Ottawa's tax changes threaten to swamp the court, chief justices warn

New rules that are 'very subjective and very open to litigation' are expected to flood the already overburdened CRA and court

National Post

Jesse Snyder

December 11, 2017

Both the current chief justice and a former chief justice of the Tax Court of Canada are warning that a "reasonableness test" inside Ottawa's proposed tax changes could lead to a higher volume of appeals from taxpayers, swamping the already overburdened court system.

"I think it's going to substantially increase the number of cases that go to the court, because it's going to be a battle between the CRA [Canada Revenue Agency] and the taxpayers as to what 'reasonable' means in various situations," former chief justice Gerald Rip said in an interview. His comments mirror those made by current Chief Justice Eugene Rossiter in a speech in November, according to several people who attended the event. Rip had also made similar comments in a speech in September.

Their warnings come as Ottawa prepares to implement its tax changes for private Canadian corporations, initially proposed in July, which include a provision that limits income sprinkling between family members. They also come amid major processing delays at the CRA, partly as a result of record levels of appeals to the agency. The chief justices have said that the higher number of appeals now threatens to spill over into the courts.

Some owners of Canadian private corporations fiercely opposed Ottawa's tax changes after they were proposed this summer, forcing the government to retreat from its plans. Opposition became so heated that Finance Minister Bill Morneau in October introduced a so-called "reasonableness test," aimed at determining whether family members have a valid right to earn income. It measures capital and equity contributions, labour contributions, the financial risks assumed and the past contributions of family members to determine the validity of their claims.

"It's very subjective and very open to litigation," Rip said.

Both chief justices have voiced concerns over the higher number of appeals entering the court system. They also say the volume of appeals is likely to rise after Ottawa implements its proposed tax changes, as well as boosting funding for the auditing division of the CRA. The government recently boosted funding to the agency by about $1 billion, much of which is earmarked for the auditing and collections divisions in a bid to crack down on tax evaders.

Chief Justice Rossiter made his comments during a speech in November hosted by the Canadian Tax Foundation. The CTF would not release video of the speech, which was closed to the public and most media, and the Tax Court of Canada declined an interview request with Chief Justice Rossiter. However, the Financial Post spoke to three accountants and tax lawyers who attended the speech and took written notes during the event.

Cathie Brayley, a partner at Clark Wilson LLP in Vancouver, quoted Rossiter as saying that "litigation will ensue" following Ottawa's proposed changes, and that because of a rise in appeals and shortage of resources, "access is going down, and stress is going up," for people involved in Tax Court of Canada proceedings.

Rossiter also suggested that a current shortage of judges at the tax court could force it to dial back the frequency of sittings, as well as restrict the number of locations that the court visits, the people in attendance said.

The Tax Court of Canada is different from other courts in that judges travel to various locations around Canada in order to hear appeals from taxpayers. The court currently has 23 judges who visit 59 communities around Canada, according to its website.

"(Rossiter's) comments were very open and honest, and there was a sense of frustration," said Peter Weissman, a partner at Cadesky Tax and Associates LLP in Toronto, who also attended the speech.

The Liberal Party shuttered the judicial advisory committee (JAC) of the Tax Court of Canada soon after it entered office in late 2015. The committee is responsible for vetting applicants for tax court judges. A new JAC was not appointed until early November 2017, causing a backlog in new appointments.

Two judges left their positions in 2016, and another is expected to leave in February, according to former chief justice Rip.

Lawyers and tax professionals say Ottawa's tax changes for Canadian private corporations are likely to cause more companies to dispute CRA decisions.

"It's invariably going to lead to more reassessments," said Dean Blachford, a tax litigation lawyer at HazloLaw Professional Corporation in Ottawa.

Taxpayers request reassessments from the CRA to dispute their income tax statements. If they disagree with the reassessment, they can then file an objection. If the issue is still not resolved after the objection, it is passed on to the courts.

Rossiter reportedly said in November that the number of appeals to the tax court had grown 42 per cent between 2012 and 2017.

Blachford also said compliance costs will be higher for companies who are navigating the new income sprinkling rules.

"Now you have to pay an accountant to comb through this reasonableness test and try and draw a conclusion on whether or not it's reasonable," he said.

Morneau has not yet released the final details of the tax changes, though the new rules are set to come into effect early in 2018.

Wernick combing public service for ideas on fixing Phoenix
iPolitics
Kathryn May
December 11, 2017

Newly released letters from Canada's deputy ministers show the extent of the Phoenix fiasco and how frontline employees with complex schedules and pay rules — from the Coast Guard crew members to prison guards — are disproportionately hard hit by pay blunders and delays.

The impact is particularly heavy among the thousands of seafaring employees of the Department of Fisheries and Oceans.

"Currently 76 per cent of our employees have outstanding cases and 100 per cent of seagoing employees are affected," wrote Deputy Fisheries Minister Catherine Blewett. The Coast Guard is an agency within the Fisheries portfolio.

"This stark reality weighs heavily on all of us, as leaders across the department. Our employees deliver for us every single day and we will not let up in our efforts to ensure that they are paid accurately and on time."

Blewett is among the deputy ministers and agency heads who responded to Privy Council Clerk Michael Wernick's call last month for an account of what departments have done or are planning to do stabilize Phoenix.

There are 101 departments and agencies using Phoenix to pay their employees and more than half of all public servants face some kind of pay issue.

Wernick gave the senior leaders a week to reply and 66 sent responses as the government prepared for the Nov. 21 release Auditor-General Michael Ferguson's report on the disastrous Phoenix rollout.

They provide a snapshot of what's been tried across government to manage Phoenix and what departments are now planning to do to stabilize what is now considered an unfixable pay system.

Wernick is giving the responses to Ferguson, the working group of cabinet ministers (headed by Public Safety Minister Ralph Goodale) overseeing Phoenix and a team of deputy ministers — and asking them to pluck out 'best practices' that all departments could use.

They are also being publicly posted to allow departments to compare measures taken and determine what has worked and what hasn't.

"I am hoping it will cause a general raising of performance over the next little while," said Wernick in an interview.

"There is nothing in the letters, from my point of view, that is the magic bullet that is going to solve all this quickly but there are a lot of good ideas in there."

The cause, frequency and complexity of pay errors vary depending on the department, the nature of the work it does, which of the 34 human resource systems it uses, how it connects with Phoenix and whether it relies on the pay centre to process pay.

Even before Phoenix went live, stories abounded of ships' crew members returning home after weeks at sea to find they hadn't been paid and, as a result, utility cheques had bounced and services had been cut off.

The summer students hired and trained by the Coast Guard for search and rescue operations on Canada's waterways were also underpaid because Phoenix didn't recognize the non-standard work week they used.

