some of the salary and employee service data entered into Penfax after the 2003 launch of the project to modernize the pension system — data that is suddenly relevant for people retiring now.

Penfax, which was designed by James Evans and Associates of Victoria and is employed by other large pension plans across the country, does not appear to be the issue. Several pension experts we consulted say they have manually double-checked pension and other calculations produced by Penfax.

"I've never had a problem with it," said an actuary based in the Ottawa area.

Rather, the difficulty appears to lie with process errors such as inputting data using incorrect software codes. This appears to crop up during calculations that involve anomalies from full-time, regular service — leaves without pay, part-time service, maternity leave, for example.

If this seems an echo of the Phoenix project, it's not surprising. The government's pension system upgrade, like that of the pay system, did not initially include software patches to include all the variables involved in an employee's career, which forced pension and pay workers to do manual workarounds. The projects were also driven by the same two themes.

In both cases, Public Services and Procurement Canada invested in efficient new software systems then centralized administration in New Brunswick. The thinking was that predicted efficiencies would allow the government to run its pay and pension systems with substantially fewer employees. As we know, the two systems played out very differently.

In the pension project, the government hired Hewlett Packard Enterprises (now DXC) and James Evans and Associates (among other tech firms), to implement Penfax and related technologies.
"It was a huge effort to clean up the data," said a private sector engineer involved with the project in its early days. "We were dealing with a 35-year-old pension system." Nevertheless, the engineer insisted the data "was for the most part fixed during conversion to the new pension system." The major issue today, he added, is the pay data being imported from Phoenix.

It may be more complicated than that. Consider the case of Laura Prevost, a former Canada Revenue Agency employee who retired in 2014 and, as she did so, arranged to buy roughly 18 months' worth of extra pension credits (as she was entitled to do). Her initial pension did not include the impact of the extra credits, known as a buyback.

Prevost anticipated that her pension payments would increase once the paperwork involving the buyback went through. Instead, in 2016, she was shocked to discover her pension deposit actually dropped by roughly $100 per month.

This was the start of a two-year odyssey dedicated to uncovering the source of multiple errors in her pension account. Along the way she has spent thousands of dollars on legal and actuarial fees. Prevost's quest has been all the more painful because 2016 was also the year after she separated from her husband.

Prevost and her lawyer Eric Letts learned that during her first couple of years of retirement, she had been receiving too much pension because the system had over-estimated the number of years during which she contributed towards her pension.

The details are complicated, involving stretches of maternity and other types of leave. In some cases Prevost opted to continue contributing towards her pensions, in other cases, not, as the rules permitted. Emails obtained through access to information, offer a revealing glimpse into how pension administrators cope with the pension system's various quirks.

For instance, a note from Lisa Hébert, a Public Services official, informed Prevost her service credit (number of years worked) had been over-stated by more than year because some stretches of her leave-without-pay had not been "coded correctly in the system."

More revealing is a note penned in 2016 by Jean-Philippe St-Onge, another pension official, who explained why Prevost had received an incorrect estimate for the cost of buying additional pension credits. "The information in the system was erroneous, which led to erroneous counselling," St-Onge wrote, "This often happens with old service (records) from Canada Revenue Agency as the information recorded in the system back then (pre-Penfax) was often erroneous." He added this was why it was so important to verify salary and service data before issuing pensions.

This email surprised Prevost. "My legacy data and CRA records were correct," she said, "what I don't know is how the data that wound up in Penfax became incorrect."

Errors do happen in pension systems, especially one as large as the one run by the federal government. The key is how administrators deal with them. Part of the reason the pension system run by Shediac didn't collapse into Phoenix-like crisis is administrators were given sufficient time to sort out most of the issues – the system wasn't rushed into service.

The pension system's call centre technology and software programs were developed from 2005 to 2013 — roughly double the length of time government project managers spent crafting the Phoenix pay system.

Not only that, the public service, RCMP and military were added to the new pension system in stages from 2013 to 2017, giving administrators plenty of time to learn the quirks of Penfax, Siebel and Oracle software and to develop workarounds where necessary. In contrast, Phoenix was launched in two phases early in 2016 separated by mere weeks.

Nevertheless, while this helps to explain why the project to modernize pensions worked when implementing Phoenix did not, Prevost's situation also points to some serious potential problems as pension administrators try to cope with the rush of Phoenix errors. Phoenix is nowhere near being repaired and the flow of retirees is both significant and unrelenting.

Not only that, dealing with pension quirks is extremely labour intensive – no fewer than six pension administrators were involved in counselling Prevost about her service buyback options, for instance. Nor is her lawsuit against the government resolved. While pension officials, according to email correspondence, have acknowledged errors in processing her account, there is still a dispute about the timing of her pension service buyback – a matter Prevost estimates involves some $40,000 worth of pension assets.

While cases such as Prevost's could be unusual, they do illustrate the vulnerabilities within the pension system.

The administrators in Dieppe have enough on their hands without having to worry about the extra complications of Phoenix pay errors. Unfortunately, this is where they are — playing preventive defence in a game that may have years to play out.

By the numbers:

Money spent to date:

On Phoenix pay: $1 billion plus for construction and consolidation of the new system, and current and proposed fixes.

On pension modernization:

- $47 million: to centralize pension administration in Shediac, N.B.
- $200 million: to modernize the public service pension plan, including 5 major software releases, completed in 2013.
- $67 million: to transform the RCMP pension plan, completed in 2014
- $142.5 million: to transform Canadian Armed Forces pension plans, completed in 2017

Barreau du Québec files bombshell motion
Canadian Lawyer Magazine
Mark Cardwell
April 17, 2018

A motion filed jointly on Friday by the Barreau du Québec and the Montreal Bar, asking the Superior Court of Quebec to issue a declaratory judgment that all of the province's laws, regulations and decrees are illegal because they were drafted and adopted in French only, has stunned politicians, lawyers and legal pundits the province.

"It's a bombshell, there's no other way to describe it," says Benoît Pelletier, a constitutional law professor at the University of Ottawa and a former Quebec Liberal cabinet minister. "I'm sure the Quebec government is quite upset about it — and worried, too."

In their 21-page, French-only brief, the provincial regulator and the Montreal Bar argue that the National Assembly routinely drafts legislation in French only.

It is only after bills are adopted, they argue, that the government has them translated into English.

The quality of some of those translations has long been a bone of contention between Quebec lawyers and government.

In their motion, the bars argue that Quebec's failure to translate laws at all stages of the legislative process deprives some litigants in the province their rights under article 133 of the 1867 British North America Act.

The article stipulates that while either French or English may be used in legislative debates and pleadings within Parliament and the provincial legislatures in Quebec, Manitoba and New Brunswick, the laws, regulations and decrees that result must be adopted in both English and French.

The bars' brief cites a long list of examples of Quebec laws that it believes are unconstitutional under article 133.

One is the province's new Code of Civil Procedure, a major reform that came into effect on Jan. 1, 2016 with the goal of making justice more accessible in Quebec.

The bars argue however that the more than 300 amendments that were written and debated in the National Assembly — and adopted in 2014 by the short-lived Parti Québécois government of former Premier Pauline Marois — were done entirely in French only.

The opposition Liberals argued then about the absence of any English versions of the proposed amendments until nearly two months after they were adopted.
The bars' brief argues that the final English version of the Code of Civil Procedure was "not the work of the legislator but the fruit of the interpretation by the translators of the National Assembly."

The brief also contends that discrepancies between some provisions of the English and French versions of the new code led to revisions in 2014, 2015 and 2016.

The law revising the Code of Civil Procedure was adopted under the PQ, but the process began under the Liberals.

The bars' brief also refers to a 2011 legal opinion by former Supreme Court of Canada justice Michel Bastarache that Quebec was failing to respect Art. 133.

The bars contend they raised the issue with the Quebec government in 2013, but to no avail.

The Barreau du Québec says it officially asked Vallée in 2015 to hire lawyers fluent in English to help with the drafting of legislation.

Though the minister struck a committee to look at the issue, the bars contend she never followed up on its recommendation that the government hire two English-speaking lawyers.

The bars' brief also contends that a meeting last month between representatives of the bar associations and the province's attorney general and assembly speaker failed to produce an agreement on the issue.

It was after that meeting, which was held just days before the Quebec government tabled its annual budget — and which notably earmarked nearly $1 billion in new spending for projects that the president of the Quebec Bar had publicly pleaded for in early March — that the bars decided to mandate the Montreal law firm of Jeansonne Avocats to file the motion for declaratory judgment on the issue.

In its request, the bars are asking the court nothing less than to declare all of Quebec's laws null and void.

They are also asking the court to grant the National Assembly 18 months to fix its legislative language problem.

In a scrum with reporters yesterday, a visibly perturbed Vallée reassured Quebecers that the province's laws are "tabled, adopted and sanctioned" in proper constitutional form.

She also said the government intends to defend itself in court.

"I don't want to go into details but I can assure you we will contest the allegations contained in the motion that was filed on Friday," said Vallée.

Other Quebec politicians however voiced their anger at the two bar associations, who represent the province's 22,000 lawyers.
In particular, the spokesperson for the Parti Québécois, Véronique Hivon, called the motion "disgusting" and "an insult to Quebec parliamentarians."

