Opinion: Comeau ruling about more than beer and the Supreme Court got it right

The impact of the court's much-criticized ruling in the Comeau case goes beyond buying cheep beer from a neighbouring province. It gives provinces a stronger legal basis to regulate in the public interest, raise revenue, and act as laboratories of democracy.

Toronto Star

Maria L. Banda

April 23, 2018

On Thursday, the Supreme Court of Canada issued its decision in R v. Comeau — a closely watched case that inspired the #freethebeer movement. Beer enthusiasts, free traders, and leading papers expressed near-universal disappointment. But, beer aside, most Canadians are better off for the court's restraint.

First, the court unanimously declined to upend Canada's constitutional tradition. Most Canadians can agree that, at 150 years old, the economic union should be stronger and that foreign firms should not have greater access to the Canadian market than local companies.

But cutting red tape within Canada calls for political leadership, not judicial fiat. If Canadians want to be free of outdated provincial alcohol monopolies and arcane constraints on trade (from milk-packaging standards to maple-syrup grades), they should look to their elected officials, not courts. Given the public attention it has generated, Comeau may be the nudge that Canada's politicians need to finally move those talks along.

Second, Comeau preserves the provinces' ability to "enact proactive policies for the good of their citizens"— and to raise revenue from those policies. Much more was at stake than just cheap beer, including "[a]gricultural supply-management schemes, public health-driven prohibitions, and environmental controls," and the court gave provinces a stronger legal basis to protect those interests.

Canada's constitution carefully distributes exclusive powers between the federal and provincial governments. Section 92 empowers the provinces to legislate for the benefit of their constituents. Section 121 limits those powers with respect to interprovincial trade.

Gerard Comeau, fined $292.50 for bringing excess liquor from Quebec into New Brunswick, argued that provincial limits were unconstitutional. But section 121, the court ruled, does not impose "absolute free trade across Canada." The ruling clarifies what provinces can and cannot do: they cannot discriminate or retaliate against other provinces out of protectionism or spite. But they can take measures to protect their citizens' health, safety, and environment.

The dispositive question is whether the provincial regulation's "primary purpose" is to restrict trade, or whether it does so "incidentally." This will no doubt give rise to legal wrangles, as it can be hard to tell a legitimate policy from a trade barrier dressed up in public-interest garb.

What does Comeau mean in practice? The Trans Mountain pipeline controversy is top of mind. If New Brunswick can control the quantity of liquor that flows across its borders, B.C. is now on stronger legal ground to limit the flow of Albertan oil to protect its coast. Comeau does not settle the issue, and

Ottawa may yet claim the power to regulate interprovincial trade and transportation. That's a fight for another day.
There are other far-reaching implications. Under Comeau, Quebec, say, could not exclude Ontario milk to protect its dairy farmers, just as Alberta could not ban B.C. wine (or restrict energy exports) simply to punish its neighbour. However, Ontario could limit trade in goods that pollute Ontarians' health, air, or waterways (such as single-use plastics), to the extent it is not pre-empted by federal law. Similarly, provinces are free to control tobacco, alcohol, and, soon, cannabis sales to protect local welfare.

Ultimately, this is a sensible formula for Canada, a regionally diverse federal state with strong local democracy. As U.S. Supreme Court Justice Louis Brandeis famously wrote in 1932, subnational units act as "laboratories" of democracy: "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Successful local experiments can be copied and scaled up.

The same is true here: at any given point, one Canadian province or another will be leading the way on health, safety, energy-efficiency, or carbon standards. Thanks to Comeau, the innovators have a shield to protect their public-interest regulations from section 121 challenges. Otherwise, provinces with better standards would risk being dragged down to the lowest common denominator by those with lax or inexistent regulations.

Any eventual Canadian free-trade deal should embody Comeau's logic to avoid a race to the bottom. Meanwhile, provinces are free to move forward with proactive policies to protect their citizens. That is a good thing for politically fraught times.

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Judge urges courts to consider racism against black Canadians when sentencing
The Globe and Mail
Sean Fine
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Black Canadians who are convicted of crimes should not automatically receive the same special consideration in sentencing as Indigenous offenders, a judge ruled on Monday.

But in sentencing Jamaal Jackson, 33, on a gun charge, Ontario Superior Court Justice Shaun Nakatsuru encouraged Canada's judiciary to give thorough consideration to how racial discrimination may have contributed to the criminality of individual black offenders before them.

He then took that history of discrimination − including slavery, which ended in Canada in 1834 − into account in sentencing Mr. Jackson. Although he might appear to be a "caricature" of a hardened criminal, Justice Nakatsuru said, racism and the hardships Mr. Jackson had faced as a black young man had shaped his choices in life. The judge said he believes Mr. Jackson can be rehabilitated.

Although Justice Nakatsuru did not go as far as Mr. Jackson's lawyers had urged him to − by making special consideration mandatory − his ruling reinforces a trend in which criminal-court judges, particularly in Nova Scotia and Ontario, have taken into account racism suffered by black Canadians.

"I find that for African Canadians, the time has come where I as a sentencing judge must take judicial notice of such matters as the history of colonialism (in Canada and elsewhere), slavery, policies and practices of segregation, intergenerational trauma and racism both overt and systemic …," the Toronto judge wrote in his ruling.

Judicial notice means judges have accepted something as a fact that offenders do not need to prove. "These social and historical facts are beyond reasonable dispute," he said, adding that judges have the authority to order that a sentencing report be prepared on the racism and disadvantage experienced by an offender.

Mr. Jackson's lawyers called the ruling's affirmation of the role race can play in sentencing a major step forward. "This ruling recognizes that in criminal justice, the distinct black experience matters. The mistreatment of black people in criminal sentencing can no longer be ignored," Emily Lam said.

Mr. Jackson had committed crimes since his youth, the judge said. In 2008, as an adult, he committed three robberies, including an armed robbery of a Petro-Canada station, for which he was sentenced to 81 months. He was out for just a few months when police caught him in a public place with a handgun, with a single bullet in its chambers, in his waistband. At the time, he had three lifetime weapons bans against him.

A report from a Nova Scotia social worker − Mr. Jackson spent his teens years in Cole Harbour, N.S. − found that he grew up in a community with a well-documented history of racial tension. And his father had been absent while away in the military.

The Crown recommended a sentence of 7½ to nine years, plus one year for violating the weapons bans. The defence asked for four years total.

Justice Nakatsuru, who began his ruling by quoting from Martin Luther King, and closed with Atticus Finch, the hero of the novel To Kill a Mockingbird, sentenced Mr. Jackson to six years in prison, and said the Canadian public still needs to be protected from him.

As Atticus Finch told his daughter, "in order to really get to know someone you are judging, you must put yourselves in the shoes of that person," said Justice Nakatsuru, whose Japanese-Canadian father was interned by Canada during the Second World War.

Mr. Jackson, who had listened intently and looked respectfully at Justice Nakatsuru as he read from portions of his ruling, grumbled loudly as a police officer escorted him from the court.

The Criminal Code already permits judges to take into account the individual circumstances of any offender when deciding on an appropriate sentence. But it also says judges must pay "particular attention to the circumstances of Aboriginal offenders" in sentencing.

Justice Nakatsuru said Parliament had sought to recognize the unique circumstances of Indigenous peoples, although black people, too, are disproportionately incarcerated. Indigenous peoples account for 27 per cent of offenders in federal prison, but just 5 per cent of the Canadian population; black people make up 8.6 per cent of federal prisoners, and just 3 per cent of the overall population. In 2003, the Ontario Court of Appeal declined do what Justice Nakatsuru was now being asked to do, he said, adding that he is bound as a judge to follow the higher court's edict.

But he also said it is unnecessary to treat the two groups in lockstep, because of the flexibility of existing sentencing rules.

Justice Nakatsuru cited six cases from Nova Scotia from 2014 to 2017 and a handful of Ontario cases dating back to 2003 in which racial discrimination had been discussed in sentencing offenders.

Apply the principles of the Gladue decision to good character requirements for lawyers
Canadian Lawyer Magazine
Michael Spratt
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The 19th century French ecclesiastic, preacher, journalist and political activist Henri-Dominique Lacordaire famously said, "between the rich and the poor, between the master and the servant, between the strong and the weak, it is freedom that oppresses and the law that sets free."

When viewed through Lacordaire's lens the purpose of law in a free and democratic society is to liberate. Our laws create a safe and just environment in which human conduct is regulated and power is constrained so that maximum freedom and safety is attained by all.

The legal profession plays a pivotal role in the creation and preservation of an equal and just society. That is why it was such a head scratcher when a segment of the profession lost their minds over the law society's proposed statement of principles. In case you have forgotten, after years of study, the law society mandated that all licensees make a commitment to some simple principles: not to discriminate, abide by workplace policies, promote equality and observe human rights legislation.