Blewett said Fisheries' employees account for about three per cent of the public service, while their outstanding cases make up about seven per cent of the backlog.

The Coast Guard can't legally sail without key positions filled by trained personnel. A sick employee creates an opening that can cause a cascade of people being put in acting positions — many of whom haven't been paid properly since Phoenix was introduced, a problem compounded by overtime calculated at the wrong rates.

The department is looking at conducting a pay review to restore confidence among employees and ensure they are paid what they are owed.

The pay errors experienced by 28,000 public servants working at National Defence — excluding the military — represent 10 per cent of the total backlog of financial transactions. About 63 per cent face pay issues and more than half of them have multiple problems. The department has paid $2.6 million in emergency and priority payments and to cover workers' out of pocket expenses.

Don Head, the commissioner at Correctional Services Canada, said the department has taken "unprecedented efforts" to solve the mistakes dogging its' workers but they remain "among the highest across the public service."

At the other end of the scale, the Canadian Centre for Occupational Health and Safety, a small national agency, has not had a single pay error case. It has 85 employees and one compensation adviser, who wrote:

"Happy to report that we have not had any issues with the Phoenix pay system … We've not had any open case since on-boarding."

White-collar departments have had comparatively fewer problems but aren't immune. For example, the Privy Council Office, the prime minister's department, reports 48 per cent of its mostly professional and executive staff face pay errors.

"While we are doing everything we can, given the broader issues, we are making only limited progress," wrote Nathalie Drouin, deputy minister at Justice Canada.

"Demands and the number of emerging complex pay issues continue to grow. Our employees' confidence in our efforts is steadily declining."

Meanwhile, Canada Border Services Agency — where border guards have a complicated pay regime — claims its measures have successfully stabilized its pay problems.

Less than 20 per cent of CBSA employees have cases in backlog compared to departments served by the pay centre, where 67 per cent of employees have encountered problems. (CBSA is among the departments that kept their in-house compensation advisers and typically experiences fewer mistakes.)

Canadian Heritage decided to order a large number of cheques as a contingency plan before the Phoenix rollout, just in case anything went awry and employees weren't paid on time.

That didn't forestall the pay disaster, but Heritage was the first department able to write cheques and get money into the hands of employees who didn't get paid.

Today, Heritage issues cheques for about 10 emergency salary advances every two-week pay cycle. It has, so far, paid 431 salary advances to 232 employees worth about $661,00.

About 1,400 of Heritage's employees have 3,065 pay transactions that have been sitting in the backlog for more than 30 days, which has taken a personal and professional toll on staff, says deputy minister Graham Flack.

"With almost two third of our employees affected, pay related issues continue to have a negative impact on our morale and detracts from overall productivity," wrote Flack.

The Liberal government has pumped more than $400 million into fixing Phoenix and hiring more staff to eliminate the growing backlog. But Ferguson's recent report crystallized everyone's biggest worry: Phoenix may not be fixable.

Wernick said the "clarity" of Ferguson's draft report, circulated among senior management, drove home that Phoenix could be stabilized at best and that would involve a "longer term slog of small improvements and gains that would hopefully pick up momentum."

Ferguson concluded the $520 million earmarked so far for Phoenix fixes won't be enough and the system will take years to fix.

Wernick said that's why he decided to get a "comprehensive picture" from deputy ministers on what was going on in departments, knowing a letter from the boss turn up the pressure for departments to "collectively" deal with Phoenix as a top priority.

And to underscore that priority, Wernick is linking deputy ministers' performance pay and bonuses for this year and next to progress made in stabilizing the system.

"I decided I needed to be more involved and nudge things along and show some leadership channelling the energy," said Wernick.

Overall, Wernick said the letters are "comforting" because they show departments have made massive efforts to resolve problems – particularly in ensuring people who haven't been paid are identified and quickly given emergency payments after payday.

The main form of action has been hiring more staff. Departments that laid off 700 compensation advisers to generate Phoenix's promised $70 million annual saving have largely rebuilt those compensation teams.

Departments and the pay centres are still hiring and the government will end up with more compensation advisers than pre-Phoenix.

A big concern for all senior leaders is the impact on employees and how some still face financial hardship even though protocols are in place to ensure they receive emergency payments as quickly as possible.

Flack said the department had to continually adapt its communication strategy because of employees reluctant to come forward with pay problems.

At first, employees thought the situation would get resolved. Some didn't want mangers to know about their finances; others feared asking for advances or priority payments would only trigger further Phoenix mistakes.

"This was our problem as an employer, not their problem as an employee," wrote Flack.

"To bring this point home, we … had to use various communications methods, from managers walking the floors to check in with their staff to department-wide town halls. Online communications were simply not enough."

Richard Wagner, nouveau juge en chef de la Cour suprême
Radio-Canada
La Presse Canadienne
12 décembre 2017

Le juge québécois Richard Wagner sera le prochain juge en chef de la Cour suprême du Canada, a annoncé mardi le premier ministre Justin Trudeau. Il succédera à la juge Beverley McLachlin, qui quittera son poste à la tête du plus haut tribunal du pays le 15 décembre, après presque 18 ans de service.

Le juge Wagner, qui siège à la Cour suprême depuis l'automne 2012, sera assermenté comme juge en chef et membre du Conseil privé de la Reine pour le Canada le 18 décembre, précise le communiqué du premier ministre annonçant sa nomination.

« J'ai une confiance absolue en sa capacité de diriger le plus haut tribunal du Canada, une institution respectée qui perpétue une longue tradition d'indépendance judiciaire et d'excellence. Le système judiciaire, la profession juridique et tous les Canadiens seront bien servis par sa volonté d'assurer le respect des lois et de la Constitution sur lesquelles repose ce pays. »

Justin Trudeau, par voie de communiqué

Avec cette décision, le gouvernement Trudeau respecte la tradition qui veut que le siège alterne entre un juge du Québec, issu de la tradition du droit civil, et un juge d'une autre province, issu de la common law.

Âgé de 60 ans, le juge Wagner pourrait diriger la Cour suprême pendant une quinzaine d'années, puisque l'âge de la retraite obligatoire pour les juges nommés par Ottawa est de 75 ans.

« Je félicite le juge Wagner pour sa nomination à ce poste important, à la fois exigeant et stimulant. Je suis convaincue qu'il dirigera la Cour avec sagesse et compétence », a commenté la juge en chef sortante Beverley McLachlin dans un communiqué transmis par la Cour.

La ministre fédérale de la Justice, Jody Wilson-Raybould, a vanté l'expérience du juge Wagner et sa capacité à travailler à travailler en « collégialité ». Elle n'a pas voulu spécifier à quel point l'enjeu de l'alternance avait penché dans la balance. Elle s'est contentée de souligner que c'était « certainement quelque chose que le premier ministre [avait] pris en considération »

À ses côtés, le député Marc Miller ne s'est pas davantage étendu sur cette question. Il a fait valoir que le premier ministre Trudeau avait opté pour la « tradition d'excellence » en misant sur le magistrat québécois. Il a refusé de dire si des pressions avaient été exercées par la députation québécoise au caucus.

