Playing the Jordan 'Trump' card
Canadian Lawyer Magazine
Jim Middlemiss
July 4, 2017

Canada's 150th birthday also marks a darker anniversary. It's been one year since the Supreme Court of Canada ruled in R. v. Jordan.

The controversial case, which turned the justice system on its ear, drew an arbitrary line in the sand, setting 18 months for provincial court and 30 months at the superior court system as the outside deadline for bringing cases to trial.

Justice department bureaucrats have been scrambling to triage cases, while defence lawyers have lined up to bring forward Jordan motions; at mid-May, Jordan had been cited in other rulings 335 times.

The fallout is notable. Dozens of cases have been tossed or withdrawn, including three involving murder.

There has been a flurry of announcements this spring dedicating more resources to the justice system. In March, the federal government announced $55 million to hire 28 new judges. Alberta promised $14.5 million to hire 35 more prosecutors; Ontario will spend $25 million to hire 13 more provincial judges, 32 Crown attorneys, 16 duty counsel and 26 court staff. Quebec is adding 16 judges, 52 new prosecutors and hundreds of court staff, part of a $200-million investment into the justice system.

That's a quarter-billion dollars and counting. Putting accused murderers back on the street has that kind of impact with politicians.

However, it's based on one ruling where the court didn't hear expert evidence on what should constitute a reasonable delay. Why 18 months and not 12 or 24?

If you think you've seen the Jordan movie before, you're right. Jordan is the sequel (or a bad a remake) of an older s. 11(b) feature flick, R. v. Askov, a 1990 ruling that stated eight to 10 months of institutional delay was too much, which led to thousands of cases being purged.

Almost 30 years have passed since Askov, yet the underlying problem remains — systemic delay.

The justice cast and crew in Jordan is different, but the plot remains the same. The solution now, as then, is to spend more and hire more people, as if that changes a bad script. It didn't work then and it won't work now.

Little is said about overhauling antiquated processes or addressing how police lay unnecessary multiple charges. Why does it typically take five court appearances to clear a criminal case? Hiring more people doesn't equal greater efficiency or better justice.

Are we spending enough on our criminal justice system (police, prisons, prosecutions and courts)? Most lawyers and judges would tell you no. Comparative figures for justice spending are hard to find and compile. A Parliamentary Budget Officer report in 2013 found that Canada spent $20.3 billion on the criminal justice system in 2011-2012, about 1.1 per cent of our GDP or $478 per Canadian (the Canadian dollar was near par with the U.S. dollar).

U.S. statistics show that in 2012, Americans spent US$274 billion on criminal justice, about 1.6 per cent of its GDP or US$872 per citizen. In 2011, Australia spent AU$12.5 billion on its criminal justice system (about US$12 billion at then exchange rates), just less than one per cent of its GDP or about US$537 per Australian. So Canada seems to be at the low end when it comes to investment in its justice system.

For what it's worth, court backlogs and delay are not a Canadian phenomenon.

Australia faces a growing backlog of criminal cases. More than 25 per cent of caseloads in some jurisdictions take longer than 12 months to get to trial.

Ontario's southern neighbour, New York State, has issues in places such as the Bronx, where cases languish for more than a year. That state's benchmark for hearing a case is 90 days for a misdemeanor and 180 days for a felony. That's lightning speed compared with Ontario.

The United Kingdom's ministry of justice has a ticker on its website that averages the days it takes to complete a case from charge to outcome. Overall, it's 24 weeks or six months. For the Crown Court, it's 51 weeks, or almost a year.

Clearly, Canada needs to do better. My concern is that the Supreme Court, by setting an arbitrary limit with scant comparable evidence on trial delay, has stirred up a hornet's nest in political circles, where justice spending doesn't have the same political cachet as hospital spending.

In May, Saskatchewan said it would once again invoke the Charter's notwithstanding clause in a fight over Catholic school funding; it's the fifth time a province has used it to override a fundamental right.

How long before a provincial government invokes the notwithstanding clause to get around trial delays? The PQ in Quebec called on the provincial Liberal government to do such, as did at least one Conservative leadership candidate.

It would be a crass card to play, but we seem to live in crass political times. If Jordan is putting accused murderers back on the street, it might be the "Trump" card in someone's election deck.

Next Supreme Court chief justice should come from Quebec: Montreal bar
National Post
Canadian Press
July 5th 2017

MONTREAL — The Montreal bar is calling on tradition to be respected and for the next chief justice of the Supreme Court of Canada to be a Quebecer.

Bar president Brian Mitchell says the law society sent a letter to Prime Minister Justin Trudeau late last month in which it outlined its position.

Supreme Court Chief Justice Beverley McLachlin announced last month she will step down in December.

McLachlin was the first woman appointed to the position and set a new longevity record by holding the job for nearly 18 years.

The letter from the bar states that according to tradition, the position of chief justice is assigned alternately between judges who come from a civil law background in Quebec and common law background elsewhere in the country.

The bar wrote that it's also important to alternate between French and English chief justices.