“If we follow (the bars’ logic), we should all be perfectly bilingual and think in both languages,” Hivon told La Presse. “It’s complete nonsense and an insult to the French fact in Quebec.”

Both bar associations and their lawyers declined requests for interviews from Legal Feeds.

Three former Quebec premiers who continue to practice law in Montreal — Lucien Bouchard (Davies Ward Phillips & Vineberg LLP), Jean Charest (McCarthy Tétrault LLP) and Pierre-Marc Johnson (Lavery , de Billy) — also declined requests for an interview on the topic.

For his part, Pelletier, a constitutional expert who served a decade in Charest’s cabinet as minister of intergovernmental affairs — and who continues to study constitutional issues related to succession in the British royal family — says the bars’ motion is a dramatic move that may have unforeseen legal outcomes and political repercussions.

“I’m very surprised they chose to go the legal route to resolve this matter,” he says. “That’s not to say this isn’t an important issue. It is a fundamental issue and a question of principle.

“I think their motion has a certain chance of success because of the jurisprudence. But by filing this motion they have also gone very far in their efforts to succeed.”

Government launches training to help public servants 'understand' Phoenix
Ottawa Citizen
Megan Gillis
April 17, 2018

The federal government is now offering public servants training to help them “understand how to use” the disastrous Phoenix pay system.

The new training is available online, Public Services and Procurement Canada tweeted Tuesday.

Developed by the Treasury Board of Canada Secretariat, it explains how data flows between human resources systems and Phoenix, PSPC said.

Launched in February 2016, the new pay system has affected 300,000 civil servants. There’s a backlog of more than 600,000 pay queries and transactions.

According to a poll commissioned by the Public Service Alliance of Canada and released last week, more than 80 per cent of federal workers say they’ve been affected by Phoenix pay issues and nearly 20 per cent say it’s caused them “great hardship.”

The survey also showed that some PSAC members had avoided asking for leave, delayed transferring positions or turned down a chance for an acting assignment because they feared the troubled, two-year-old system would mess up their pay.

The new training emphasizes that there are two important steps to avoid "pay issues."

The first is planning ahead for new hires and acting positions by submitting Phoenix pay requests early; the second is approving requests for overtime and leave as soon as they're submitted and completing paperwork for students and new hires as soon as possible.

OPINION: How I went from Supreme Court chief justice to 'Citizen McLachlin'
After 36 years of making important choices, Beverley McLachlin is now making mundane ones again—part of the wonders and challenges of retirement
Macleans
Beverley McLachlin
April 17, 2018

Beverley McLachlin was the 17th Chief Justice of the Supreme Court of Canada, the first woman to hold this position, and the longest-serving Chief Justice of Canada in history.

On Dec. 15, 2017, I ceased to be a judge.

As I made my exit through the great doors of the Supreme Court of Canada as chief justice for the last time, as I accepted the hugs and handshakes of my colleagues, a single phrase kept drumming at the base of my mind like a funeral dirge: You have ceased to be a judge.

It was the one thing I hadn't expected. I had expected to feel a mixture of sadness and relief on my retirement. Sadness that the best part of my life—my life as a judge—was ending; as I remarked at my farewell dinner, "Whatever may come after, my time at the Supreme Court of Canada will always be the centrepiece of my life." Relief that the heavy burden of responsibility and never-ending load of work was at last slipping from my shoulders; even if I could have hung on for another six months, the time had come to go and let others take up the torch.

What I hadn't expected was the wrench of feeling my identity slip from my shoulders along with the sadness and relief. For 36 years I had been a judge, and enjoyed what came with it—position, modest power, respect. Now it was gone. No position. No power, except the statutory right to sign onto outstanding judgments for the next six months. Respect? Well maybe, but only what I could earn. I was no longer "Chief Justice" or even simple "Justice." Meet the newly minted Citizen McLachlin.

The world wasted no time marking my descent to the ranks of the merely mortal. The RCMP escort that had been necessary to preserve my security while I was Chief Justice, and upon whom I had depended for daily transport for the previous almost 18 years, didn't show up the next morning to take me to work. When I finally got to the Courthouse, I discovered that the court staff (quite properly) had moved the new Chief Justice into my former chambers, and I found myself sneaking in like a thief to retrieve personal items from my former bathroom cabinet. The people I met in the corridors still greeted me with a cheery Hi Chief, but then immediately stammered and said Sorry, just a habit. I replied: Just call me Bev.

The learning curve I encountered in my new life was steep. How much it costs to ride a bus (you need exact change and by the way, a pass is cheaper and better). How to walk to a destination. How to eat in a food court. How to stand in line at the bank and wait. And wait. And wait.

To my surprise, I discovered that negotiating my new challenges was more exhilarating than daunting. There was satisfaction in realizing that at the advanced age of 74, I could still, in a pinch, forage for myself. And there were the people. I had never led an elite life; I've always shopped for food at the Metro and walked my dogs in the village. But freed from the protective carapace that the office of Chief Justice had built around me, I met more people. Nice people. The gentlemen on the bus who instructed me in how to put in my coins in the slot and told me to take out the ticket because it was good for two-and-half hours. The young woman who took pains to warn me of the icy patch on the sidewalk. More than one person who recognized me and shyly sidled up to thank me for what I had done for the country. Over and over, I was taken aback by the sheer decency of my fellow Canadians.

Another bonus: choices. As a judge, I had to make choices. That was my job. Some were relatively routine. Should a statute be interpreted this way or that way? Did the judge err in her jury charge or not? Was the decision of the rental board reasonable or beyond the bounds? Others were gut-wrenchingly difficult, like whether part of the country can unilaterally secede or whether the Charter prevents the government from denying the right to assistance in dying.

But those choices were my work. What I did not have was much choice about what I did on a day-to-day basis. My life was a pre-determined round of the activity. Heading off in the morning to the Courthouse to hear cases and work on court administration. Crisscrossing the country to attend meetings and talk to legal groups. Presiding over meetings of the Judicial Council and Order of Canada meetings. An endless round of obligatory and semi-obligatory events. Apart from the odd weekend at the cottage and a few weeks of summer vacation, my life was mapped on a grid so tight that any idea of choice was an illusion.

Don't get me wrong—I loved the intense pace of the job of Chief Justice. I loved the energy it demanded and the even greater energy I got back doing significant things with interesting people. And I loved the comfort of just doing whatever my assistants told me I had to do without the necessity of choosing. Let's face it: making choices about what to do tomorrow, much less how to shape the next chapter of one's life, can be daunting.

I am learning from friends who have already navigated the uncertain waters of retirement. They have offered varying pieces of advice on how to move forward. But one theme is constant—take time to figure out what you want to do with the next phase of your life. Take a cruise, take a trek, take your pick. Just take time out to think.

And then, they say, move on. In your soul-searching-enforced hiatus from the world's affairs, look for something new and different from what you have been doing. Change it up. People are living longer; retirement is no longer simply a slide into oblivion. You have time, with a bit of luck, to seek another world.

That is what the happiest of my friends are doing. They have poured themselves into new efforts to promote access to justice or better corporate governance. They are pursuing Ph.Ds in literature and advanced jurisprudence. They are reflecting on dreams yet unfulfilled and learning to paint, play the guitar or climb Mount Kilimanjaro. They are writing books and serving on community boards. They are alive, vibrant and contributing.

Alfred, Lord Tennyson, struggling to come to grips with the death of a beloved friend, contemplated the options: either sink into oblivion, or press on to new adventures. The result was his mediation in Ulysses. The aging warrior has won his wars, secured the peace. It is time to rest on his laurels. But he finds himself unable to sit at his comfortable hearth, and resolves to set out on new journeys. So he readies his ships and rallies his cohorts:

Death closes all: but something ere the end,
Some work of noble note, may yet be done…
Come, my friends,
T'is not too late to seek a newer world…

I have taken Ulysses's words to heart, and sought out those new worlds. My first novel, Full Disclosure, will come out May 1—a book I've had in my head for 40 years and only now, in retirement, could write. And it turns out I won't have to give up judging entirely—for a month each year, I will sit as a foreign judge on the Hong Kong Court of Final Appeal. That may seem counterintuitive for a post-judging life, but that ominous dirge—"You have ceased to be a judge"—no longer drums in the backdrop.

It turns out there is no guidebook for what a chief justice should do after decades of being defined by important choices. But one thing has become clear for me, as I navigate these waters: there is joy to be found in the choices I make for myself, all the same.

Accused Calgary gang leader free, judge stays murder charge over trial delay
The Province
The Canadian Press
April 17, 2018

CALGARY — An accused gang leader has walked out of a Calgary court a free man after a judge stayed his first-degree murder charge because the case took too long to get to trial.

Nicholas Chan was arrested in the 2008 shooting death of Kevin Anaya.

The judge also stayed charges of conspiracy to commit murder and directing a criminal organization.

The court dismissed the jurors and thanked them for their time.

The Calgary Police Service says it won't comment until it reviews the judge's written decision.

Alberta's Justice Department says it is also reviewing the ruling as the Crown considers whether to appeal.

"The Crown has taken immediate steps to review this matter with their Appeals Branch," an official said Tuesday.