Admis au Barreau du Québec en 1980, après avoir fait ses études à l'Université d'Ottawa, Richard Wagner a pratiqué le droit jusqu’à sa nomination à la Cour supérieure du Québec, pour le district de Montréal, en 2004. Il y a siégé à la Chambre civile, à la Chambre commerciale et à la Chambre criminelle.

En février 2011, il été nommé à la Cour d'appel du Québec, où il n'avait finalement siégé qu'un peu plus d'un an avant d'être nommé à la Cour suprême par le premier ministre Stephen Harper.

« Un juriste de grand talent »

« Le fait qu’on ait un juge avec une expertise en droit civil à la tête de la Cour suprême, pour nous, est important », a commenté le premier ministre du Québec Philippe Couillard. « Pour nous, c’est un développement qui est heureux et qu’on salue positivement. »

« Je salue le respect ainsi manifesté envers la tradition civiliste spécifique au Québec », a pour sa part déclaré sa ministre de la Justice, Stéphanie Vallée. « L'honorable Richard Wagner est un juge hautement respecté et qui saura s'inspirer des plus grandes valeurs canadiennes et québécoises. »

Cette nomination d'un juge en chef francophone du Québec respecte l'alternance entre les juridictions de common law et civiliste. Nous ne pouvons que saluer cette excellente nomination et apprécier que nous avons été entendus dans nos demandes.

Stéphanie Vallée
En entrevue à Radio-Canada, le bâtonnier du Québec, Paul-Matthieu Grondin, n'a pas caché que le Barreau est « très heureux » de cette nomination. Elle sera accueillie « avec beaucoup de joie dans la communauté juridique du Québec », a-t-il avancé.

On est très heureux de la nomination de Richard Wagner, un juriste de grand talent, issu du Québec, de la tradition de droit civil. On est content de savoir que le principe d'alternance a été respecté.

Paul-Matthieu Grondin, bâtonnier du Québec
Même si elle a été suivie de façon « un peu imparfaite », la tradition d'alternance a « une haute valeur symbolique pour le Québec », a rappelé Me Grondin. « S'il y avait eu une autre nomination, on aurait probablement été un bout de temps sans voir le Québec à la tête de la Cour suprême. »

Au Québec, le juge Wagner est principalement connu pour avoir dirigé le procès pour fraude de l'ex-PDG de Norbourg, Vincent Lacroix, qu'il a condamné à 13 ans de prison. Il a également décidé de maintenir en détention l'ex-juge Jacques Delisle, condamné pour le meurtre prémédité de son épouse, pendant les procédures d'appel.

Les autres juges du Québec à la Cour suprême sont Suzanne Côté et Clément Gascon, qui ont tous deux été nommés après le juge Wagner.

La juge Côté est cependant considérée comme trop peu expérimentée pour diriger le plus haut tribunal du pays, puisqu'elle n'avait jamais été magistrate avant d'y être nommée, il y a trois ans.

Quant au juge Gascon, nommé en juillet 2014, il n'aurait pas été intéressé par le poste.

Les derniers juges en chef de la Cour suprême

Beverley McLachlin, 2000-2017, Colombie-Britannique
Antonio Lamer, 1990-2000, Québec
Robert George Brian Dickson, 1984-1990, Manitoba
Bora Laskin, 1973-1984, Ontario
Joseph Honoré Gérald Fauteux, 1970-1973, Québec
John Robert Cartwright, 1967-1970, Ontario
Robert Taschereau, 1963-1967, Québec
Patrick Kerwin, 1954-1963, Ontario
Thibaudeau Rinfret, 1944-1954, Québec
(Source : Cour suprême du Canada)

À titre de juge en chef de la Cour suprême, Richard Wagner sera appelé non seulement à présider les audiences de la Cour à laquelle il siège, mais aussi à superviser le travail de la Cour en désignant les juges qui entendront les affaires et les requêtes dont la Cour est saisie.

Il deviendra en outre le président du Conseil canadien de la magistrature, composé des juges en chef et juges en chef adjoints ou associés des cours supérieures fédérales et provinciales, des juges principaux des cours supérieures territoriales, et le juge en chef de la Cour d'appel de la cour martiale du Canada.

Richard Wagner est le fils de Claude Wagner, qui a été ministre de la Justice du Québec dans le gouvernement de Jean Lesage.

Top court reaffirms mandatory unpaid standby shifts are unreasonable
Lawyers Daily
Anatoly Dvorkin
December 12, 2017

In the recently rendered decision, Association of Justice Counsel v. Canada (Attorney General) 2017 SCC 55, the Supreme Court of Canada reaffirmed two important realities of labour law. First, labour arbitrators are owed deference when deciding on issues relating to the interpretation of collective agreements. Second, (…) This article is subject to pay wall and cannot be distributed in its entirety.

Richard Wagner Named New Supreme Court Of Canada Chief Justice
The current chief justice, Beverley McLachlin, is stepping down after 28 years on the court.
Huffington Post
December 12, 2017

Prime Minister Justin Trudeau has appointed Quebec-born Justice Richard Wagner to be the next chief justice of the Supreme Court of Canada.

Wagner, 60, was born in Montreal and earned a law degree from the University of Ottawa in 1979.

He practised law for more than 20 years, focusing on professional liability and on commercial litigation related in particular to real estate law, oppression remedies and class action suits.

"It is an honour to name the honourable Richard Wagner as the new chief justice of Canada," Trudeau said in a statement.

"I have the utmost confidence in his ability to lead the highest court of Canada, an institution with a long and respected history of judicial independence and excellence. The judiciary, the

legal profession, and all Canadians will be well served by his dedication to upholding the laws and Constitution upon which this country is founded."

As a Quebec Superior Court judge, he sat on several of the court's committees, including the judicial practice committee for training of newly appointed judges. He was named to the Supreme Court by Stephen Harper in 2012.

Wagner is a self-declared advocate of judicial independence, once saying that "the judiciary is only accountable to the person subject to trial."

He is the middle child of former Quebec Liberal cabinet minister and one-time federal Conservative leadership candidate Claude Wagner.

Current chief served for 18 years

Trudeau had been under pressure from some quarters to name a Quebecer as chief, in keeping with the tradition of alternating between a civil code jurist from Quebec and a common-law one.

The current chief justice, Beverley McLachlin, is stepping down after 28 years on the court, including almost 18 years as chief.