Mitchell says the bar, which represents some 15,500 lawyers in Montreal, wrote the letter as a reminder that traditions have existed and should be maintained.

"It's not at all a demand, it's rather an invitation for the prime minister to consider and also the justice minister to consider," Mitchell said Wednesday.

"Ultimately, it's the discretion of the prime minister to choose whomever he wishes."

Three Quebec judges — all francophones — currently sit on the Supreme Court: Clement Gascon, Suzanne Cote and Richard Wagner.

'Failing everyone': 204 cases tossed over delays since Supreme Court's Jordan decision
Legal observers call on governments to make drastic and urgent changes to fix sluggish court system
The Canadian Press
Laura Kane,
July 6th, 2017

More than 200 criminal cases across the country have been tossed due to unreasonable delays since the Supreme Court of Canada's landmark Jordan decision one year ago, court data shows.

The cases include murders, sexual assaults, drug trafficking and child luring, all stayed by judges because the defendant's constitutional right to a timely trial was infringed.

While provinces and the federal government have taken steps over the past year to speed up Canada's sluggish courts, legal observers say more drastic and urgent changes are needed.

"Not nearly enough has been done by the government in order to repair this crumbling system," said Rick Woodburn, president of the Canadian Association of Crown Counsel.

"Until the government views the justice system as a priority, we'll continue to see murderers set free."

Advocates say governments must provide more funding for every facet of the system, including judges, Crown attorneys, legal aid and infrastructure. Ottawa is also being urged to reverse decisions made under the previous Conservative government to expand mandatory minimum sentences and to close three of six RCMP forensic labs in the country.

The Jordan decision, as it has come to be known, was issued on July 8, 2016, when the high court ruled the drug convictions in British Columbia of Barrett Richard Jordan must be set aside due to unreasonable delay.

In a 5-4 ruling, the court said the old means of determining whether proceedings had taken too long were inadequate. Under the new framework, unreasonable delay was to be presumed if proceedings topped 18 months in provincial court or 30 months in superior court.

1,766 applications for stays

In a dissenting opinion, a minority called the new framework unwarranted and unwise, warning it could lead to thousands of prosecutions being thrown out.

The Canadian Press requested data from all 10 provinces, three territories and the Public Prosecution Service of Canada to examine the impacts to the country's justice system from the groundbreaking decision.

Since the ruling, approximately 1,766 applications have been filed for charges to be stayed because of unreasonable delays.

Of those, 204 have been granted and 333 have been dismissed. The remainder are either still before the courts, have been abandoned by the defence or were resolved on other grounds.

Still more charges have been proactively stayed by the Crown due to the expectation they would not survive a Jordan application, including 67 by the Public Prosecution Service of Canada.

Heidi Illingworth, executive director of the Canadian Resource Centre for Victims of Crime, said 200 cases tossed over delays was "shocking" and very painful for victims and their loved ones.

System 'failing everyone'

"The system is failing everyone. It's failing victims, it's failing accused, it's failing everyone who is working in it," she said.

"We can't have this situation where the public lacks faith in the justice system, and that's what we're starting to see happen."

Determining whether stays have increased since Jordan is challenging because most provinces did not track applications based on the previous framework for determining unreasonable delay.

Ontario reported that 65 stays were granted due to delays in the fiscal year 2015-16, meaning the number increased slightly after Jordan to 76.

Manitoba said no unreasonable-delay applications were successful between January 2015 and June 2016, but two had been granted since the Jordan ruling.

A study conducted at Dalhousie University in Halifax shows both applications and stays went up after the decision. In the six months before Jordan, 26 stays were granted out of 69 applications, while in the six months afterward, 51 stays were granted out of 101 applications.

Eric Gottardi, the Vancouver lawyer who brought Jordan's case to the Supreme Court, said the impact of the decision will not be fully known for three to five years.

The court provided transitional exceptions for cases that were already in the system before Jordan. The Crown can argue the time the case has taken is justified based on the parties' reliance on the previous law.

Public outrage 'understandable'

Gottardi said it's unacceptable for a serious case to get to the point where a judge thinks it must be tossed, and the outrage felt by victims, families and the public is completely understandable.

"The focus of the anger should be towards the government, in my view, not towards the courts," he said. "There's myriad reasons why it got to that point, and most of them have to do with infrastructure and funding."

Justice Minister Jody Wilson-Raybould said there are a number of solutions to delays and she expects to introduce reforms in the fall. She also said her government remains committed to reviewing mandatory minimum sentences.

Despite a raft of new appointments, there are still 49 vacancies of federally appointed judges across the country, and more than a dozen vacancies of provincially appointed judges.

Bill Trudell, chairman of the Canadian Council of Criminal Defence Lawyers, said the Jordan decision has sent an "electric shock" through the justice system.

He said he thought the decision went too far, but it has been a catalyst for positive change.

"It's like a protest. Good things may come from protests, even though you might not like the protest at the time."