It is a good thing that refraining from chicken-little-style, hyperbolic rhetoric was not a principle the legal profession was being asked to disavow because the law society's initiative was described as chilling, Orwellian and worse than cold war McCarthyism.

These reactionary criticisms all missed the mark. No lawyer should have difficulty in pledging to uphold the important principles of equality and justice – this is, after all, is what most of us do, on a daily basis. No one, not even the most contrarian lawyer, should have any qualms about signing off on the oh-so-controversial principle that discrimination and racism are bad.

The real criticism of the law society is that statements of principle can only go so far to advancing the cause of equality and fairness. Sometimes action is needed. The law society managed to whip up a controversy with its very modest proposal but in the end the statement of principle is not much more than yet another form that most lawyers will robotically sign.

But the law society will have an opportunity to put their purported principles into action. On May 9, 2018, a motion will be made to force the law Ssociety to pay more than just lip service to fairness and equality when examining a prospective licensees good character.

You see, every lawyer must be of good character to gain admission to the bar. Despite the fact that the law society itself has found little evidence that past misconduct is a meaningful predictor of future behavior, the good character requirement is designed to protect the public, to maintain high ethical standards and to maintain public confidence in the legal profession. And despite the fact that there are many lawyers who have skeletons in their closet, including criminal convictions, the law society defines good character pretty broadly to include an examination if someone has ever been found guilty of or been convicted of any offence under any statute (excluding speeding and parking ticket).

This may seem to make sense until you actually reflect on the statement of principles we all had to sign and then it all starts to seem unfair. Because the good character requirement disproportionately impacts indigenous people. And that is what the May 9 motion is all about.

It is a notorious fact that indigenous individuals are over-represented in the justice system. This means that, despite the fact that indigenous people are not more likely to break the law than anyone else, they are more likely to be stopped by the police, prosecuted, and punished. The Supreme Court of Canada acknowledged this reality almost 20 years ago in the ground-breaking Gladue decision.

The Supreme Court has also recognized that the history of colonialism, displacement, and residential schools can lead to higher rates of indigenous poverty and marginalization and that those historic factors provide an important context for understanding an indigenous individual's circumstances.

The May 9 motion calls for the law society to take into account these same factors when examining the good character requirement and to review its evaluation process. In simple terms the motion seeks to compel the law society to buy in to its own statement of principles.

Removing and contextualizing systemic barriers that operate against Indigenous people is vital in order to foster a diverse and representative legal community. And it is particularly important given that the Truth and Reconciliation Commission identified that indigenous communities often harbor a distrust of Canada's legal system. I wonder why.

Imagine a young, Indigenous law student who has overcome significant adversity, obtained an increasingly expensive legal education, landed a scarce articling position, all despite historic and systemic disadvantages. Imagine doing all of this in the face of uncertainty as to whether the law society will even admit you to its privileged ranks because of past run-ins with the law – run-ins that may have

never occurred but for your Indigenous background. And then imagine the continued stigma of an opaque good character evaluation process that turns a blind eye to the important context of systemic barriers.

It is actually unimaginable that an institution so important to the creation and maintenance of a safe and just environment could ever operate in such a manner.

It is time for the law society to put into practice the 20-year old lessons delivered by the Supreme Court of Canada in Gladue. It's time the law society signed onto its own statement of principle.

Youth and criminal justice: Reflections on the legislation
Current research and program evaluations should be taken into account when making any legislative changes concerning young offenders.
Policy Options
Michèle Goyette
April 24, 2018

It's stating the obvious, and all the practitioners on the ground will tell you, serious delinquency is fuelled by a host of social and psychological factors, which have been clearly established since the existence of criminology. Whether it is a question of social exclusion, inequality of opportunities, childhood abuse, or neglect, it has been shown that environmental contexts that are negative to social and psychological development are closely linked to delinquency in early adolescence or even before.

That is why is crucial to identify the children who are most at risk from a very early age. But to be able do this, we will have to improve school and social programs for children and not cut them.

Even so, there will still be adolescents who exhibit serious and recurring delinquent behaviour. For these youth, we have a duty to ensure we can count on the best means possible to help them reintegrate positively into society. So what are the ingredients for success in the social reintegration of young offenders who are their own worst enemies?

In my view, we will have to work on several fronts at once: we must ensure that we have a progressive legislative framework, and the best evaluative tools. We must also draw on recognized and proven approaches in our interventions, support partnerships between all the actors, and promote the ongoing advancement of knowledge through research and evaluation.

Criminal legislation dealing with adolescents is relatively recent across the world. In Quebec, measures that specifically dealt with the issue of minors presenting with behavioural or delinquency problems were introduced only in the 19th century. The Industrial Schools Act (1874) and the Reform School Act established the first institutions that treat minors differently from adults.

In 1908, the Parliament of Canada adopted the Juvenile Delinquents Act. This law officially established a distinct penal system for children (it applied to those aged 7 to 18), and it also considered a young delinquent as a still developing person who needed help and advice. It urged judges to act as good

fathers of the family and take the necessary means to guide the young person back on the right path. However, this law did not grant adolescents the same rights as adults. Rather, its aim was to protect young people, not to make them more responsible.

The Young Offenders Act replaced the Juvenile Delinquents Act in 1984, after several years of work. This law recognized juveniles as subjects of law and afforded them the same guarantees to protect their rights as it did adults. The law focused on making adolescents take responsibility for their crimes, maintaining that socially integrating offenders would make them more responsible, and would also better protect society. For all those engaged in the field in Quebec, this law offered a reasonable balance between accounting for the needs of young people and protecting society. It favoured a rehabilitation approach – which in Quebec has always been advocated for juvenile delinquency – and it opened the door to the decriminalization of minor offences.

All the research and scholarship in criminology indicates that more repressive measures are not the best way to protect communities.

Despite all this, since the late 1990s, and even more so in the 2000s, Canada seems inclined to toughen the criminal laws for adolescents. The media coverage of a few very serious, but exceptional, situations plays on the general sense of insecurity and leads politicians to want to deal more harshly with crimes committed by adolescents. Toughening the Young Offenders Act has thus become an election issue, which is how the Youth Criminal Justice Act was adopted in 2001 and implemented in 2003. This law imported the principles of adult penalties from the Criminal Code: now it is no longer a question of measures to be taken, but of sentencing. This has changed the hierarchy of principles: the emphasis has shifted to protection of the public and the proportionality of the sentence relative to the offence. Now the judge of the Justice Québec's Youth Division can pass adult sentences on adolescents. At the same time, there is even more focus on the decriminalization of minor crimes, and the position of victims is being reinforced. These are positive developments.

In 2012, the adoption of the Safe Streets and Communities Act takes the repressive aspect a step further by considering general deterrence as a factor that can be taken into account in the pronouncement of a sentence, and by allowing the court to lift the publication ban on the identity of an adolescent who has committed a crime.

Yet research shows that more repressive laws have no impact on reducing delinquency; the opposite is true. In this regard, we should not follow the example of our southern neighbour: with the highest incarceration rate in the world, the United States is becoming increasingly violent, and it has a much higher crime rate than does Canada. For example, in 2012, 14, 827 murders were reported in the United States, compared with 543 in Canada.

It is perhaps more appropriate for Canada to look to other countries as examples to follow. For instance, the European Rules for Juvenile Offenders Subject to Sanctions or Measures, adopted in November 2008 by the justice ministers of the Council of Europe member states, incorporate several of the guiding principles and rules from the United Nations Guidelines and Rules for the Prevention of Juvenile

Delinquency. The principles found in the European Rules guide member states in developing legislation on juvenile delinquency. The following are some excerpts:

The sanctions or measures…shall be…based on the principles of social integration and education and of the prevention of re-offending.

The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed… and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports. In order to adapt the implementation of sanctions and measures to the particular circumstances of each case, the authorities responsible for the implementation shall have a sufficient degree of discretion… Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

The juvenile's right to privacy shall be fully respected…
All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.
Canada is in the avant-garde among nations in social policies. Nevertheless, in the past decade there has been an continuous tendency to toughen penal laws, despite the fact that all the research and scholarship indicates that more repressive measures are not the best way to protect communities.

The application of the Youth Criminal Justice Act has given social workers and legal stakeholders in Quebec an opportunity to think collectively about the values, principles and knowledge on which they should base their interventions. This has allowed them to adopt a common vision and orientation as to how to apply the law. As well, they have scientifically examined the repercussions of their actions in an exhaustive study. So when in the future politicians make changes to the legislation to do with justice for minors, they must take account of the current scholarship on the topic, as well as the evaluations of existing programs. While this might not be too advantageous electorally, it is certainly the responsible approach.

