Ursula Hendel: Speeding-up courts will take money from provinces and Ottawa

The Province

Ursula Hendel

May 15, 2017

Last summer, the Supreme Court of Canada's ruling in R. v. Jordan reset the timelines for how quickly criminal trials must be completed in our country. Subject to some pretty narrow exceptions, when the timelines aren't met, the accused goes free. It's a serious problem, and one that has citizens from coast-to-coast-to-coast speaking out in alarm.

But it's not a new problem. The justice system has been struggling with trial delays since the Supreme Court's first major ruling on the topic shocked the system in 1990. Numerous efforts to speed-up trial times have been tried since then, but they have proven largely ineffective.

Why did these measures fail? Like health care, the criminal-justice system is extremely complex and pretty expensive. Both the federal and provincial governments have roles to play in making significant alterations. Both have the responsibility to prosecute different kinds of crimes and both federally and provincially appointed judges hear criminal cases.

Together with three levels of police (federal, provincial and municipal), an independent judiciary and the defence bar, everyone shares in the responsibility for the efficient operation of the courts. Simple solutions have proven elusive. Half-measures didn't suffice.

Attorneys general from across Canada are currently discussing a range of ideas — including additional courtrooms, more aggressive pre-trial screening and limiting mandatory minimum-sentences procedural reforms — all of which have one thing in common: they require more resources to be properly implemented. While hiring more personnel isn't the solution, no solution is possible without more personnel.

Accordingly, many provinces have announced that they'll be hiring more prosecutors and appointing more judges. Unfortunately, the federal government is making a critical mistake by failing to match this move.

While the recent federal budget announced plans to staff more superior courts with new federally appointed judges, the attorney general seems to have forgotten that in order to move along the cases being heard by these new judges, there will need to be more prosecutors — and that includes federal prosecutors.

Federal prosecutors try terrorism cases, organized-crime cases, drug offences and all criminal cases in the northern territories. The failure of the federal government to match the provinces'

hiring actions will lead to a reduction in the number of federal prosecutors, who are paid lower wages than most of our provincial counterparts despite doing very similar work. Each time a province hires more prosecutors, we lose valuable talent. Some of our most-experienced federal prosecutors will also "graduate" to the bench and fill those new judicial appointments, making our ranks doubly vulnerable to loss. To make matters worse, the talent pool for this specialized work is small and the federal government's hiring practices are very slow. It will take years to recover.

Having been a prosecutor since 1997, I know first-hand that prosecutors are highly committed professionals who are profoundly dedicated to the communities we serve. But we are already chronically overworked. We generally do whatever is necessary to ensure that justice is served, even to our personal detriment. In the last month alone, I watched as two prosecutors fell seriously ill from the cumulative impact of exhaustion. Sadly, new staffing shortages will only exacerbate this problem.

We can't implement the solutions designed to safeguard the proper operation of the criminal-justice system if we don't have the staff to do so. Hopefully the federal government will recognize its critical mistake before it's too late.

Ursula Hendel is president of the Association of Justice Counsel.

GUNTER: Canada's justice system coddling criminals
Edmonton Sun
Lorne Gunter
May 15, 2017

St. Albert Conservative MP Michael Cooper's Bill S-217, also known as Wynn's Law, was defeated by the federal Liberal government. (FILE)

For a long time now – since Pierre Trudeau was justice minister back in the 1960s – there have been two fundamentally conflicting views of what the purpose of Canada's justice system is: To keep ordinary Canadians safe or to rehabilitate criminals.

It would be nice if our politicians, courts, prisons, criminologists, parole officials and others could keep both goals in the front of their minds simultaneously. Unfortunately, too often, when push comes to shove they side with the criminals.

The latest example of this is the federal Liberal government's refusal late last week to support Bill S-217, also known as Wynn's Law.

The bill, which would have made it mandatory for the Crown to lead with evidence of an accused's criminal record at a bail hearing, was sponsored by Ontario Conservative Senator Bob

Runciman (a former provincial solicitor general and minister of public safety) and by St. Albert Conservative MP Michael Cooper.

It arose after the tragic murder of RCMP Const. David Wynn and the wounding of Aux. Const. Derek Bond in January 2015 at St. Albert's Apex Casino by hardcore career criminal Shawn Rehn. At the time, Rehn was out on bail.

Despite having 68 prior convictions for crimes such drug abuse, resisting arrest, domestic violence, home invasion, armed robbery, skipping out on bail, violating parole conditions and "multiple, overlapping, firearms prohibitions," plus 27 additional outstanding charges, Rehn's criminal past was not raised at his bail hearing. So he was released onto the streets where he stole a truck, acquired a gun and ambushed the two Mounties while they walked through the casino looking for the person who stole the pickup.

It's not 100 per cent certain that a reading of Rehn's priors would have caused a judge or justice of the peace to deny him bail. There are lenient judges who believe in third and fourth and fifth chances.

But it's 100 per cent certain that not reading them at all made Rehn's bail far more likely.

Where you come down on S-217 says a lot about how your view our justice system.

To most ordinary people it just makes sense that an accused's prior convictions should be listed for the judge deciding on a bail application. You have a history of skipping on previous bails, you have a history of violence and weapons violations, of failing to appear in court. Hmm, probably unwise to grant you bail this time. Nope, stay in jail until your trial.

But to the "experts" who run the system and to the "progressives" who occupy the federal Liberals' benches in Parliament, there is always too much concern for the poor, dear criminal.