"As this case remains before the courts, due to the Crown having 30-days in which to appeal, it would be inappropriate to comment in more detail."

The department says there have been 31 cases in Alberta that have been either judicially stayed or proactively stayed by the Crown due to a Supreme Court of Canada ruling known as the Jordan decision.

Of the 31 cases to by stayed, Chan's is the only murder case.

In 2016, Chan was acquitted of first-degree murder in connection with the 2009 New Year's Day triple murder at a Calgary restaurant. (CTV Calgary)

Les barreaux accusés d'« entrer en guerre » contre le français
Leur croisade contre Québec sur l'inconstitutionnalité des lois suscite une levée de boucliers et de réactions
Droit Inc
Delphine Jung
17 avril 2018

La décision du Barreau du Québec et du Barreau de Montréal d'entamer des procédures pour faire invalider les lois québécoises a suscité plusieurs réactions, allant de l'incompréhension à la colère chez les élus et les chroniqueurs des médias généralistes.

Véronique Hivon s'est dite «estomaquée». «Trahison », écrit le chroniqueur Mathieu Bock-Côté , « consternant » dit Me Pierre-Marc Boyer, fervent défenseur de la langue française…

Selon la demande introductive d'instance déposée vendredi par les barreaux, l'article 133 de la Loi constitutionnelle de 1867 n'est pas respecté, car dans un monde idéal, l'adoption des textes législatifs devrait se faire simultanément en français et en anglais.

Le Barreau du Québec, présidé par Paul-Matthieu Grondin, et celui de Montréal, présidé par Brian Mitchell, affirment plutôt que l'Assemblée nationale établit un processus législatif pratiquement unilingue, suivi d'une traduction à la toute fin du processus d'adoption.

« On ne partage pas du tout l'opinion tant du Barreau de Montréal que du Barreau du Québec. On va donc faire valoir nos arguments devant les tribunaux pour contester les allégations qui se trouvent dans la requête », a déclaré la ministre de la Justice, Stéphanie Vallée.

Déclaration de guerre

Depuis, les réactions sont nombreuses. La porte-parole de l'opposition officielle en matière de justice et vice-cheffe du Parti québécois (PQ), Véronique Hivon, juge que le Barreau « met ainsi en cause les droits constitutionnels des parlementaires de pouvoir oeuvrer et légiférer dans la langue de leur choix » et estime même qu'il s'agit là d'une « insulte aux parlementaires québécois », peut-on lire dans La Presse.

Le chroniqueur du Journal de Montréal, Mathieu Bock-Côté va même plus loin, écrivant dans son édito : « nous sommes devant une déclaration de guerre pure et simple contre l'idée même du Québec français, au cœur de l'héritage de la Révolution tranquille ».

Il accuse carrément le Barreau d'entrer en guerre contre le français.

Dans la Presse, l'éditorialiste Paul Journet souligne d'emblée la démesure de l'action des deux barreaux: invalider toutes les lois. « Le Barreau n'a rien trouvé de plus précis que l'arme nucléaire », dit-il.

Il ajoute que le Barreau ne met pas tant de forces à défendre le français. « On ne l'a pas entendu dénoncer l'apparente violation de la loi 104, qui prévoit que Québec doit communiquer « uniquement » en français avec les personnes morales. Son bureau du syndic avait par contre sanctionné un avocat pour avoir déploré qu'une juge rédige un jugement unilingue en anglais même si tout le procès s'était déroulé en français », rappelle-t-il.

Les avocats divisés

Sur Droit-inc, nous avons reçu près d'une cinquantaine de commentaires sous l'article d'hier, intitulé « Les barreaux veulent invalider les lois québécoises ».

Les avis sont divisés quasi également entre les pour et les contre.

Quelques-uns soutiennent leur action: « Parfaitement en accord avec cette initiative. Cela fait des années que le Barreau aurait dû agir en ce sens. Un mot : enfin »

« Le Barreau doit justement aller de l'avant avec ce genre de procédures. Le respect de la constitution ne sera jamais d'une autre époque! »

D'autres s'y opposent vivement : « C'est le type de débat, payé avec mes cotisations, dont j'aimerais qu'on m'explique la pertinence quant à la mission du Barreau. »

« Cette action importante aurait dû faire l'objet d'une consultation auprès des membres », réagit un autre lecteur.

Une action politique

L'avocat Pierre-Marc Boyer s'exprime à visage découvert sur la question. « Je comprends qu'on s'appuie sur la Constitution pour faire valoir certains arguments, mais là c'est une question politique. Je ne comprends pas en quoi c'est le rôle du Barreau de s'attaquer à ça. Il agit ici comme un lobby politique », dit celui qui avait déjà attaqué le bâtonnier de Montréal, Me Brian Mitchell, pour son « franglais ».

Fervent défenseur de la langue française, Me Boyer comprend que le Barreau s'attache à la primauté du droit, mais il devrait plutôt « s'attaquer à l'accès à la justice et la prédominance du français et pas aller dans le sens du bilinguisme ».

En accord avec d'autres qui ont manifesté leur mécontentement, Me Boyer accuse les barreaux d'engorger encore davantage les tribunaux en lançant une procédure qui sera longue et dont on « ignore combien elle va coûter ».

Mais surtout, il aimerait que « le public sache que les choses faites par le Barreau ne sont pas forcément approuvées par ses membres ».

Une nouvelle fois contacté par Droit-inc pour répondre à ces nombreuses accusations, les deux barreaux ont préféré se terrer dans le silence, répétant qu'ils ne commenteront pas ce dossier puisqu'il se trouve devant les tribunaux.

Public servants burned by Phoenix demand action from union
Neither lawsuit nor strike in the cards, PIPSC president tells angry members during town hall
CBC News
Julie Ireton
April 18, 2018

As federal public servants continue to absorb the impact of the failed Phoenix pay system, some workers want to see their union do more, including legal action or a possible strike.

Their anger over the ongoing pay issues was evident Tuesday at a town hall hosted by the Professional Institute of the Public Service of Canada (PIPSC).

Federal government scientists, IT professionals and policy analysts pressed their union leaders for answers to questions such as, why can't workers sue the government?

PIPSC president Debi Daviau told the gathering that by law, public servants cannot sue the federal government, but unions can file grievances, and that's exactly what PIPSC is doing.

"For all intents and purposes we are suing the government. We are taking legal action through the mechanisms we have available, which in our case are through grievances," Davaiu said. "It doesn't sound as all-powerful as taking a class action lawsuit, but grievances can be mitigated a lot quicker."

Another member asked why workers can't just walk off the job — in other words, strike.

"If it's a legal issue that's stopping us, well, it's not exactly legal to not get paid," said David Alloggia, who works at Transport Canada.
Fines, discipline, termination
Daviau said that's a question she gets asked all the time.

"Literally everywhere I've been in the country, this is on our members' minds," she said. "Unfortunately, if you participate in an illegal strike activity or job action that isn't sanctioned through the legislation, our members could be fined and disciplined up to termination, and that's not a risk we're willing to take."

Public servant Bob Webster called for a public inquiry aimed at preventing such a catastrophic technological failure in the future.

He pointed to a similar case in Australia where IBM developed a pay system for Queensland's department of health, with results similar to the Phoenix failure. In the Australian example, a public inquiry was held.

"I would like to have a major public inquiry. I understand the auditor general will be looking into this and there's work being done by the various departments, but I think it's important to draw the public's attention to this sort of thing, because this is going to happen again," Webster said.

Despite their anger over Phoenix, public servants cleared the room as soon as the noon-hour town hall ended — and diligently went back to work.

"They're still going to work, every single day, on behalf of Canadians," Daviau said.

Les Linklater's job is to fix Phoenix—including for himself
A known problem solver from the policy world, Linklater is pushing pods and promoting payroll innovation to find solutions to the ongoing Phoenix disaster.
The Hill Times
Emily Haws
April 18, 2018

Les Linklater's job leading the team fixing the Phoenix pay system can be frustrating, daunting, and pressure-filled, but he empathizes with public servants' payroll frustrations because he's dealt with them firsthand.

His base salary hasn't been affected, he said, but he has issues related to parking and benefits.

"I know they will catch up, but just given the volume of transactions in the queue, I'll just wait my turn and they'll be dealt with," he said.

Mr. Linklater is a year into his post as the associate deputy minister of Public Services and Procurement Canada (PSPC), captaining those working to fix the troubled pay system that went live in February 2016 and has since left almost 75 per cent of public servants with pay problems.

Phoenix was supposed to consolidate pay for about 262,000 government workers in two parts: first, it moved to off-the-shelf PeopleSoft software configured to the government's 32 HR systems by IBM; second, it relocated pay staff from the capital region to the new Public Service Pay Centre in Miramichi, N.B.—with several satellite pay offices opening since.

There are 625,000 open cases, or transactions, at the pay centre as of March 21, with 377,000 cases with financial impact stuck in the backlog.

The progress is slow, Mr. Linklater said, but there's a light at the end of the tunnel. After initially making parental leave and disability-related cases the priority, in March and April 2017 the pay centre began to meet service standards, he said, which have been maintained about 95 per cent of the time for the last year.