McLachlin, 74, is the first woman to hold the top job on the high court and is also Canada's longest-serving chief justice.

Justin Trudeau names Richard Wagner new chief justice of Canada
The Montreal-born Wagner, 60, a former commercial and civil law litigator and judge on Quebec's trial and appeal courts, means Trudeau has opted to stick to the custom of rotating the plum chief justice job between common law and civil law judges.
Toronto Star
Tonda MacCharles
December 12, 2017

OTTAWA—Supreme Court of Canada Justice Richard Wagner once joked that, as a middle child, "I learned to achieve consensus early."

That sense of humour and pursuit of co-operation plus a clear, persistent campaign by Quebec's legal and political community that stressed it was the province's turn may have secured Wagner the plum job of chief justice of Canada.

Prime Minister Justin Trudeau announced Tuesday he would elevate the Montreal-born Wagner, 60, a former commercial and civil litigator and judge from Quebec's trial and appeal courts, to replace Beverley McLachlin, who retires Friday after 28 years on the top court, 18 as chief justice.

“I have the utmost confidence in his ability to lead the highest court of Canada, an institution with a long and respected history of judicial independence and excellence,” Trudeau said in announcing Wagner’s promotion. “The judiciary, the legal profession and all Canadians will be well served by his dedication to upholding the laws and Constitution upon which this country is founded.”

In naming Wagner, Trudeau bypassed one tradition — of appointing the most senior judge on the court, Rosalie Abella — in favour of another: alternating between a common law judge from English-speaking Canada and a Quebec judge trained in civil law. It’s a practice that hasn’t always been followed, including by Trudeau’s own father when he was prime minister.

But Quebec’s legal and political community had launched a full-court press to ensure a Quebec judge would replace McLachlin. The Bar of Montreal had written Trudeau and the provincial legislature passed a unanimous resolution supporting a Quebec chief justice, urging him to follow the practice.

Justice Jody Wilson-Raybould admitted to reporters that it “certainly was something that the prime minister considered in making this appointment,” but she stressed Wagner’s personal qualifications too.

“He has the integrity, the wisdom and the collegial spirit and co-operation that a chief justice of the Supreme Court of Canada needs,” she said.

By promoting Wagner, Trudeau set aside his goal to promote women to senior posts whenever possible. Abella, who has 13 years’ experience on the top court, has been internationally recognized for her intellectual heft, passion for human rights and commitment to equality law. At 71, she is due to retire in 2021, by which time choosing the next chief might no longer be up to Trudeau. So opting for Wagner now represents a safe, longer term appointment.

The job comes with a $30,000 raise — Wagner will earn $405,400 in his new post — and an opportunity to shape the court and influence the direction of the Canadian judiciary for the next 15 years and beyond.

He will head the Canadian Judicial Council, the governing body for federal judges, and the board of the National Judicial Institute, which leads judicial education. He will also chair the advisory council on Order of Canada appointments and could occasionally step in as deputy governor-general.

Osgoode Hall law dean Lorne Sossin doesn’t expect Wagner’s appointment to be a “radical departure kind of moment for the court.”

“If anything I think it will be a chance to see what can gel among people on the court who really don’t seem as if they have an obvious amount of chemistry in common. So the real test is almost more as a builder of esprit de corps.”

Still, it’s unclear just what kind of mark Wagner will leave.

He is a judicial centrist who often sides with majority opinions.

An analysis of the high court’s rulings last year published on a legal blog, thecourt.ca, shows Wagner participated in 52 of 55 judgments handed down in 2016, and sided with a majority or a unanimous ruling in 48 of those, or 92 per cent.

He describes himself as a champion of an impartial and non-politicized judiciary, and said in 2012 he viewed the Charter of Rights and Freedoms as a living, evolving document, a view that underpins small-l liberal sentiment in this country.

He joined unanimous court rulings that struck down much of Stephen Harper’s legislative and policy agenda, including Senate reform, and a bid to put an Ottawa-based federal judge into a Quebec seat on the court — even though it was Harper who appointed him to the Supreme Court.

Yet Wagner has shown deference to the role of legislators in other instances, issuing a stinging dissent with his former colleague Marshall Rothstein when the majority upheld the right of Saskatchewan’s public service workers to strike. He also dissented when a majority struck down the Harper government’s mandatory minimum sentences for illegal firearms possession and repeat drug trafficking charges.

Sossin is watching to see how Wagner rules in a pair of appeals that deal with discrimination claims based on sexual orientation. Trinity Western University wants the court to order Ontario and B.C. law societies to license its graduates despite the professional bodies’ objections to the Christian university’s requirement that students not engage in sexual activity outside of straight marriage.

Wagner decided to exclude all LGBTQ groups from participating in the hearings, a move that was reversed by order of McLachlin.

Sossin said it “will be a real test of where some of the new justices find themselves” and a test of Wagner as well. Equality cases are hardest for centrists because of the polarizing nature of such cases, he said.

Wagner will be sworn in at Rideau Hall on Monday to take on a job that McLachlin often joked is one that gave her the reins of power, only to discover that are no horses attached.

That's because the chief justice is first among equals in a court full of strong-willed and opinionated jurists who take pride in their independence — not just from government, but from bosses of any kind.

Within minutes of the announcement, emails of delight about his promotion flew around Quebec law firms and offices.

"It was exactly 10:03," said Denis Ferland, a former partner of Wagner's in private practice when they were at Lavery de Billy. "I got an email and I am very, very happy."

"Richard is very mindful of the people he works with, so I think he will be very good for the court, for the lawyers and … those citizens who actually have to live with the rulings thereafter," Ferland said. He praised the prime minister for sticking to tradition, and Ferland dismissed the notion that any political desire to keep peace in Quebec as the hurly-burly of an election year approaches played a part.

"I don't think it was done for political reasons. But we're going through, as a country, all kinds of changes and the judicial system is one of the foundations which is left in our society and you don't want to change everything all at once," he said. "I think it is a good tradition. But over and above the tradition, I think Richard is a very good candidate."

Wagner first became a trial judge of Quebec's Superior Court in 2004 under the Liberal government of Paul Martin, and appointed to the top court by Harper's Conservative government five years ago.

At that time, some speculated that Wagner's political leanings were Conservative. But Wagner has not displayed particular political leanings or ideology on the court.

Canadian ambassador: Canada worried about reform in justice
Romanian Business News – Actmedia
December 13, 2017

Kevin Hamilton, the Ambassador of Canada in Bucharest met Mihai Chirica at Iasi Town Hall on Tuesday. He declared to the press that the fact that people go to the street and protest peacefully shows that Romania has a strong democracy.

Canada, as well as many international partners, has the same worries as many protesters, about reform in justice and the package of laws debated in Parliament. Since 2007 to the present day, Romania has made remarkable progress in the fight against corruption and in setting up independence in this sector. Many parts of the mentioned package of laws seem to reverse the process, said Kevin Hamilton.