Metis man sues Crown, RCMP after key evidence withheld in wrongful conviction
APTN National News
Kenneth Jackson
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The RCMP repeatedly harassed a Metis man, wrongly accused him of a being a drug trafficker and then withheld key evidence for months that he needed to exonerate himself while locked up in an Edmonton jail.

Then the Crown prosecutor on the case found out and not only didn't drop the charges, but let Clayton Boucher plead guilty to crimes he knew Boucher didn't commit.

It was this “deliberate and unlawful” conduct that make up the main allegations in the more than $1 million lawsuit filed in an Edmonton court Monday by lawyer John Phillips, who began representing Boucher after APTN News first reported on this case last October.

The claim names five RCMP officers, the Crown prosecutor and Boucher’s lawyer at the time as defendants, as well as Canada and Alberta.

Phillip’s last client was Omar Khadr who reportedly received a settlement of $10 million from the Canadian government over his treatment by the United States government.

“(Boucher) spent months incarcerated not only in the absence of evidence but despite the existence of exonerating evidence was withheld from him,” the claim states.

The key evidence that was withheld was Health Canada test results on powder seized from Boucher’s home at the time that came back negative for cocaine, or any illegal drug. In fact, it was baking soda.

But no one told Boucher and he spent four months in the Edmonton Remand Centre until pleading guilty to multiple counts of drug possession on May 30, 2017.

Those convictions were overturned last September by the Alberta court of appeal.

Just recently the RCMP launched a code of conduct investigation into several of the officers involved in Boucher’s arrest.

The bulk of this story is based on the statement of claim filed in court, unless otherwise stated.

The Arrest

The last day Boucher saw his wife was the day he was arrested on Jan. 22, 2017.

Boucher was allegedly breaching his probation by not informing the court he had changed addresses and the RCMP pulled over a vehicle he was the passenger in. The driver of the vehicle apparently told police he bought meth from Boucher. However, no drugs were found during the arrest.

Boucher was living at a friend’s house at the time and the RCMP obtained a search warrant to search the home for drugs.

“They located some white powdery substances, including in an Arm & Hammer backing soda box in a kitchen cupboard, which they concluded was cocaine, and therefore seized as evidence,” the claim states.

Boucher, who had been in lock up for about six hours at this point, told the RCMP it was just baking soda.

“The (RCMP) believed that Mr. Boucher was lying, and decided that the substance must be cocaine, crack cocaine, or methamphetamine,” the claim states.

He was charged with not only trafficking crack cocaine and methamphetamine, but making it.

A day after his arrest he told his lawyer Leighton Grey to contact Crown prosecutor Erwin Schulz to have powder tested immediately by Health Canada.

He did so again Feb. 17 and Grey emailed Schulz seeking test results but the RCMP hadn’t sent in the powder to be tested at that point.

Boucher called Grey’s office five more times in March for results.

While this was happening APTN knows Schulz had requested the lab results on several occasions from the RCMP based on documents APTN previously obtained.

But Schulz was told the results were not back yet, every time.

Despite no tests results a trial was scheduled for September 2017.

But Boucher kept calling.

“He keeps asking the same questions!!!” wrote Grey’s assistant Robin Harrison in a telephone call log sheet on April 3, 2017.

He called again two days later and twice on Friday, April 7, 2017.

But he was also calling Schulz and other members of the Public Prosecution Service of Canada office demanding test results and telling them he was being wrongfully imprisoned.

“By April 28, 2017, the Plaintiff had been in prison for over three months and still did not have a copy of the Certificate of Analyst which was the key to regaining his liberty,” the claim states. “He was completely vulnerable, and reliant on Grey, Schulz and the (RCMP) doing their jobs; nevertheless, he was effectively ignored and dismissed.”

Boucher’s wife dies

Two days later his common-law wife, Phyllis Favel, died in a car collision in Saddle Lake, Alta. She was 34.

On May 5, 2017, a desperate Boucher finally broke.

He told Grey he would plead to lesser charges of possession if he was released on time served. However, he still held out hope the results would be back in time before that would happen.

However, Grey had already threatened the Crown on May 2, 2017 he would file a Stinchecombe application to demand all the RCMP's evidence if he did not produce the Health Canada test results.

The RCMP told the Crown the next day the results came back negative for cocaine.

Simply put, there were no drugs.

On May 4, 2017, Schulz called Grey about the results.

"Remarkably, Schulz did not immediately offer to drop all charges and release Mr. Boucher, nor did Grey demand that he do so," the claim states.

The RCMP then sent Schulz the certificates showing the results May 15. Grey and Schulz discussed that day Boucher pleading to "possession of smaller amounts of drugs".

This all happened on the same day Boucher attended his wife's funeral dressed in a jail-issued orange jumpsuit and in shackles, as per Schulz's direction.

"It is unconscionable that, knowing of Mr. Boucher's innocence, Schulz allowed the farce of these charges to persist while he was grieving his wife's death and to insist on a humiliating protocol as a condition to permitting him to attend her funeral," the claim states.

APTN previously reported Schulz somehow believed the seizures contained "spitballs" (small amounts of cocaine), despite the test results "unequivocally" coming back negative for any controlled substances.

Schulz has never said how he came to this conclusion based on documents APTN has obtained.

Schulz didn't respond to questions from APTN on the lawsuit.

Grey also didn't respond to questions but previously told APTN he was told by Schulz the drugs contained trace amounts of cocaine in 0.8 of a gram, otherwise known as the spitballs.

"Schulz, as an experienced Crown prosecutor, fully understand the documents and their implications," the claim states.

Grey never got a copy of the test results – before Boucher pleaded guilty – to confirm what he alleges Schulz said.

Boucher alleges in the claim that Grey breached his fiduciary duties by not obtaining copies of the test results and "allowing Mr. Boucher to plead guilty to an offence that did not occur."

Schulz also allegedly breached his fiduciary Boucher by "continuing a criminal prosecution against Mr. Boucher when he knew that the prosecution was not supported by the available evidence."

Boucher did plead guilty on May 30, 2017 and was released that day, as per the plea agreement.

“He was effectively compelled to plead guilty in order to obtain his freedom to deal with the tragic death of his wife that occurred while he was wrongfully behind bars,” the claim states.

Clearing his name

Once he got out Boucher went to work to clear his name. He first directed his attention at the RCMP to find out if the powder was ever tested.

“Unbeknownst to Mr. Boucher, the Certificate of Analyst was actually completed several months before Mr. Boucher entered his guilty plea, and it was readily available to Mr. Grey, upon request, at least two weeks before Mr. Boucher entered his guilty plea,” the claim states.

Two samples of the powder seized were sent to Health Canada Feb. 20, 2017 and were completed four days later.

“As of that date, the evidence was clear that Mr. Boucher was not guilty of any of the offences,” the claim states.

However, Const. Allison Moore put the certificates into a holding locker without informing anyone once the results were sent back to the RCMP. As the exhibit custodian it was her job to alert the other officers on the case.

Const. Karine Bertrand was working “closely” with Moore and apparently never followed up with her on the results.

Const. Janarth Paramanantham was the lead investigator and did not request the certificates at any time before viewing them in May 2017.

Cpl. Daniel Fenton, who did the initial arrest, was a supervisor and was supposed to be managing the exhibits from start to finish.

The claim also names Staff Sgt. Henry Van Dorland, who was in charge of the detachment.

“There is no acceptable explanation for why it took a month to get the samples to Health Canada, why the results were not promptly reviewed and disclosed upon receipt, and why none of the (officers) who had moved with such speed and force to condemn Mr. Boucher to lockup had bothered to look for the results of the testing,” the claim states.

The claim alleges this can’t be “attributed to a simple lapse in judgment.”

Months before Boucher was arrested as a suspected crack and meth trafficker he was on bail for an outstanding robbery charge. It’s alleged he robbed a Lac La Biche department store but there is no video

of the robbery or any other physical evidence besides a clerk who believes it was Boucher. That case goes to trial next month.

Boucher was known to police having grown up in Lac La Biche and got into trouble as a teenager and early adulthood. His record shows break and enter convictions dating back to 2001, but nothing for drugs or any serious violent crime.

He claims police were always after him, stopping him walking on the sidewalk with sirens on.

“From the summer of 2016 to January 2017, Mr. Boucher was consistently harassed, intimidated and targeted by the (RCMP),” the claim states. “During this period, Mr. Boucher was stopped 8-10 times or more by RCMP officers. These stops were carried out in public and in a highly conspicuous manner.”

One incident includes showing up at Boucher’s home late at night to check to see if he was there. He was, but didn’t hear the knocking as he was sleeping and hearing impaired.