Mr. Linklater is categorized as a DM1 on the government's pay scale, meaning he makes between $192,600 and $226,500 annually, with a maximum performance pay award of 26 per cent, or between about $50,000 and $59,000. He told The Hill Times his bonus is largely related to stabilizing Phoenix, but he has yet to receive the first one in his current role. The latest rating period wrapped up March 31, with pay awarded in the fall.

Overall, he said the types of cases he's hearing about have changed. In the beginning, media reports were often about workers not being paid properly, whereas now it's more about the frustration of not having concerns addressed in a timely manner.

"I think moving to the pod model, [and] improving the data, we are going to see the queue level off and start to go down later in the spring," he said.

In December, the government implemented a pilot project at the pay centre with Veterans Affairs, Innovation, Science, and Economic Development, and the Federal Economic Development Agency for Southern Ontario. As part of the project, certain pay adviser teams in the pay centre, or pods, aligned with specific departments.

The model is also used by the Canada Revenue Agency, said Mr. Linklater, bringing "experienced pay staff into leadership positions so that they can manage other staff." Departments will have details on the roll-out of the pay-centre-wide pod model in the coming days.

"Rather than calling Miramichi [blindly], a department knows to call Bob in Miramichi because he's responsible for their team on the floor," he explained. "We're seeing… [that] new transactions are being dealt with as they come in more than 90 per cent of the time, and we're actually chipping away at the backlog for the departments who are in the pile at the pod pilot right now."

Treasury Board also recently asked all departments to sign off on a blanket approval to bypass financial rules, delegating authority over salary spending to PSPC in order to fix Phoenix emergencies before they happen, reports iPolitics.

The same sort of internal bypass was used at Christmas when a technical glitch caused a backlog of cases related to overtime, time sheets, among others, to not be approved, which would have affected the Dec. 27 pay run for 50,000 employees. About 7,000 of those affected could have had issues with their base pay.

Mr. Linklater said this “creative solution” exemplifies how his team is getting better at “anticipating issues and dealing with them” before a crisis. He’s in the office from about 8 a.m. until 6:30 p.m., and starts earlier if there are 7:30 a.m. calls, which is often. Even with the long hours, he admits he’s constantly on his Blackberry.

To unwind, he tries to get to the gym, or visits friends, he said, and in the summer he enjoys tennis.

Mr. Linklater wouldn’t get into final Phoenix costs, only saying it’s more important to pay people. It’s currently pegged at more than $1.2-billion according to CBC News, but this excluded departmental costs.

The office of the comptroller general is working on a full costing of all measures related to Phoenix, said Mr. Linklater, set to be completed by the end of May. The office will deliver it to the House Public Accounts Committee, according to Treasury Board, and will continue to monitor Phoenix costs into the future.

It can be daunting to be the lead fixer of a massive problem, Mr. Linklater said, but he “can’t feel anything but sympathy for the people who have been affected by this.”

“Knowing that the work that we’re doing has a direct impact on people’s lives, their livelihoods, that’s a particular stress that I think a number of public servants who are in leadership positions don’t necessarily have on a day-to-day basis, or to this degree,” he said.

Linklater a policy-world problem solver

Mr. Linklater is from the policy world, having no prior experience in human resources or the technical aspects of bureaucracy. He’s never solved a large IT project, but said he has a “pretty good track record in terms of taking problems and solving them.”

Mr. Linklater integrates human resources and pay, reporting jointly to PSPC Minister Carla Qualtrough (Delta, B.C.) and Treasury Board President Scott Brison (Kings-Hants, N.S.). He and Ms. Qualtrough have weekly update meetings, he said.

His team includes a mix of PSPC and Treasury Board officials, including PSPC assistant deputy minister Marc Lemieux handling the pay administration side, and assistant deputy minister Danielle May-Cuconato heading the pay stabilization project.

Prior to her recent retirement, Cécile Cléroux, assistant deputy minister at Treasury Board’s chief human resources office, oversaw the human resource policies and processes. Mr. Linklater also manages over 2,000 government workers in pay operations, IT, and project management.

“I’m good at bringing people to the table, identifying issues, and then moving forward with the plan to address them,” he said, adding it’s what he did as deputy secretary of operations at the Privy Council Office (PCO).

Mr. Linklater started at the PCO in 2014 as the assistant secretary to the cabinet of social development policy, moving up to be a deputy secretary in July 2015. Prior to that, he worked at Citizenship and Immigration Canada, with roles including director general of the immigration branch and assistant deputy minister of the strategic and program policy branch.

Andrew Griffith, a former executive who worked with Mr. Linklater at CIC, said Mr. Linklater completed a policy renewal of all major programs while there.

The exercise saw him "both track and deliver on all the policy changes, including co-ordination with the operations folks and other departments that needed to be engaged," he said in an email.

"I think his move to PCO attests to how well he was considered to have delivered in a complicated portfolio with arguably the most diligent and knowledgeable minister in cabinet," Mr. Griffith said, referring to former Conservative immigration minister Jason Kenney.

Feds shifting staff responsibilities with IBM

Along with the pod model and getting the ability to bypass spending controls, Mr. Linklater said that within the next couple of weeks "departments will have additional tools around performance metrics and data," allowing them to make better decisions.

The government has also shifted more responsibility onto IBM for stabilization, said Mr. Linklater. In 2016, the two parties implemented a "managed service arrangement" under the contract, meaning it's letting IBM determine how to achieve government-determined outcomes instead of micromanaging.

Within the next few weeks the government is also going to have IBM staff run some of the routine operational functions previously performed by government employees, allowing them to develop "the more creative and strategic work-around fixes," he said. This could include a solution for leave management and scheduling, he said.

This means government workers running pay would "move more to a 9-to-5 job, thinking about how to build the module that would need to be integrated into the system to help with improved scheduling…while [IBM is] going to be there at 2 o'clock Sunday morning running pay," he said.

This service amendment was signed in December, he said, and IBM is increasing its staff.

Overall, Mr. Linklater said staff enthusiasm for finding solutions is inspiring, such as a Miramichi data team worker who created a program to bring up an employee's pay history in an spreadsheet. Previously, workers would pull up one pay cheque singularly, he said. The new solution saves time.

"I'm constantly amazed and impressed by the enthusiasm, the types of things the staff are developing and generating because of their commitment level."

Demande d'invalidation des lois: le Barreau se défend

« Les barreaux font du droit, pas de la politique », rétorque le Barreau du Québec face aux questionnements et aux nombreuses levées de boucliers

Droit Inc

Delphine Jung

18 avril 2018

« Les barreaux font du droit, pas de la politique », lit-on dans un communiqué de presse envoyé hier soir par le Barreau du Québec.

Il répond aux nombreuses réactions qu'ont suscité sa volonté - associée à celle de sa branche montréalaise - de vouloir faire invalider les lois québécoises.

Vendredi, les barreaux du Québec et de Montréal ont en effet déposé une requête expliquant que le processus d'adoption des lois par le législateur québécois n'est pas conforme à la Constitution canadienne.

Accusés de vouloir entrer en guerre contre le français, suscitant le questionnement des membres au sujet de la pertinence d'une telle action de la part de leur Ordre, les barreaux ont donc décidé de mettre les choses au point et de justifier leur démarche.

« Une mauvaise qualité de la version anglaise des lois au Québec peut pénaliser tant un citoyen francophone qu'un citoyen anglophone. En effet, un juge peut appliquer différemment une loi, selon qu'il utilise sa version anglaise ou sa version française », rappelle le Barreau du Québec.

Pour régler le problème, le Barreau du Québec, qui est présidé par Me Paul-Matthieu Grondin, a requis publiquement la somme de 500 000 dollars afin d'embaucher des légistes.

Règlement hors cour

« Ce dossier pouvait certainement se régler hors cour, comme le souhaitaient les barreaux depuis plus de sept ans », dit-il, en expliquant qu'il y a encore peu, les représentants des barreaux sont allés à la rencontre du président de l'Assemblée nationale, de la ministre de la Justice et de la ministre responsable des Relations avec les Québécois d'expression anglaise « pour tenter de dénouer l'impasse ».

Accusé de ne pas avoir non plus demandé l'avis de membres sur le sujet, le Barreau rétorque qu'en janvier 2017, « le Conseil des sections du Barreau du Québec a unanimement recommandé au Conseil d'administration du Barreau du Québec d'entamer un processus judiciaire ».

Pour répondre aux francophiles, l'institution explique également que son but n'est pas d'obliger les parlementaires à travailler en anglais.

« Le Barreau du Québec et le Barreau de Montréal ne font pas de la politique. Ils veulent une saine application de la loi constitutionnelle et l'équité pour l'ensemble des citoyens du Québec, tant les francophones et les anglophones », ajoute-t-il.

Quant aux frais engagés pour cette bataille juridique qui s'annonce longue, le Barreau dit avoir obtenu une subvention de 125 000 dollars du Programme d'appui aux droits linguistiques (PADL).

« L'un des objectifs de ce programme est d'appuyer les recours judiciaires qui permettent l'avancement et la clarification des droits lorsqu'il s'agit de causes types et que les recours à un processus de résolution de conflits ont échoué. La mission du Barreau du Québec est la protection du public et la défense de la primauté du droit. Cette démarche s'inscrit dans cette mission », conclut le communiqué.

