What's in store for the Supreme Court?
Matthew Gourlay
Law Times
October 16, 2017

The fall term of the Supreme Court of Canada, which began Oct. 3 and continues through early December, will be Chief Justice Beverley McLachlin's last. She officially retires Dec. 15. Given her unparalleled longevity and influence, this is undoubtedly a transitional moment for the court. To put it in perspective, the next longest-serving judge, Rosalie Abella, has been on the Court since 2004 — 13 years to McLachlin's 28. And the other seven judges were all appointed in 2011 or later.

Accordingly, even though the chief justice's retirement will be an important milestone, most of the turnover from what observers usually think of as the "McLachlin Court" has already taken place.

This is a very different group from the court of the 2000s that consolidated and refined the approach to the Charter first elaborated by the more fractious courts led by Brian Dickson and Antonio Lamer. From a criminal law perspective, the McLachlin Court tended to be more consensus oriented than its predecessors and, in any event, was quite evenly balanced between more liberal and more conservative voices, tacking right on some issues such as the Charter rights of detainees (Singh, Sinclair) and left on others such as mandatory minimum sentences (Nur, Lloyd).

Few of the court's current members participated in the most significant criminal law decisions of the chief justice's tenure. As a result, it is difficult to predict what direction the jurisprudence will take after her departure. Justices Michael Moldaver and Abella are known quantities, moderately conservative and moderately liberal on criminal law issues, respectively. Of the others, much less can be confidently predicted. And, of course, the court is about to get a new member from the west and (presumably from among the current complement) a new chief. Few people seem to have any real insight into the likely identity of either. Those who do aren't saying so publicly.

As alluded to above, a lot has happened in criminal law jurisprudence during McLachlin's tenure. Looking ahead to her final term, however, this fall doesn't seem to promise much in the way of criminal law blockbusters.

Nothing remotely like Jordan, last year's landmark case on unreasonable delay, appears to be in the offing. Indeed, the case that's probably going to be watched most closely by criminal lawyers is not actually a criminal case at all. The long-running saga of Joe Groia and the Law Society of Upper Canada will finally reach its conclusion about 17 years after the courtroom events in question took place.

Back around the turn of this century, Groia behaved obstreperously in the course of defending a client charged with securities offences arising out of the collapse of Bre-X. He repeatedly made unfounded allegations of misconduct against the prosecution. Eventually, his client was

acquitted, but Groia himself was brought up on law society charges that he committed the professional offence of incivility.

I tend to think that the case's significance has been exaggerated by its notoriety. The Supreme Court itself has dealt twice with related issues of lawyers' conduct in the recent past. In Doré(2012), the court held that the Barreau du Québec was within its rights to discipline a lawyer for writing a rude letter to a judge. It sounded a note of caution, however, observing that "lawyers should not be expected to behave like verbal eunuchs."

And earlier this year, in Jodoin, the court approved of a lower court ordering costs against a defence lawyer personally for having brought a baseless recusal motion.

My guess is that the court is likely to take a similarly deferential approach to the Groia case but that this isn't likely to prompt an avalanche of civility prosecutions as feared by the defence bar. After all, the law society has other pressing business on its agenda, such as the re-branding of "Upper Canada" to something more hip and contemporary.

One of the few important criminal law cases on the fall docket is the Wong case from British Columbia, which concerns the test to be applied when a convicted person seeks to have a guilty plea overturned because they were unaware of the immigration consequences that attach to the conviction or sentence. More often that you might think, a non-citizen offender will learn only after pleading guilty that they are now subject to automatic deportation.

The Ontario Court of Appeal has been relatively generous in its approach to reviewing such convictions; the British Columbia Court of Appeal has been more stringent.

I would hope that the Supreme Court comes down in line with the Ontario approach given the extent to which unawareness of such drastic consequences really does undermine the "informed" character of a plea.

The rest of the fall docket features the usual assortment of criminal appeals taken by leave and as of right. Though none of them stands out as earth-shaking, it's always possible that a "sleeper" will emerge.

Recall that the most cited criminal case in the history of the Supreme Court, R. v. W.(D.), [1991] 1 S.C.R. 742, the operative passages of which any criminal lawyer can recite from memory, arose as a humble appeal as of right. It was heard by a panel of only five judges. Significantly for the era that is about to end, McLachlin was one of them.

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Quebec set to pass law banning face coverings for anyone receiving public service — even a bus ride

Couillard government will hold vote on Bill 62 aimed at establishing 'neutrality of the state'

CBC News
Benjamin Shingler
October 16, 2017

Muslim women in Quebec who wear a burka or niqab could soon be required to uncover their faces to ride a city bus under a proposed provincial law.

The Couillard government's Bill 62 on religious neutrality could be put to a vote as early as Tuesday, two years after it was tabled.

The controversial legislation would effectively ban public workers — including doctors, nurses, teachers and daycare workers — as well as those receiving a service from the government, from wearing the niqab, burka or any other face covering.

Amendments introduced in August extended the proposed rules to services offered by municipalities, including public transit.

"As long as the service is being rendered, the face should be uncovered," Quebec Justice Minister Stéphanie Vallée said Monday in an interview with Daybreak host Mike Finnerty.

"This is a bill about le vivre ensemble [living together in harmony], it's a bill about guidelines and clearly establishes neutrality of the state."

The legislation, she said, is necessary for "communication reasons, identification reasons and security reasons."

Once the bill is passed, the province will work with municipalities, schools and public daycares to "establish clear guidelines," she said.

Vallée said the law would be the first of its kind in North America.

The bill has been subject to criticism from those who contend it unfairly targets Muslim women, while the two main opposition parties, the Parti Québécois and Coalition Avenir Québec, have argued it doesn't go far enough.

The Liberals hold a majority of seats at Quebec's National Assembly.

Exemptions possible?

There remains confusion about how exactly the proposed law would work.

Under the legislation, an exemption is possible if there is a "serious" request for accommodation on religious grounds.

However, Lucie Lamarche of Quebec's Ligue des droits et libertés said it's unclear how the term "serious" will be defined by the province and how such an exemption would work.

No niqabs on public buses? Confusion reigns after surprise amendments to Quebec bill

The law, she said, would put the burden on someone asking for an exemption when, for instance, getting a driver's licence or a bus ticket.

"The management of the [law] is a bit hard to figure out," said Lamarche, a law professor at the University of Quebec in Montreal, adding that the guidelines will inevitably be open to interpretation.

Those guidelines may not be in place until next June.

"The thing with guidelines is that they are read and applied by many people in many different contexts in many different regions," she said.

"As we know, there are many different opinions about the role of the state and the principle of state neutrality in Quebec. So it's hard to believe that those guidelines by themselves won't produce discrimination."

Not a ban on religious symbols, Vallée says

The bill, Vallée said, is unlike the PQ's failed values charter in that it doesn't target religious symbols. The law would also apply, for instance, to masked protesters.

"We're talking about having the face uncovered. It's not what is covering the face," she said.

Shaheen Ashraf, a board member of the Canadian Council of Muslim Women in Montreal, disputed that assertion.

Ashraf said the bill clearly targets Muslim women and will lead to their further marginalization in Quebec society.

"For me, neutrality would be everyone believes what they want to," she said.

"Forcing someone to uncover, or forcing someone to cover: for me that's not neutrality."

Montreal Mayor Denis Coderre previously raised concerns about the bill, accusing the provincial government of overstepping its jurisdiction and ignoring the city's multicultural character.

1st woman appointed chief justice of Alberta Court of Queen's Bench
Mary Moreau has litigated numerous landmark cases involving minority language rights and charter rights
CBC News
October 17, 2017

For the first time a female judge has been appointed chief justice of the Alberta Court of Queen's Bench.

Mary Moreau will take on the role after Prime Minister Justin Trudeau announced her appointment Tuesday.

"I've certainly received a whole pile of emails throughout the day, so it's been a pretty exciting day," said Moreau, speaking to Radio Active from Grande Prairie where she was performing a bilingual bar admissions ceremony.

Moreau said her new role will be quite a change from the past 22 years spent in the courtroom working on criminal, civil and family law cases.

In her new administrative role, Moreau's focus will be on assigning judges their cases, dealing with issues of judicial resources and dealing with both federal and provincial governments.

"It will be a very exciting time and challenging for me," she said.

Since joining the bench in 1994, Moreau has been involved in education, administration and strategic planning for Canada's court system, the Prime Minister's Office said in a news release.

Moreau has presided over French and bilingual trials in Alberta, and litigated numerous landmark cases involving minority language rights and the Canadian Charter of Rights and Freedoms.

She is a co-founder of the Association des juristes d'expression française de l'Alberta.

Since 2014, Moreau has been a member of the advisory committee on judicial ethics, which provides confidential advisory opinions on ethical issues to federally appointed judges across Canada.

Before becoming a judge, Moreau practised criminal law, constitutional law and civil litigation in Edmonton.

The province's highest ranking judge is Catherine Fraser, who in 1992 became the first woman to be appointed Chief Justice of Alberta at the superior Court of Appeal of Alberta.

Prison justice group hopes to tackle 'gaps' in provincial, federal prisons
Legal and social justice advocates hope to mirror successes on West Coast
CBC News
Nic Meloney
October 17, 2017

Prisoners in Nova Scotia may soon have a new way to make their voices heard inside the prison system.