“The (RCMP) deliberately targeted Mr. Boucher, and intended to ensure that the was kept behind bars as long as possible – even if he committed no crime,” the claim states. “Mr. Boucher was regularly and consistently harassed by the (RCMP).”

The RCMP didn’t respond to the allegations made in the claim.

RCMP Complaint

Boucher filed a complaint soon after his release and was told last month by Chief Supt. Wendell Reimer of the RCMP that his allegations warranted a code of conduct investigation that is on-going.

As for the lab results, Boucher never did get those until Oct. 19, 2017, nearly nine months after his arrest.

It doesn’t appear to be from a lack of trying. Between June and September he called Grey’s office for copies at least 12 times.

He never got them from Grey but from the Public Prosecution Service of Canada.

However, he did call Grey a 13th time on Sept. 27, 2017 to ask why Grey didn’t get a copy of the results before he pleaded guilty.

The statement of claim doesn’t provide an answer.

It was also Boucher himself who filed a hand-written appeal of the convictions after his release.

He did so on June 15, 2017 after Grey declined to take the case several days earlier.

Boucher requested legal aid, who contacted Grey about the merits of the appeal on July 7, 2017

“Grey advised (legal aid) that there was no procedural or substantive basis for an appeal,” the claim states.

APTN has previously reported that Grey said he first learned the powder wasn’t drugs on July 11.

Grey changed his mind and agreed to take the appeal on bro bono.

On Sept. 26, 2017, Boucher was acquitted of all charges. Unlike all the other court of appeal decisions in Alberta, Boucher’s acquittal has never been publicly posted.

Canada’s top bureaucrat says no tolerance for harassment in public service
iPolitics
Kathryn May
April 25, 2018

Canada’s top bureaucrat is launching a review of the culture in the public service with the aim of building a respectful workplace where harassment and discrimination are not tolerated.

“It is critical—but not sufficient—to have appropriate policies and resources in place. We must create respectful workplaces where inappropriate behaviours are never tolerated,” said Privy Council Clerk Michael Wernick in his annual report to Prime Minister Justin Trudeau.

In his report, Wernick said he appointed a task team to lead a “targeted review” of the public service’s culture, harassment policies and find ways to better support employees.

Wernick said the public service is not immune to the harassment and sexual violence behind the ground-breaking #Me Too and Time’s Up movements that shone the spotlight on obstacles women face in their daily lives at work and at home.

That was borne out in recent public service surveys – both an annual survey done in 2017 and the newly released triennial survey—showing harassment and discrimination remain persistent problems over the years. Public Sector Integrity Commissioner Joe Friday has also highlighted harassment and bullying in several of his investigations.

The annual survey found 22 per cent of public servants say they were harassed in the previous two years–higher than the 19 per cent who reported the same in 2014. The recent triennial survey found 18 per cent said they faced harassment and the main harassers are bosses and co-workers.

The same survey found 8 per cent of respondents said they faced discrimination. Again, supervisors and co-workers were the primary culprits.

The persistence is worrisome for a government that has made diversity and inclusion a central tenet of its brand.

“I am resolved in my commitment to ensure that all employees feel respected and safe to come forward if they feel they have been a victim of harassment,” Wernick wrote.

Treasury Board’s harassment policy is aimed at prevention and provides employees with informal or formal harassment resolution process without fear of reprisal.

This policy is being strengthened with the new regulations and provisions of Bill C-65, new harassment legislation for all federally-regulated employees, that will give victims unhappy with the process to appeal to the Canada Industrial Relations Board.

Despite this, Wernick said the “path for an employee to get help” is not always clear and departments must make it easier and more understandable.

The public service survey found only eight per cent of those who reported harassment filed a grievance or complaint; 25 per cent took no action at all. Among those who said they were faced discrimination, seven per cent filed complaints and 48 per cent took no action.

Along with harassment, Wernick said his other top priorities for the year included: mental health and workplace wellbeing; paying public servants on time and getting them the right tools and organizational structures to do their jobs.

He created two “Clerk’s Tables” for advice and feedback from experts, one on diversity and inclusion and another on mental health.

The government also did a number of internal studies last year on diversity and barriers employees face working in the public service. They included a major union-management study on diversity and others on indigenous representation; disability and accessibility and bilingualism.

Wernick said the recommendations of these reports will “shape a new approach” for inclusion. A plan will be developed by a new Public Service Centre on Diversity, Inclusion and Wellbeing at Treasury Board which was announced in the budget.

At the same time, he said senior management has to find better ways of doing things and develop a culture of “intelligent risk-taking.”

Wernick said the public service would be more effective and creative with fewer rules and layers of approval. Senior manager should find new ways to organize teams and make their organizational structures more ‘flexible’, not just for specific projects, but across the public service.

This was Wernick's third report as clerk. He filled it with real-life stories of public servants, their accomplishments, ideas, experiments and where he plans to focus efforts next year. But Phoenix, the pay disaster "that should never have happened" took centre stage again as a top management priority.

He highlighted it in his letter to Trudeau as his "highest priority."

"Over the coming year, I will also be focusing a lot of my time and energy on the pay system," he wrote in closing his report.

He said the government is still digging into the "root causes" of the debacle, studying reports of consultants Goss Gilroy and Auditor-General Michael Ferguson to ensure a failure on this scale never happens again. Ferguson's second report into how the project went off the rails is expected next month and will "provide critical insights" into the planning and implementation of large government-wide IT projects in the future.

Managing Phoenix and the problems has preoccupied the government for two more than years badly tarnished the reputation of the public service. The Liberals have decided to replace the accident-prone Phoenix but it still has to be fixed so public servants can be paid.

Public Service Minister Carla Qualtrough had hoped Phoenix could stabilized by the end of year. But Wernick said when Phoenix will be fixed is anyone's guess.

"The problems with our pay system never should have happened," said Wernick. "In spite of the significant efforts of public servants, our pay system challenges persist. I sincerely wish that I could state with certainty when these issues will be resolved, but there are no quick fixes.

Quebec judge authorizes lawsuit against the federal government over Phoenix
CTV News
The Canadian Press
Caroline St-Pierre
April 25, 2018

MONTREAL -- A Quebec judge has authorized a class-action lawsuit against the federal government related to the troubled Phoenix pay system.

The suit alleges some employees were paid too much before being forced to reimburse the difference, while some others were not paid at all or did not receive the proper remuneration.

Lawyers are seeking a base amount of $500 for all those admissible to join the lawsuit and an additional $1,000 for people who had mistakes in their pay, regardless of whether they received too much money or not enough.

The amount would be higher for anyone who did not receive at least half of their pay during at least two consecutive pay periods.

"When we speak to people, we realize that even just being employed in the civil service during the period caused them prejudice," Julien Fortier, a lawyer with the Sarailis Avocats law firm, said in an interview.

The lead plaintiff is Ezmie Bouchard, who worked at Passport Canada between January and August 2016.

She alleges several mistakes were made on her pay and that when she left she was owed $4,800. The court document states Bouchard ended up receiving $1,000 too much and had to pay it back.

Quebec Superior Court Justice Jean-Francois Emond's ruling does not apply to all employees affected by the Phoenix fiasco.

He excluded employees who, under federal labour laws, have recourse to a grievance.

That includes unionized and non-unionized employees.

Emond said the people eligible to join the lawsuit are primarily students, retirees and casual workers.

Sarailis said it is looking at the possibility of filing an appeal of the limits imposed by the judge.

"Our team is concerned about the excluded members' access to justice, especially for non-unionized employees such as managers," the law firm said in a statement.

"Without access to a form of collective representation or to independent arbitration of their claims, these persons will form a sizable but largely silent subgroup."

Fortier said he believes between 40,000 and 70,000 people across Canada could meet the criteria set out by the judge.

Asked on Wednesday about the lawsuit, the parliamentary secretary to Public Services and Procurement Minister Carla Qualtrough did not want to comment on a matter that is before the courts.

"(But) I don't think we've ever hesitated in saying this should have been settled a long time ago and that it shouldn't have happened," said Steven MacKinnon.

"All available human, financial and technological resources are being used to solve the problem."

It is so far estimated that the total cost of the debacle, from the creation of Phoenix to dealing with its problems, will reach or exceed $1 billion by the end of this year. When the system was first adopted, the previous Conservative government had predicted it would save taxpayers $70 million annually.

Doing justice by Black Canadians

Canada is recognizing the International Decade for People of African Descent. It's a key opportunity to address anti-Black racism in the justice system.

Anthony Morgan
Policy Options IRPP
April 25, 2018

Prime Minister Justin Trudeau recently gave a short but significant speech on Parliament Hill announcing that the Government of Canada is officially recognizing the International Decade for People of African Descent. The decade, from 2015 to 2024, was proclaimed by the United Nations General Assembly in 2014.