Une écrasante majorité s'oppose à la démarche

Droit-inc a sondé ses lecteurs, hier, sur la démarche des deux barreaux.

À la question: « Approuvez-vous la requête des deux barreaux pour faire invalider les lois québécoises? », plus de 80 % ont dit non.

Restorative justice: rebuilding relationships with society
Governments have an interest in restorative justice because it generates significant benefits to society.
Policy Options
Johanne Vallée
April 19, 2018

The trial is over, the sentence was handed down months ago, but Jeanne (not her real name) still doesn't feel the closure she had been hoping for since the whole ordeal began. Many unanswered questions remain, and she agonizes over them every day. Why her? Why did this man decide to violate her intimate space? Her distress is isolating her, because she feels nobody understands her. Her friends try to reassure her as best they can. The legal process has followed its course, and her aggressor has been sentenced. So why are this individual's motives still being questioned? Isn't all of that finished?

Then there are members of certain Indigenous communities who live in the hope of regaining some measure of peace. They want to rebuild positive relationships among themselves despite the violence, abuse and isolation they have been experiencing for ages, generation after generation. There must be a way for them to express their suffering and take steps toward healing, without having everything come crashing down.

Antoine (not his real name) has been serving his sentence for the last two years. Though he takes part in a social rehabilitation program, he is convinced that once he is released, he will be shunned on account of his criminal record. His family no longer visits him. They are fed up of all the trouble he has caused. He has never offered any apologies for the crimes he committed, whether to his victims or to the people close to him. He is wondering what the future holds and what his role will be in society.

Restorative justice proposes different approaches for each of the situations described. The purpose is to rebuild broken ties, all while considering the needs of both victim and offender and on a strictly voluntary basis. The ties we're talking about are numerous and complex. They include re-establishing a positive dialogue with family and friends, and reconnecting with larger society. Restorative justice is also

about rebuilding self confidence, confidence in others, and reasserting control over one's life. Often, the crime committed affects those involved well beyond the more obvious injuries. Restorative justice addresses all of these aspects.

The steps of the restorative justice process are well defined. They generally consist of several preparation meetings where the individuals concerned sit down one-on-one with a facilitator. They attempt to identify the source of their distress. They learn to put words to their suffering and express what they are feeling in an attempt to overcome it. During the process, when they feel ready, one or more meetings will be arranged between the victim and the aggressor (or an aggressor unconnected to the crime in question). The meetings are conducted under the watchful eye of a facilitator. The victim can meet with the person who committed the crime (as recommended by Correctional Service Canada and alternative justice organizations) or with a person who has committed a similar crime (as offered by the Centre de services de justice réparatrice, in a group setting or individually). These encounters are carefully prepared, for it is essential that the victim not be re-victimized.

Restorative justice also encourages offenders to take responsibility for their actions. Participants derive no tangible benefits from the process; their sentence is not reduced, their conditions of supervision remain in place, and they are not granted parole simply for having taken part in the process. Furthermore, if the facilitator concludes that the offender's intentions are not consistent with the objectives of the restorative justice process, the offender is not allowed to continue. Facilitators are particularly sensitive to family violence cases and seek to avoid any harmful effects whatsoever to the family and the victim.

Restorative justice is also about rebuilding self-confidence, confidence in others, and reasserting control over one's life.

There is no financial benefit for victims, but they stand to gain much more: taking back control over their lives by expressing their suffering and emotions and obtaining answers to their questions. The facilitators, who are volunteers, ensure that nobody exerts power over anyone else. This entails establishing a respectful dialogue based on truth and mutual respect. In some cases, the meetings aid in the healing process.

The Centre de services en justice réparatrice (CSJR) has been working with victims and offenders for over 15 years. It trains facilitators, explores the latest research in the field and raises public awareness. It prioritizes an integrated approach and collaborates with various organizations to ensure understanding and provide overall support.

It was not by chance that the CSJR was invited to take part in recent consultation sessions held by the Department of Justice Canada and the Office of the Federal Ombudsman for Victims of Crime. This federal government initiative to transform the criminal justice system has multiple objectives: improving the efficiency of the system, considering the needs of vulnerable populations, ensuring respect of the Canadian Charter of Rights and Freedoms, increasing transparency, accountability and oversight within the federal corrections system, and increasing access to restorative justice. These honourable objectives

reflect the public's expectations. They are worth further consideration given that the criminal justice system is going through rough times due to its complexity, costs, accessibility and our perceptions of it.

It is important to bear in mind that the objectives of repairing harm caused to the victim and to the community, as well as encouraging offenders to accept responsibility for their crimes, are set out in section 718 of the Criminal Code of Canada. Therefore, restorative justice is undeniably very attractive to governments. Several challenges nonetheless remain.

Though victims sometimes forgive the offender at the end of the process, the primary purpose is to provide them with a forum to express their experiences, ask their own questions and possibly express their anger and frustrations.

First, restorative justice is often misunderstood, and there is significant apprehension and misconception around it. For instance, some feel that governments are interested in restorative justice for the sole purpose of reducing the number of criminal cases at the expense of the victims and their needs and interests. However, as practised within the CSJR, the restorative justice process begins only after the sentence has been handed down, and sometimes even after it has been served. Others believe that the victim is required to forgive the offender. This is not quite how it works. Though the victim sometimes forgives the offender at the end of the process, the primary purpose is to provide them with a forum to express their experiences, ask their own questions and possibly express their anger and frustration. At no time are the victims made to bear the weight of other people's expectations. Given these fears and perceptions, an awareness and education campaign aimed at the criminal justice system and members of the public would be beneficial.

Second, facilitators require extensive training. In addition, their services are required over a broad territory. Limited access to restorative justice services is more of an issue in outlying regions. However, the Quebec government has acknowledged the situation and is dedicating resources to ensure more services can be provided.

Third, there is a persistent public perception that a community organization, overseen by a volunteer board and making use of volunteer staff, somehow isn't professional. The view is that professionalism can only exist when services are provided by paid employees or by public organizations. And yet, organizations like the CSJR are non-profit corporations that are accountable to their members, their donors and to governments.

These organizations ensure the delivery of quality services through rigorous processes that cover the recruitment of facilitators, their training and their supervision. Volunteers that facilitate restorative justice sessions come from social science fields. Beyond their training, the life skills of these facilitators is also a major factor taken into consideration. Respect, empathy, and the ability to ensure safety and equality in their work are core values. The community character of restorative justice should not cast doubt on these initiatives. Moreover, it encourages citizen engagement and collaboration.
To maintain the participation of community members and the respect of the parties involved, there is a last recommendation to make to governments.

From time to time, government budget priorities require that each activity and task be quantified, imposing results that are defined in advance and applying timelines to them. In the same way, a trend towards systematizing restorative justice practices can hurt the rhythm of a restorative process. Government officials, while showing an openness to restorative justice, must resist the temptation to institutionalize these initiatives and box them into a purely accounting logic. Restorative justice must maintain its human character and remain an accessible solution that privileges citizen engagement.

Despite these challenges, restorative justice is a promising avenue in many respects: rebuilding constructive relationships, re-establishing self-confidence and regaining trust in others/in the community generate inestimable benefits to society.

This article was written in collaboration with Estelle Drouvin, coordinator of the CSJR.

Judge says underfunded justice system 'failed' accused gang leader Nick Chan, who walked free this week

Calgary judge issued stay before alleged gang leader Nick Chan's murder trial could begin
CBC News
Meghan Grant
April 19, 2018

In staying all charges against accused murderer and gang leader Nick Chan, a Calgary judge has placed blame on an underfunded justice system, backlogged courts and "inadequate planning" by prosecutors.

"The criminal justice system failed Mr. Chan, and thereby failed society also in not seeing him prosecuted," wrote Justice Paul Jeffrey in his newly released decision.

Chan was supposed to go on trial on Monday on charges of first-degree murder, conspiracy to commit murder and instructing a criminal organization. But the charges were stayed on Tuesday after the judge issued a so-called Jordan ruling, finding Chan's right to a timely trial was violated.

"The institutions must shoulder far more of the blame, that is, this court and those who fund it," wrote Jeffrey.

In his decision, Jeffrey also outlines a complicated 58-month timeline that details who was responsible for each month of delay.

Inherent delay (time to retain counsel, review disclosure, trial prep): 13 months.
Institutional delay (time between when parties ready for trial but court can't accommodate): 20 months.
Crown delay: 6 months.
Defence delay: 11 months.
Neutral delay (caused by co-accused): 8 months.

Initially, Jeffrey had indicated his reasons for the decision would be protected by a publication ban but on Thursday morning, the Court of Queen's Bench clarified that only the identities of some witnesses were protected.

Chan was arrested in July 2013 with his trial set to wrap up May 18, 2018. Because of the stay, the timeline was cut down from 58 to 57 months.

The judge wrote that the Crown "had a duty to be more proactive" and should have planned "to ensure these very serious charges would be prosecuted in a timely or manner."

Jeffrey said prosecutors were responsible for a delay in getting disclosure to defence that didn't affect the trial but did "reveal inadequate planning of the Crown not proceeding as diligently as it ought, especially considering that Mr. Chan was charged in 2013 for events in 2008."