The Liberals on the Commons Justice committee, plus federal Justice Minister Jody Wilson-Raybould, plus Edmonton Liberal MPs Randy Boissonnault and Amarjeet Sohi can claim all they want that they were just heeding expert testimony that Wynn's law, by compelling consideration of criminals' histories, would delay parole hearings and lead to more, not fewer, criminals free on our streets.

But "progressives" have too often supported greater leniency while at the same time insisting they are all about enhancing public safety.

The Liberal-dominated Justice committee largely controlled the list of witnesses who came to testify against Wynn's law. Is it any surprise, then, that most of the "experts" the committee heard from were opposed?

Liberals claimed a reading in of criminal records would cut the number of bail hearings a judge could hold from 10 a day to one or two. Really!? How slowly do the Libs think most judges read?

This is just a shameful excuse masquerading as a real concern, and yet another example of putting criminals first.

Federal government announces handful of judicial appointments across the country
Canadian Lawyer Magazine
Mallory Hendry
May17, 2017

The Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould, has announced several new judges in Quebec, British Columbia, Alberta and Newfoundland and Labrador — all under the new judicial application process the government announced last fall.

The new process emphasizes transparency, merit and diversity in the appointment of jurists.

From Langlois Avocats, partner Karen Rogers was appointed a judge of the Superior Court of Quebec, district of Montreal. The position she fills is a new one created by Bill C-31. Before her appointment to the judiciary, Rogers led the litigation group at the firm.

She brings more than 28 years of experience in litigation to her new role. She is a member of the Barreau du Québec's discipline and arbitration committees and has taught at l'École du Barreau for nearly a decade. Rogers mentors young women in her role as a member of the Association of Quebec Women in Finance and is also an active member of a fundraising team supporting the Jewish General Hospital and its research into women's cancers.

Christine Baudouin, lawyer at Casavant Mercier Avocats, is also appointed a judge of the Superior Court of Quebec, district of Montreal. She replaces Justice M. De Wever, who elected supernumerary status effective Nov. 7, 2016. Since her call to the bar in 1993, Baudouin has practised litigation with several firms, including Heenan Blaikie LLP from 1997-2009 and Casavant Mercier Avocats from 2010 until her appointment to the judiciary.

Baudouin has contributed her expertise in bioethics by serving on the Ethics Committee of the Montreal West Island Integrated University Health and Social Services Centre and the Research Ethics Committee of McGill University and is also involved with charities addressing various causes such as women's health and autism.

Associate professor at the Faculty of Law at McGill University, Frédéric Bachand, is appointed a judge of the Superior Court of Quebec, district of Montreal. His appointment fills a vacancy left by Justice S. DeVito, who elected supernumerary status on Dec. 6, 2016.

Bachand joined the Faculty of Law at McGill in 2003, and has served as an accredited arbitrator in both domestic and international cases. He has volunteered with a number of organizations, including the Canadian Civil Liberties Association, where he served on the board. Bachand was named Advocatus Emeritus (Ad. E.) by the Barreau du Québec recognizing his contributions to the law and to legal education and received the John W. Durnford Teaching Excellence Award at McGill University.

Daniel Royer, a Crown prosecutor with the office of the director of criminal and penal prosecutions, is appointed a judge of the Superior Court of Quebec, district of Montreal. He replaces Justice P.G. Capriolo, who elected supernumerary status effective Dec. 14, 2016.

Royer has exclusively practised criminal and penal law since his call to the bar in 1996. He practised for 15 years as defence counsel with the firm of Labelle Boudrault Côté and Associates. From 2011 until his recent appointment to the judiciary, he was a Crown prosecutor in the Longueuil and Montreal offices of the Director of Criminal and Penal Prosecutions. Royer has argued more than 100 criminal appeals before the Quebec Court of Appeal and the Supreme Court of Canada over the course of his career. He has taught criminal law and evidence at O'Sullivan College in Montreal, as well as a course linked to the Gale Cup moot at the Université de Montréal.

Johnna Kubik, sole practitioner with Kubik & Co. in Alberta, was appointed a judge of the Court of Queen's Bench of Alberta in Calgary. Her appointment fills the vacancy left on Nov. 15, 2016 when Justice B.E. Mahoney elected to become a supernumerary judge.

Kubik represented a wide range of clients during her career as a civil litigator, including representing them in personal injury cases, insurance defence and estate litigation. She has represented claimants in the Indian Residential School Independent Assessment Process, patients in mental health proceedings and the Lethbridge Police in a public fatality inquiry. She is also active in the community, promoting access to justice throughout her 12 years of service on the Regional Appeals Committee (Southern Region) or Legal Aid Alberta. Kubik is a veteran volunteer, offering her services pro bono at Lethbridge Legal Guidance.

Senior counsel with the Public Prosecution Service of Canada, W. Paul Riley was appointed a judge of the Supreme Court of British Columbia in Vancouver. He replaces Justice C.J. Ross after she elected to become a supernumerary judge on April 1, 2016.
In 2007, Riley became head of the British Columbia Regional Office's appeals group where he conducted hundreds of appeals in the British Columbia Court of Appeal and appeared over a dozen times as lead counsel at the Supreme Court of Canada.

The cases involved issues of criminal and constitutional law. He has served on numerous committees, including the PPSC's National Litigation Committee and the British Columbia Court of Appeal's Criminal Appeals Advisory Committee.

Partner with Cox & Palmer, Sandra Chaytor, was appointed a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador in Grand Bank, replacing Justice G.A. Handrigan who elected to become a supernumerary judge on April 8.