As for the changes to the Fiscal Code, recently adopted by the government, the Canadian diplomat showed that investors do not like sudden changes.

He showed that their main preoccupation is to ensure safety and predictability in the economic market. Investors do not like sudden changes, corruption and the signs which may show that good governing is in danger, the Canadian ambassador said.

In his turn, Mihai Chirica, the mayor of Iasi, said he was confident that Canadian investors would come to Iasi to open businesses in the area.

“I think we can strengthen economic relations. Canada is present in Iasi with companies which have 800- 1,000 employees. Maybe it is not much but it is important it is here. We have prospects in this respect and I am sure that Canada, as well as other EU states and the US, can contribute to the economic progress of Iasi,”mayor Chirica showed.

His Excellency Kevin Hamilton wrote a message in the condolences book placed in the central hall of Iasi Town Hall, laid at the disposal of people who want to pay a last homage to His Majesty King Michael of Romania.

Canadian Children Need Protection From Our Government
We need support from all Canadians for the Children's Charter to be successful and provide a guarantee of fundamental rights for the next generation
Huffington Post
Hannah Ruuth and Pamela Lovelace
December 12 2017

Oh Canada, we deserve a better and stronger future. Listen to our call to action and hear our voices by reading and acting on the recommendations in the Canadian Children's Charter. While we are thankful Canada signed the United Nations Convention on the Rights of the Child in 1991, Canada's inaction for the last quarter century is demoralizing. Canada lags far behind the most wealthy nations when it comes to the well-being of children, due to Canada's promises made to the most vulnerable in our society but never kept.

Last month, children and youth from across Canada between the ages of 10 to 20 gathered in Ottawa to raise their voices and call for the federal government to act on the Articles listed in the UN Convention on the Rights of the Child, a binding document endorsed by Canada well before those participating in the charter creation were born.

The young Canadians who created the national children's charter presented it to Member of Parliament Peter Schiefke, Parliamentary Secretary to the Prime Minister (Youth). The member of Parliament admitted to having a mandate that doesn't include children under the age of 16, but neither the prime minister nor the minister of families, children and social development were available to meet with the young Canadians to discuss the Charter.

The predominant goal is for the Government of Canada to take seriously its role and responsibility to protect and guarantee the rights of the child. It's time to improve the well-being, bridge inequality, stop the violence against children and bring justice to all of Canada's young people.

Canada's 1989 promise to end child poverty by 2000 is an international embarrassment. Poverty and homelessness among youth continue to restrict Canadians from reaching their potential and contributing to Canadian society. In a few months, Canada is required to report to the UN on how well they've been doing to meet their promises to children and youth.

Although the charter is not a legal tool, it is an urgent plea for Government, civil society organizations, the private sector and all Canadians to respect, protect, and fulfill our obligation under the UN Convention on the Rights of the Child. "A Canadian Children's Charter can measure the progress in improving children's well-being in Canada," says Reem Al-Ameri a youth from Ottawa.
The Canadian Children's Charter outlines recommendations to improve the well-being of Canadian children by adopting some of the United Nations Convention on Rights of the Child, which Canada has chosen not to implement. These Articles represent broken promises:

Article 12 - You have the right to give your opinion, and for adults to listen and take it seriously.

Earlier this year, Noah Irvine, 17, from Guelph, Ontario sent letters to 338 MP's. Only 40 responded. With a children's charter, Irvine's voice would be recognized and used as a pivotal point of advice when considering a National Mental Health Strategy.

Article 15 - You have the right to choose your own friends and join or set up groups, as long as it isn't harmful to others.

In Alberta, politicians recently argued about whether or not parents/guardians should be notified if their children participate in Gay Straight Alliances (GSA) at public schools. A new law would out children to their parents for exploring sexual identity. With a Children's Charter enforced, children and youth would have freedom of association with GSA's or any school group.

Article 19 – Right to Protection

One in three children in Canada have experienced some form of abuse. While a children's charter cannot stop violence against a vulnerable child, it can ensure the child is afforded all the protection required from threatening situations and provide safety. A Children's Charter will ensure that no matter where a child lives in our country we will all be treated equally under Canadian law. After all, it's still legal in Canada to hit a child. Clearly, Canada is not doing all it could to protect children from harm.

Article 42 – Knowledge of Rights

Currently, there is no legal requirement for educational professionals to teach Canadian children their rights. A Children's Charter would change that and the government of Canada must acknowledge their failing to meet this basic right of the child.

CHILDRENFIRSTCANADA.COM
The Children's Charter taking shape at the National Summit in Ottawa
The children of Canada appeal to all Canadians to raise their hand and stand up for children's rights. We need support from all Canadians for the Canadian Children's Charter to be successful and provide a guarantee of fundamental rights for the next generation of leaders, parents, workers and effective citizens. We must hold our government accountable to keep their promises to kids.

Hannah Ruuth is 18 years old from Windsor, Ontario studying at the University of Guelph. She is a Youth Ambassador for Children First Canada and a passionate advocate for children's and youth rights.

Pamela Lovelace is Project Manager with Wisdom2Action (W2A), School of Social Work at Dalhousie University in Halifax, Nova Scotia. W2A is a national knowledge mobilization initiative supporting researchers, community based organizations, educators, policy makers, and others working to improve the mental health and wellbeing of vulnerable children and youth.

Phoenix Pay System unacceptable to government employees; disgrace to the nation
The Guardian -Guest Opinion
Vaughan Davies
December 12, 2017

I am writing concerning the Government of Canada’s complete inability to pay its own employees as unacceptable and disgraceful. If we are fortunate this inability will not carry over to the paycheques of the Canada Pension Plan and the Old Age Pension.

One of the oldest laws since the beginning of time is you do not cheat on the employees’ paycheque. The work is done and the wage is then paid – it’s absolute.

Commonly known as the Phoenix Pay System, this program does not work, does not pay employees at all, pays employees somewhat, overpays employees or takes back what was paid to employees.

Tens of millions of taxpayers dollars have been squandered on this program, hundreds of new employees hired in an attempt to fix the program and tens of millions of tax payers dollars will likely continue to be squandered in the future with no solution in sight.

Just think how welcomed that money could be used to help homeless veterans or seniors in poverty.

This boondoggle raises several questions:

Who are the management executives who led this pay system?

Were they competent?

Were the best people hired for the job?

Where are they today?

Have they been held accountable?

Have they been fired?

Are they in jail?

Are they still on the pay roll?

Have they been shuffled off to the back room?

Have they been pensioned off?

On the other side of the fence are the employees' largest bargaining units -The Professional Institute of the Public Service of Canada and the Public Service Alliance of Canada.