Gang war
From 2002 to 2009, Chan is believed to have been the leader of the FOB gang that, in a street war with its rivals the FK gang, was responsible for 25 killings.

Police and prosecutors have never suggested Chan carried out the killings, but as the alleged gang leader, he was accused of directing others to carry out his orders and paying up to $10,000 for every dead FK member.

Chan has been tried three times since his arrest:

In 2016, a jury acquitted him of murder in connection with the Bolsa Restaurant triple homicide.

In 2017, he was found not guilty of weapons offences.

And Tuesday, Jeffrey found Chan's Charter rights were violated when it took 57 months to get him to trial.

'Notorious systemic' delays in Alberta courts
Chan was to go before a jury this week in the killing of Kevin Anaya.

Anaya, who was linked to the rival FK gang, was shot and killed in 2008 while walking to a friend's house for a barbecue in Calgary's Marlborough neighbourhood.

In March, counsel for both sides argued over the delay, with Chan's lawyer making a Jordan application based on a 2016 Supreme Court of Canada decision that put a 30-month hard timeline on matters getting to trial after an arrest.
Prosecutors Steven Johnston and Ryan Persad agreed with the timeline but argued there should be more leeway in Chan's case because of its complexity based on voluminous disclosure, the number of witnesses, an "extraordinary number" of pre-trial applications and complicated legal issues

But Jeffrey noted the Bolsa triple murder trial — for which Chan was acquitted — was completed within 33 months and involved many of the same issues stemming from the same operation.

The judge said that timeline supported his conclusion that the Anaya trial did not proceed within a reasonable time.

The Crown also argued the case should fall under transitional exception, which considers which delays occurred before the Jordan decision was issued.

"It is not for me to speculate on the cause or causes behind these delays, be they inadequate resourcing by either level of government or by insufficient resource allocation by court decision-makers," wrote Jeffrey.

"[Chan's] Charter right to be tried within a reasonable time cannot be sacrificed to any persisting disregard of the notorious systemic curial delays in Alberta or the persistent inability to remedy them."

The Crown has appealed Jeffrey's decision, asking for a new trial.

Here is a timeline outlining Chan's court appearances from the time of his arrest to Tuesday when the judge stayed all charges.

TIMELINE
July 18, 2013 —Nick Chan arrested.
July 23, 2013 — First appearance.
* adjourned several times awaiting disclosure.

Sept. 4, 2013 — Initial disclosure package to Chan.
Dec. 11, 2013 — Crown signed a direct indictment on Anaya case.
Jan 24, 2014 — First appearance in Court of Queen's Bench on Anaya indictment.
Feb. 21, 2014 — Anaya trial booked for Sept. 15, 2015. *First scheduled trial.*
May 2, 2014 — First bail hearing.
Sept. 3, 2014 — Bail denied.
November 2014 — Case management judge assigned.
Jan. 8, 2015 — Crown hands over additional disclosure.
March 5, 2015 — O'Connor application brought by defence lawyer Dick Cairns (defence seeks 3rd party records — wants Correctional Service of Canada (CSC) documents on a key witness who got immunity deal). "There appears to be no delay by Mr. Cairns in bringing that application and the Crown fairly does not suggest there was," wrote Jeffrey.
April 8, 2015 — O'Connor application adjourned.
May 19, 2015 — To speak to O'Connor application.
June 22, 2015 — Case management meeting for three trials (two involving Chan). Crown wanted pre-trial applications (O'Connor) to proceed together with other prosecutions that came out of Desino. Cairns objected since it meant having to co-ordinate schedules with many lawyers. Court disagreed, sided with Crown. On this day Cairns also met with CSC counsel to try to narrow request.

Sept. 10, 11, 14, 2015 — O'Connor application hearing set for three prosecutions involving six accused.
July 13, 2015 — Judge orders release of CSC documents to lawyers for the three informants.
Aug 12, 2015 — Cairns and Crown meet with case management judge (CMJ). CMJ says trial dates aren't feasible. Cairns said too many counsels "jammed up" the matter, blame shouldn't be placed on either side. Crown wants to proceed.
Aug. 18, 2015 — Trial officially adjourned, jury selection cancelled.
Sept 14, 2015 — CMJ adjourned the setting of new trial dates to Jan. 7, 2016.
Oct. 8, 2015 — Chan's pre-trial applications on Bolsa.
Sept. to Dec. 2015 — Third party records received, reviewed, redacted, released.
Nov. to Dec. 2015 — Bolsa pre-trial applications heard.
December 2015 — Dustin Darby, Real Honario plead guilty. Chan the only one left to be prosecuted on Anaya file.
Jan 7, 2016 — Setting date for new Anaya trial adjourned.
Jan. 15, 2016 — Dates set for second scheduled Anaya trial: Pre-trial motions Sept. 5-25, 2017 with trial dates Oct. 2 to Nov. 10, 2017. Cairns had a "lengthy trial commitment in 2016" so couldn't do it earlier. Court and Crown were available January 2017.
Feb. to March 2016 — Bolsa trial, Chan acquitted.
Sept. 8-15, 2016 — Chan's second bail hearing.
Oct. 28, 2016 — Chan can't pay Cairns, he withdraws as counsel.
Nov. 21, 2016 — Bail denied a second time.
November 2016 — Crown has more disclosure, which surfaced in another trial (police notes re. one of the key witnesses).
March 24, 2017 — Fisher application: Chan asks government to pay for Cairns arguing he was the only one with experience comparable to Crown counsel. Crown said Chan failed to prove Cairns uniquely suited to provide a defence.
April 19, 2017 — Fisher application denied.
June 1, 2017 — Andrea Serink on record as Chan's lawyer on the condition trial dates be pushed back to 2018. Court and Crown accommodated, Chan waived delay.
March 5 to May 18 — pre-trial motions + new trial dates (Third scheduled trial).
Sept. 25-27, 2017 — Weapons trial.
Dec. 7, 2017 — Chan acquitted of weapons offences.
March 5 to April 13 — Pre-trial motions on Anaya.
April 16 — Chan released on bail.
April 17 — Judge stays charges.

A youth justice system that's more than courts and prisons

Our justice system for youth should invest in early childhood well-being and opportunities for young people in the most marginalized communities.

Policy Options
Yafet Tewelde
April 20, 2018

The federal government has begun to look at ways of ensuring young people charged under the Youth Criminal Justice Act are diverted by police and the courts to specialized programs and services that

provide comprehensive supports. It's critical that these supports represent a collaborative approach among governmental, non-profit and community programs and services that include but are not limited to: Educational assistance, employment, mental health, familial supports, mentorship and social isolation reduction.

For Youth Initiative, where I work, received federal funds in 2014 for a three-year comprehensive gang intervention program that employs these programs and services.

While the government's efforts are encouraging, there continues to be a one-step-forward-two-steps-back approach to addressing youth criminality. For example, Public Safety Canada convened a "guns and gangs" meeting in March 2018 of provincial and federal government, police, community and Indigenous representatives to address gun violence, illegal gun ownership and to "make vulnerable young people less susceptible to the 'insidious lure' of gang activity." But the over-representation of law enforcement and academic institutions, along with the under-representation of youth-focused community and social services representatives, highlight a continuing blind spot about the roots of youth involvement with guns, gangs, violence and criminality more generally. This is particularly true for historically marginalized communities in Canada.

The familiar language of "guns and gangs" is part of the type of "law-and-order" agenda that's politically expedient but offers little in terms of actual success. The public doesn't wind up hearing much about the large body of evidence around how to effectively and comprehensively address youth criminality.

What's required is a focus on justice for victims, perpetrators and their communities so that a holistic approach is taken to prepare youth for the future and give them real opportunity to experience their full potential. That's what will move youth away from guns, gangs, violence and criminality.

A justice focus for youth requires an understanding that the Canadian legal system has operated in unequal terms.

A justice focus for youth requires an understanding that the Canadian legal system has operated in unequal terms. The racial and economic disparity between who is imprisoned and who is not is the most damning evidence against the reliance on police, courts and prisons.

The Canadian government must finally accept the reality that policing, courts and prisons are not solutions to criminality but rather tools of a system that further marginalizes historically oppressed communities; particularly Indigenous and Black communities. Data on Canadian Indigenous and Black inmate over-representation is similar to American data on Black inmates.

In Ontario, there are five times more Indigenous boys and four times more Black boys in the young male jail population than what they represent in the general young male population.

Furthermore, research shows that there is a concentration of youth violence and criminality within marginalized communities, such as Indigenous and Black communities, suggesting youth criminality is

linked to alienation, economic inequality and growing anger and resentment, especially among young, low-income, racially marginalized men.

In Toronto, for example, there are long-established inequalities in areas that include education, employment, income, housing and health. These disparities are not only concentrated geographically but along racial, class and gender lines.

It's time for Canada to implement policies that address the root causes of crime in the communities where youth live.

A justice focus requires meaningfully investing in early childhood well-being and opportunities for young people in the most marginalized communities. Doing so is actually a more fiscally, as well as socially, responsible path to reducing criminality and violence. The benefits are therefore potentially astronomical because we would be able to better allocate the large amount of resources dedicated to police, courts and prisons to include community and social service partners. It must be done if we're to shift the focus on youth criminality to a justice focus, which is much more complex and requires the involvement of many partners beyond law enforcement.