A group of legal and social justice advocates are meeting this month for the first time to discuss human rights issues faced by prisoners in Nova Scotia's provincial and federal prisons.

The East Coast Prison Justice Society (ECPJS) was officially registered this month by eight individuals with diverse experiences in legal counseling and human rights advocacy. The roster includes three legal professionals, three from advocacy groups and two university professors.

"Right now, it's about increasing the public's skills and knowledge to provide more support for prisoners," said Emma Halpern, one of the society's directors.

Halpern served as equity officer for the Nova Scotia Barristers' Society and is the new director for the Elizabeth Fry Society for Mainland Nova Scotia, another group advocating for women within the Nova Scotia justice system.

She said her group's goal is to identify and discuss the "gaps" within the justice system from as many perspectives as possible and provide the resources to correct them through education, scholarship, legal support, public and grass-roots services.

It's a result of the relationships between the legal, academic and activist communities in Nova Scotia, said Halpern. Many had already been pooling and sharing resources for anyone that works with prisoners. She said the society's diversity provides a wide range of skills and interests that each can benefit from.

"For me," said Halpern, "it's about having access to other people who are interested in prison justice work and increasing the amount of lawyers interested in representing these people."

The group is taking notes from the work of the West Coast Prison Justice Society (WCPJS), based in Burnaby, B.C. It was registered in the early 1990s and has since developed into a full-time legal clinic for all federal and provincial prisoners in British Columbia.

The WCPJS is the only fully-funded legal aid clinic in Canada, and employs five lawyers and two administrative staff.

In just the last year, it's received more than 2,300 requests for assistance from prisoners in that province. Requests range from disciplinary charges to involuntary institutions transfers and parole suspensions.

Jen Metcalfe, West Coast director and supervising lawyer, said the efforts have gone a long way for prisoners in the province.

"We have a lot of small successes everyday," she said, adding that some efforts have had a lasting impact.

Last year, Correctional Service Canada changed its policies around inmates that identify as transgender. Metcalfe had filed a human rights complaint against the CSC while working with trans inmates.

"People don't hear from prisoners in society, so if we're able to give them a voice — that's a success in and of itself."

Metcalfe said she was excited to learn of an East Coast effort for prison justice and said their goals are the same: rehabilitation.

"Going to prison is the loss of your liberty, but prisoners retain all of their rights as citizens. If we treat prisoners unfairly while they're inside, they're going to come out resentful of their experience and that's not going to contribute to public safety."

The East Coast Prison Justice Society is holding its first annual general meeting at the end of the month.

Halpern said top-of-mind will be selecting a chairperson to focus efforts, and then the group will hear from other lawyers, judges and individuals who have experienced systemic issues while serving time.

Justice Minister Louis Sebert survives vote to oust him from N.W.T. cabinet
7 voted in favour, 11 opposed ousting justice minister who lost vote of confidence this month
CBC News
Priscilla Hwang
October 18, 2017

Justice Minister Louis Sebert will keep his job as minister for the Northwest Territories, after seven members voted for, and 11 against removing him from cabinet at the Legislative Assembly Wednesday.

MLA for Tu Nedhé-Wilideh Tom Beaulieu originally planned to introduce the motion to oust Sebert Thursday; it came a day earlier than expected.

MLAs Tom Beaulieu, Julie Green, Shane Thompson, Kieron Testart, Kevin O'Reilly, Michael Nadli and Cory Vanthuyne voted to remove Sebert.

The other four regular MLAs Frederick Blake Jr., R.J. Simpson, Daniel McNeely, Herbert Nakimayak voted alongside cabinet against removing the minister.

Beaulieu introduced the motion Wednesday as a response to ministers unanimously stating they would not voluntarily step down from the non-binding confidence vote during the midterm review.

During the Oct. 5 midterm review — the first in 20 years — MLAs cast a secret confidence vote on each member of cabinet. Sebert was the only minister to lose the confidence of the House.

On Wednesday, contrary to the secret ballot, members of the assembly took turns and publicly declared their support, or opposition to the motion. Even before the official vote, it was clear that Sebert would keep his job.

"This is a distressful conversation for the minister, and it is for me as well," said Yellowknife Centre MLA Julie Green, addressing the assembly Wednesday before the vote.

"It didn't have to be this way, had the cabinet taken the direction of the non-confidence motion."

"I would be the first to admit that I could do a better job as minister," said a composed Sebert to the assembly, following several statements from members criticizing his performance.

Sebert continued to say that "all members of both sides of this house share in the government's success and bear responsibility for its failings."

"I still think the intention of the midterm review... was the right one," said Sebert.

"But I now wonder if putting as much focus on a midterm review as we did meant we as an assembly failed to take advantage of other opportunities."

P.E.I. Chief Justice urges Ottawa to fill vacancies in P.E.I. court
Gordon Campbell says vacancies have led to delays in cases
CBC News
Sally Pitt
October 17, 2017

Supreme Court Justice Gordon Campbell is urging federal officials to fill two judge vacancies on P.E.I. as soon as possible.

Two of the five positions with the Supreme Court trial division are vacant. Justice Ben Taylor retired in August.

Prior to that, Justice Wayne Cheverie went to half-time in September 2016, followed by former Chief Justice Jacqueline Matheson in January 2017.

Campbell said he's in regular contact with the federal justice minister's office about the need to fill the positions.
A provincial selection committee screens applicants, but it's up to Ottawa to make the appointments.

"They're well aware of our needs, the process is unfolding and we're hopeful of something happening soon," said Campbell.

Shortage leads to delays

The lack of judges has lead to delays in family, civil and criminal matters.

"When things book up you know a month, six weeks in advance, that might mean bumping something for a couple of months. It's unfortunate but if we just don't have a body to put on the bench then we can't do it," said Campbell.

However, he said none of the delays so far have been extreme.

"While I fully appreciate that people want their day in court whether it's on on family matter, or a civil matter or a criminal matter — and I appreciate delay is not good — no, we are not in any point yet in any case that I'm aware of that we've infringed the [Canadian Charter of Rights and Freedoms] or are getting close to it."

5-year commitment

Campbell has been acting chief justice since Matheson reduced her hours, however he isn't interested in taking on the role permanently. A chief justice has to commit to five years of full-time work, said Campbell, and at the age of 64 he wants to keep his options open to cut back on his hours at some point.

"We had a bit of a family health issue, that caused us to step back, look at our priorities and say you know, it's probably a good idea to maintain the flexibility and I'm very content and comfortable with that decision," he said.

In addition to Campbell, Justices Nancy Key and Tracey Clements are the other two full-time judges in P.E.I.'s Supreme Court Trial Division. Campbell is adding his concerns to those raised last week by David Jenkins, Chief Justice of the Appeal Division.

Concerns raised as Liberals consider tougher French requirements for public servants
The move would likely spark more resentment inside the bureaucracy, where many view the existing requirements as an insurmountable hurdle to promotion
National post
John Ivison
October 17, 2017

Canada is blessed with a bilingual public service – a bureaucracy mildewed with caution and capable of stifling innovation in both official languages.

We are, in fact, better at stopping things happening than anyone – Canada is number one in the International Civil Service Effectiveness Index.

Yet, nearly five decades after the passage of the Official Languages Act, the public service is not bilingual enough, it seems.

A new report by two senior bureaucrats, commissioned by the Clerk of the Privy Council Michael Wernick, has found many public servants working in bilingual regions do not feel comfortable using their language of choice at work.

The solution, according to Patrick Borbey, president of the Public Service Commission of Canada, and senior bureaucrat, Matthew Mendelsohn, is to raise the linguistic requirements for those in supervisory roles.

This sounds fair enough at first blush – people should be able to work in the language in which they can express themselves most easily. The complaint is that even when French is used, it is symbolic – typically introduced at the beginning or end of a discussion but not sustained.

However, the backdrop to this is a public service that is already over-represented in executive positions by French speakers. Twenty three per cent of Canadians identify French as their first language but 26 per cent of Canada's 250,000 federal public servants are French speakers and fully 31 per cent of those in executive positions primarily speak French.

Raising the linguistic bar is likely to exacerbate the dominance of French speakers in the upper echelons of the public service – sparking more resentment inside the bureaucracy, where many view the existing requirements as an insurmountable hurdle to promotion.

The proposal is to raise the requirement for French oral expression and comprehension from level B to level C – a test which only 35-45 per cent of employees currently pass.

The Liberals point out that the move toward superior proficiency levels is just one of 14 recommendations made by Borbey and Mendelsohn – and none are likely to be adopted in isolation.

The hope is that by increasing training levels across the public service, proficiency would improve at all levels.

“We’re committed to ensuring English and French speaking Canadians have equal opportunities of employment and advancement in federal institutions, including through better and more accessible language training necessary to achieve higher language standards,” said Jean-Luc Ferland, press secretary to Scott Brison, president of the Treasury Board.

He blamed the Conservative government for cutting training budgets and said any proposed changes would be made in consultation with public sector unions.