Provinces have brought in new procedures to speed up the justice system. Here's a look at some of the initiatives provinces have undertaken:

Quebec

Quebec is investing $175-million over four years to recruit new judges, prosecutors, legal aid lawyers and support staff and create new courtrooms. So far, 449 positions have been filled and several new hearing rooms are operational. Justice Minister Stephanie Vallee recently announced an additional $9 million to hire 47 legal aid workers. The province has also launched a pilot program to allow for alternatives to incarceration, such as community service, in some minor offences.

Vallee is also calling on the federal government to create eight new Superior Court justice positions and two additional Appeal Court judge positions, but Ottawa has not done so yet.

Ontario

Ontario Attorney General Yasir Naqvi said in an interview the Jordan decision is a "game-changer" and a call to action for all levels of government. He said the province has added 13 judges, 32 assistant Crown attorneys and a number of other staff.

Ontario has also focused on streamlining the front-end of the system with a number of initiatives aimed at better serving individuals with mental health issues, addictions and unstable housing. It has expanded provincewide a program that facilitates the release of low-risk accused into the community pending trial, as well as launched a new "bail beds" program that provides supervised housing for vulnerable accused. It has also developed a program to provide supports to Indigenous people who are accused of a crime.

British Columbia

B.C.'s Supreme Court recently issued new directions for so-called "mega-trials," or large or complex criminal cases that have the potential to occupy a significant amount of court time or

risk delays. The directions call for a case management judge to be appointed early in the process and for tight time limits for disclosure, pre-trial applications and the trial itself.

Associate Chief Justice Austin Cullen said in an interview the court began reviewing complex trial procedures about 18 months before the Jordan decision. But he said the ruling helped "spur us on and made us realize that we're doing something useful."

B.C.'s government tasked lawyer Geoffrey Cowper in 2012 with writing a report on its justice system, in which he identified a "culture of delay." In November 2016, Cowper said B.C. was on the road to recovery. A major initiative he cited was B.C.'s use of administrative law to move tens of thousands of drunk-driving charges out of provincial court.

Nova Scotia

Chris Hansen, with Nova Scotia's Public Prosecution Service, said the province is being "fairly aggressive" in dealing with Jordan. It has established a criminal justice transformation group with the sole purpose of addressing delays. Every criminal case has a "Jordan ticker," so that when participants access material online, they can clearly see the number of months since the information was laid. Hansen also said the courts have increased their use of technology with video conferencing and electronic disclosure.

Saskatchewan

Saskatchewan's Public Prosecutions said most cases in the province finish within the time limit and exceptional events are often the cause in the small number of cases that don't. Nonetheless, it said it's implementing further strategies to move every case along as quickly as possible. These include focusing on expediting disclosure, assessing cases as early as is workable, removing cases that do not meet the prosecution standard, and working to resolve cases as soon as possible.

With files from Brett Bundale, Sidhartha Banerjee, Joanna Smith, Allison Jones, Lauren Krugel and Geordon Omand

Justice minister says Jordan decision 'lit a fire'
The Record
Joanna Smith
The Canadian Press
July 6th, 2017
OTTAWA — They did not see it coming, but they knew that something likely would derail their plans.
More than a year ago, Justice Minister Jody Wilson-Raybould convened a meeting of people engaged in the criminal justice system to hear their views on reform, which included a sober and prescient reflection.

"Extraneous circumstances and events, which are unforeseeable to us today, will hijack the agenda — use them as they can be an effective way to attract and commit public interest," said a summary of the May 2016 discussion obtained through an access-to-information request.

Seven weeks later, the Supreme Court of Canada released its groundbreaking ruling, R v. Jordan, that urged everyone to get serious about reform.

"It lit a fire under me," Wilson-Raybould said in an interview.

The Charter of Rights and Freedoms gives someone charged with an offence the right to have their case tried within a reasonable amount of time and in the drug-related case of Barrett Jordan of Surrey, B.C., it had taken more than four years.

"A culture of complacency towards delay has emerged in the criminal justice system," the high court wrote in a 5-4 ruling that sent a strong message that enough was enough.

The Supreme Court imposed strict limits on the amount of time a case could take to make its way through the system — 18 months in provincial courts and 30 months in superior courts.

Those presumptive ceilings were upheld in another ruling last month.

The only remedy for a case that goes on so long is a stay of proceedings, no matter how serious the charge, and a dissenting minority opinion argued the new time limits could lead thousands of cases being tossed.

The ruling came with a transitional measure for cases already in the system, but there have been some high-profile examples of stayed proceedings, including murder charges, which has brought a greater sense of urgency.

Rick Woodburn, president of the Canadian Association of Crown Counsel, said there was a crisis in the justice system long before the ruling came out.

"The Supreme Court of Canada just put the exclamation point on it."

Eric Gottardi, one of the lawyers who argued for the defence in the Jordan case, said a stay of proceedings should be viewed as a health check on a system that needs fixing.

"It's not a reward for the person who has been accused of a terrible crime," he said.

There have been a number of different solutions proposed.

A recent report from the standing Senate legal committee on legal and constitutional affairs proposed a wide range of ideas, including having the federal government fill a judicial vacancy

the same day a Superior Court judge retires and moving most impaired driving cases out of the criminal courts.