Police now have an opportunity to partner with community and social service organizations that are currently equipped with community outreach workers, social workers and youth workers. Police forces across the country are currently debating the need to provide more effective services while managing ballooning policing budgets, abuse of vulnerable communities, increased demands to do more community engagement and their ability to adapt to technological advancements.

In Toronto, for example, police and policy-makers have been grappling with these issues in several ways over the last few years, meaning it's an opportune time to collaborate with social service agencies to address youth justice.

In 2012, the Toronto Police Service attempted to respond to claims of racism and discrimination by developing the Police and Community Engagement Review (PACER). The result was a report that contained 31 recommendations focusing on public accountability, governance, community consultation, professional standards, human resources, performance management, information management, operational improvements, intelligence-led policing, corporate communications and project management.

Furthermore, in 2017, Toronto police also developed the Transformational Taskforce, with its goal to better focus on what the public most needs from police, embrace partnerships to create safe communities and better zero in on the complex needs of a large city.

Both these Toronto initiatives highlight an understanding that policing is about much more than arrests, convictions and prisons. They rely on more community expertise. The economics of these proposals would allow for a more efficient use of taxpayer dollars to enhance youth justice. The savings that come from investing in social services and community work could be reinvested in further infrastructure to address the social, political and economic inequalities that lead to youth criminality.

Redirecting the focus of police from arresting and processing youth through courts and prisons and mandating that all kids under 18 must be directed to a youth justice services will help address the causes of youth criminality.

Going even further, though, collaborations between law enforcement and specialized youth justice programs may very well alter the very nature of interactions between police and Black, Indigenous and other racially marginalized youth and their communities. Redirecting the focus of police from arresting and processing youth through courts and prisons and mandating that all kids under 18 must be directed to a youth justice services will help address the causes of youth criminality.

My work at For Youth Initiative represents a recognition by the federal government that there is a need to find alternatives to the status quo. The success of the program can be seen in the partnership we've been able to develop with different law enforcement agencies while still maintaining a community engagement focus. Of the 100-plus young people who have come through our program over a three-year period, only six percent have re-offended. But these six percent were still able to get support and services from For Youth Initiative that mitigated any future criminal activity. Furthermore, at the close of the program, participants reported an increase in academic grades and ability, growing feelings of support and more networks for them to turn to, as well as a reduction in criminal engagement.

However, even with this type of success from For Youth Initiative and similar programs, funding and government partnerships remain inconsistent and rarely move beyond the pilot phase.

It's imperative that Canada increase its commitment to such programs to increase youth justice, because it's unsustainable to rely on non-profits using charitable dollars and other types of fundraising. Governments cannot continue to outsource this work to community and social service partners without properly resourcing and partnering with them.

This type of initiative is not the only solution to addressing racial and economic injustice. But it's an example of how to address the systemic mechanisms that allow them to flourish. It is time for Canada to truly get behind a justice focus for youth.

Supreme Court of Canada sets precedent in ruling on child-abduction cases
The Globe and Mail
Sean Fine
April 21, 2018

Children's wishes will be given new importance in international cases of alleged abduction by a parent after a Supreme Court of Canada decision changed the ground rules for determining whether a child must be returned to another country.

In an unusually sharp dissent, three judges said the ruling on Friday will "benefit would-be abductors" by allowing them to be rewarded when their children develop roots in their new communities. It would also encourage abductors to manipulate the emotions of the children, the dissenters said.

The 6-3 ruling came in a dispute between separated parents over where their two children should live. The family of four, all Canadians, had been living in Germany, but the children were struggling in school. The father had custody, but allowed the mother to bring the children to St. Catharines, Ont., for the 2013-14 school year. When the consent agreement ended, he sued in the Ontario Superior Court of Justice under a 1980 international agreement known as the Hague Convention on child abduction to have the children returned.

By the time it reached the Supreme Court, the case had been resolved in a roller-coaster two-year process. The trial judge said the children had to be returned to Germany. On appeal by the mother, Ontario's Divisional Court threw out the ruling, saying the children had become integrated into their new community. The father appealed, and the Ontario Court of Appeal restored the original ruling, saying a child's habitual residence does not change when a parent gives consent to a time-limited stay in another country. The mother then returned with the children to Germany, obtained custody and brought them back to Canada.

The Supreme Court said the issues were important enough to address even though the dispute was settled.

Written by the now-retired chief justice Beverley McLachlin (judges have six months after retirement to complete the cases on which they sat), the ruling sets out a new approach for Canadian courts applying the Hague Convention. (Canada is one of about 90 signatories.) The convention sets out the terms for returning children to the country of their "habitual residence." Until now, previous parental intention on what the home country is usually, with some exceptions, would settle the matter.

But the Supreme Court majority said that approach is out of line with an international trend in the European Union, Australia, New Zealand and parts of the United States. That approach focuses neither on parental intention nor children's wishes, but on a hybrid of those two, plus other factors, such as whether children have settled into their new community.

"The reality is that every case is unique," Ms. McLachlin wrote.

Under the flexible, hybrid approach, children's views will be given new weight, as long as a judge determines they are mature enough to have a say. (There is no specific minimum age at which they qualify.)

A judge "considers all relevant links and circumstances," the chief justice wrote. And, even where parental intentions had been clear, one parent, acting on his or her own, may be able to depart from those intentions: "There is no rule that the actions of one parent cannot unilaterally change the habitual residence of a child."

The ruling did not apply its new interpretation of the Hague Convention to the current case because it was already settled, prompting the father's lawyer, Steven Bookman, to say it will be years before Canada's courts work out what the new interpretation means in practice.

He has cases, he said, in which mothers have brought the children to Canada, saying they wish to visit the children's grandparents for a month or two. The father gives a time-limited consent. Such consents are now "meaningless," he said.

The dissenting authors, Justice Suzanne Côté and Justice Malcolm Rowe, supported by Justice Michael Moldaver, were scathing. The ruling "effectively permits one parent to unilaterally change a child's habitual residence without the other parent's consent even in the face of an express agreement," and promotes abduction, they said. "The uncertainty generated by this ad hoc approach benefits would-be abductors."

Le Barreau doit faire marche arrière
Le Devoir – Idees
Mathieu Hébert *
Avocat
21 avril 2018

La supériorité législative d'une norme constitutionnelle n'emporte pas nécessairement sa supériorité morale. C'est précisément ce qu'oublie le Barreau du Québec en s'appuyant sur une norme aux relents coloniaux pour défendre la bilinguisation institutionnelle du processus de rédaction législative à l'Assemblée nationale du Québec. En s'appuyant sur l'article 133 de l'Acte de l'Amérique du Nord britannique qui sert de charpente constitutionnelle au Canada, le Barreau fait un geste politique dont l'opportunité est hautement discutable, alors que sa mission première demeure la protection du public. En ayant recours à des fonds fédéraux visant à défendre les minorités linguistiques pour promouvoir la bilinguisation institutionnelle au Québec, cela renforce le sentiment de politisation de l'enjeu. En conséquence, nous croyons que le Barreau devrait s'abstenir d'utiliser les tribunaux pour faire de l'activisme politique.

La minorité anglophone du Québec a des droits linguistiques qui sont garantis constitutionnellement et c'est tant mieux. L'objet de cette lettre n'est pas de remettre en question ces droits, mais plutôt de dénoncer le fait qu'un organe qui a pour mission de défendre le public fasse de l'activisme politique par l'entremise d'un recours juridique. Le Barreau ne peut ignorer la nature hautement politique et polémique de la norme sur laquelle il s'appuie. Tenter de se dédouaner avec un discours purement légaliste ou plaider l'ignorance n'est pas suffisant.

Pour bien comprendre ce dont il retourne, il faut savoir que, lors de la fondation du Canada moderne, il était explicite que seule la minorité linguistique anglaise du Québec méritait une protection constitutionnelle forçant l'adoption des lois en anglais et en français. L'article 133 de l'Acte de l'Amérique du Nord britannique est éloquent par son silence qui évite de conférer des protections équivalentes aux minorités francophones hors Québec. Cette absence de protections s'est perpétuée lors de la croissance territoriale du Canada, à l'exception notable du Manitoba qui, lorsqu'il s'est joint à la fédération en 1870, prévoyait une obligation de bilinguisme législatif.

Or, l'obligation de bilinguisme du Manitoba fut rapidement ignorée face au phénomène de minorisation linguistique des francophones, puis réinstaurée près d'un siècle plus tard, en 1985, à la suite d'un

jugement de la Cour Suprême. C'est précisément ce jugement sur lequel devra s'appuyer le Barreau pour promouvoir le bilinguisme institutionnel dans la rédaction législative au Québec. Il est important de se rappeler que l'article 133 de la Constitution est celui qui a servi à faire invalider les articles de la loi 101 qui visaient à faire des lois adoptées en français les seules lois ayant une valeur légale au Québec. Il est aussi à noter qu'en 2015 la Cour suprême du Canada a reconnu qu'aucune obligation constitutionnelle n'obligeait l'Alberta et la Saskatchewan à adopter leurs lois dans une autre langue que l'anglais.