Where are the unions on this question?

Are they fighting for the members?

The PSAC, being the larger of the two, are they taking the lead in this fight?

Where is the union's leadership on this?

Where is the fight back campaign?

Where is the campaign to educate the public on this dire situation?

Where is the campaign to gain the public's assistance, support and trust?

If employees are not being paid where is the job action?

Who ever heard of not being paid and continuing to work?

Where are the lunchtime demonstrations?

Where are the days of action?

Where is the national day of rage?

On this question it does appear the union is as useless as the employer in demonstrating leadership.

Given what the taxpayers know today it seems very unlikely a solution will be found within government. Maybe it is time to have the discussion to outsource payroll to the private sector. At this time it is most likely even the most ardent union member would be highly supportive.
One thing we do know is the taxpayer will continue to pay out millions of their hard earned dollars and pay the price of management incompetence.

- Vaughan Davies, Charlottetown, is a former federal government employee and a former member of the P.E.I. branch of the Public Service Alliance of Canada

Crown counsel in Napoleon murder trial one of two new provincial court judge appointments
Energetic City
Chris Newton
December 13, 2017

FORT ST. JOHN, B.C. — The lawyer representing the Crown in the trial of Leon Wokeley, who is charged with second-degree murder in the death of Pamela Napoleon, won't be working the case much longer.

Peter Whyte is one of two new provincial court judge appointments announced by the Office of the Attorney General today. He graduated from UBC's School of Law with a Juris Doctor in 2005, and worked at the North Vancouver firm Lake Whyte LLP as a lawyer before joining the Public Prosecution Service of Canada as an agent prosecutor for close to a decade.

Whyte joined the BC Prosecution Service in 2015 as Crown counsel. The Ministry said that Whyte will be assigned to the Northern Region as a provincial court judge, effective January 2nd, 2018.

Whyte is currently serving as Crown counsel in the second-degree murder trial of Leon Wokeley, which is scheduled to resume on December 20th at 2:00 p.m. at the Fort St. John Law Courts.

COMMENTARY: Tradition triumphs as Trudeau names Richard Wagner chief justice of Canada's top court

Global News
Tasha Kheiriddin
December 13, 2017

Hail to the new chief justice of the Supreme Court of Canada — Justice Richard Wagner, replacing the outgoing Beverley McLachlin, who served in the position for 17 years.

Here's what McLachlin had to say about her successor: "I congratulate Justice Wagner on his appointment to this important and challenging role … Justice Wagner is a distinguished jurist and a person of deep integrity. I am confident he will lead the court with wisdom and skill."

Wagner is 60 years old, a former commercial litigator and bilingual. He was appointed to the bench in 2012 by Prime Minister Stephen Harper. He is from Quebec, so his appointment respects the unwritten convention that sees the chief justice position alternate between the country's civil and common-law systems. McLachlin hailed from the common-law jurisdiction of Alberta, so her successor was always likely to be someone from Quebec, which maintains three spots out of nine on the court.

Likely — but not definitely. Former prime minister Pierre Elliott Trudeau broke with tradition in 1984 when he named Justice Brian Dickson (originally from Saskatchewan) to succeed Bora Laskin (from Ontario). But Trudeau Sr. previously had offered the position to the senior Quebec justice on the court, Jean Betz, who turned it down for health reasons.

In similar fashion, many court-watchers speculated that his son, PM Justin Trudeau, might disregard the tradition of alternating between common and civil law judges — but for entirely different reasons. Speculation started in November when Trudeau was set to fill McLachlin's soon-to-be-vacant seat, which by tradition would be held by a judge from western Canada. Some thought Trudeau would use the occasion to appoint the court's first-ever Indigenous Supreme Court judge. Mary Ellen Turmel-Lafond, Saskatchewan's first female Aboriginal judge, was rumoured to be a strong contender for the post.

This could have presented Trudeau with an opportunity to score another first — by immediately elevating the new appointee to the position of chief justice, a position never held by a person of First Nations origin. That would have been a break from tradition on two fronts; chief justices of the Supreme Court are generally elevated from the court's current bench, not appointed from outside.

When Trudeau named Sheilah Martin from Alberta to fill McLachlin's shoes, talk of an Indigenous chief justice ceased and attention turned to the other members of the court in contention for the top job. The Quebec justices were relative newbies, however; Wagner was

appointed just five years back and Clément Gascon and Suzanne Côté joined the court only three years ago.

This brought the conversation around to the most senior Supreme, Rosalie Abella. Abella is a former appellate court judge appointed to the High Court in 2004. She's the first Jewish woman to be elevated to the court and is known for her feminist and left-leaning interpretations of Charter rights. She's also very open (for a judge) about expressing her opinions publicly. At a recent commencement speech given to Brandeis University in Massachusetts, she jumped into American domestic politics with both feet:

"Here we are in 2017, barely seven decades later, watching 'never again' turn into 'again and again,' and watching that wonderful democratic consensus fragment, shattered by narcissistic populism, an unhealthy tolerance for intolerance, a cavalier indifference to equality … (There is also) a shocking disrespect for the borders between power and its independent adjudicators like the press and the courts."

While Abella didn't name the United States or U.S. President Donald Trump, many took her comments (made before an American audience, remember) as a criticism of the president's attitude towards jurists and of the American political climate in general. All of which might have made her a bit of a lightning rod, at a time when Trudeau's government is trying to renegotiate NAFTA and deal with a White House that is, to put it mildly, unpredictable and easily provoked.

But that wasn't the main strike against Abella. As soon as her name hit the headlines, Quebec MPs, legal scholars, and newspapers began not-so-gently reminding Trudeau of "l'alternance" — the principle whereby chief justices traditionally alternate between French and English Canada.

"We think it's very important that we have this alternance, by having for a time a civilian chief justice, followed by a common-law chief justice," MP Denis Paradis told Le Devoir. The Montreal Bar Association was more blunt: "The next Supreme Court must come from Quebec." And Quebec Justice Minister Stephanie Vallée sent Trudeau's office an official message: "The recognition of the specificity of Quebec's legal tradition must (…) be illustrated through the appointment of the judge to lead the Supreme Court by the Prime Minister of Canada."

Trudeau was listening and acted accordingly. Considering Canada's dual legal system, it was the right thing to do; politically, of course, he didn't have much choice. Quebecers were still smarting from the recent defeat of an NDP private member's bill which would have mandated that Supreme Court justices be bilingual.

Justice system 'riddled with loopholes,' says child sex assault victim after charges dropped
Jorden Van Voorthuizen was to be tried 2nd time in sexual assaults of 2 boys but charges were dropped
CBC News
Meghan Grant
December 13, 2017

It took 10 years for David to muster the courage to tell family members about the sexual abuse he says he suffered beginning when he was just eight years old. It took another decade before he kicked the addictions he believes are tied to that trauma.