The province and territorial justice ministers, meanwhile, came out of an emergency meeting on judicial delays this spring having agreed to think about criminal law reforms, changes to mandatory minimum penalties, bail, preliminary inquiries and the reclassification of offences.

"My approach is recognizing there isn't one solution," said Wilson-Raybould.

Many of these suggestions were familiar to those who took part at that first roundtable in Toronto last year, where Wilson-Raybould spoke of finding more off-ramps from the criminal justice system and getting serious about how to tackle the overrepresentation of Indigenous Peoples and those living with mental health issues and addictions.

There was also a sense in the room that no one wanted to wait much longer.

"We know what is needed and in what areas," said the summary of the discussions. "We should do them and move beyond the normal reflex of problem identification exercises, which delay action."

Topping the list of things the participants told Wilson-Raybould she could rather quickly review was existing and mandatory minimum penalty provisions.

Wilson-Raybould said she remains committed to this, especially since more than half of the charter challenges her officials are tracking involve mandatory minimums.

She said other research by the department has shown they do not even increase sentences.

"They are becoming the ceiling, rather than the floor," she said.

More than a year since they gathered in Toronto for what they described as a refreshing and inspiring roundtable with the relatively new federal justice minister, some are tired of waiting.

"People are going to jail that shouldn't be going to jail because there are mandatory minimum sentences — every day that is happening," said Jonathan Rudin, program director at Aboriginal Legal Services in Toronto.

Sen. Kim Pate, a long-time advocate for female prisoners, said she understands broader reforms could take longer, but that is not the case for everything.

"Some of these criminal law approaches really could be implemented now," she said.

Patrick Baillie, president of the Canadian Psychological Association, said his ongoing patience will depend on the result.

"I think if we end up with a process that gets rid of some of the silos so that health and social services and housing and education and justice and Aboriginal services and immigrant and refugees services are all talking about what we can do to address the overrepresentation of certain groups within the justice system, then that's a worthwhile dialogue," he said.

Bill Trudell, chair of the Canadian Council of Criminal Defence Lawyers, noted that Wilson-Raybould has had a lot on her plate, including the legalization of marijuana.

So, he too is willing to wait for legislative changes — for a little while.

"I think they'll come, but if they don't, six months from now, we'll feel like it was a lot of words," he said.

Wilson-Raybould said she, too, is "anxious about time frames" and she understands those who are frustrated by the pace of reform.

"I am hopeful they will see their voices in those reforms and they will contribute to the dialogue around potentially improving in the fall when we introduce measures for change," she said.

How provinces have tried to speed up the justice system since the Jordan ruling
National Post
The Canadian Press
July 6th 2017

VANCOUVER — Provinces have brought in new procedures to speed up the justice system following last year's Supreme Court of Canada ruling in the Jordan case, which set tight time limits for trials. Here's a look at some of the initiatives provinces have undertaken:

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Quebec is investing $175-million over four years to recruit new judges, prosecutors, legal aid lawyers and support staff and create new courtrooms. So far, 449 positions have been filled and several new hearing rooms are operational. Justice Minister Stephanie Vallee recently announced an additional $9 million to hire 47 legal aid workers. The province has also launched a pilot program to allow for alternatives to incarceration, such as community service, in some minor offences.

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Canada's new sexual assault law is a 'catastrophic attack' on the rights of the accused
This is an appalling bill that will make it even more difficult for accused individuals to provide a full and robust defence
National Post
Barbara Kay
July 6th 2017

Depending on one’s view of the criminal justice system — classic vs. postmodern — there were two general takeaways from the Jian Ghomeshi trials.

Colour me classic.

Based on his known character, I fully expected the charges against Ghomeshi to result in at least one conviction. But the startling inconsistencies between the complainants’ allegations and the trail of electronic communications brought into evidence by the defence convinced me that his acquittal was justified. I ended with no sympathy for the complainants who, in their wilful suppression of pertinent facts, had demonstrated a shocking disregard for the primacy of truth-telling in the courtroom.

Postmodernists, who respect “truth-telling” according to its alignment with desirable social-justice outcomes, were offended by the outcome. They were less concerned about Ghomeshi’s rights as an accused individual than they were in seeing him take the fall, which would have affirmed their view that female victims of sexual assault should be believed. They shrugged off the complainants’ duplicity as a mere detail in a larger campaign. They would have complacently seen Ghomeshi found guilty — never mind the Criminal Code and “reasonable doubt” — for the social crime of being a sexist sleazebag.

An accused will be prohibited from introducing sexually explicit texts or emails in court unless a judge rules them to be admissible

The government apparently feels these ideologues’ pain. They have channeled the mistaken but widespread belief that the justice system is skewed against women into Bill C-51, which has finished second reading in Parliament and will now receive attention from the Standing Committee on Justice and Human Rights. C-51 proposes changes that will satisfy many radical feminists, but may ruin the lives of many innocent men accused of sexual assault.