Chaytor, called to the bar in 1989, has more than 25 years' experience at Cox & Palmer, serving as deputy managing partner of the St. John's office. She was appointed Queen's Counsel in 2007 and in 2010 was named a Master and Taxing Officer at the Supreme Court of Newfoundland and Labrador. Chaytor was selected to serve as co-counsel to two high-profile public inquiries in the province: the Commission of Inquiry on Hormone Receptor Testing, which investigated errors in breast cancer testing, and most recently the Inquiry Respecting the Death of Donald Dunphy.

Frances Knickle, acting director of public prosecutions with the Newfoundland and Labrador Department of Justice and Public Safety, was appointed a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador in Happy Valley Goose Bay. Her appointment fills the vacancy left by Justice C.R. Thompson who elected to become a supernumerary judge in Dec. 4, 2016. The vacancy is located in Happy Valley Goose Bay because of an internal transfer by the chief justice.

After articling with the Newfoundland and Labrador Department of Justice, Knickle worked with the Public Prosecution Division since being called to bar of Newfoundland and Labrador in 1992.

Through her long tenure as a front-line trial Crown, Knickle developed a specialty in appellate advocacy, and appeared several times before the Supreme Court of Canada.

Immigration: la détention indéfinie est contestée en Cour fédérale
LaPresse
Colin Perkel
15 mai 2017

Le système d'immigration permet la détention indéfinie et arbitraire d'étrangers en attente de déportation, et viole donc la Charte canadienne des droits et libertés, ont plaidé lundi des avocats qui contestent en Cour fédérale la constitutionnalité de la loi.

Dans leur plaidoirie, les avocats d'un ressortissant jamaïcain qui a passé cinq ans en détention préventive ont soutenu que le gouvernement canadien devrait se doter d'un mécanisme rigoureux, prévoyant une limite à la détention lorsque l'étude du dossier de déportation ne risque pas d'être rapide.

Me Jared Will a soutenu que ces détentions indéfinies sont contraires aux principes de justice, et que l'État canadien prive ainsi des êtres humains de leurs droits fondamentaux, en violation de la Charte mais aussi des obligations internationales du Canada.

La Charte canadienne des droits et libertés garantit que «chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires». Or, certaines dispositions de la Loi sur l'immigration permettent aux autorités canadiennes de détenir indéfiniment, souvent dans des conditions de sécurité maximale, des étrangers en attente de déportation si Ottawa croit qu'ils pourraient s'enfuir ou constituer une menace, ou encore si on ne peut confirmer leur identité.

La Commission de l'immigration et du statut de réfugié du Canada doit réexaminer tous les 30 jours les motifs pour lesquels l'Agence des services frontaliers garde en détention un étranger ou un résident permanent. Mais selon les avocats du Jamaïcain qui a passé cinq ans en détention préventive, ce réexamen ne serait souvent qu'une simple formalité, qui renvoie le détenu en prison de façon automatique.

Résultat: des centaines de personnes attendent derrière les barreaux pendant des mois, voire des années. Me Will a plaidé lundi pour que la détention soit limitée à six mois, sauf exception. L'Union européenne, par exemple, a fixé cette limite à 18 mois, a plaidé l'avocat.

À risque?

Sa collègue Jean Marie Vecina a de son côté signalé qu'une fois le terme «menace à la sécurité publique» lâché par un représentant du gouvernement fédéral, ce constat sera répété inlassablement tout au long du processus, sans que l'on puisse vraiment en vérifier l'exactitude. De plus, le gouvernement n'a aucune obligation de dévoiler des renseignements qui pourraient être favorables à un détenu.

Le juge Simon Fothergill a à plusieurs reprises interrogé les avocats sur la constitutionnalité du mécanisme, ou du moins la façon dont il est appliqué sur le terrain. Les avocats ont soutenu que ces détentions «injustes» violent aussi l'article 12 de la Charte canadienne, qui prévoit que «chacun a droit à la protection contre tous traitements ou peines cruels et inusités».

Le Jamaïcain détenu pendant cinq ans, Alvin Brown, a finalement été renvoyé dans son pays en septembre dernier, à l'âge de 40 ans, après avoir passé plus de 30 ans au Canada. Le père de six enfants, atteint de maladie mentale, avait eu plusieurs démêlés avec la justice canadienne, notamment pour des affaires de drogue et d'armes.

Le Réseau pour la fin de la détention en immigration, qui était présent en Cour fédérale à Toronto lundi, réclame pour sa part une limite de 90 jours à la détention préventive. Selon l'organisme, des centaines d'étrangers sont actuellement détenus au Canada, souvent au milieu de

criminels endurcis. Au moins 15 de ces détenus sont morts en prison depuis 2000, soutient l'organisme, mais l'Agence des services frontaliers est avare de commentaires à ce sujet.

Ottawa doit plaider sa cause en Cour fédérale mardi.

MP tackles marijuana laws, Phoenix pay system
Crag & Canyon
Spencer Van Dyk,
May 17, 2017

Member of Parliament for Banff-Airdrie Blake Richards insists more be done and more questions be answered when it comes to marijuana legislation and the Phoenix pay system.

Richards took the opportunity to address both issues in his most recent Richards Reports, which are posted on his website.

In April, he wrote that the Liberal marijuana plan leaves unanswered questions, and asked that his constituents participate and provide feedback about the issue.

“We’ve gotten quite a bit of feedback, which is what it was designed to do,” he said.

“There are a lot of different opinions about it,” he added, and said that although there are a “variety of opinions,” most people agree that they want answers.

Richards raised concerns that the federal government is leaving many decisions up to the provinces, and that although he hasn’t heard much from Alberta, saying it’s not been as vocal as other provinces on the issue, there is a tight timeline and a lot to be determined by the projected July 2018 deadline.