Now, David — not his real name, a publication ban protects his identity — wants his story told after a devastating decision in November in a courtroom in Lethbridge, Alta..

"I had no idea the justice system is riddled with loopholes that people can swim their way through," said David in an interview with CBC News.

David has two reasons for speaking out: he wants the man he says tormented him for years behind bars and he wants to do whatever he can to protect other child victims.

Originally convicted in 2013
Jorden Van Voorthuizen was originally convicted in 2013 of molesting two boys, including David, between 1995 and 2001.

The Alberta Court of Appeal overturned that conviction and ordered a new trial because the judge didn't properly instruct jurors before they began deliberations.

Then,in November, after David had travelled from Ontario to Lethbridge to testify on the first day of the second trial, Van Voorthuizen's lawyer made a Jordan application, meaning he argued his client's right to a timely trial was violated.

The judge agreed and stayed Van Voorthuizen's charges.

"I thought I could finally close that chapter … I am so angry at the way this thing turned out," said David.

In the last few days, however, a small victory has David feeling hopeful again; the Crown is appealing the judge's decision to stay Van Voorthuizen's charges.

'Problem child'
Because he can't be identified, many of the details of David's story can't be told. That's one of the reasons he's trying to have the ban lifted.

Anonymity is designed to protect sexual assault victims, but David feels it's only served to protect his alleged abuser.

David's childhood was "tumultuous," he says. He believes his troubles at home and his substance issues were directly related to the sexual abuse he says he suffered.
A self-described "problem child," David was a drug addict by the age of 13 and familiar with officers from his local RCMP detachment.

"It kicked the shit out of me. I was a drug addict on and off from 13 to 28," he said.

David tells his secret
By the time he was ready to talk about the abuse, David had put time and distance between himself and the man he says preyed on him for four years.

At 17, David left Alberta and moved to Ontario. Soon after that, he told his family what had happened to him.
Taking the next step and reporting Van Voorthuizen to police was "daunting," said David, but he began what would be a years-long process of telling his story over and over again: to police, prosecutors and in court.

He testified at the first trial that from the ages of eight to 11, Van Voorthuizen preyed on him, engaging in sexual activities.

A second victim told a similar story.

Once Van Voorthuizen was convicted, David said he finally felt like he had a clean slate to start over.

"I'm 31 years old now and I've managed to work through most of these issues. But I didn't really start getting anything out of life until I was 28, until after that trial was done."

'I need to stay clean'
Last summer, a Supreme Court decision put hard timelines on what is considered an unreasonable delay for bringing criminal matters to trial.

Defence lawyers can now file so-called Jordan applications — named after the high court decision that gives the Crown 18 months to get provincial court matters to trial and 30 months for superior court cases.

David appreciates the need for trials to be held in a reasonable amount of time, but he argues Van Voorthuizen's case made its way through the system before the new law. He also takes issue with crimes involving child victims, a factor he believes the courts should take into account.

"Where's the justice in this? If we're not looking out for young people, who are we looking out for?"

David's not worried this latest setback will threaten his sobriety. He is worried other children will be victimized.

"I need to stay clean to get things done," he said.

Richard Wagner is the right choice to be Supreme Court chief justice
Opinion: Emmett Macfarlane on the Quebec jurist who will succeed Beverley McLachlin, and the challenges ahead for the court he will lead
Macleans
Emmett Macfarlane
December 13, 2017

Emmett Macfarlane is a professor of political science at the University of Waterloo. He is the author of Governing from the Bench: The Supreme Court of Canada and the Judicial Role (UBC Press). He was briefly consulted by the Prime Minister's office on the selection of the new chief justice, and while his views expressed here are consistent with his advice, it should not be construed as necessarily reflecting anything the PMO considered when making its decision.

The elevation of Supreme Court justice Richard Wagner to chief justice was in many ways the obvious choice. It is also the correct one.

Wagner is a first-rate judicial mind and by all accounts is likely to continue the consensus-building and collegial approach fostered by Canada's longest-standing chief justice, Beverley McLachlin. He is lauded as forthright and clear-minded, both in his judgments and his public statements. He is often part of the majority of the Court on major decisions, but is not afraid to issue forceful dissents on matters of principle. An example of this is his dissenting judgment, with colleague Marshall Rothstein, in a landmark right-to-strike case in 2015.
Wagner's appointment also adheres to a loosely followed quasi-convention of alternating between common-law and civil-law (Quebec) chief justices. There was some debate among legal observers leading up to the selection about whether the prime minister might go in another direction. Some would have preferred to see Rosalie Abella, the Court's most senior justice, elevated to chief. The attraction, for some, was also ideological: Abella is the standout "progressive" voice on the Court, in part a result of the fact that all of the other potential candidates, Wagner included, were appointed by Stephen Harper. (Abella was appointed by Paul Martin; Malcolm Rowe was appointed by Justin Trudeau in October 2016.)

This preference briefly intensified in some circles this past summer after Wagner rejected applications by four LGBTQ groups to intervene in the case of Trinity Western University, a Christian law school that required students to sign a code of conduct limiting sexual activity to heterosexual marriage. In a virtually unprecedented act, the Court later reversed this decision,

extended the hearing of the case to two days to accommodate the interveners, and issued an explanation to that effect. There's no evidence that Wagner's initial decision reflected anything more than an honest restriction given the time limitations, however oblivious it may have been to the politics at play.

Moreover, Abella's tenure as chief would have been a short stint of under four years. Wagner, at 60 years of age, will have roughly 15 years in the post if he continues until mandatory retirement, something that has the appeal of providing stability to the Court. Further, it would have been troubling if Trudeau had overlooked Wagner on the basis of his appointment under Harper. As Maclean's own Paul Wells tweeted, "Sometimes avoiding partisanship means not reflexively shunning your predecessor's appointee." This too reflects a bipartisan tradition: McLachlin was appointed to the Court by Brian Mulroney and elevated to chief by Jean Chrétien, and her predecessor Antonio Lamer was appointed by Pierre Trudeau and elevated by Mulroney.

What challenges might Wagner face as chief justice? There has been steady turnover on the Court in recent years, and so it remains an open question whether the new chief will be able to marshall unity among the justices in the way McLachlin so often did. The chief justice is really only "first among equals"; it's important to remember that each justice enjoys individual independence and freedom to go it alone. It will be interesting to see whether divisions emerge on a relatively inexperienced bench.

More fundamentally, there are a number of legal challenges the Court is likely to face in the coming years. The rights of Canada's Indigenous peoples will remain front and centre in the era of reconciliation, and the Court's approach to these rights, particularly in relation to the legal principle that governments owe a "duty to consult" has resulted in a lot of dissatisfaction over the past decade. How the Court will apply this principle, and whether it will augment it, is of pressing concern.