In his remarks, Trudeau recognized that chief among the issues and challenges particularly affecting Black people in Canada is their overrepresentation in the corrections system. In particular, the Prime Minister said: "We know that the interaction between Black Canadians and the corrections system as a whole faces a host of challenges, from discrimination in policing, to overrepresentation in our prisons. The percentage of inmates in our prisons who are Black is 8.6 percent, despite Black Canadians accounting for only 3.5 percent of the general population."

The prime minister's speech and accompanying official statement are a welcome step forward, as they mark an unprecedented official acknowledgement by a sitting Canadian prime minister of the pernicious and pervasive impacts of anti-Black racism. More importantly, the recognition of the International Decade is an opportunity to root out the underlying causes of criminalization of Black Canadians and to take meaningful steps toward eliminating anti-Black racism in criminal justice systems

Chronic criminalization of Black people in Canada

As I outlined recently in Policy Options, systemic anti-Black racism in Canadian policing and courts goes back to at least the 1980s. Since then, it has continued to dramatically accelerate the rate of overrepresentation of Black people federally incarcerated in Canada.

For instance, in 2013, Canada's Office of the Correctional Investigator (OCI) revealed in its 2012-13 Annual Report that between 2003 and 2013, the number of Black inmates in Canada's federal prisons increased every year, growing by nearly 90 percent over that period, while the number of Caucasian inmates actually declined by three percent over the same time. While the acceleration rate of Black overrepresentation in Canada's federal prisons has slowed moderately since then, the trend is still troublingly strong.

The OCI, referring to its 2013 findings, noted in its 2016-17 Annual Report: "Four years later very little appears to have changed for Black people in federal custody."

While this pattern stands as its own threat to Canadian values of multiculturalism and equality, the problem is not an isolated one. These incarceration trends are not unconnected to the endemic practice

of racial profiling, in the form of carding and street checks, which has recently been exposed as a Canada-wide phenomenon.

It is also important to note that Black people not only make up an inordinately high portion of the federal prison population but also experience some of the harshest treatment once inside. The practice of segregation, or solitary confinement, has been recognized by the United Nations as well as Canadian advocacy organizations and human rights agencies as a form of torture.

A 2015 report of the OCI stated that "the number of Black offender admissions to segregation and the number of offenders have increased significantly in the last 10 years"; from 2005 to 2015, the number of Black inmates sent to segregation increased by 100.4 percent. As reported by the Globe and Mail, "For that same 10-year period, aboriginal admissions to solitary increased 31.1 per cent."

A criminal justice policy program for the decade

The UN's International Decade for People of African Descent includes a detailed and thoughtful program of activities, intended to guide countries such as ours on how to implement the decade domestically. Special attention is paid in the program to eliminating anti-Black racism in criminal justice systems. States are called on to adopt 11 measures to ensure the protection and promotion of human rights of people of African descent. The measures range from basics that we in Canada take for granted, such as adopting equality laws and human rights tribunals, to more ambitious endeavours such as providing reparations for the ways the criminal justice system has perpetuated the logics and effects of state-sanctioned enslavement of people of African descent.

One of the serious criticisms of Trudeau's announcement recognizing the decade is that it came without a substantive plan of action or articulation of a platform for policy change. The government of Canada has an opportunity to respond correctively to this legitimate critique by undertaking an official review of the UN's program. While our country has adopted many of the program's measures in some form, statistics show that major problems persist and have done for decades. So, the program's measures should be used by our justice professionals to conduct an honest assessment of Canada's progress and lack thereof in implementing access to justice for Black Canadians.

An added advantage of the UN program's suggestions is that the measures proposed are articulated in a manner that speaks to the ways systemic anti-Black racism in the criminal justice system is both an inextricably linked cause and a consequence of its manifestation in other areas, such as poverty, employment, housing, health and education outcomes for Black people in Canada. In other words, to make substance of the thus far symbolic recognition of the international decade, Canada should seize the opportunity to pursue policy change grounded in the letter and spirit of the UN's program of activities.

Toward criminal justice reform for African Canadians

For credible, evidence-based ideas on how to address the chronic criminalization of Black people in Canada, we need not look far. Prime Minister Trudeau, along with Canada's Minister of Public Safety,

Ralph Goodale, and our Attorney General and Minister of Justice, Jody Wilson-Raybould, should consult the October 2017 Report of the UN Working Group of Experts on People of African Descent on its mission to Canada.

The group visited Black Canadians in Toronto, Ottawa, Montreal and Halifax in October 2016 to learn about the experience of being Black in Canada. Sadly, but not surprisingly, during their visit, the members of the working group were immediately struck by the staggering racial disparities that existed in Canada's criminal justice system. The group released a lengthy media statement and an extensive list of recommendations for improving criminal justice outcomes for Black people in Canada, saying that the mission had left members with "serious concerns about systemic anti-Black racism in the criminal justice system in Canada."

Interestingly, the 2016-17 correctional investigator's annual report endorses and repeats certain correctional justice reform recommendations made by the working group. These recommendations offer the most legitimate representation of the will of Black Canadians with respect to eliminating anti-Black racism in Canada's criminal justice system.

To guide and sustain the process of prioritization and implementation of the recommendations of the UN working group and those of other credible sources, the government of Canada should take immediate steps toward establishing an African-Canadian justice portfolio within the Department of Justice, as well as a crime prevention and African-Canadian community safety division within Public Safety Canada.

A distinct policy approach for a distinct people

During Trudeau's announcement, he affirmed one of the most important reasons for taking a targeted approach to anti-Black racism in Canada generally, and within the criminal justice system more specifically. Unlike any other prime minister before him, he noted that "people of African descent represent a distinct group."

As a distinct group, Black Canadians require a distinct policy approach. African Canadians collectively endure unique and chronic challenges due to systemic anti-Black racism in Canada's criminal justice system.

In his remarks, the Prime Minister noted that Canada needs to do "better" by Black Canadians. But, respectfully, I disagree.

After centuries of being deeply disadvantaged by this system, Black Canadians deserve a system that does more than just better, for "better" is an unconscionably low bar to meet. No, we're calling for a system that actually lives up to its name and finally does us justice.

How? In the words of the Prime Minister, "Addressing the challenges facing Black Canadians requires participation from all Canadians."
On y va.

Did you know? The numbers on Canada's public service in 2017
iPolitics
Kathryn May
April 25, 2018

For 25 years, Canada's top bureaucrat has written a report for the prime minister about the state of the public service that outlines accomplishments, plans and priorities. Privy Council Clerk Michael Wernick issued his third report to Prime Minister Justin Trudeau this week for 2017. Here's a by-the-numbers snapshot.

The People
262,696: employees

44.9: average age

6,480: executives

50.2: average age of executives

36: deputy ministers; average age, 56.7

41: associate deputy ministers; average age 54.6

4: percentage under age 25

2.2: percentage over age 65

11,085: new hires

43: percentage of new hires between age 25 and 34

9,500: retired

49.3: percentage of public service with 5 -14 years of experience

12: percentage with less than four years of experience

29.2: percentage who speak French as first language

70.8: percentage who speak English as first language cent is Eglish

At Work
69: percentage affected by Phoenix
43: percentage who feel quality of work suffers because of too many approval stages

18: percentage who reported harassment

58: percentage feel supported if pitched a new idea

80: percentage who say supervisors support flexible work

76: percentage who feel their departments supports a diverse workplace

67: percentage encouraged to take risks

92: percentage of students with “positive “ work experience in the public service

75: percentage of students who would seek a public service career

25: percentage of women National Defence aims to have in military by 2026

Services to Canadians
64.7 million: visits to Canada.ca

7.02 million: in-person visits to a Service Canada Centre

1.78 million: calls answered at 1-800-O-CANADA

4.89 million: passports issued

$30.5 billion: duties and taxes collected by Canada Border Services Agency

86: percentage of Canadians who filed taxes online

7.9 million: users of the auto-fill-my-return feature

300: projects by departments for Canada 150

1.54 million: social insurance applications processed

2.97 million: Employment Insurance applications

2.7 million: Old Age Security applications and renewals

1.5 million: Canada Pension Plan Applications

The Bouquets
Top Ranking in the International Civil Service Effectiveness Index
Top Ranking on the Global Government Forum’s Women Leaders Index

Canada's Top 100 Employers – 2018
• Canada Revenue Agency
• Canadian Heritage
• National Energy Board
• Treasury Board of Canada Secretariat

Canada's Best Diversity Employers – 2018
• Agriculture and Agri-Food Canada
• Employment and Social Development Canada
• Health Canada
• Public Services and Procurement Canada

Fixing Phoenix pay system is priority No. 1, says Canada's top public servant
Ottawa Citizen
Jacquie Miller
April 25, 2018

Fixing the troubled Phoenix pay system is his top priority, says the chief of Canada's public service. The pay "challenges" that persist with the government's payroll system are unacceptable, said Michael Wernick, the Clerk of the Privy Council, in his annual report to Prime Minister Justin Trudeau.