Une norme aux relents coloniaux

Il y a certes eu des progrès en matière de protection des droits linguistiques des minorités francophones au niveau provincial. Néanmoins, hormis l'exception du Nouveau-Brunswick qui a vu ses protections enchâssées dans la Constitution lors du rapatriement de cette dernière et hormis celle du Manitoba, il est faux de prétendre que toutes les minorités linguistiques de langues officielles sont constitutionnellement égales au Canada. Cet état de fait est le témoignage que l'article 133 de notre Constitution est une norme aux relents coloniaux hautement polémiques. Cette dimension politique de la norme sur laquelle s'appuie le Barreau ne peut être ignorée dans les facteurs qui ont mené à une prise de décision que l'on peut qualifier d'activisme juridique.

Autrement, bien que la question soit intéressante d'un point de vue juridique, le Barreau a jusqu'à présent échoué à démontrer comment cette imposante procédure produirait des retombées en matière de protection du public. Un anecdotique écart interprétatif en matière d'utilisation du cellulaire au volant ne semble pas mettre en danger le public et justifier d'entamer une procédure massue visant à déclarer inconstitutionnels, inopérants, nuls et sans effet des pans entiers du corpus législatif québécois.

Enfin, il existe des programmes permettant d'aider les groupes de défense des droits des minorités linguistiques, et c'est sain dans une société démocratique comme la nôtre. Cela dit, nous nous expliquons mal comment le Barreau de Montréal a pu se qualifier pour obtenir 125 000 $ du Programme d'appui aux droits linguistiques fédéral alors que la défense des minorités linguistiques ne fait pas partie de sa mission première. Ces sommes devraient être utilisées à bon escient par un groupe qui a pour mission la défense des droits des minorités linguistiques et non par un organisme de protection du public comme le Barreau.

Pour tout ce qui précède, nous espérons que le Barreau reviendra à sa mission première de protection du public et laissera à d'autres le soin de mener les combats politiques de défense des droits des minorités linguistiques.

* La lettre est cosignée par :
Me Maxime Gauthier;
Me Jean-François Trudelle;
Me Guillaume Rousseau;
Me Ariel Thibault;
Me Julie Tremblay;
Me Maxime Laflamme;

Me Stéphane Brassard;
Me Félix Martineau;
Me Damien Pellerin;
Me Hugo De Koulen;
Me Frédérique Saint-Jean;
Me Alexandre Thériault-Marois;
Me Dominique Goudreault;
Me Maxime Laporte;
Me Nicolas Cléroux;
Me François Alexandre Guay;
Me François Côté;
Me Nicolas Bucci;
Me Valérie Costanzo;
Me Patrice Labonté;
Me Stéphane Lapointe;
Me Denis Royal

Community justice hubs to offer addiction, mental health support under same roof as courts
New community hubs will offer offenders mental health, housing, addiction supports under same roof as courts in Toronto, London, Kenora.
Toronto Star
Kristin Rushowy
April 21, 2018

Typically, they are charged with minor crimes and released on bail, on the condition they not drink or do drugs and that they reside at a certain address.

But they are addicts, or have mental health issues, or are homeless — and soon find themselves back in the court system for violating those conditions, not committing another crime. The cycle begins, and it's one they can't get out of.

In such cases, the court system does not always do justice to those who get caught up in it — something Ontario is now working to address through a plan for innovative centres that include both legal and social services under one roof.

"For some time, I've been concerned about how our criminal justice system works in silos," Attorney General Yasir Naqvi said in an interview. "It deals with criminal behaviour. It doesn't really look at homelessness, it doesn't really look at poverty, it doesn't really look at mental health or addiction. There's a lack of that holistic approach.

"How can we start looking at the totality of an individual and see some of the underlying factors that may be causing them to engage in criminal behaviour?" said Naqvi, a lawyer who is also a former corrections minister.

Those questions — and a move provincially to promote community hubs — led to a look at the concept of Community Justice Centres. That in turn sparked plans for three in the province: in London, Kenora and Toronto's Moss Park neighbourhood.

The provincial budget recently earmarked funds for the initial phases — $5.6 million this year, $4.6 million in 2019-2020 and $3.7 million in 2020-2021. More funding will come as plans are formalized.

No two justice centres are alike, as each is created by community members based on extensive local consultations, catering to specific identified needs.

In Moss Park, the issues are harm reduction, mental health and housing. In Kenora, it's an approach that needs to includes Indigenous education and restorative justice practices to address the disproportionate number of Indigenous youth in the system, many coming from fly-in communities. (Satellite hubs are to being looked at for Sioux Lookout and Timmins.)

In London, youth 18 to 25 years old, representing one-third of all charges in the city, need mental health, substance abuse and employment support.

Community Justice Centres, while almost unheard of in Canada, operate in a number of other countries, notably the two-decade-old Red Hook centre in Brooklyn, N.Y. That centre is housed in a former school and has a courtroom, housing services, addiction services, youth programming, among other supports.

When an accused appears before a judge, an intake officer initially provides the judge with an update, said Naqvi, who visited the Brooklyn site last year, with status updates including treatment appointments the accused attended or missed.

"The lawyers actually hardly spoke in that," Naqvi said. "It wasn't adversarial at all, it was more of a conversation with the judge.

"And this was the most remarkable thing — the judge spoke directly to the accused, and he spoke directly to the accused as a person," putting an arm around a shoulder, leaning away from the court microphone to ask how children are doing, reminding the accused that taking part in addiction treatment makes for a good parent.

"That was the essence," Naqvi stressed. "It was focused on human beings … and the flaws they may have, and have to try to reconcile."

In Toronto, it could mean that instead of being released from court and told to hop on public transit to access treatment, they just walk down the hall, said Karen Pitre, a special adviser to the premier regarding community hubs.

In the present model, "the judge will say, 'You need a treatment plan and can you just get on the streetcar and go down the street to CAMH?' And people walk out the door and they are gone."

Instead, at a justice centre, the “accused actually has access to a social worker, someone they can point to, and say, ‘You need to go talk to that person who is sitting at the back of the courtroom and they are going to help you put together a plan to deal with all the issues you are facing.’ ”

Consultations in the three pilot cities continue, and determining the types of offences that should be dealt with is going to take some work, she said. With that and potential locations to sort out, there’s no set timeline to get them open.

Such a system doesn’t work for serious crimes. Even though the centres deal with lesser crimes, it’s not “hug-a-thug,” as critics may charge.

“They are still held accountable for the criminal offences they’ve committed,” said London police Superintendent Bill Chantler, who was involved in the justice centre working group there.

“I believe it is the correct approach and the most appropriate approach to addressing the issue of young adults becoming entangled in the justice system,” he said. He said he hopes the approach helps decrease crime and recidivism rates as it has in Red Hook.

A Community Justice Centre would not only help address the underlying problems, he said, but also expedite charges, given London youth spend a disproportionate amount of time incarcerated.

Sioux Lookout Mayor Doug Lawrance said about 85 per cent of the inmates in the district jail in Kenora are Indigenous and most of them from north of his municipality.

They are not hardened criminals, he explained, but people who commit crimes because of drug or alcohol addiction. What’s needed is a detox centre, a safe injection site and “housing, housing, housing,” he said.

“We need changes in the justice system so people are not (criminalized) but triaged and sent to the type of care that they need.”

Such centres are open to the broader community to access services, which can include employment help, services for new immigrants or adult literacy classes.

Down the road, judging the centres’ success will not simply be based around recidivism rates, Naqvi said.

“Our metrics are going to be much broader metrics than just whether you commit a criminal offence or not,” he said.

“We want to see that they are actually getting better housing, getting better health care access, and that all of those things are having an impact in that you don’t have to engage in criminal behaviour.”

Le Barreau doit faire marche arrière

Plusieurs avocats (*) remettent en cause la poursuite entamée par les barreaux contre le gouvernement

Droit Inc

Mathieu Hébert

23 avril 2018

Ils ont signé cette tribune qui a été publiée dans Le Devoir.

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En s'appuyant sur l'article 133 de l'Acte de l'Amérique du Nord britannique qui sert de charpente constitutionnelle au Canada, le Barreau fait un geste politique dont l'opportunité est hautement discutable, alors que sa mission première demeure la protection du public. En ayant recours à des fonds fédéraux visant à défendre les minorités linguistiques pour promouvoir la bilinguisation institutionnelle au Québec, cela renforce le sentiment de politisation de l'enjeu. En conséquence, nous croyons que le Barreau devrait s'abstenir d'utiliser les tribunaux pour faire de l'activisme politique.

La minorité anglophone du Québec a des droits linguistiques qui sont garantis constitutionnellement et c'est tant mieux. L'objet de cette lettre n'est pas de remettre en question ces droits, mais plutôt de dénoncer le fait qu'un organe qui a pour mission de défendre le public fasse de l'activisme politique par l'entremise d'un recours juridique. Le Barreau ne peut ignorer la nature hautement politique et polémique de la norme sur laquelle il s'appuie. Tenter de se dédouaner avec un discours purement légaliste ou plaider l'ignorance n'est pas suffisant.

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