C-51 expands the “rape shield” protections for sexual assault complainants, by restricting the ability of the accused to use communications by a complainant or witness that are “of a sexual

nature" or "for a sexual purpose" as part of his defence, particularly to establish the defence of "mistaken belief in consent" (remember Lucy DeCoutere's email to Ghomeishi following an allegedly harrowing assault, "I love your hands!"?). An accused will be prohibited from introducing these kinds of sexually explicit texts or emails as evidence in court unless a judge first rules them to be admissible, after conducting a closed hearing with the Crown prosecutor, which the complainant may attend, accompanied by her own lawyer if she chooses (giving the phrase "lawyered up" new depth of meaning).

This is a scandalous reversal of the traditional understanding that the burden of proof of guilt lies upon the Crown. Toronto defence lawyer Joseph Neuberger told columnist Christie Blatchford that the bill's effect will be a "catastrophic attack on our ability to make full answer and defence. It's unprecedented."

If this bill passes, defence lawyers will be more restricted in the evidence they can lead or the case theory they can propose (defence often taking its cue from Crown strategy). The defence's prior disclosure may also identify complainant landmines, permitting the Crown to plot a course around them. There's also a risk that a complainant who participates in the closed hearing (to rule on an email or text's admissibility) will be tipped off on what to say or not say in court. Those complainants who have no problem lying anyway may simply tailor their in-court testimonies, once they've been made aware of the evidence that the defence plans to lead. Anthony Moustacalis, head of the Ontario Criminal Lawyers Association, told me, "It's using the power of the state to help prepare the Crown to prosecute the accused at the accused's expense."

Moreover, under C-51, if the defence doesn't seek to introduce such sexual-nature communications as evidence, it's a likely signal that it has none, and the Crown can be fairly confident that the case will be little more than "he said-she said." This forced revelation of the defence's cards essentially makes the defence an unwilling player for the Crown team.

Retired family-law lawyer Grant Brown believes C-51 is so misguided that it is tantamount to a repeal of the presumption of innocence, because it so weakens the defence's ability to defend himself. He wrote to me: "Canadians have a charter right against self-incrimination, which entails that an accused is not required to speak to the police or to testify at a trial. Requiring defence disclosure comes perilously close to revoking that Charter right."

This is an appalling bill that will make it even more difficult for accused individuals to provide a full and robust defence. If defence disclosure is such a great idea for the administration of justice, why should it only apply in cases of sexual assault? That was a rhetorical question. Only in sexual assault cases can one be nearly certain that the law will be tilted heavily in favour of finding men guilty of the offences of which they've been accused.

Over 200 cases tossed over delays since top court's Jordan decision
Vancouver Sun / Montreal Gazette
Laura KaneThe Canadian Press
July 6th 2017

VANCOUVER — More than 200 criminal cases across the country have been tossed due to unreasonable delays since the Supreme Court of Canada's landmark Jordan decision one year ago, court data shows.

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Majority of charges laid in Canada’s largest marijuana dispensary raid will not go to trial
Global News
Adam Miller Online Journalist
July 6th 2017

The majority of criminal charges laid in the single largest police raid on marijuana dispensaries in Canadian history will not go to trial, the Public Prosecution Service of Canada has revealed.

Of the 90 individuals who were facing more than 180 charges in Toronto police’s May 26, 2016 Project Claudia raids of 43 dispensaries, 45 of those cases have been withdrawn or stayed and a further 27 have been settled through peace bonds — meaning the charges will not appear on the accused’s criminal records.

The data, first revealed by VICE News Canada, showed seven of the cases will go to trial in Superior Court, two will face trial in provincial court, four do not have a trial date set, three individuals have pleaded guilty and been sentenced, one is wanted on a bench warrant and the court lost jurisdiction in two cases.

Toronto police spokesman Mark Pugash told Global News Thursday that although the majority of the cases won’t see the inside of a courtroom, many of the accused had forfeited significant amounts of money and marijuana products seized by police in the raids. He said that showed the profitability of the “current illegal cannabis dispensary environment.”

“We know dispensaries are selling large amounts of cannabis, they’re generating large amounts of money,” Pugash said. “We have no idea where the dispensaries are buying their cannabis … which leads to, at the very least, the possibility that they’re buying it from organized crime. But we don’t know because they won’t tell us.”

Pugash said dispensaries also pose a risk to public safety, as the businesses have been the targets of “violent armed robberies” in the past, possibly because perpetrators believed there was a copious amount of marijuana and money inside.

“What is beyond any doubt is that dispensaries are against the law, there is no grey area … And so as long as it’s against the law we’ll continue to enforce,” he said.

“There appear to be a number of dispensaries that are prepared to walk away from large amounts of money and large amounts of product, which suggests that they’re making even more money and have access to even more product.”

Toronto lawyer Paul Lewin, who represented many of the accused along with several other lawyers, called the raids “a horrible use of very scarce police resources and court judicial resources” that only serve to push the market “further underground.”

“To say they don’t care about it, they walked away from it — I don’t think they have much of a legal choice in the matter,” he said.