Richards is encouraging his constituents to share their thoughts with him either on his website or over the phone.

“No matter what side people are on, there are questions that need to be answered here, like impaired driving is an example of that, workplace safety issues, a whole host of questions like that which obviously need to be answered,” he said.

“I’m going to seek and push for answers, and raise those concerns that people have in Parliament, so I would encourage them to come to me, and I will do my absolute best to get answers,” he added.

Richards raised a similar issue of lack of answers in his May Richards Report, stating there are still too many of his constituents struggling with the Phoenix pay system.

It’s been more than a year since the new payroll system left thousands of federal government employees either without pay or with not enough pay, and there is no end in sight to resolve the problem.

Richards said it is the No. 1 issue plaguing his constituency office, and that many Parks Canada employees have been, and continue to be, affected by the system, although Richards said it is not limited to parks staff.

The government is saying it may set up a committee to address the issue.

“I don’t know if that’s going to make anyone who’s going without pay or without enough pay for the last year feel too good about it that they have a committee a year later,” Richards said.

“When you’re struggling to make payments or you’ve got line of credit’s that are pretty much maxed out because you’re not getting paid or not getting paid enough, that can be very concerning,” he added.

Richards said that like the marijuana legalization issue, he will continue to press Parliament for answers, and he encourages his constituents to voice their concerns to him.

“If this were the private sector, people would be getting fired for this,” he said.

Supreme Court to examine 'duty to consult' indigenous group about legislation
The Canadian Press
May 18, 2017

OTTAWA - The Supreme Court of Canada will delve into the issue of whether the federal duty to consult indigenous groups applies to the legislative process.
The high court agreed today to hear the Mikisew Cree's argument that the former Conservative government should have consulted the Alberta First Nation on legislative proposals that would affect its treaty rights.
In 2012, the government introduced two omnibus bills proposing changes to Canada's environmental protection and regulatory processes.
Bills C-38 and C-45 amended the Fisheries Act, the Species At Risk Act, the Navigable Waters Protection Act and updated the Canadian Environmental Assessment Act.
A Federal Court judge said there was a duty to consult the Mikisew once the bills were tabled -- though not prior to introduction -- because the proposals would arguably affect fishing, trapping and navigation.
The Federal Court of Appeal overturned that ruling, saying that including the duty to consult in the legislative process offends the doctrine of the separation of powers and the principle of parliamentary privilege.

Canadian union logs formal grievance over troubled pay system
Global Government Forum
Liz Heron
May 18, 2017

A civil service union has filed two policy grievances against the Canadian federal government, following a catalogue of errors in its computerised pay system which – they say – have led to civil servants going unpaid for extended periods.

The Professional Institute of the Public Service of Canada (PIPSC) has accused the government of "continuously violating" the terms of its collective agreements since the Phoenix pay system was launched in February 2016.

The first grievance alleges that the government has made "continuous and on-going errors in pay", which include failure to be paid, substantial delays, miscalculation, underpayments, overpayments, and inaccurate payments.

The latter include errors in overtime payments, extra duty pay, allowances, annual increments, retroactive pay, acting pay, promotional pay and payments in lieu of severance.

The second grievance relates to problems with disability, maternity and parental leave benefits, which violate both collective agreements and the Canadian Human Rights Act, according to the PIPSC.

The union is calling on the Treasury Board to formally acknowledge that it has breached collective agreements over pay and benefits, immediately pay all monies owed to employees, and process both pay and benefits in a timely manner, amongst other undertakings.

President Debi Daviau said that these are "fair and reasonable demands to make under what for many have been – and remain – extremely trying circumstances".

"Our members have shown remarkable patience and, in some instances, astonishing forbearance in coping with the problems and deprivations imposed by the government's failure to accurately and reliably pay the salaries our members are owed," she said.

Policy grievances are filed by unions on behalf of all their members under a Canadian employment dispute resolution process that involves employers meeting with union representatives according to a strict timetable. The move comes after the PIPSC filed 600 individual grievances on behalf of members.

The Phoenix computerised pay system was brought in to save costs and boost efficiency by streamlining payment and tax systems across federal government departments. But it caused pay

problems for 82,000 federal civil servants, with some overpaid, others underpaid and some not paid at all for months.

In March, the government disclosed that 284,000 erroneous pay transactions had yet to be sorted out. Earlier, it emerged that nearly CAN$70 million (€46m or US$51m) had been paid in error and about 50,000 tax slips had to be reissued to public servants.

Union dues that are collected by the government and handed on were also affected. The PIPSC, which represents more than 50,000 federal employees including scientists, engineers and accountants, has said it is owed nearly CAN$2 million.

On April 27, the government set up a task-force headed by public safety minister Ralph Goodale and launched a two-year strategy to address the problems caused by Phoenix.

The strategy allowed departments to retain the system's expected annual CAN$70m savings to cover additional costs resulting from the errors. The government also pledged to provide employees who faced payroll problems with up to CAN$200 (€132 or US$147) towards their tax advice fees in relation to income tax for 2016 and 2017.

Treasury Board spokesman Martin Potvin told Global Government Forum that the task-force was utilising the experience of ministers and taking a "whole-of-government" approach. It will review plans and actions going forward to ensure the pay system issued are resolved, he said.

"Our focus is on ensuring employees are paid accurately and on time, and that the Government of Canada has a stable and reliable pay system," he said. "We are working closely with the public service bargaining agents to resolve these issues as quickly as possible and minimise impacts on employees."