Wernick said the government will continue to "work hard to make progress on the pay system and to ensure that our employees are paid accurately and on time," but gave no assurances on when that will be accomplished.

Nearly 70 per cent of public servants say they have experienced problems with Phoenix, the automated pay system. They have been underpaid, overpaid or not paid at all. Unions say many public servants fear shifting positions, taking promotions or even retiring for fear their pay will be messed up.

Wernick said he was distressed by the "emotional and financial hardship" that Phoenix has caused public servants and their families. The problem should never have happened, but there are no quick fixes, he warned.

An integrated team is working to correct the underlying problems with the pay system, tackle the backlog of complaints and redesign human resources processes, his report said.

The government has also begun work on a new pay system.

The auditor general will release a second report on Phoenix this year, wrote Wernick, which will "provide critical insights that will inform the planning and implementation of future government-wide transformation projects."

Wernick's report touched on many accomplishments of public servants, too, from helping handle disastrous flooding in Quebec and Ontario, and wildfires in B.C. to designing various solutions to

improve services, from information sessions to informing Indigenous people on reserves and in the North about the new Canada Child Benefit to a Parks Canada app that helps people find a campsite and share their experience in national parks.

Other key points in the report:

Harassment and discrimination: Wernick promised to create a task force to review the culture and policies in the public service to ensure harassment and discrimination are not tolerated. While organizations have tools to respond to harassment and to support employees, sometimes "the path for an employee to get help is not clear," said Wernick, pledging to make processes easier to understand and access.

Listen to the people on the ground: The report acknowledged that often the best ideas come from employees closest to those receiving services. The government must also reduce the number of approval stages and unproductive rules in order to "build a culture of intelligent risk taking," said the report, noting that 43 per cent of public servants felt the quality of their work suffered because of too many approval stages.

Wernick pledged to "tackle the hierarchy," citing as an example a project that began at Natural Resources Canada called Take Me With You that encourages managers to bring employees to meetings with them. That allows less experienced professionals to gain insight into how priorities are set and decisions made, and managers to benefit from new perspectives, said the report.

What do public servants think about the public service?

Some key results from the 2017 public service employee survey:

69: Percentage who said their pay or compensation has been affected by the Phoenix pay system

34: Percentage who said pay-related or compensation-related issued caused them stress at work

58: Percentage who said they would be supported if they proposed a new idea

41: Percentage who said their work suffers because of complicated or unnecessary business procedures

56: Percentage who said their workplace was "psychologically healthy"

18: Percentage who said they had been the victim of harassment in the last two years
8: Percentage who said they had been the victim of discrimination in the last two years

Federal lawyers' union says low pay contributing to 'crisis' in hiring, retention, court delays and stayed prosecutions

Cristin Schmitz
Lawyer's Daily
April 26, 2018

The union leader representing 2,600 federal government lawyers says Ottawa's persistent failure to pay competitive compensation is contributing to lacklustre lawyer recruitment, and severe staff shortages in major cities across the country — as well as to court delays and criminal charges being stayed for violating the Supreme Court's speedy trial deadlines.

Ursula Hendel, president of the Association of Justice Counsel (AJC), spoke with The Lawyer's Daily shortly before she testified before the Commons Human Resources Committee April 25 in support of amending the Federal Public Sector Labour Relations Act to restore binding arbitration for federal unions — a dispute resolution mechanism that had been removed by the predecessor Conservative government. The AJC's three-year collective agreement expired in May 2014, and the union is awaiting the outcome of consensual binding conciliation after spending nearly three years of fruitless negotiations with successive governments.

The federal Treasury Board is arguing for a 1.25 per cent cost-of-living increase in each of years one, two and four of a four-year contract with its lawyers, with 2.25 per cent increase in year three.

However, the AJC is seeking significant catchup "market adjustments" to propel the pay of federal lawyers, as compared to their provincial counterparts (now in sixth or seventh place as compared to their provincial counterparts, according to the union), back up to second or third place, behind Ontario Crowns. Federal Crowns' pay also significantly lags that of provincial prosecutors in Alberta, B.C. and Quebec. (For example, the main federal working-level prosecutors (LP2) maximum pay of $137,866 per year is lower by 31 per cent than the $199,149 annual pay rate for comparable Ontario prosecutors (CC-3), the AJC says.)

Consequently federal lawyers in many major centres are departing in droves, leaving behind overworked and stressed colleagues to carry an even larger load, Hendel said.

She noted that in the past two years the B.C. regional office of the federal Department of Justice (DOJ) has shrunk from approximately 200 to 140 lawyers who handle immigration, tax, civil litigation and other non-criminal matters. Even junior lawyers are leaving because they can't afford to live in Vancouver and pay off their student loans.

"We call it the graveyard," Hendel said. "If you talk to management [in B.C.] … we agree that we're in a crisis, and management is desperate to try to solve it."

She said efforts by DOJ management in Vancouver to staunch the outgoing tide of lawyers include offering leaves of absence to those who depart for provincial prosecutions or the private sector "in the

blind hope that they'll hate their new job and they'll come back to the DOJ." However, "no one expects it to be an effective strategy," she added.

The fallout from short-staffing — which Hendel maintains is caused by poor pay and frozen hiring budgets — has prompted stern admonitions from the bench. For example, when he threw out heroin-importation charges last January, Justice Paul O'Marra sitting in Brampton, Ont., said he was "joining the chorus of … judicial condemnation about the period of time it has taken the federal Prosecution Service of Canada to complete the disclosure process to permit the parties to proceed and/or move the matter along in non-complex importing cases." Earlier this month the Toronto Star also revealed that since the Jordan case set timelines in July 2016 for the s. 11(b) Charter right to a speedy trial, 21 narcotics prosecutions have been stayed by judges or federal prosecutors for undue delay in Brampton — one of the country's busiest criminal courts.

"We're under stress in almost all jurisdictions, but it's acute in the major centres, [such as] Montreal, Toronto, Vancouver, Edmonton," Hendel said. "If we can remedy pay, if we can improve our [lawyer] complement, the workload issue might attenuate naturally."

Hendel, a prosecutor with the Public Prosecution Service of Canada (PPSC), noted that as a result of the Jordan imperative, provincial governments are hiring additional prosecutors (including 32 in Ontario, 52 in Quebec and 50 in Alberta). A significant number of those prosecutors will be poached from the ranks of federal prosecutors, she said.

She suggested to keep pace, the PPSC should be creating 22 additional positions for federal prosecutors: six in Ontario; six in Quebec; and 10 in Alberta.

Treasury Board spokesperson Isabelle Tessier told The Lawyer's Daily "the Government of Canada is committed to reaching agreements that are fair and reasonable for employees and for Canadians." Tessier said average public service salaries are set to keep up with the market in order to maintain the government's ability to recruit and retain qualified employees. "Wage increases are determined based on several factors, such as labour market and economic trends, as well as affordability based on the state of the Canadian economy," she explained. "Salaries for represented employees are established through good faith negotiations with unions. As we are awaiting a decision from the Federal Public Sector Labour Relations and Employment Board on this matter, it would not be appropriate to comment on our position at this time."

Les juges devront payer leurs frais
La Cour d'appel a rejeté la demande de provision pour frais des juges de la Cour supérieure
Droit Inc
Jean-François Parent
26 avril 2018

Ces derniers devront donc payer eux-mêmes leurs frais dans la demande en jugement déclaratoire déposée contre la Cour du Québec l'année dernière.

Les requérants, dont le juge en chef de la Cour supérieure Jacques R. Fournier, plaidaient pour que « leurs honoraires extrajudiciaires ainsi que tous leurs déboursés pertinents » soient couverts.

Demande rejetée, les juges de la Cour supérieure n'ayant pas fait la preuve de leur « impécuniosité ».

La situation ne correspond pas à une situation où une partie « serait incapable d'agir en justice sans l'ordonnance » de provision pour frais. Jamais demande de frais pour provisions n'a été accordée lors d'un renvoi, observe la juge Duval Hesler, dans les motifs de sa décision rendue le 24 avril.

Les juges sont représentés par Me William J. Atkinson, du cabinet éponyme, ainsi que par Me Véronique Roy, de Langlois. Les avocats font valoir « qu'en jugeant de leur demande de provision pour frais, il faut d'abord et avant tout s'interroger sur le risque de porter atteinte au principe d'indépendance et d'impartialité du système judiciaire et à l'importance d'éviter tout apparence de conflit d'intérêt », écrit Nicole Duval Hesler.