That goes without saying since the report recommends the government fund increased training by “re-purposing” the $800 bilingualism bonus paid to public servants who meet the language requirements for their position. That goes without saying since the report recommends the government fund increased training by “re-purposing” the $800 bilingualism bonus paid to public servants who meet the language requirements for their position. (Full disclosure: my spouse qualifies for the bonus.)

Killing the bonus could prove counter-productive – many bureaucrats maintain their skills with the express purpose of passing their five-yearly language test and qualifying for the $800 bonus.

One wonders if Justin Trudeau would be mobbed by joyful civil servants in the future, as he was at the Global Affairs building two years ago, if he claws back the bilingualism bonus?

Auditor-General looks at Liberals' handling of Phoenix
iPolitics
Kathryn May
October 17th, 2017

Auditor-General Michael Ferguson’s upcoming report on the troubled Phoenix pay system could make it difficult for the Liberal government to keep shifting the blame for the debacle onto the previous government.

Ferguson told MPs on the Commons public accounts committee Tuesday that his first report, expected in November, will examine the pay problems that have gripped the federal workplace for the past 18 months and the government’s “efforts to rectify” them. The Liberal government decided to roll out Phoenix and has since pumped more than $400 million into fixing it.

“We will be making comments on the efforts to resolve… (This article is behind a pay wall and cannot be shared in its entirety)

Gender and the Canadian justice system topic of Victoria discussion

Ongoing conversation series takes a look at gender justice and leadership

Kristyn Anthony
Victoria News
Oct. 18, 2017

An Oct. 25 panel discussion exploring professional women in the justice system will look at aspects of the Canadian justice system from the perspective of those working inside it.

Part two of a six-part conversation series exploring gender and leadership will bring together VicPD Sgt. Shannon Perkins, Crown counsel Paula Donnachie, Treena Smith, a parole supervisor with Correctional Services Canada and Holly Craig, a probation officer.

Satinder Virdi, executive director of the Society of Friends of St. Ann's Academy, says after hosting a women and leadership conference in October of 2016, the society was left with a resounding need "to carry on the conversations" they had opened around gender justice.

"There's still a lot of that sort of old-school thinking at play in different workplaces," Virdi says, which is important to address. She's encountered situations with people, often men, who think society has moved past the limitations that give way to gender disparity. "But people that are [working] in the system, they don't feel the same, regardless of the profession you're looking at."

The informal structure of the discussion is to encourage a personal element from the panelists, to speak truth to the powers that be. Much of the structure of the justice system was built by and for men, says Eva Silden, chair of the panel and criminal justice instructor at Camosun College.

"I think it's so important to keep having these conversations," she explains. "Women are a unique population, so we do need to do things differently. I think there is a lot yet to learn, and a lot to change, both for women who are experiencing the system and for women who work in the system."

While the focus remains on females, Virdi points out that opening these dialogues aims to ensure social justice for all genders. The pair encourages audience participation; they've created this space for the community to come together and speak up, asking questions they need answers to, in what Silden hopes will be an "exploration."

"We can't be silent," she says. "The minute we become silent, becomes very dangerous."

To register to attend the panel discussion, email Virdi at sfsaa.vic@gmail.com or call Darlene Clover, 250-721-7816 or Lynne Milnes, 250-472-5031. The event runs from 7 to 8:30 p.m. next Wednesday.

Magnitsky human rights law, protections for journalists' sources get royal assent
Russia says passing of Magnitsky law causes 'irreparable damage' to Russia-Canada relations
CBC News
Brennan MacDonald
October 18, 2017

Two private member's bills, one protecting journalists' sources and another that allows Canada to get tough on human rights abusers, received royal assent Wednesday.

One of those laws is the so-called Magnitsky Act, the Justice for Victims of Corrupt Foreign Officials Act or Bill S-226. It allows the Canadian government to impose sanctions and travel bans on foreign officials responsible for gross human rights violations.

"Canada has a strong reputation around the world as a country that holds clear and cherished democratic values and stands up for human rights," Minister of Foreign Affairs Chrystia Freeland said in a statement issued by Global Affairs Canada.

"This new law, which has received cross-partisan support in Parliament, is a clear demonstration that Canada takes any and all necessary measures to respond to gross violations of human rights and acts of significant foreign corruption," Freeland said in the statement.

The legislation was inspired by Russian lawyer Sergei Magnitsky, who died in 2009 in a Moscow prison after accusing Russian officials of a massive tax fraud scheme.

In a series of tweets Wednesday, the Russian Embassy in Canada called the bill's royal assent an "irrational act" causing "irreparable damage" to Canada-Russia relations.

When the bill unanimously passed in the House in early October, Russia threatened to retaliate.

Bill S-226 was introduced by Conservative Sen. Raynell Andreychuk in May 2016. The government of Canada announced its support in May 2017, but with added amendments.

Protection of journalistic sources

The Journalistic Sources Protection Act, Bill S-231, also received royal assent Wednesday. It amends Canadian law to better protect the confidentiality of journalistic sources.

Conservative Sen. Claude Carignan tabled the private member's bill in November 2016, following revelations that Quebec provincial police had spied on reporters in 2013.

"A great day for democracy," said Carignan in a tweet.

Bill S-231 allows journalists to refuse to disclose information or a document that identifies a journalistic source. However, a journalist may be compelled to disclose the information if it cannot be obtained by any other reasonable means and the public interest in the administration of justice outweighs the public interest of protecting the identity of the source.

The bill also amends the Criminal Code so that only a judge of a superior court may issue a search warrant against a journalist.

The House voted unanimously in favour of these protections on Oct. 4.

Whitehorse lawyer offers snarky reply to Crown request to adjourn appeal hearing
'Perhaps PPSC Yukon could stop prosecuting bail breaches at a rate 415,000.00% higher than in Quebec'
Yukon News
Jackie Hong
October 18, 2017

A Whitehorse lawyer has submitted a snide reply in response to a Crown application asking that an appeal hearing for a first-degree murder conviction be adjourned.

A jury found Norman Larue guilty of first-degree murder in 2013 for his role in the 2008 slaying of 63-year-old Gordon Seybold in his Whitehorse-area home. Larue, who had pleaded not guilty to the charge, filed an appeal later that year, the latest iteration of which was filed to the Court of Appeal Sept. 5.

Among the grounds for the appeal are the trial judge not granting a change of venue to ensure an impartial jury and allowing as evidence audio and video recording made by undercover police officers of Larue's former partner and co-accused Christina Asp.

The Crown submitted a notice of application Oct. 13 stating it would be requesting more time to file its factum and for an adjournment of the appeal hearing, scheduled to take place Nov. 21.

"Assigned Crown counsel have been engaged in other substantial, complex litigation activities throughout the summer and early fall months which have necessarily, though regrettably, interfered with the Crown's availability to conclude our review of the appeal materials and our factum drafting endeavours," the notice reads, also pointing out that the original Crown attorneys from Larue's trial are "not available to assist … in digesting and summarizing the trial proceedings" as relevant to the appeal.

"An extension of time is requested in the interest of justice and is, in the Crown's submission required to permit Crown counsel a sufficient opportunity to respond comprehensively to the Appellant's summary of the facts and the legal arguments included in his factum."

Larue's current lawyer, Vincent Larochelle, submitted a reply the same day.

"The (Crown) points to its significant case-load as an explanation for its application. The appellant has much sympathy for this, but as (a) legal aid staff lawyer is no stranger to high workloads," his reply reads.

"The calendar of the appellant's counsel is a grim sight to behold, ladden (sic) with appeals, dangerous offender hearings, complex trials and insufficient vacation … perhaps (the Public Prosecution Service of Canada) Yukon could stop prosecuting bail breaches at a rate 415,000.00% (sic) higher than in Quebec in order to reduce its case load and that of Legal Aid staff."

Larochelle was also unsympathetic to the Crown's argument that the original prosecutors are no longer working for PPSC, noting that one of them "was available from 2013 until his well publicized retirement in April 2017 to assist Crown counsel in the preparation of this appeal."

"Appellant's counsel, despite acting alone in this matter, and despite this heavy case-load, has respected his engagements for filing material. There is no reason why respondent's counsel should not be held to the same standard," the reply says.

"The hearing of Mr. Larue's appeal is long overdue," the reply concludes. "The application for an adjournment should be dismissed."

Can our justice system cope with mental illness?
The case of one man raises questions about the justice system's ability to deal with people with mental illness.
Policy Options
Kirk Cameron
October 20, 2017

On September 29, 2017, Canadians were well served by the judicial system. At a time when Indigenous people are falling through the cracks of our social safety net at a staggering rate, one judge in Yukon took extraordinary steps on that day to not let this happen to one very troubled man.

Michael Nehass, a member of the Tahltan Nation, was charged with assaulting a woman in 2011. It was not his first violent offence. Although he was convicted in 2015, a judge declared a mistrial earlier this year, a highly unusual action. But while he was in custody at the Whitehorse Correctional Centre (WCC), Nehass attacked a guard. Subsequently he spent extended periods in solitary confinement, which further eroded his already fragile mental health. WCC staff raised concerns about his mental condition and requested that he be transferred to a forensic psychiatric

facility outside the territory. This did not happen until 2016, when he was sent to a treatment centre in Ontario.