Government departments are expected to use the reallocated savings to help resolve their employees' pay issues and will be required to report on the activities and expenditures required to address pay administration issues, Potvin added.

Accused killer in Quebec to be released due to Crown delays
The Canadian Press

Another person charged with murder in Quebec is set to be released due to unreasonable legal delays.

A judge stayed the second-degree murder proceedings against Van Son Nguyen Friday after he ruled delays in his trial violated a 2016 decision by the Supreme Court of Canada.

The country's highest court ruled legal proceedings cannot exceed 18 months in provincial courts and 30 months in Superior Court in order to respect a citizen's right to be tried within a reasonable period of time.

Nguyen, 52, is a U.K. citizen and was still awaiting trial 55 months after being charged.

He was charged with allegedly stabbing a man 34 times with a machete in a home that housed an illegal marijuana grow-op.

Nguyen is not a Canadian citizen and can therefore be deported to Britain rather than be released in Canada.

Government of Canada announces judicial appointments in the province of Ontario

OTTAWA, May 19, 2017 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the following appointments under the new judicial application process announced on October 20, 2016. The new process emphasizes transparency, merit, and diversity, and will continue to ensure the appointment of jurists who meet the highest standards of excellence and integrity.

The Honourable Thomas A. Heeney, Regional Senior Judge for the Southwest Region of the Superior Court of Justice, is transferred back to the regular complement in Woodstock, effective June 1, 2017.

The Honourable Bruce G. Thomas, a judge of the Superior Court of Justice in Chatham, is appointed Regional Senior Judge for the Southwest Region to replace Mr. Justice Thomas A. Heeney, effective June 1, 2017.

Patrick J. Monahan, Deputy Attorney General for the Province of Ontario, is appointed a judge of the Superior Court of Justice in Toronto. He replaces Mr. Justice G.T. Trotter, who was elevated to the Court of Appeal for Ontario on October 19, 2016.

M.J. Lucille Shaw, a partner with Miller Maki LLP in Sudbury, is appointed a judge of the Superior Court of Justice in Brampton. She replaces Madam Justice P.C. Hennessy (Sudbury), who elected to become a supernumerary judge effective April 10, 2017. The Chief Justice has transferred this position to Brampton.

Heather J. Williams, a partner with Cavanagh Williams LLP in Ottawa, is appointed a judge of the Superior Court of Justice in Ottawa. She replaces Mr. Justice T.D. Ray, who elected to become a supernumerary judge effective April 8, 2017.

Lise G. Favreau, general counsel with the Ministry of the Attorney General in Toronto, is appointed a judge of the Superior Court of Justice in Toronto. She replaces Mr. Justice L.A. Pattillo, who elected to become a supernumerary judge effective January 30, 2017.

Michelle O'Bonsawin, general counsel with the Royal Ottawa Health Care Group in Ottawa, is appointed a judge of the Superior Court of Justice in Ottawa. She replaces Mr. Justice P.B. Kane, who elected to become a supernumerary judge effective April 27, 2017.

Julie Audet, a senior family lawyer at ALT Divorce in Ottawa and Embrun, is appointed a judge of the Superior Court of Justice and a member of the Family Court in Ottawa. She replaces Madam Justice A. Doyle, whom the Chief Justice has transferred into a general complement position.

Hélène C. Desormeau, a partner at Desormeau & Giggey LLP in Cornwall, is appointed a judge of the Superior Court of Justice and a member of the Family Court in Cornwall. She replaces Madam Justice J. Lafrance-Cardinal, who elected to become a supernumerary judge effective April 22, 2017.

Biographies

Justice Thomas A. Heeney was appointed to the Ontario Superior Court of Justice in 1998 and became the Regional Senior Judge for the Southwest Region in June 2012. Prior to his appointment to the bench, Justice Heeney practised in general litigation with Mandryk and Heeney in Tillsonburg, Ontario. He received his LL.B. from the University of Western Ontario in 1977 and was admitted to the Ontario Bar in 1980. Justice Heeney has served on the Technology Committee of the Canadian Superior Court Judges Association. He is currently a member of the Association's executive and co-chair of its Conduct Review Committee. He also serves as a Deputy Judge of the Supreme Court of Yukon. He chaired the Judicial Advisory Committee for three years prior to his appointment as Regional Senior Judge. As a trial judge, he has presided over some complex and highly publicized murder trials in London.

Justice Bruce G. Thomas was appointed to the Ontario Court of Justice in 1999 and subsequently to the Superior Court of Justice in 2008. Throughout his judicial career, Justice Thomas has dedicated himself to courts administration. While a member of the provincial court, he served as Regional Senior Judge for the West Region. Since joining the Superior Court of Justice, he has been the local administrative judge in Windsor, Chatham, and Sarnia. A graduate of the University of Western Ontario (B.A., 1976) and the University of Windsor (LL.B., 1979), Justice Thomas practised with McGuire, McFarlane & Thomas prior to his appointment to the bench. His practice included criminal law, family law, and civil litigation.

Justice Thomas has been active in continuing education. He was the criminal law education chair for the provincial court, and he has taught extensively across Canada in the programming of the National Judicial Institute.

Justice Patrick J. Monahan served as Deputy Attorney General for the Province of Ontario from November 2012 until his appointment to the bench. Previously, he had been Provost and Vice President Academic of York University (2009-2012), and Dean of Osgoode Hall Law School (2003-2009). Born in Ottawa to parents of Irish and French-Canadian ancestry, he received degrees from the University of Ottawa and Carleton University, followed by an LL.B. from Osgoode Hall Law School, where he graduated as the gold medalist, and an LL.M. from Harvard Law School. He served as law clerk to Justice Brian Dickson of the Supreme Court of Canada and was a faculty member at Osgoode Hall Law School for over two decades. He was also part-time counsel to a major Toronto law firm for 20 years, acting in a wide variety of public law litigation at all levels of court.