“What choice did they have but to walk away from it especially when the Crown is offering to drop all the charges? But legally it would be difficult to get it back and I’d say if they’re thriving, there’s a reason why a medical dispensary is thriving and that’s because the government system is no good, it’s broken.”

Toronto Mayor John Tory said during a press conference Thursday that by previously “urging” Toronto police to crack down on the dispensaries, his “objective” was not to see anybody go to jail but to maintain “peace” in the city.

“We cannot have the kind of popping up of these shops all over the place. And I’m absolutely certain that once the new regime is in place, whatever it is, it won’t contemplate marijuana shops popping up on every street corner,” he said, adding that he was “happy” there were fewer dispensaries in the city following the raids.

“So, I just think that the justice system will grind on as it does on in many areas and that the police will do what they have to do, which is enforce the law and we’ll go from there.”

Tory added he was “heartened” by the fact peace bonds would prevent individuals from opening more dispensaries in the future, something he said is not in the best interest of families and businesses in a “peaceful city.”“It makes me happy to see that all of these victims of prohibition

are having their charges dropped or thrown out but it makes me very sad to see that the police across this country are behaving like dinosaurs," marijuana activist Jodie Emery told Global News Thursday.

"They refuse to catch up with public opinion and the opinion of the public prosecutors and of the Crown that cannabis cases are a waste of time and shouldn't be clogging up the courts."

Pugash dismissed the notion that police were unable to investigate different types of crimes equally.

"For the people like Jodie Emery that say, 'Well they should concentrate on murders and other things,' we are able to do many things at the same time," he said.

"Our homicide unit is solving homicides, our sex crimes unit is charging people with sex crimes of various sorts, our financial crimes unit is working very effectively — and so we make decisions about priorities and resources the same way as the prosecution service."

Lewin said he's hopeful that more cases will be withdrawn in the future, adding he could not imagine a less harmful crime.

"It's the height of recklessness on the part of the authorities — John Tory for pushing this, Justin Trudeau for not having a plan, the Toronto police for sprinting forward with this knuckleheaded plan when the consequences are potentially so serious for these young people," he said.

"Either something is criminal or it's not criminal, and if it is it should be prosecuted."

Bill C-51 not revenge for Ghomeshi acquittals
Toronto Sun
July 8th 2017

Catastrophic attack" on the defence's right to make full answer and defence," "a barrier to justice," "scandalous" attack on our criminal law.

Some hysterical defence lawyers have had the ear of Postmedia columnists Christie Blatchford and Barbara Kay who have been channeling their supposed worst nightmares about Bill C-51, which finished second reading in Parliament and is now headed to the Standing Committee on Justice and Human Rights.

And it's all the fault of these "radical feminists" who are on a mission to convict the innocent. Blatchford even writes that the Bill has "had scant attention, probably because it touches upon the accepted and sacred wisdom that women just can't get a break in the criminal courts."

I beg to differ. It's received scant attention because it's merely the case of legislation being updated with the times, particularly technology to modernize the already validated but dated rape shield law.

That law deals with the twin myths. First, past sexual experience can't be used to show it made complainants more likely to consent to sex. Second, that their past sexual activity makes them more or less worthy of belief.

When the rape shield law was introduced, defence lawyers were also howling about how shocked they were at this new law. Heresy!

The Supreme Court of Canada upheld the constitutionality of that law in a case called Darrach in 2000. I was the assistant Crown attorney who prosecuted the case in the early 1990s, which took over a year to conduct due to a slew of schmaltzy and baseless defence motions.

The law then was that if the accused wanted to adduce evidence of past sexual experience to show the complainant was more likely to consent, or that their past sexual activity made her less worthy of belief, the accused had to enter into a process where the judge would rule weighing the evidence to determine, among a variety of criteria, whether it had a significant probative value "not substantially outweighed by the danger of prejudice to the administration of justice."

Darrach got convicted. He lost his first appeal. Then he headed to the SCC where the defence continued to scream bloody murder. The integrity of the criminal justice system is at stake! The accused's right to make full answer and defence, his right to a fair trial and the presumption of innocence have been tossed out the door, not to mention that he's forced to incriminate himself!

The SCC would have none of it. The court rightfully found the "twin myths" are "simply not relevant at trial" and can "distort the trial process." The process for screening the evidence "enhances the fairness of the hearing by excluding misleading evidence."

Text messages, emails and video recordings were in their infancy, if they even existed, in 1992-1993, so they weren't included in the language of the Criminal Code. Now they would be. Everything else stays the same.

Blatchford and Kay both claim Bill C-51 is revenge for the Jian Ghomeshi acquittals. Of course, that makes it sexier to write about.

But no. It's actually simply a bit of spring cleaning and making sure the Criminal Code is with the times. If the Bill becomes law, expect the same legal challenges as in Darrach. Also expect the SCC to uphold it.

Now back to what you were doing.