Following the mistrial, the Crown prosecutor at first decided to retry Nehass on the 2011 charges. Let's be clear: Nehass, who has been diagnosed with a variety of mental illnesses, including schizophrenia, has been a considerable threat to public safety. Citing this danger, many people called on the judicial system to keep him in prison.

Nehass' defence counsel applied for a judicial stay of proceedings, which would have led to the case being terminated. The judge can issue this stay in cases that relate to violations of the Canadian Charter of Rights and Freedoms, as was being argued by the defence. The defence also requested that Nehass be transferred under mental health legislation to a treatment centre in British Columbia, which would be closer to support from his family.

In what is considered to be a highly unusual exercise of Crown prerogative, and not reviewable by the court, the Crown prosecutor directed that the proceeding be stayed, which essentially stops the proceedings before the court. However, it also gives the Crown the option of recommencing the proceedings within one year of the stay, leaving the entire question of Nehass' future up in the air.

Disturbed by the Crown's actions, Yukon Supreme Court Justice Ron Veale took the unusual step of issuing a memorandum. Normally, the Crown's move would have meant an end to the debate in the court on the contentious issue of Nehass' treatment since 2011 while he had been waiting for the conclusion of his trial. Veale's memorandum describes this treatment in detail and addresses the rights of mentally ill people after a criminal proceeding is terminated.

I would like to focus on two aspects of this judicial story. First, the action of the Crown prosecutor demonstrated an abrogation of responsibility and, in my opinion, was disrespectful of the court. In effect, his action abruptly stopped defence lawyer, Anik Morrow, from arguing that there had been substantial violations of Nehass' rights since 2011 under the Charter; her application for a judicial stay of proceedings should have been heard and not shut down.

Morrow felt that the Crown's tactic was intended to avoid embarrassment. She accused the justice system of dumping Nehass "onto the sidewalk in Ontario" without concern for his ongoing mental problems. She described the Crown's conduct as "shameful."

Over the protestations of the Crown counsel, Veale allowed Morrow to outline her concerns about the case to the court, which she did in considerable detail. Veale justified this by saying that the Crown's move in response to the defence application was made at the last minute. The court, therefore, needed to give room to the defence to describe the issues, which were important for society's understanding of individuals with mental illness and the appropriate way to treat them.

Another important aspect of the case argued by the defence lawyer was that the Canadian justice system has failed in its treatment of Indigenous people and people with mental illnesses. She especially highlighted the use of solitary confinement, which in Nehass' case had been extensive: he had sometimes been in solitary for up to 23 hours a day at the WCC.

Before the defence lawyer could begin her arguments, the Crown counsel excused himself and left the courtroom. This decision to walk out of the proceedings was surprising, to say the least: the federal government has said that the "honour of the Crown" is a fundamental cornerstone of its commitment to bring about reconciliation with Canada's Indigenous people. In a statement in July, Justice Minister Jody Wilson-Raybould laid out 10 principles that are to guide all the Crown's interactions with Canada's Indigenous peoples. The Minister stated, "The Principles will guide the review of laws, policies and operational practices and form a foundation for transforming how the federal government partners with and supports Indigenous peoples and governments." The third principle states that "the Government of Canada recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples."

Where was the "honour of the Crown" when its representative before a superior court walked out before proceedings were concluded? How does this behaviour align with the Minister's wish to "[support] Indigenous peoples and governments"?

The second important element of this case is the action taken by Veale. He could have let the Crown's behaviour pass without comment, but he did not. He expressed disappointment that the Crown had decided not to stay for the remainder of the discussion: "I find it unfortunate that the Crown has bowed out of the proceeding…It makes it difficult for justice to be done." That was when he announced he would be preparing a memorandum on the matter.

In his memorandum, Veale ordered that Nehass be transferred to competent care in British Columbia, as requested by the defence, instead of being abandoned to an uncertain future in Ontario. He said, "The authority for this Court to have jurisdiction over Mr. Nehass is based on its parens patriae jurisdiction, that is…the care of mentally incompetent persons, founded on necessity, and the need to act for the protection for those who cannot care for themselves."

The road to reconciliation between Canada's Indigenous population and the Crown is fraught with challenges. The federal justice minister has declared that the Crown, in its many parts, must step up to meet the objective of reconciliation. Veale's actions met, and indeed exceeded, this expectation. The same cannot be said of Crown counsel.

Veale's September 29 memorandum also addressed the shortcomings of the Whitehorse Correctional Centre as a place for inmates with mental illness. Following calls for action by many leaders in the Yukon community (Indigenous and non-Indigenous), the Yukon Minister of Justice has ordered an inspection of the centre by an independent expert. Hopefully this review will bring about further changes to the system, given its inability to deal with people with mental

illness. There have also been calls for the federal government to conduct an independent public inquiry into the case. As for Michael Nehass, he will be relocated to a hospital in British Columbia.

'Not up to the federal government' to challenge Quebec's religious neutrality law: Trudeau
'I believe fundamentally in rights, in the Charter of Rights and Freedoms, and I will always defend that'
CBC News
Peter Zimonjic
Oct 19, 2017

Prime Minister Justin Trudeau spoke for the first time about Quebec's controversial religious neutrality legislation today, saying it's not up to his government to challenge the law but that he would "always defend" people's rights under the charter.

Trudeau made the comments in Roberval, Que., where he was campaigning for Richard Hébert, the outgoing mayor of Dolbeau-Mistassini, who is running in Monday's byelection.

"It's not up to the federal government to challenge this, but we will certainly be looking at how this will unfold with full respect for the National Assembly," Trudeau said in French.

"The federal government has an obligation to accept the fact that the provinces have a right to pass their own legislation, but as you know full well, as a Liberal, at the federal level, I believe fundamentally in rights, in the Charter of Rights and Freedoms, and I will always defend that," Trudeau said, adding: "And that applies to everyone in Canada."

The Quebec Liberal government's religious neutrality law, also known as Bill 62, passed Quebec's National Assembly on Wednesday.

The law prohibits public workers — including doctors, teachers and daycare employees — as well as those receiving a service from the government, from covering their faces.

It was extended to municipal services, including public transit, in an amendment made in August.

The Liberals, who hold a majority in Quebec's National Assembly, voted in favour of the bill, while all the other parties voted against.

The two main opposition parties, the Parti Québécois and Coalition Avenir Québec, have argued the legislation doesn't go far enough, while civil rights advocates and Muslim groups argue it discriminates against religious minorities.

Opposition to the bill

NDP Leader Jagmeet Singh was quick to condemn the bill upon its passing.

"I'm completely opposed to the bill, but I am completely confident in the existing protections that are in place in Quebec that will protect human rights," Singh said, adding he believes the law violates human rights.

"Fundamentally, we can't have the state telling people what to wear, what not to wear."

Singh's predecessor, Tom Mulcair, acknowledged that the NDP's support for a women's right to wear a niqab contributed significantly to the party's crashing fortunes in Quebec during the 2015 election, where a large number of voters backed the Conservative Party's pledge to ban face coverings at citizenship ceremonies.

"Ultimately, it's up to Quebecers to pass judgment on this legislation. The Conservative Party believes every Canadian has the right to express themselves and practice their religion, not just in private but in public too," said Jake Enwright, director of communications for Conservative Leader Andrew Scheer.

Conditional sentences aren’t jail time in immigration law: Supreme Court
Global News
Stephanie Levitz
The Canadian Press
October 19, 2017

OTTAWA — Equating time served in the community with time spent in jail opens up the door to absurd possibilities within immigration law, the Supreme Court of Canada ruled Thursday.

In an unanimous decision, the court said conditional sentences do not count as jail time when it comes to deciding whether permanent residents convicted of a crime should lose their status in Canada.

The justices also ruled that deciding whether a permanent resident is inadmissible to Canada depends on the maximum sentence on the books at the time they committed the offence and not at the time their immigration proceedings begin.

Thursday’s decision means the federal public safety minister must now decide anew whether Thanh Tam Tran, who came to Canada from Vietnam as a teenager decades ago, ought to have his permanent status reviewed in light of his criminal past.

Tran was convicted in 2012 for his role in running a marijuana grow-op. At the time of his conviction, the offence carried a maximum 14-year jail term, but he was given a 12-month conditional sentence to be served in the community.

The government began a process to revoke his permanent residency under a section of immigration law that renders a person inadmissible to Canada if they're convicted of "serious criminality," defined as an offence that carries a maximum 10-year penalty or a conviction that results in at least six months behind bars.

Tran took the government to court to stop the immigration proceedings.

He argued that in 2011, the year he committed the offence, the maximum penalty on the books was only seven years, and that the law at the time of his offence must be the one under which his admissibility was judged. He also argued the conditional sentence he received ought not to count as a "term of imprisonment."

The Federal Court agreed with him, but the Federal Court of Appeal sided with the government.

The top court overruled that decision, with Justice Suzanne Cote writing that equating conditional sentences to a "term of imprisonment" opens the door to absurd possibilities in the context of immigration law.

The Immigration and Refugee Protection Act makes it clear that the length of a sentence is a sign of whether a crime is serious, which is why they set a six month bar, but not all sentences are the same, Cote wrote.

Previous rulings have determined that conditional sentences were for "less serious and non-dangerous" offenders.