Justice Monahan played a leading role in the establishment of the Law Commission of Ontario, where he was the founding Chair and currently serves on the Board of Governors. His writing has been cited by courts and tribunals in Canada more than 90 times, including 18 occasions by the Supreme Court of Canada. In 2008, he was awarded the Mundell Medal for excellence in legal writing by the Attorney General of Ontario. He and his wife, Monica, live in Toronto and have two adult children.

Excerpts from Justice Monahan's judicial application will be available shortly.

Justice M.J. Lucille Shaw was born and raised in Sudbury, along with her seven siblings. She earned her Bachelor of Commerce and LL.B. at Queen's University, before returning to her hometown in 1993. Justice Shaw joined the Sudbury firm of Miller Maki upon her return and became a partner in 2000. For the past 15 years, she has maintained a broad civil litigation practice, including personal injury and property cases throughout northern Ontario. She also has experience in family law. For four years, she was a member of the Consent and Capacity Board of Ontario.

Justice Shaw has been active and engaged in her community. She spent seven years on the board of the Sudbury YWCA. During her term as president, a new shelter was built to house women and their children fleeing from abusive situations. She was also a board member of the Montessori School of Sudbury during a time of expansion. In the legal sphere, Justice Shaw is a former President of the Sudbury District Law Association. In 2009, she co-founded Colloquium, a two-day conference in Sudbury aimed at enhancing access to justice and developing the skills of lawyers from northeast Ontario. Justice Shaw also served as a director of The Advocates' Society beginning in 2012. She recently travelled to Iqaluit, Nunavut, on behalf of The Advocates' Society to provide skills training for lawyers practising in the territory.

Excerpts from Justice Shaw's judicial application will be available shortly.

Justice Heather J. Williams was born in Lachine, Quebec. She completed CEGEP at Marianopolis College and earned a Bachelor of Journalism from Carleton University. She

worked for several years as a radio broadcaster before earning her law degree from the University of Ottawa. Justice Williams practised as a civil litigator in Ottawa for over 25 years, most recently with the firm now known as Cavanagh Williams and previously with Nelligan O'Brien Payne (formerly Nelligan Power). Her practice focused primarily on defending lawyers and health professionals against liability claims. Her work also included employment law and general litigation.

Justice Williams has served on the boards of the Royal Ottawa Health Care Group and Pro Bono Ontario. She is a past president of the County of Carleton Law Association and chair of the Association's annual civil litigation conference. She is a Fellow of the American College of Trial Lawyers. She has served as a director of The Advocates' Society and as co-chair of a committee of the Law Society of Upper Canada's "Justicia" project, promoting the retention and advancement of women in the private practice of law. For many years, Justice Williams taught trial advocacy at the University of Ottawa. In May 2016, she was appointed a deputy judge of the Small Claims Court in Ottawa.

Excerpts from Justice Williams's judicial application will be available shortly.

Justice Lise G. Favreau grew up in a bilingual family in Montreal, speaking both French and English at home. She attended high school and CEGEP in French. She then earned her B.A. in English literature at McGill University and her LL.B. at the University of Toronto. After her call to the Ontario Bar, Justice Favreau practised civil litigation with Blake, Cassels & Graydon in Toronto. In 2003, she joined the Crown Law Office – Civil at the Ministry of the Attorney General, where she represented the Crown at all levels of court, including the Ontario Court of Appeal and the Supreme Court of Canada. Her practice included administrative law, tort law, class proceedings, health law, and environmental law. While at the Crown Law Office – Civil, Justice Favreau was a public law team leader. In 2016, she was named general counsel at the Ministry of the Attorney General.

Justice Favreau has been a frequent speaker, including in the areas of administrative law, civil litigation, and ethics. She is fluently bilingual and has conducted litigation in both English and French throughout her career. She has also been a dedicated mentor to younger lawyers and students.

Excerpts from Justice Favreau's judicial application will be available shortly.

Justice Michelle O'Bonsawin was born in Hanmer, Ontario, a small Francophone town east of Sudbury. She is a fluently bilingual Abenaki member of the Odanak First Nation. Justice O'Bonsawin holds a B.A. (Laurentian University), an LL.B. (University of Ottawa), and an LL.M. (Osgoode Hall), and is currently enrolled in the University of Ottawa's Ph.D. program in law. She began her legal career with the RCMP Legal Services and later was counsel with Canada Post Corporation, specializing in labour, employment, human rights, and privacy law. Prior to her appointment, Justice O'Bonsawin was general counsel for the Royal Ottawa Health

Care Group, where she developed a specialization in mental health law. She has taught Indigenous law part-time in the University of Ottawa's French common law program.

In addition to her legal work, Justice O'Bonsawin is a frequent guest speaker on mental health, labour and privacy law. She serves on the Board of Governors of the University of Ottawa, as well as its Executive Committee. Justice O'Bonsawin also acts as a mentor in the Canadian Bar Association, Ontario Bar Association, and University of Ottawa mentorship programs and is the legal coach for the Collège catholique Samuel-Genest high school team for the OBA/OJEN moot competition. She resides in Ottawa with her family.

Excerpts from Justice O'Bonsawin's judicial application will be available shortly.