Senate Committee proposal on court delays doesn't solve the problem, it hides it
Canadian Lawyer Magazine
Clayton C. Ruby, C.M. & Annamaria Enenajor
July 10th, 2017

The current Canadian criminal justice system is designed to make problems disappear rather than solve them. We do little to resolve the social and economic problems prevalent among those in conflict with the law. Rather, we hide them by warehousing the poor, prosecuting many Canadians with mental illness and addiction issues and over-relying on incarceration at both the pre-trial and sentencing stages.

Our country's systemic failures are not visible to the public, so they do not incite public outrage. If the public is not outraged, the government does not have to act.

In the last year, one of the most publicly discussed systemic failures in our criminal justice system has been the unacceptable length of time that it takes to prosecute a person accused of a crime. We agree.

In late June, the Standing Senate Committee on Legal and Constitutional Affairs released a comprehensive report with 50 recommendations to alleviate the strain on our court system entitled "Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada." Among the solutions offered by the Senate Committee is the proposal that where an accused's constitutional right to be tried within a reasonable time has been violated, a stay of proceedings should not be the only remedy available to courts. It recommended that the government codify less significant remedies such as adjusting sentences and allowing for costs — both of which assume the accused person is not innocent.

This proposal should be rejected. Not only does it fail to address the true causes of court delays, it reflects a failed approach — it attempts to make a problem disappear rather than solve it.

The report was not motivated by delays that have been plaguing the justice system for decades but rather by the Supreme Court of Canada's most recent attempt to tackle such delays with yet another new framework. In the now-infamous 2016 R. v. Jordan decision, the court established time limits for the prosecution of cases from the laying of charges to the conclusion of a trial. Any delays exceeding these time limits are presumed to be unreasonable and a violation of an accused's Charter right to be tried within a reasonable time. If a court finds that a delay is unreasonable, a judicial stay of proceedings will result.

The Senate Committee's proposal to extend remedies beyond judicial stays stems not from a concern over high ceilings, but from its conclusion that an entry of a stay of proceedings for those persons charged with crimes "shocks the conscience of the Canadian community and brings the administration of justice into disrepute." This outrage, however, is necessary for change. As the court pointed out in Jordan, the delays in our courts are the result of a "culture of complacency." Shifting this culture will take a large injection of resources. Allowing for remedies other than judicial stays to quell public outrage will ease the pressure on the government to address the causes of delay and remove the sense of urgency necessary to change a culture of complacency.

The Senate Committee's proposal to extend remedies beyond judicial stays also stems from a floodgates argument that is neither supported by the language in Jordan nor by the way it has been interpreted by courts. The court's framework in Jordan allows for additional contextual considerations for cases currently in the system. This is to prevent unjust results that might occur when actors within a system are forced to rapidly adjust to standards of which they had no notice. These "transitional exceptional circumstances," as the court calls them, will apply when the Crown satisfies the court that the time the case has taken is justified based on the parties' reasonable reliance on the law as it previously existed.

In the press release announcing its report, the Senate Committee represented to the public that these "transitional provisions" prevent the full implementation of the Jordan time limits. The Senate Committee further stated that these "transitional provisions" run out for provincial courts in January 2018, at which time "the flood gates will open for tens of thousands of stays."

This is simply incorrect. The transitional exceptional circumstances do not prevent the full implementation of the time limits in Jordan. The Supreme Court was quite clear that even for transitional cases, the presumptive ceilings of 18 and 30 months apply. The transitional exceptional circumstances only contextualize the analysis of reasonableness where a delay exceeded the ceiling.

Also, the transitional exceptional circumstances do not "run out" for provincial courts in January 2018 or on any other date. The Jordan decision does not place temporal limits on a court's ability to consider transitional circumstances. Rather, these considerations continue to be appropriate in assessing the reasonableness of delays in all cases that were in the system prior to Jordan. Contrary to the assertions in the Senate Committee report, they do not operate as floodgates holding back the deluge of judicial stays.

Finally, it is important to recognize that allowing for remedies other than judicial stays when an accused's right to be tried within a reasonable time has been violated shifts the burden of systemic failure on to the accused. We must remember that waiting years to have your case tried is not merely an inconvenience, it is illegal. It is a violation of the Constitution, which binds the state and is the most important law in the country. The burden of constitutional compliance should be borne by the state. While entering judicial stays of proceedings when serious crimes

are alleged can constitute a blow to the public conscience, that blow should not be softened by deflection toward the accused.

Deflecting the consequences of Charter violations removes the impetus for reform. The state must focus on eradicating Charter violations rather than making the consequences of such violations more palatable to the public. Such solutions lack ambition, are constitutionally suspect and continue to reflect the very culture of complacency that has characterized our justice system for so long.

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Canada tops new index of civil service effectiveness
Global Governmnet Forum
Liz Heron
July 11th, 2017

Canada has the world's most effective civil service, followed by New Zealand and Australia, according to a new global ranking.

The International Civil Service Effectiveness Index (InCiSE), which covers 31 countries across Europe, Asia, North America, South America and Australasia, is the first comparative assessment of how national governments' civil services are performing around the world.

The index, which has been jointly developed by the University of Oxford's Blavatnik School of Government and London think tank the Institute for Government (IfG), aims to help civil servants learn from each other's experience and to boost the transparency of governments.