"It would be an absurd outcome, if, for example, 'less serious and non-dangerous offenders' sentenced to seven-month conditional sentences were deported, while more serious offenders receiving six-month jail terms were permitted to remain in Canada," Cote wrote.

"Public safety, as an objective of (immigration law) is not enhanced by deporting less culpable offenders, while allowing more culpable persons to remain in Canada."

Ensuring public safety also means permanent residents must fully understand what it means to behave lawfully while in Canada, the court said.

The government had argued what that means is Parliament's view of the seriousness of an offence at the time of admissibility proceedings, but Cote did not agree.

Tran could not have known when he committed his crime that what he was doing was an act of serious criminality that might breach those obligations and lead to his deportation, Cote wrote.

“While Parliament is entitled to change its views on the seriousness of a crime, it is not entitled to alter the mutual obligations between permanent residents and Canadian society without doing so clearly and unambiguously,” she wrote.

“…The right to remain in Canada is conditional, but it is conditional on complying with knowable obligations.”

Supreme Court, CRA express concern about cellphone trackers after CBC story: documents

Both institutions reached out to Canada's electronic spy agency for advice on the trackers

CBC News
October 20, 2017

The Supreme Court of Canada and a senior executive with the Canada Revenue Agency anxiously reached out to Canada's communications spy agency for help after the CBC revealed cellphone tracking technology was being used near Parliament Hill, according to documents.

In April, a months-long CBC News and Radio-Canada investigation revealed that someone was using cellphone spying and tracking technology in the parliamentary precinct.

A day later, Public Safety Minister Ralph Goodale announced the RCMP and CSIS would launch an investigation into who was using the trackers, while saying that it wasn't a Canadian security agency.

The revelation prompted an IT manager from the Supreme Court to request help from the Communications Security Establishment, according to emails released to CBC News through the Access to Information Act.

What kind of assistance was requested from CSE is unclear because that part of the email was redacted.

Questions about BlackBerry Messenger

In a statement to CBC News, a spokesperson for the Supreme Court said the court wanted "to better understand any possible implications of this technology for the court." CSE met with officials from the Supreme Court to explain how the technology worked, Remi Samson said.

In another exchange, an IT specialist from the Canada Revenue Agency reached out to CSE with concerns a director general with the agency raised, including "whether or not the BBM Enterprise is protected against the espionage tools found on Parliament Hill yesterday."

The specialist wanted assurances from the spy agency that BlackBerry Messenger (BBM) — an encrypted instant messaging and video app — is protected for all three kinds of messages: voice, text and video. Answers were not included in the email chain.

But in a statement to CBC News, CRA said it "received clarification from CSE that no unknown security vulnerabilities were identified."

In an email to CBC News, CSE said that its IT team provided guidance to both CRA and the Supreme Court, including information about the threats posed by the tracking devices known as IMSI catchers and possible mitigation measures.

How the technology works

IMSI catchers work by mimicking a cellphone tower to interact with nearby phones and read the unique ID associated with the phone — the international mobile subscriber identity, or IMSI.

That number can then be used to track the phone. In some instances, IMSI catchers can be used with other technology to access a phone's text messages and listen in on calls.

The emails from CSE also provide a window into the reaction to the CBC/Radio-Canada investigation from the highest levels across Canada's security agencies hours after the story went to air.

One chain includes the heads of the RCMP, CSIS, CSE and the National Security Adviser to the prime minister, among others in the Privy Council Office, on how each organization was responding. The emails included media lines being sent out and advice about what the public safety minister and MPs might be asked the following day.

Confusion around role of CSIS

A separate set of emails from Public Safety reveal there was initial confusion about CSIS's role.

Amid concerns about what to communicate, it wasn't initially clear whether a Canadian agency might have been the one doing the spying.

"Can we be categorical on security agencies NOT being involved?" asked Christiane Fox, then the assistant secretary to the cabinet, in an email to representatives from Public Safety, the Privy Council office and CSE.

A director at Public Safety Canada writes back: "I don't know that we can say that categorically."

Twenty-one minutes after Fox's initial question, he replied again.

"CSIS confirmed they can't be categorical," wrote Ryan Baker.

However, Goodale was categorical when he spoke to reporters the next morning that it was not a Canadian agency that was doing the spying.

CBC News checked in again with the minister's office this week and was told that "while CSIS was unable on the night of April 3rd to confirm specific details on the service's use of this technology, Minister Goodale was provided with updated information from CSIS and the RCMP by the next morning," before the minister spoke to reporters.

Exclusive: New data shows race disparities in Canada's bail system
Reuters
Anna Mehler Paperny
October 19, 2017

TORONTO (Reuters) - Black people in Canada’s most populous province spent longer behind bars awaiting trial than white people charged with many of the same categories of crimes in each of the past five years, according to data obtained by Reuters.

Between April 2015 and April 2016, the most recent period in which data is available, black people awaiting trial in Ontario jails were there longer, on average, than white people charged with the same crime in 11 of 16 offense categories Reuters examined. There were approximately 6,000 black people and nearly 26,000 white people remanded to pre-trial detention during the period.

The data showed similar patterns in the four prior years. (Graphic: Racial disparities in pre-trial detention - tmsnrt.rs/2z18vS7)

Among the categories examined, black people spent almost twice as long in remand in 2015-2016 for weapons offenses, equivalent to an additional 38 days. They also spent 46 percent longer for serious violent offenses and 36 percent longer on charges of obstructing justice.

In three categories, white people awaiting trial were held longer in remand during the same period. Those included drug possession, theft and traffic offenses. In two categories, the difference was 1 percent or less.

The data also showed black people arrested and held in custody between 2011 and 2016 were more likely than white people to spend more than a year in pre-trial detention.

Reuters obtained the previously unreported data through access-to-information requests from Ontario, which asks inmates to indicate their race when they enter jail. Other provinces do not collect this data or categorize it differently.

A spokesman for Ontario Attorney General Yasir Naqvi said the province “takes systemic racism seriously and is working to address racial inequities,” but declined to comment on the data.

The Ontario Crown Attorneys’ Association, which represents the province’s prosecutors, and the Association of Justices of the Peace, which represents the people who decide most of Ontario’s bail cases, declined to comment.

More than a dozen defense lawyers as well as prosecutors, criminologists, and a judge interviewed by Reuters said shortcomings in Canada’s bail system appeared to play a role in the racial disparities shown in the data.

Unlike the United States, Canada virtually eliminated cash bail almost half a century ago. Instead, courts often require prisoners awaiting trial to secure a surety, meaning a relative or close friend who can appear in court and subsequently monitor them.

A surety needs assets to pledge, a crime-free record and, often, a home where the accused person can live until the case is complete. A surety cannot represent more than one defendant at a time.

Current and former prosecutors interviewed for this story said securing a surety can be onerous and the requirement is perhaps relied upon too often; but some said sureties remain the best way to protect the public and ensure defendants show up for trial.

HARDER ON THE POOR

Critics of the system say the poor are less likely than middle-class or wealthy people to have connections to provide the assets to pledge or housing to act as a surety. They add that this has an outsized impact on minorities, who are over-represented among Canada’s poor.

“Surety is a huge issue in Ontario,“ said Nicole Myers, a criminologist at Simon Fraser University in British Columbia. ”If you are from a marginalized community or a criminalized community, it can be very difficult to find a surety the court deems appropriate.”

The data did not take into account specifics of each case, the person’s criminal record, the frequency of plea deals, whether the person had a bail hearing and why bail may have been denied.

Reuters focused on offenses with the largest pre-trial populations when comparing the average periods in remand, to minimize the impact of outliers. Inmates charged in multiple offense categories were counted in only the more serious one; multiple charges could affect someone’s chances of getting bail.

Studies, including one published last year by the Ottawa police, have found Ontario’s black communities are more heavily policed than white ones.

This makes black people more likely to be caught breaching bail and makes it harder to find a surety without a criminal record who is not serving as surety for someone else, said Chris Sewrattan, a defense lawyer who represents many young black men from eastern Toronto.

In a ruling this year, Canada's Supreme Court called sureties "one of the most onerous forms of release," not to be used unless other options have been considered, such as programs that assign a case worker and require the accused to check in regularly with the courts.

The court did not address race in its ruling.

At least six provincial governments in Canada, including those of Alberta, British Columbia, and Manitoba, have said they are reviewing bail practices. An earlier Reuters investigation found inmates awaiting trial are more likely to die behind bars than their sentenced counterparts.

Additional reporting by Grant Smith in New York; Editing by Paul Thomasch

Bill 62: Could Ottawa really do anything about Quebec's face-veil ban?
Global News
Monique Scotti
October 19, 2017

Prime Minister Justin Trudeau may not like it, but experts agree that he and his government have limited options when it comes to challenging a new law in Quebec that forbids people from giving or receiving government services with their faces covered.

Bill 62, passed by the province's National Assembly on Wednesday, cannot simply be overturned by the federal government. It must be challenged in court, something that is expected to happen almost right away.

What the federal government can do, however, is participate in court challenges, and potentially influence the speed at which they wind their way up from the provincial courts to the ultimate judicial authority — the Supreme Court of Canada.

Getting to a final ruling on Bill 62's constitutionality could take years if the case (or cases) follow a traditional path, he noted. But if the province of Quebec and the federal government can agree to questions that can be ruled upon right away by the Supreme Court, the whole process could unfold much faster.