Prior to her appointment to the bench, Justice Julie Audet practised as a family lawyer, mediator, and collaborative practitioner in the Ottawa and eastern Ontario regions. Fluently bilingual, she graduated from the National Program (LL.B./LL.L.) at the University of Ottawa with the highest honours in 1996 and completed an LL.M. in family law at Osgoode Hall Law School in 2011. Justice Audet has taught family law at the University of Ottawa; led the family law component of the Law Society of Upper Canada's Law Practice Program (in French); and co-authored a textbook, L'essentiel du droit de la famille dans les provinces et territoires de common law au Canada, with the late Professor Nicole Laviolette.

Justice Audet is well-known in her community for her involvement in pilot projects and committees related to the family justice system and her commitment to helping couples separate with dignity. She co-founded ALT Divorce and Family Law in A Box, two companies aimed at providing services and educational programs on family law to members of the public. Raised in the Gaspé Peninsula in a modest and hard-working Francophone family, Justice Audet studied in Montreal, worked in Calgary, and completed her education in Ottawa – where she finally settled, grew strong community roots, and raised her own family.

Excerpts from Justice Audet's judicial application will be available shortly.

Born in Summerside, Prince Edward Island, of French Canadian heritage, Justice Hélène C. Desormeau was called to the Ontario Bar in 2004. She received a Bachelor's in Social Science, an LL.L, and a J.D. from the University of Ottawa. Before her appointment to the bench, Justice Desormeau was a founding partner in the firm of Desormeau & Giggey, established in 2011. She previously practised with Gorrell, Grenkie & Remillard. She ran a litigation practice in both official languages, with an emphasis on family law, child protection, and criminal law. Her practice included serving as an agent for the Office of the Children's Lawyer and for the Provincial Crown Attorney's office in Cornwall.

Justice Desormeau is a former President and Treasurer of the Stormont, Dundas & Glengarry Law Association. She has served on numerous family law committees and on the board of an agency offering counselling and support services in her community. In addition, she was the

Chair of the Centre York Centre, a supervised access centre for families and children in Cornwall. Prior to obtaining her law degrees, Justice Desormeau was an infantry reservist with the Canadian Grenadier Guards in Montreal and the Governor General's Foot Guards in Ottawa.

Excerpts from Justice Desormeau's judicial application will be available shortly.

Quick Facts

Budget 2017 proposes additional funding of $55 million over five years beginning in 2017-2018 and $15.5 million per year thereafter for 28 new federally-appointed judges. Of these new positions, 12 would be allotted to Alberta and one to the Yukon, with the remaining 15 being assigned to a pool for needs in other jurisdictions.
To ensure a judiciary that is responsive, ethical and sensitive to the evolving needs of Canadian society, the Canadian Judicial Council will receive $2.7 million over five years and $0.5 million ongoing thereafter. This will support programming on judicial education, ethics and conduct, including in relation to gender and cultural sensitivity.
Today's appointments are separate from the Budget 2017 announcement.
Federal judicial appointments are made by the Governor General, acting on the advice of the federal Cabinet and recommendations from the Minister of Justice.
The Judicial Advisory Committees across Canada play a key role in evaluating judicial applications. There are 17 Judicial Advisory Committees, with each province and territory represented.
Significant reforms to the role and structure of the Judicial Advisory Committees, aimed at enhancing the independence and transparency of the process, were announced on October 20, 2016.
The Judicial Advisory Committees in ten jurisdictions have been reconstituted. Most recently, Minister Wilson-Raybould announced the composition of three new Judicial Advisory Committees on April 13, 2017.
This process is separate from the Supreme Court of Canada judicial appointment process announced on August 2, 2016. Nominees to the Supreme Court of Canada are selected by the Prime Minister from a thoroughly vetted list of candidates.

Judicial education doesn’t breach independence, but Bill C-337 might.
Policy Options
Thomas Harrison
May 22, 2017

While mandatory judicial education does not breach independence, some requirements of Bill C-337 may have implications for independence and the rule of law.

Should federal judges be required to go back to school? That’s what is being considered in a draft law currently before Parliament. Although it seems like a good idea, the proposed Bill may go too far and might well breach judicial independence.

Tabled by interim Conservative Leader Rona Ambrose in February, Bill C-337 is named the Judicial Accountability through Sexual Assault Law Training Act, referred to simply as the "JUST Act" by the Conservatives. If passed, Bill C-337 would require judges who hear sexual assault matters to take mandatory legal education.

The matter is being fast-tracked through the legislative process. On March 8, on a motion from New Democratic Leader Thomas Mulcair, all parties unanimously agreed to send Bill C-337 directly to the Status of Women Committee, which began considering it on April 5.

This legislative proposal arises from a growing perception that Canada's legal system deals ineffectively with sexual assaults. For example, a widely reported Globe and Mail investigation recently described "deep flaws at every step of the process"; it said police frequently dismiss sexual assault claims as "unfounded." The perception of systemic failure in criminal sexual assault matters has focused attention on the specific roles of others, like judges, who have contributed to the problem.

Most recently, a complaint proceeding against Justice Robin Camp received nationwide coverage, raising questions about how Canadian judges are trained and governed. The public hearing in September 2016 revealed Camp's inadequate understanding of the criminal law of sexual assault and some inappropriate attitudes about the subject. In one exchange from his time serving on the Alberta Provincial Court, the judge asked a sexual assault complainant in court, "Why couldn't you just keep your knees together?" Faced with this critical scrutiny and a recommendation that he be removed from office, Camp resigned in March from the Federal Court.