Professor Ngaire Woods, Dean of the Blavatnik School of Government, said: "An effective civil service can play a central role in driving forward a country's progress and prosperity. The InCiSE index will help both governments and citizens identify how well their civil service is functioning and how it can learn to improve from the best performers."

The index is a pilot programme that was funded by the Open Society Foundations and supported by the UK Civil Service. The founding institutions have committed to support the further development of InCiSE for four years.

It assesses the effectiveness of a country's civil service according to what it delivers and how its various functions are delivered. Countries are scored both on their overall effectiveness, and on a set of functions and attributes. These include tax administration, inclusiveness, capabilities, openness, integrity, HR management, crisis or risk management, regulation, fiscal and financial management, digital service, social security administration and policymaking.

The index, which focuses solely on national governments, does not measure the service delivery outcomes for citizens of departments such as health and education, because these also involve other parts of the public sector.

In rank order, the other countries in the top 10 are: the UK, Finland, Sweden, Estonia, Norway, South Korea, and the United States. However, the index can also be adjusted by national GDP, producing notably different results. When this methodology is used, Estonia takes first place for overall effectiveness, followed by Mexico and South Korea.

IfG deputy director Julian McCrae said: "This index can help governments around the world, including in the United Kingdom, successfully negotiate the immense challenges they face by allowing civil service leaders to identify other countries from whom they can learn.

"Our aim is to encourage collaboration in vital areas, such as the adoption of digital technology, and to provide a transparent account to the public of how countries are doing."

The Blavatnik School of Government is hosting in international conference in September to discuss the results of the pilot and the project's future direction. An international advisory panel will also be set up to guide further development work.

Canada's civil service is world's most effective: UK report
Ottawa Sun
Andrew Duffy
July 11th 2017

Canada's public service is the most effective in the world, according to the results of a new British study that compares the performance of government workforces in 31 countries.

Canada topped the rankings based on its overall score for performance measures such as tax administration, policy making, inclusiveness, openness, integrity, crisis management, fiscal and financial management.

New Zealand, Australia, the United Kingdom, Finland, Sweden, Estonia, Norway, Korea and the U.S. rounded out the top 10 list, which represents the first-ever attempt to compare bureaucracies worldwide.

Among the lowest scoring bureaucracies were those in Slovakia, Hungary, Greece, Czechia, Italy, Portugal and Turkey.

Canada was praised for having a highly-educated government workforce with "a good representation of women, ethnic and religious groups."

"It's a good news story, and it's interesting, when you put that in parallel with the public's perception of civil servants because, generally, they think we're a bunch of lazy people," said Emmanuelle Tremblay, president of the Canadian Association of Professional Employees (CAPE), which represents 13,000 federal economists, policy analysts, research assistants, translators, statisticians and interpreters.

Chris Aylward, national executive vice-president of the Public Service Alliance of Canada, said the study speaks to the dedication of the country's public servants — and the need to stop contracting out government services. "We're not surprised, but we're very pleased to hear that Canada's civil service ranks at the top in this survey," said Aylward. "They're proud of the work they do."

The study, known as the International Civil Service Effectiveness (InCiSE) Index, was prepared by researchers from Oxford University and the Institute for Government, a U.K. think tank.

The researchers assessed government bureaucracies from 31 countries on eight core functions and four key attributes. Data for the initial study was incomplete, the researchers warned, and will be refined in future years.

Canada was ranked third in the world for human resources management on the strength of its meritocratic hiring system, and also scored well on policy making and regulation. Its lowest ranking (20th) came in the area of tax administration — a reflection of the country's relatively slow adoption of digital services.

Canada was among the top five nations for three of the four "attributes" measured: capability, integrity and inclusiveness. On the fourth attribute, openness, Canada's civil service ranked 9th worldwide.

"Canada's openness score, although well above the average, suggests there may be some lessons to learn from the leading countries concerning the right to information theme, as well as the availability and accessibility of government data," the report concluded.

When researchers adjusted each country's overall score based on GDP per capita, Canada's civil service fell to fifth worldwide, behind top-ranked Estonia, Mexico, New Zealand and Korea.

Estonia held the top position because of its world-class tax administration and its extensive suite of digital services.

The effectiveness index was financed by the Open Society Foundations, an organization launched by billionaire George Soros to support democracy-building efforts worldwide.

The civil service index was created to help government leaders understand how their public servants are performing compared to those in other countries. This matters, the researchers argued, because civil servants play such a vital role in a country's development.

The index will be published annually during the next four years; researchers are hoping to add more countries to the list while broadening the scope of their assessment tool.

Tremblay said the study suggests too many Canadians take their civil service for granted. "And remember," she said, "you have tens of thousands of public servants who have not been paid, or appropriately paid, and continue to show up at work with a sense of duty and service. So I think it's particularly a good news story for all these wounded public servants."

Scores of federal employees have experienced problems with their paycheques since the Phoenix pay system was introduced in early 2016 before it was ready to handle the massive task. The system administers pay for more than 290,000 employees across 98 federal organizations.