The federal government, via cabinet, would need to submit what is called a "reference question" to the court, Behiels explained. The court, in turn, could expedite its ruling. The ruling is not legally binding, but no government has ever ignored one.

Recent reference questions include one regarding the constitutional validity of same-sex marriage in Canada in 2004 and one linked to possible Senate reforms in 2014.

‘It’s a question of respect’

While campaigning in Roberval on Thursday ahead of a federal byelection, Trudeau suggested that he personally doesn’t like Bill 62, but he stopped short of promising federal intervention on any level.

“It’s not up to the federal government to contest (the law). It’s up to citizens to contest.”

The prime minister would not say if he thought Bill 62 was unconstitutional. Asked if the federal government might consider financing a court challenge, he replied: “we’re not there yet.”

Canada is a federation, Trudeau added, and “the federal government must respect, or accept, that the provinces have the right to make their own laws. But as you know well, as a Liberal at the federal level, I believe profoundly in the Charter of Rights and Freedoms. I will always defend it and it applies to everyone in Canada.”

Behiels noted that Trudeau’s father, former prime minister Pierre Elliott Trudeau, faced a similar predicament in the 1970s when Quebec passed its provincial language law, Bill 101. He did not intervene and the court challenges ran their usual course.

Quebec sparked heated criticism across the country Wednesday after it passed the controversial new legislation. Muslim organizations, civil rights groups and the province of Ontario have come out strongly against Bill 62.

The law bans the wearing of any face covering on people giving or receiving a service from the state, but it offers a framework outlining how authorities should grant accommodation requests based on religious beliefs.

Quebec Premier Philippe Couillard has defended the law by saying it is necessary for reasons related to communication, identification and security.

Government of Canada announces judicial appointment in the province of Newfoundland and Labrador
PR Newswire
October 20, 2017

OTTAWA, Oct. 20, 2017 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the following appointment 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.

Vikas Khaladkar, Crown counsel with the Newfoundland and Labrador Department of Justice and Public Safety, is appointed a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador in St. John's. He replaces Mr. Justice R. LeBlanc, who elected to become a supernumerary judge effective September 26, 2017.

Biography

Mr. Justice Vikas Khaladkar was born in Dar es Salaam, which was then in the British colony of Tanganyika. At age seven, he was sent to boarding school in India – where one of his school friends was the future Freddie Mercury of the rock band Queen. In 1962, Justice Khaladkar and his family immigrated to Canada. His father was convinced, after much deliberation, that Canada was the best country to raise a family. While his father had practised law in India and Tanganyika, he found employment in rural Saskatchewan as a high-school teacher.

Justice Khaladkar received his B.A. with distinction from the University of Saskatchewan in 1972. Soon after beginning law school, he took a year off to work as an archaeologist on an environmental impact assessment of the Churchill River in northern Saskatchewan. There he met his future wife, Susan, a Newfoundlander and Labradorean who was working on the same study.

Justice Khaladkar completed his LL.B. at the University of Saskatchewan, articled with the firm of Morgan and Tufts, and was called to the Saskatchewan Bar in 1977. He practised law in that province for 30 years, focusing on First Nations law. Justice Khaladkar was the first General Counsel for the Federation of Sovereign Indigenous Nations (as it is now called). He represented the Federation in negotiations leading up to the Charlottetown Accord, as well as agreements related to gaming jurisdiction and on-reserve policing. In 1984, he successfully argued one of the first Charter cases heard by the Supreme Court of Canada – Therens, dealing with the right to retain counsel upon detention or arrest.

In 2007, Justice Khaladkar accepted a one-year contract as a Crown attorney in Newfoundland and Labrador. The one-year contract turned into a permanent move. Since 2007, Justice Khaladkar has prosecuted cases at all levels of court, including the Supreme Court of Canada.

Justice Khaladkar and Susan have two children still resident in Saskatchewan and two wonderful grandchildren.

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

Lack of legal aid leaves too many defendants to represent themselves: Canada's top judge speaks in Newfoundland and Labrador

The Telegraph
Sue Bailey
October 20, 2017

The old adage goes something like this: a man who is his own lawyer has a fool for a client.

But Canada's top judge blames a lack of legal aid funding for what she says is the major challenge facing the criminal system — access to justice, especially for the poor and marginalized.

"We have a justice system to be proud of but it does not always do the job it was created for," Beverley McLachlin, chief justice of the Supreme Court of Canada, told a public lecture Thursday at Memorial University of Newfoundland in St. John's.

She especially emphasized the number of people who struggle to represent themselves after being denied legal aid.

"The cut-off can be quite low," she said of funding restrictions.

"Lost in a system they don't understand, and that seems incompatible with their reality, the accused lose faith in the system and in justice itself, and they give up. Is that access to justice? I don't think so," she told the standing room only audience.

"We all have heard criticisms of the justice system for occasionally producing a wrongful conviction."

Self-represented defendants are more likely to plead guilty, to be denied bail and to be convicted, McLachlin said.

"If I had a wish that some genie would fulfil, I'd say it would be to somehow impress attorney generals — people involved in the justice system and governance — with the vital importance of spending a little more on justice and making sure people are represented."

It was one of her last public lectures as chief justice before she gets set to retire in mid-December after 28 years on the country's highest court. She has been in the top job for almost 18 years.

McLachlin said while health and education spending have increased, spending on the justice system has been stagnant or declined across Canada in recent decades.

Yet she says various studies show that rehabilitating offenders pays off economically.

She believes the five most pressing access challenges for the criminal justice system are: access to professional legal advice, prompt trials, fair sentencing, access to a system that meets victims' reasonable expectations, and access to culturally appropriate processes.

The latter is especially vital for aboriginal people who are disproportionately incarcerated, McLachlin said.

"I'm not in the habit of telling governments what to do," she stressed. But she would like to hear debate on the judicial weight that should be placed on rehabilitation and how best to accomplish it. Offenders who go on to lead productive lives cost less, she added.

"I hope we have this conversation."

Criminal defence lawyers have repeatedly called for changes to minimum mandatory sentences imposed by the last federal Conservative government.

They say minimum sentencing actually increases repeat offences, and have urged the governing Liberals to introduce changes expected sometime this fall.

There have also been widespread calls for action on disproportionate incarceration rates for Indigenous citizens and visible minorities.

"Aboriginal persons are grossly over-represented in the system," said Ian Carter, vice-chairman of the Canadian Bar Association's criminal justice section. "It's an enormous problem. In fact, I'd say that's a bigger problem than the legal aid issue.

"We have to find ways to reduce that level of incarceration," he said in an interview.

About one-quarter of all prison inmates are aboriginal even though they make up just four per cent of the general population, the office of the federal correctional investigator reported in 2015.

"That number's just unacceptable," Carter said. "How can people have faith in a system with that kind of over-representation?"

McLachlin took no questions from media Thursday but had a bit of fun answering some from the audience. She was asked if she had advice for anyone considering law school.

"Go for it," she said to laughs from the audience. "It certainly was good for me."

Indigenous Justice Forum hears message of education, reconciliation
Parole board worker stresses relationship building and 'moving forward'
CBC News
Cody MacKay
October 20, 2017

The 11th annual Indigenous Justice Forum kicked off in Charlottetown on Friday with a focus on education and reconciliation.

Elder Noel Milliea, from Elsipogtog First Nation, N.B., delivered the keynote speech.

He's been working with the Parole Board of Canada for the past 18 years with a particular focus on Indigenous offender reintegration.

He said this year's forum is focused on reconciliation and the transference of Indigenous knowledge to the public.

'True history'

"My message for them today was an openness the ability for us to be able to change perceptions … through knowledge and education," Milliea said.

The forum was an opportunity for the Indigenous community to be able to "breakdown those barriers" associated with racism, prejudice and discrimination.

And, he added, it provided the opportunity "for people to be able to learn the true history about who we are as a people."

The idea of learning from Indigenous groups is especially important for those who work in the justice system, Milliea said, to understand how to effectively work with Indigenous people and build relationships.

Truth and Reconciliation Act

A lot of the understanding, he added, involves building upon the Truth and Reconciliation Act.

"Truth and Reconcilation recommendations there are really amazing and really beautiful. We have to constantly keep feeding them," Milliea said.

"In our culture and our way of life one of the most important things is about relationship building, for us to always be moving forward and not going back — sometimes the fear of going back stops us from moving forward."

Secret evidence should not be allowed in civil cases
The Globe and Mail - Opinion
Kent Roach and Craig Forcese
October 20, 2017

Kent Roach and Craig Forcese are professors of law at the University of Toronto and Ottawa, respectively, and the authors of False Security.

In the dog days of summer, the federal Department of Justice issued a short "targeted stakeholder" consultation on intelligence and evidence. Part of the proposal, if implemented, would allow the federal government to defend itself in civil litigation brought by victims of security abuses on the basis of evidence only seen by the trial judge, government lawyers and a security cleared special advocate. The plaintiffs and their lawyer would never see the evidence. The special advocate could only talk to them after seeing the secret evidence with a judge's permission.