Rappelons le contexte pour cette demande: les juges de la Cour supérieure exigent que les magistrats de la Cour du Québec cessent d'entendre les causes dont la valeur dépasse 10 000 dollars. Les juges contestent le fait que la Cour du Québec puisse avoir une compétence « exclusive » en civil, ainsi que le seuil de 85 000 dollars qui lui est attribué.

La ministre de la Justice, Stéphanie Vallée, conteste la requête des juges de la Cour supérieure. Mes Dominique Rousseau et Jean-Yves Bernard, de Justice Québec, représentent la Procureure générale du Québec dans cette affaire.

L'arrêt D'Amico
Les juges invoquaient l'arrêt D'Amico, où un requérant avait obtenu la provision pour frais sans avoir démontré son impécuniosité.

Un argument que la juge Duval Hesler rejette, en faisant valoir que les demandeurs « ont tort d'affirmer que la preuve de l'impécuniosité n'avait pas été faite dans cette affaire ».

Nicole Duval Hesler ajoute que « comme cette provision pour frais a été ordonnée postérieurement à la résolution du litige, elle s'apparente davantage à une adjudication des frais en faveur du requérant ».

Elle conclut donc que les juges de la Cour supérieure, « ceux-ci n'ayant pas fait la preuve de leur impécuniosité ».

Former chief justice of Canada Beverley McLachlin: How I became a thriller writer
Beverley Mclachlin
The Globe and Mail
April 26, 2018

I have always loved stories.

The love began with childhood, as such loves usually do. Fairy tales of princesses in castles and trolls on bridges, enthralling and frightening and drive-you-under-the- covers scary. Old Testament sagas full of romance, war and warnings of dire things to come. So enthralled was I by stories that on occasion I would turn my childish hand to chronicles of heroes disappearing down rabbit holes, Alice-like, to discover new worlds of magic and adventure. My mother tossed them out with the weekly trash, which is doubtless where they belonged, but to this day I remember with pleasure the exhilarated hours I spent scribbling them at the dining-room table.

The love of stories followed me into adolescence. We didn't have many novels in our house, but each Saturday I cajoled my parents into dropping me off at the Pincher Creek Municipal Library, staffed Wednesday lunchtime and Saturday afternoon by the town's redoubtable matrons. I started off with Nancy Drew – smart girls chasing down gentle thieves – and the Hardy Boys – teenage sleuths who once rode the El in Chicago to intercept marauders and keep the city safe. Having exhausted the juvenile shelves, I took to the adult section. If the proper ladies behind the desk privately looked askance at a 13-year-old taking out Trollope, they tactfully kept it to themselves. "Enjoy," they would say grimly, as they brought the date stamp down and I turned and fled with my salacious catch of the week.

At university, my consumption of novels – at its peak two a week – diminished. Cramming philosophical treatises and French grammar into my head left little time for frivolous meanders into frivolous fiction. And then, out of the blue, an unexpected epiphany. I took a class in 20th-century English literature and discovered Joseph Conrad and E.M. Forster. I followed Heart of Darkness and A Passage to India on voyages into strange lands and even stranger workings of the human psyche. Here were stories of a depth and breadth I had not imagined possible. I swallowed them up whole.

I became a lawyer and discovered more stories – the stories in the cases, the stories of my clients. Stories of abuse, stories of broken hearts, stories of greed and loss and ineffable suffering. Weekends, for emotional relief, I took to reading the short stories of a little-known author named Alice Munro. I bought her first book, Dance of the Happy Shades, and every one thereafter. The girls had old-fashioned names such as Gladys and Flora, but they spoke to me. I encountered women I recognized, women such as Del Jordan in Lives of Girls and Women – outsiders, dissatisfied, struggling to expand their minds beyond the limited experiences of the little town in which they were raised. Just like me. I didn't know that this obscure Canadian author would some day win the Nobel Prize for literature; all I knew was that when we entered her stories, we arrived in new worlds. Worlds filled with the quiet tragedy of ordinary lives; worlds filled with words laid down with precision, evocative and razor-precise; worlds of delight and surprise, the quick ironic twist at the end. And, when the last page was turned, a sigh; that is how it was; no – that is how it is.

An old yearning stirred in me – I wanted to write. Needed to write. Not briefs, not factums, but fiction. I took to reading mysteries – British greats such as P.D. James and Ruth Rendell. I knew nothing about writing fiction and had a legal career that filled my days and not a few nights. But if P.D. James could work by day (for the National Health Service) and write at night, so could I, I told myself. Secretly, before dawn or late at night, I took to my aging Olivetti. I created a character – a wilful defence lawyer I named Jilly Truitt – and built a story – sort of – around her. I knew the book wasn't good, but on a lark sent it off

to a first-novel competition. It didn't win, but to my astonishment, Anna Porter of McClelland & Stewart evinced interest in it. I started to revise.

And then fate intervened. I was asked to be a judge. I had never dreamed of being a judge, but I knew it was work I would love. Important work, interesting work. I also knew I couldn't combine it with a career as a novelist. A position on the bench was not a job, but a calling. I wavered. Become a judge, or pursue my book? In the end I chose judging. With a heavy heart, I phoned Anna and told her I would not be revising my book.

I came to the job of judging green, not knowing what to expect. I thought I'd get a lot of law. What I got was a little law and a lot of stories. It is the happy lot of a trial judge to listen to a never-ending stream of stories. Day after day, humanity in all its colour paraded before me, a catalogue of hopes, dreams, deceptions, disappointments. Men and women of all races and backgrounds, sad, happy, angry, indifferent. Their portraits inhabit my mind to this day – a middle-class widow from West Vancouver standing before me in her best dress and hat to plead for another six months before the bank foreclosed on her house; the innocent youth mired in a world of crime by a casual mistake; the husband and wife destroying each other in a frenzy of mutual rage; a man, dissolute and sad with a face from The Scream describing in clinical detail how he murdered his mother.

The job required me to retell the stories I heard in the judgments I wrote at the end of each case. And I did, in cursory fashion. Part of me longed to describe what I had witnessed in vivid strokes, revealing all. Yet I refrained; to do so would be impermissibly self-indulgent and would unjustifiably invade the privacy of the people concerned, or what was left of it. Or so it seemed to me. These were real women and men, who came or were dragged to court for one reason – to get or be given justice. My job as a judge was to reveal those facts necessary to allow the legal analysis to proceed, not to indulge myself in literary extrapolations on the conduct or character of the people whose fate I was required to judge. Some judges have taken a different view, leavening their judicial prose with humorous pastiches of this plaintiff or that defendant, or hooking the reader in with opening lines such as Lord Denning's famed "It was bluebell time in Kent." I envied them. But, for better or worse, I could never bring myself to emulate them. I contented myself with guilty pleasures of reading the latest thriller from P.D. James or Jo Nesbo or Bill Deverell.

Thirty-six years after I mounted the bench to hear my first judicial story, my work as a judge came to an end, as all good things must. As I approached retirement from the bench, my mind returned to stories and to the book I had abandoned almost 40 years earlier. Perhaps, I thought, I could take up the dream I had put aside so long ago, now that I would be a judge no longer. Like Tennyson's Ulysses, it might not be too late to seek a newer world.

I started tentatively, getting up at 5:30 a.m. before regular work to see what would happen. Soon the story took over – the characters, the plot, the pathos and the joy – elements I had absorbed over the decades now fused into something new, something true but not-true. To my astonishment, the result found a publisher and my first novel, Full Disclosure, will be released on May 1.

What is it about stories that have led them to dominate my existence, from childhood to postretirement? Poems, essays, learned treatises – yes, even judgments – all have their place in the literary pantheon. But why do so many, me included, keep coming back to stories? I wish I knew the answer.

It has to do with people, I think. We are social animals, Aristotle observed almost 3,000 years ago. We care about each other. We have a word for this - humanity. It's how we are in the world, with each other. It's what the law is about. It's what literature is about. Nothing, in the end, reveals our humanity better than a good story.

Beverley McLachlin is a former Justice of the Supreme Court of Canada, and served as Chief Justice from 2000-2017.

Le retour à temps plein de l'avocat Di Iorio
L'avocat et député a annoncé sa démission surprise de la Chambre des communes.
Droit Inc
Delphine Jung
27 avril 2018

Me Nicolas Di Iorio a annoncé mercredi qu'il quittera la Chambre des communes avant le scrutin de 2019 et donc, ne se représentera pas comme député fédéral de la circonscription montréalaise de Saint-Léonard – Saint-Michel.