While judicial education might seem like a hot topic in 2017, it's a question that's been argued in the legal community for at least the past 20 years. For example, in 1996 Osgoode Hall law professor Allan Hutchinson challenged the Supreme Court's Chief Justice Antonio Lamer in scholarly debate when the top judge advanced the traditional view that an imposed educational requirement breaches judicial independence. That historical view has gradually given way to a practical approach to independence, which acknowledges that the overall principle is not absolute.

For example, Canadian judges have tenure of office but must retire at age 75 since a constitutional amendment in 1960. Their remuneration is determined by independent commissions, but the Supreme Court ruled a few years ago that governments can reject salary recommendations if they have legitimate reasons and a reasonable factual foundation. To be sure, there are some current tensions around administrative independence and the relationship between judges and the government; a recent source of concern is the slow pace of judicial appointments at the federal level. But on the whole, as Chief Justice Beverley McLachlin noted last year, the judicial branch is regarded as an "independent" and "strong" institution that is "respected in Canada and abroad."

The idea of compulsory education for judges does not necessarily contradict the principle of independence. Coincidentally, in the midst of this controversy, the Supreme Court of Canada rendered a decision in March that supported legal education as a mandatory part of professional regulation of lawyers. As I've argued before in the context of that case, an education requirement in law, whether for lawyers or judges, is justified as being reasonably within the public interest to ensure competence, improve quality of service and enhance confidence in the justice system.

However, Bill-337 goes far beyond a simple requirement of judicial education. One proposed provision requires written reasons in sexual assault cases, but such a prescription may not improve matters in the court system. The Canadian Bar Association (CBA) has submitted that oral reasons delivered from the bench at the end of hearings may in fact shorten waits for decisions since written judgments can take many months to prepare. The CBA also notes that requiring written reasons may cause delays resulting in the dismissal of charges, because of a recent Supreme Court decision that imposed new time limits on proceedings. In any event, the CBA points out, there is already a legal requirement that all judicial decisions must be sufficiently justified.

Bill-337 also requires annual reporting to Parliament. These reports would provide details of judicial educational programs and the participation of individual judges, and they would indirectly identify those who had not taken courses. Such a requirement raises the spectre of judicial evaluation: participation records could be used to critically assess the outcomes of cases with a view to altering the opinions of individual judges and influencing their future decisions. Judicial evaluative tools are "common" for some judicial officials in England, according to a 2012 study, and used in several American states. In Canada, though, one 2009 effort to assess judicial performance sparked what the Globe and Mail called a "firestorm."

Beyond the specific requirements of the draft Bill, mandatory education for judges raises the possibility that a later government might impose further educational content on judges for political purposes. Such threats seem unlikely in the Canadian context. Taken to its extreme, the threat of authoritarian "re-education" is more commonly associated with illiberal political regimes, like China's. But recent partisan attacks on judicial rulings in the US may lend substance to fears in this country about the possibility of ideological training for judges following criticism by politicians.

The recent public discourse on this subject has sparked two developments. The Minister of Justice recently announced additional measures to combat gender-based violence. These measures include new funding to provide more training for judges about the law on sexual assault and domestic violence, through the National Judicial Institute. In addition, the Canadian Judicial Council adopted a motion in April recognizing education training for new judges as mandatory, and it has recommended changes to the judicial application process that would require all prospective judges to provide an "undertaking" to pursue ongoing education if appointed.

These developments are welcome news to address judicial education in Canada. In my view, mandatory education for judges does not itself breach independence, especially as part of an attempt to address what appears to be a significant failing of the justice system in handling sexual assaults. It's in the public interest that judges undertake education to enhance their knowledge and skills in this area. However, the additional requirements in the draft Bill seem to go beyond what is required for that purpose and risk breaching judicial independence. Parliament should carefully consider the wider implications for both independence and the rule of law to ensure that Bill C-337 does not do more harm than good.

Un accusé du meurtre bénéficie d'un arrêt Jordan
Radio-Canada
19 mai 2017

Van Son Nguyen, 52 ans, qui était accusé d'avoir tué un Montréalais par 34 coups de machette dans le quartier Saint-Michel, en 2013, sur les lieux d'une culture illégale de cannabis, a obtenu un arrêt des procédures en vertu de l'arrêt de Jordan.

Il s'agit de la troisième personne au Québec à obtenir un arrêt des procédures à la suite de l'arrêt Jordan. Le mois dernier, Sivaloganathan Thanabalasingam, qui était accusé d'avoir tué sa femme en 2012, a aussi échappé à son procès. La couronne a toutefois fait appel de cette décision.

Van Son Nguyen avait été arrêté au janvier 2013, au lendemain de la découverte du corps dans un appartement de Saint-Michel et accusé de meurtre non prémédité.
Quatre ans et quatre mois plus tard, le procès n'avait toujours pas commencé et le juge Daniel W. Payette a statué qu'il s'agissait d'une affaire plutôt simple qui ne justifiait pas de tels délais de procédures.

En vertu de l'arrêt Jordan de la Cour suprême, le délai maximal du début à la fin des procédures judiciaires aurait dû être, dans son cas, de 30 mois.
Le juge a également statué dans son jugement rendu vendredi que la poursuite était responsable d'une grande partie de ces délais et que finalement la gravité ne pouvait pas être le seul facteur pris en considération pour justifier de longs délais comme ceux-là.

Au contraire, les crimes les plus graves sont ceux qui devraient être jugés le plus rapidement par les tribunaux pour maintenir la confiance du public, écrit le juge Daniel W. Payette.

Van Son Nguyen n'est cependant pas citoyen canadien et pourrait être déporté plutôt que remis en liberté.