This proposal is troubling. It raises many political and legal questions. Would the recent settlement with Omar Khadr, as well as Ahmad El-Maati, Abdullah Almalki and Muayyed Nureddin, have been different or avoided if the government could have defended itself with secret evidence? We will never know, but all of these cases involved alleged Canadian complicity with other countries, an area where Canada as a net importer of intelligence is frequently concerned with secrecy.

Even if the government could have defended itself on the basis of secret evidence, should it have? Secret evidence is not allowed in criminal cases, but is allowed in security-certificate cases and passport revocations.

Secrets are important, but right now they are protected by judicial non-disclosure orders that do not allow material that will reveal secrets to be used in criminal or civil trials.

The government's secret-evidence proposal is based on controversial 2013 legislation in Britain that allows the use of "closed proceedings." Like the British legislation, the federal proposal allows either the government or a plaintiff to seek a closed proceeding on the basis that it would contribute to a full and fair trial.

Practically, however, the government is more likely to benefit from closed proceedings because it will be difficult for plaintiffs who have not seen the secret information to persuade a judge that a closed proceeding is necessary. The plaintiffs would also have to rely on a special advocate, not their own lawyer, to make and carry their case in closed proceedings.

The British legislation has one important safeguard not mentioned in the Canadian proposal: Judges in Britain must be persuaded that closed proceedings are in the interest of fair and

effective administration of justice. They can stop closed proceedings at any time if they conclude that the proceedings are no longer fair.

It may, however, be premature to consider fine tuning the federal proposal. The prior question Canadians should ask themselves is whether extending secret evidence into civil proceedings is a good idea?

There is nothing in the brief consultation papers that makes the case that such a significant innovation in civil proceedings is necessary. In Britain, at least there was a major consultation before the enactment of closed proceedings. In New Zealand, there was a report by a law reform commission. In Canada, we had a couple of pages released in late summer, which people had just over a month to respond to before the Sept. 15 deadline.

It is unfortunate that this proposal on controversial secret evidence in civil proceedings has been joined with others proposals designed finally to act on the Air India Commission's 2010 recommendations. The criminal proposals do not allow the use of secret evidence, but rather would give criminal trial judges new powers to make and revise orders that evidence not be disclosed to the accused because of concerns about state secrecy.

This was the approach used in the Toronto 18 terrorism prosecution after a trial judge held that Canada's unique two-court structure was unconstitutional. Momentum toward this reform was lost in 2011 when the Supreme Court held that Canada's two court approach was constitutional. But simply because something is constitutional does not mean that it is optimal and there is much to be said for a one-court approach.

Ironically the government's new proposal to allow secret evidence to be used in civil proceedings may attract its own constitutional challenges. The Supreme Court's 2011 decision did not sanction the use of secret evidence. It warned that if there was any doubt about fairness, criminal proceedings against the accused must be terminated. The court has also held that the Charter's guarantees are not limited to criminal trials. The civil secret evidence would alter the traditional ways that courts resolve civil claims. The government has failed to justify the need for the radical and controversial innovation of allowing the use of secret evidence in civil proceedings.

'Sunshine' approach to diversity in federal public service working, study says

Women now make up 54.4 per cent of federal government staff while visible minorities and Indigenous people account for 14.5 per cent and 5.2 per cent of the workforce respectively.

Nicholas Keung
October 20, 2017

An employment equity regimen that relies on public disclosure rather than a mandatory quota system seems to have improved representation from women, visible minorities and Indigenous people in the public service, according to a new study.

Women now make up 54.4 per cent of federal government employees while visible minorities and Indigenous people account for 14.5 per cent and 5.2 per cent of the workforce, respectively, according to the report by the Institute for Research on Public Policy.

The latest government statistics say 50.4 per cent of Canada's population are women, 20 per cent are visible minorities, and 4 per cent are Indigenous. The Canadian government defines visible minorities as non-white people other than Indigenous people.

Under the Employment Equity Act, the federal government is obligated to report annually on diversity within the government and in the federally regulated private sector.

The growth has been steady for both women and Indigenous people, who started at 46.1 per cent and 2 per cent respectively in 1993 when data became available, said report author Andrew Griffith.

And the almost quadrupling of representation for visible minorities from a mere 3.8 per cent in 1993 was remarkable, he noted.

"The transparency, sunshine-law approach and the politics of shame has shifted the representation of public services by a remarkable extent," said Griffith, a retired director-general with the Immigration Department and now an independent policy analyst specializing multiculturalism and diversity.

"The organic and uncontroversial approach may have worked better than a quota system that would have created more resistance and tension."

Successful lawyers more likely to experience mental health problems
CTV News
Michelle McQuigge
The Canadian Press
October 22, 2017

New Canadian research suggests lawyers are more likely to experience mental health struggles the more successful they are in their field.

The study from the University of Toronto, slated for publication in the Journal of Health and Social Behaviour, compares two national surveys of thousands of lawyers in both Canada and the United States.

In both countries, researchers found a strong correlation between signs of depression and traditional markers of career success.

Lawyers holding down jobs at large firms in the private sector, widely considered to be the most prestigious roles, were most likely to experience depressive symptoms.

Researchers say the findings buck trends found in the general population, where career success is typically equated with fewer mental health risks.

Lawyers say professional bodies have recently begun acknowledging mental health concerns, but say the research findings highlight the need to keep pushing for change within the industry.

A conference organized by the Law Society of Upper Canada and set to take place in Toronto and Ottawa this week is slated to tackle mental health as a primary discussion topic.

Study co-author Jonathan Koltai said the findings were notable for their consistency across both American and Canadian research subjects.

American data surveyed lawyers who were called to the bar in 2000, while the Canadian lawyers in the survey began their careers about a decade later.

Regardless of the fact that both groups were at different stages along their professional path, Koltai said the same patterns emerged. The larger the firm and the more lucrative the role, the more likely a lawyer was to experience depressive symptoms.

"In the population we know ... that groups that are better off in terms of income are also better off in terms of mental health. But if you zoom in to this specific subgroup of lawyers, that pattern is reversed," Koltai said in a phone interview. "People working in environments with more income on average actually tend to experience more depressive symptoms, and that's because of their higher levels of stress exposure."

Koltai said depressive symptoms were less evident among lawyers working in public sector roles, which typically pay less than similar positions in the private sector. One of the major drivers, he said, is the lack of work-life balance typical among those in positions that demand long working hours.

The findings came as no surprise to one Ontario lawyer who said professional accomplishments nearly always came hand-in-hand with significant deterioration in his mental health.

Orlando Da Silva, former president of the Ontario Bar Association and current lawyer with the provincial Ministry of the Attorney General, recollects major episodes of depression at several career milestones.

He never told his law school classmates of his mental turmoil as he took on the editorship of a campus legal publication.

Nor, when he began articling at a prestigious law firm upon graduation, did he share the thoughts of suicide and self-harm that plagued him when he went home at night.

Those thoughts culminated in 2008 as Da Silva washed 180 sleeping pills down with two bottles of alcohol. But even as he languished in hospital, he still tried to hide the depths of his depression for fear of losing the job that he said had come to define him.

"I was so afraid the stigma of mental illness would destroy my career," he said. "Especially as a trial lawyer where you're supposed to be strong. Certainly strong enough to fight the battles that others can't fight for themselves."

Da Silva said the fatigue and overwork he accepted as part of his climb up the career ladder helped isolate him from his family, further compounding the problem.

When he became bar association president in 2014, he made the focus on mental health a personal priority, sharing his story and setting up a web resource to try to remove the taboos around the issue.

He said he's begun to see evidence that law firms are waking up to the perils of mental health problems among their employees.

Law schools have also started to clue in, he said. Several now have counsellors on staff with lengthy waiting lists of students grappling with the unique brand of industry pressure.
Calling the change in approach "fundamental" and "refreshing," Da Silva said he hopes to see the conversation continue.

"If it can be caught early, if professionals can be made to feel comfortable seeking treatment without fear of scorn, judgment, ridicule and loss of reputation, it won't get that far."

Hope for Indigenous Supreme Court justice swells as appointment recommendations loom
Globe and Mail
Sean Fine
October 23, 2017

Prime Minister Justin Trudeau is set to receive a short list of three to five candidates for the Supreme Court from an advisory committee Monday, and hopes are high in the aboriginal community for the first Indigenous appointment to the country's top court.

The position is open because Chief Justice Beverley McLachlin has announced her retirement, effective Dec. 15. Chief Justice McLachlin has been outspoken off the bench about injustices done to Indigenous peoples – saying publicly that Canada committed "cultural genocide" through its residential-schools policy – and on the bench, she has led an expansion of Indigenous rights.

Mr. Trudeau has stressed reconciliation between Indigenous and non-Indigenous Canadians. He appointed the first Indigenous attorney-general, and he told the United Nations General Assembly last month that Canada's relationship with its First Nations has been one of humiliation, neglect and abuse.

The pool of highly qualified Indigenous candidates is relatively small. Limiting that pool, candidates must be from the West or North, according to Mr. Trudeau's written instructions to the advisory committee, which is drafting the short list. He allows for a variety of connections to those regions: "bar membership, judicial appointment, or other relationship." He has also said candidates must be functionally bilingual in English and French.

The advisory committee of five women and two men is chaired by former Progressive Conservative prime minister Kim Campbell.