Élu en octobre 2015 face à une autre avocate, Me Rosannie Filato, cet avocat spécialisé en droit du travail et de l'emploi va retourner exercer à temps plein au sein du cabinet Langlois. Il y est co-chef de l'équipe de droit du travail et de l'emploi.

Pour Droit-inc, le député est revenu sur sa carrière en politique et ses projets futurs, dont celui de pratiquer le droit pendant encore… 50 ans !

Droit-inc : Vous avez été élu député libéral en 2015, qu'est-ce qui vous avait poussé vers la politique ?

Nicola Di Iorio : Lorsqu'on m'avait approché, je ne voulais pas devenir député. Je répondais que j'étais l'homme le plus heureux du monde, qu'on pouvait me demander n'importe quoi, mais pas ça. Par contre, à l'époque, il y avait un gouvernement conservateur en place et je connaissais Justin Trudeau depuis plusieurs années. Son père avait été mon collègue de travail. Justin Trudeau voulait avoir quelqu'un qui faisait partie de la communauté d'affaires, engagé dans la société et reconnu dans le milieu juridique. Alors dans ces circonstances, j'ai fait le saut. J'ai entrepris un cheminement pour reconquérir le comté qui avait été presque perdu en 2011.

Quels ont été vos objectifs en tant que député ?

Le premier était la prolongation de la ligne bleue, très importante pour mon comté. Deuxièmement, l'enjeu de la prévention de la conduite avec facultés affaiblies était très important pour moi. Je voulais

mettre sur pied cette semaine du même nom. Un autre enjeu fondamental était celui de la direction de la Cour suprême. Je voulais qu'il y ait la plus haute des rigueurs dans le choix de la personne qui allait y être nommée. C'était primordial pour l'avenir du pays. J'ai travaillé d'arrache-pied pour arriver au résultat auquel nous sommes arrivés. Enfin, je suis très fier de mes origines italiennes, alors je voulais aussi créer le mois du patrimoine culturel italien. Le dossier sur la fiscalité des petites entreprises me tenait également particulièrement à cœur.

Quel est le souvenir le plus marquant de votre carrière politique ?

Quand j'ai proposé la création de la Semaine nationale de la prévention de la conduite avec facultés affaiblies, les réactions ont été curieuses. Il y a des gens qui disaient que je proposais cela parce que j'étais un député libéral, que je me sentais coupable puisque le cannabis allait être légalisé. Donc j'ai dû prendre mon bâton de pèlerin. Même dans mon propre caucus, il y avait des gens qui n'étaient pas convaincus. J'ai dû les convaincre un par un. Après le vote, quand j'ai constaté qu'il y avait 295 voix pour et aucune contre, et que les gens de l'opposition et du gouvernement m'ont applaudi chaleureusement, j'étais très heureux.

Dans votre carrière politique, comment le droit vous a aidé ?

La droit a été un secours précieux et inestimable. La politique, le système parlementaire, le régime démocratique que nous avons, tout ça constitue une machine extrêmement complexe, à multiples variables, qui évolue dans plusieurs dimensions et à travers un immense territoire. Avoir été professeur de droit, avoir pratiqué le droit, m'a donné la main sûre.

Et à l'inverse, pensez-vous que votre carrière politique va vous aider pour votre retour à temps plein au cabinet Langlois ?

De manière extraordinaire ! Ce que j'ai appris dans ces trois années est l'équivalent de trois doctorats en sciences politiques.

Qu'est-ce qui va le plus vous manquer de votre carrière de député ?

Cette camaraderie fraternelle qu'on développe avec les collègues… On devient très attaché les uns avec les autres. J'ai développé de belles amitiés des deux côtés de la ligne. Je considère chaque membre de mon caucus comme un ami ou une amie, mais aussi comme un frère ou une sœur.

Pensez-vous un jour revenir en politique ?

Ma prédiction est que je vais pratiquer le droit pendant encore 50 ans ! Je suis un homme qui a beaucoup d'énergie et d'enthousiasme, j'aime vivre la vie avec émotions et ces émotions-là constituent un puissant carburant. Il y a une chose dont je suis sûr, c'est que je vais continuer à servir mon pays et si je dois le servir à nouveau comme député, je le ferai le moment venu. En attendant j'ai beaucoup d'autres choses à faire.

Avez-vous des projets ?

Je suis en train de créer une fondation destinée à développer la recherche et la science pour éviter les fatalités causées par la conduite avec facultés affaiblies.
Quelque chose à ajouter ?

Droit-inc a été un très bon compagnon pour moi durant mon passage. Étant souvent absent et à l'extérieur, Droit-inc me gardait ancré dans la réalité.

De juge en chef de la Cour suprême à romancière
L'ex-juge McLachlin publie son 1er roman, qui ne sera pas son dernier, assure-t-elle. La vedette ? Une jeune criminaliste idéaliste
Radio-Canada
30 avril 2018

Presque six mois après avoir officiellement pris sa retraite de la direction du plus haut tribunal du pays, Beverley McLachlin publie cette semaine son premier ouvrage : un roman policier.

Jilly Truitt est avocate criminaliste à la tête d'un petit bureau au centre-ville de Vancouver. Étoile montante dans son domaine, elle a un faible pour les causes que tous croient perdues d'avance. Cette fois, la procureure se prépare pour ce qui deviendra probablement son plus important dossier en carrière : défendre le riche homme d'affaires Vincent Trussardi, accusé du meurtre prémédité de son épouse.

La jeune avocate est le personnage fictif et l'héroïne d'un roman policier à paraître mardi.

Elle ne serait pas peu fière de rencontrer celle qui l'a mise au monde. « J'avais dans ma tête une sorte d'histoire, une héroïne, une jeune avocate, dans le domaine criminel qui essaie de concilier sa vie personnelle et sa vie professionnelle », lance l'ex-juge en chef Beverley McLachlin, en entrevue à l'émission Les coulisses du pouvoir. « Je l'ai mise de côté pendant les 36 ans que j'étais juge. »

Mais l'idée n'a jamais été enfouie très loin. Il y a un peu plus d'un an, Beverly McLachlin décide donc de se lancer. Tôt le matin, tard le soir, les fins de semaine, durant les vacances, dès que son travail de juge lui permet, elle couche sur papier ce projet qui avait mûri pendant presque quatre décennies. Le résultat final, Full Disclosure, sera lancé ce mardi au Canada anglais.

Pourquoi la sérieuse juriste, spécialisée en droit civil, a-t-elle choisi de cadrer l'action de son premier livre avec une cause criminelle?

L'ex-juge en chef affirme qu'elle a bien peu en commun avec son héroïne. Le seul clin d'œil qu'elle s'est permis, admet-elle avec un sourire, c'est ce moment où Jilly traverse la bibliothèque du palais de justice où se trouve le portrait de la juge en chef du Canada, quand elle était « jeune et jolie » écrit-elle, ce qui lui rappelle que parfois, les femmes finissent par atteindre les hautes sphères.

Un ouvrage éducatif

Le procès décrit dans le roman est précis et détaillé, même si l'auteur dit avoir dû réduire certains éléments pour maintenir le rythme : une façon pour le lecteur de mieux comprendre la façon dont se déroule un procès criminel. Et une fenêtre sur ce que pourrait devenir le système de justice canadien à la suite de la réforme proposée par le gouvernement.

Beverley McLachlin a en effet éliminé l'enquête préliminaire et imposé à la procédure une cadence très rapide.

« C'est un procès exemplaire. J'ai toujours parlé du besoin d'accès à la justice et d'un processus efficace. Dans ce roman, c'est très efficace », dit-elle en riant.

L'influence de sa mère

Beverley McLachlin a dédié l'ouvrage à sa mère « qui lui a appris à aimer les histoires ».

« Elle a toujours aimé les histoires, elle a beaucoup lu, elle nous a raconté des histoires. Elle-même a souvent dit : si j'avais eu la chance, j'aurais écrit des livres. Elle n'a jamais eu la chance, elle était trop occupée avec le travail, avec les enfants, avec la vie. Mais pour elle, c'était un rêve, et pour moi, c'était très symbolique. Peut-être que je peux dans une certaine mesure réaliser ce rêve. »

Le rêve de sa mère et le sien surtout. La juge à la retraite admet que si le droit ne l'avait pas happé rapidement dans sa jeunesse, elle aurait volontiers bifurqué vers l'écriture.

Quelques décennies plus tard, son rêve de jeune fille est-il en train de se concrétiser? Beverley McLachlin a à peine publié son premier livre qu'elle pense déjà à la suite de son histoire qui fera l'objet d'un second roman. Entre temps, elle travaille aussi sur un recueil de ses mémoires.