In the legal community, the two names of Indigenous jurists most frequently mentioned are John Borrows and Mary Ellen Turpel-Lafond, who is bilingual. Prof. Borrows has been studying French during a sabbatical year spent partly in Montreal. Both have doctorates in law, both have published several books and both have wide experience of Canada, having worked and taught in several provinces. Ontario Superior Court Justice Todd Ducharme, who is Métis, and who also serves as a judge in Nunavut, Yukon and the Northwest Territories, has applied, according to a source.

Prof. Borrows is the Canada Research Chair in Indigenous Law at the University of Victoria. His background is Anishinabe/Ojibway; he is a member of the Chippewa of the Nawash First Nation in Ontario. Ms. Turpel-Lafond is a Saskatchewan Provincial Court judge who took a leave to be the Representative for Children and Youth in British Columbia, a position she held for 10 years. She is a member of the Muskeg Lake Cree Nation in Saskatchewan. She is still on leave from her job as a judge, a court spokeswoman said.

The Globe and Mail approached Prof. Borrows and Ms. Turpel-Lafond to ask whether they are candidates for the Supreme Court. Last year, when the court had a vacancy, The Globe asked them the same question and they each said no. But this time, Ms. Turpel-Lafond declined to comment. Prof. Borrows was cryptic. "I am still diligently working on and prioritizing the Indigenous-law degree we are developing at UVic," he said in an e-mail in late September. When The Globe asked him to clarify if that meant he wasn't a candidate, he did not reply. The Globe asked him again this month and has not received a response.

Prof. Borrows appears to be a fit with Mr. Trudeau's oft-mentioned dream of reconciliation. At the University of Victoria, he is spearheading the development of Canada's first Indigenous-law program, to be blended with study of the common law. The program, which still needs certain approvals, is to be modelled after McGill's integrated common-law, civil-law program, which brings together legal traditions based on English precedent and the Quebec civil code.

"He's almost creating a body of reconciliation," Vancouver lawyer Merle Alexander, a partner in the Vancouver offices of Gowling, an international law firm, said in an interview. Mr. Alexander is from the Kitasoo/Xai'xais First Nation in the mid-coastal area of B.C.

"He really looks for ways to try to harmonize or find true reconciliation between Canadian Indigenous law and the common law. That's almost life purpose. There's never really been a voice like that."

He also has a wide background in several legal disciplines, including Canadian constitutional law, and he has taught in the United States, Australia and New Zealand.

"John has made it his mission I think to teach in every area of law that exists," Gordon Christie, who teaches at the University of British Columbia's Allard School of Law, said in an interview. "I think he's tried to teach every kind of course in the law school. He likes to know everything about everything, which is quite a mission."

Ms. Turpel-Lafond has a reputation for outspokenness and independence. As the Representative for Children and Youth in B.C., she often found herself in public confrontations with the provincial government over child-protection issues.

"She was out front all the time; she was vocal and she made the points she thought should be made in a forceful way," retired judge Ted Hughes said in an interview. (It was on his recommendation that B.C. created the post, which Ms. Turpel-Lafond was the first to fill.)

In the Indigenous community, the feeling is that the combination of talented jurists and a seeming push from Ottawa on First Nations issues means their time may have come.

Val Napoleon is a law professor at the University of Victoria who is working with Prof. Borrows on the proposed Indigenous-law program, as well as a member of the Saulteau First Nation in northeast B.C. She stressed the importance of having an Indigenous judge on the Supreme Court.

"Canada is multijuridical," she said. "There are Indigenous legal traditions along with civil and common law, and an Indigenous Supreme Court judge would bring another legal perspective and another set of tools and way of understanding human problems to the table."

Bill 62: Quebec justice minister promises to clarify rules surrounding face-covering ban
In light of the escalating debate surrounding Quebec's religious neutrality bill, the government will publish the rules on how it will be applied, the province's justice minister said Sunday.
The Canadian Press
October 22, 2017

QUEBEC — In light of the escalating debate surrounding Quebec's religious neutrality bill, the government will publish the rules on how it will be applied, the province's justice minister said Sunday.

Stéphanie Vallée said the decision to publish the document, which was originally intended only for administrators, was made in order to fully inform the public on the controversial legislation.

In a lengthy interview with The Canadian Press, Vallée said she was stunned by the intense reaction to Bill 62, which requires anyone giving or receiving state services to do so with an uncovered face.

Opponents have called the bill an attack on Muslim women, and municipal politicians have said it's unfair to ask bus drivers or library workers to decide who gets services.

The premiers of Alberta and Ontario have denounced the bill and Prime Minister Justin Trudeau has said governments shouldn't tell women what they can and can't wear.

On Sunday, Vallée called for calm and stressed the need to "reposition the law in its context."

She noted that most members of Quebec's legislature agree with the principle behind the bill.

"I must admit that the interpretation we've heard is quite particular, because we were concerned throughout the bill with preserving balance and especially preserving individual freedoms," she said.

An Angus Reid poll published in early October showed that 87 per cent of Quebecers support the bill's objectives.

Vallée says she'll publish the rules this week that will explain exactly when, where and how people will have to show their faces when using services, which include public transportation or hospitals.

The bill does, however, allow reasonable accommodations on a case-by-base basis and is not coercive, meaning there are no penalties or fines attached to it.

Vallée said the guidelines for these accommodations will be published later.

She denied the accusation that the law targets Muslim women who wear face veils, noting it applies equally to hoods or bandanas that cover the face.

She suggested that part of the intense debate surrounding the law is because Quebec is trailblazing onto new legislative territory, as it did when it passed medically-assisted dying legislation.

“It’s not easy to carve a path when legislating, when presenting new law,” she said.

“On one side and on the other we get criticism, both from those who say we’re going too far and those who consider that we’re not going far enough.”

Trudeau would not answer directly when asked earlier this week if the federal government would challenge the law.

But if it comes down to a constitutional challenge, Vallée said Quebec is prepared to fight “tooth and nail” to defend both the elements of the law and the province’s right to legislate.

Un juriste Innu veut mettre en place un système juridique autochtone au Québec
Armand MacKenzie a soumis cette proposition à la Commission d'enquête sur les relations entre les Autochtones et certains services publics vendredi à Val-d'Or.
Radio-Canada
23 octobre, 2017

Selon lui, ce système pourrait être inspiré des États-Unis.

« Un système de justice autochtone autonome, qui fonctionne à l'intérieur de l'État québécois, comme c'est le cas aux États-Unis où il y a des "Tribal courts". Ç'a n'a pas dérangé le système américain, dit-il. Ce serait la même chose pour le Québec. Les Autochtones pourront juger des infractions de leurs membres ou décider en matière de la protection de la jeunesse, sur les intérêts supérieurs de l'enfant. On ne peut pas faire pire. »

La Directrice des services sociaux de Uashat-Maliotenam a également témoigné devant la commission.

Nadine Vollant a expliqué à la commission comment il est difficile d'appliquer la Loi de la protection de la jeunesse en tant que travailleuse sociale vivant en communauté.

« Il y a peu de travailleurs sociaux autochtones ou d'intervenants qui s'intéressent à cette pratique, qui est difficile dans les communautés, dit-elle. C'est difficile pour les Premières Nations d'appliquer cette loi quand elle vient heurter profondément mes valeurs. J'ai persisté à

faire cette pratique, parce que je me suis dit que si moi qui suis Innue, n'a pas cet engagement-là, d'avoir le désir de protéger nos enfants, qui va l'avoir? »

Les travaux de la Commission Écoute, réconciliation et progrès se poursuivent pour la huitième semaine lundi.

Un criminaliste devient juge à la Cour supérieure
La ministre de la Justice et procureure générale du Canada a annoncé aujourd'hui la nomination d'un nouveau juge
Droit Inc.
Delphine Jung
23 octobre 2017

Jody Wilson-Raybould a nommé François Dadour juge à la Cour supérieure du Québec, district de Montréal. Il remplace le juge Brian J. Riordan, qui a choisi de devenir juge surnuméraire à compter du 15 octobre 2017.

François Dadou est associé du cabinet Poupart, Dadour, Touma et associés. Il a obtenu un baccalauréat et une maîtrise en droit de la faculté de droit de l'Université de Montréal. Son mémoire de maîtrise, intitulé « Le SIDA et le droit criminel : impact et enjeux », a reçu le prix Alma Mater.

Admis au Barreau du Québec en 1995, il a fait carrière en droit criminel au sein du cabinet Poupart, Dadour, Touma et associés.

En 2008, le juge Dadour a été nommé avocat spécial par le ministre de la Justice et procureur général du Canada.

Pendant plusieurs années, il a été chargé de cours à la faculté de droit de l'Université de Montréal, de même qu'à l'école du Barreau. Il a également écrit plusieurs textes portant sur le droit pénal et le droit de la sécurité nationale.

Il a assuré la présidence de la section de droit pénal de l'Association du Barreau canadien, Division du Québec, et a reçu, en 2016, le prix de l'Association québécoise des avocats et avocates de la défense.

Né au Québec, le juge Dadour a vécu plusieurs années au Moyen-Orient, ce qui lui a permis de maîtriser la langue arabe et d'acquérir une connaissance approfondie des cultures arabes et moyen-orientales.