And despite more than 35 years of development of the Charter of Rights and Freedoms by the Court, there remain a host of difficult issues. The Court has never fully agreed on the best approach to equality rights—indeed, there are cases where the justices have arguably dodged legitimate equality issues in favour of settling cases on the basis of another section of the Charter, such as the "right to life, liberty and security of the person."

The Court is also likely to face new cases concerning a handful of recently decided controversies. Parliament enacted new laws after the Court struck down the criminal prohibition on assisted dying and three laws that indirectly banned prostitution. Legal challenges to these new laws have the potential to work their way up to the Court, which may soon find itself grappling with difficult questions concerning whether mature minors or people suffering from depression ought to be eligible for assisted dying. There is also a case challenging the core of Canada's universal health care system working its way through the courts, an issue that completely divided the Court in 2005.

It will be interesting to watch the new "Wagner Court" as it confronts the challenges that lie ahead. The new chief justice is, by all accounts, well equipped to deal with them.

Liberals pledge 'continuous improvement' of Phoenix in 2018 … but not a fix
iPolitics
Kyle Duggan
December 13, 2017

As 2017 comes to a close, public servants might want to buckle up for another year of government-wide pay problems.

The Liberals say they're working hard to fix the problem-plagued Phoenix pay system. Ask them whether it will be fixed by, the end of next year, however, and the bar suddenly lowers from a fix to "continuous improvement."
Steve McKinnon, parliamentary secretary to the minister of Public Services and Procurement, told reporters in a pre-caucus scrum Wednesday morning that the government is "going to fix the current system" and that it's "dedicating every bit, every inch of available government resources to fixing this problem."

But when asked about the timeline – whether it will be fixed in 2018 – he said there is going to be "continuous improvement" in Phoenix's operations over the next year.

"We are going to see continuous improvement in the pay system in 2018, yes" McKinnon said.

"So, not fixing it …" one reporter said. McKinnon repeated his statement.

A recent report by Auditor General Michael Ferguson suggested it could be years before the pay system is finally fixed.

"A sustainable solution will take years and cost more than the $540 million the government expected to spend to resolve pay problems," it said.

That's similar to what Queensland experienced with its error-prone pay system.

"The government needs to be aware that it may be in a similar situation to Queensland Health, a department in the Australian State of Queensland, which after eight years has spent over CAN $1.2 billion and continues to resolve problems with its pay system," the report said.

The Liberals brought the Phoenix project online in early 2016. It was a pay system originally designed under the Conservative government to save money. Instead, it has prevented thousands of public servants from getting paid properly and has become a major political headache for the Liberals – one that apparently won't subside in the new year.

« Le bilinguisme n’est pas un absolu pour moi », dit l'ex-juge en chef de la Cour suprême
Radio-Canada
Madeleine Blais-Morin
14 décembre 2017

Beverley McLachlin n'est plus à la tête de la Cour suprême du Canada. Radio-Canada s'est entretenue avec l'ex-juge de 74 ans afin de faire le bilan de son passage au plus haut tribunal du pays. Mme McLachlin donne notamment son avis sur le bilinguisme à la Cour suprême, elle passe en revue ses cas les plus marquants, comme le renvoi sur la sécession du Québec, et revient sur son affrontement avec Stephen Harper.

Une de vos réalisations est d’être parvenue à des consensus à la Cour. Était-ce important pour vous?

Oui, ce l’était. Parfois, nous avions des dissidences, c’est notre droit, mais l’idée était de minimiser les dissidences sur les points auxiliaires.

Est-ce que le fait d’être une femme a contribué à votre style, à votre capacité d’obtenir des consensus?

[Rires] Peut-être, mais je laisse ça à l’histoire. Chaque juge a sa propre personnalité et j’ai toujours été une personne qui voulait bâtir le consensus, si possible, et se rapprocher des gens. C’est dans ma nature comme être humain. Je ne sais pas si le fait d’être une femme a fait une différence. Peut-être, qui sait?

À votre avis, l’équité hommes-femmes est-elle importante à la Cour suprême?

Il y a une différence dans l’approche, je pense, dans l’atmosphère. Par exemple, quand vous avez quatre femmes sur neuf juges, personne ne pense : « Elle a dit ça, car c’est une femme. » C’est presque : nous sommes des êtres humains. Et la question d’être une femme ou un homme n’est pas du tout importante.

Est-ce que la question du bilinguisme est importante pour vous?

Oui, c’est important. Pendant des siècles, la Cour a fonctionné presque de façon unilingue, avec des juges qui ne parlaient pas français. Je crois qu’il est de plus en plus important que les juges soient capables de s’exprimer et de travailler dans les deux langues.

Important ou nécessaire?

Que veut dire « nécessaire »? Comme je l’ai dit, la Cour a fait son travail pendant longtemps sans que tous les juges soient bilingues. Dans ce sens-là, ce n’est pas nécessaire. Mais ce l’est au

sens où la Cour fonctionne mieux ainsi, elle est mieux placée pour maintenir le respect de tout le pays. C’est quelque chose de bénéfique.

Discutez-vous parfois en français, entre juges?

Oui, parfois. Presque tous les juges sont maintenant capables de discuter en français. Nos discussions vont être un peu en français, un peu en anglais. On le fait de plus en plus, surtout dans des causes du Québec ou qui ont été présentées en français.

Un compromis sur le bilinguisme d’un juge peut-il être acceptable, par exemple pour permettre à un juge autochtone de siéger à la Cour?

Évidemment, le bilinguisme n’est pas un absolu pour moi. Avoir des juges complètement bilingues est un atout, mais ce n’est pas quelque chose qu’il faut avoir. Il y a d’autres compétences, d’autres qualités que l’on doit rechercher chez un juge. Il faut des compromis, peut-être. C’est au premier ministre de décider.

Quelles qualités faut-il avoir pour être juge en chef? De quelle façon avez-vous réfléchi à ça?

Il faut être un peu conciliateur. Comme juge en chef, vous devez être là pour chaque juge, vous devez faire ce que vous pouvez afin que chaque juge fonctionne à son mieux, afin que chaque juge possède les outils dont il ou elle a besoin pour que l’institution fonctionne bien. Ça prend certaines qualités personnelles, il faut vraiment être capable de parler avec les gens, de développer des solutions.

Pensez-vous que Richard Wagner a ces qualités?

Oui, je suis tellement contente qu’il soit mon successeur!

Avez-vous parlé de votre successeur avec M. Trudeau, avez-vous essayé d’appeler le premier ministre?

[Rires] J’ai parlé avec le premier ministre, oui.

Je vous fais un petit clin d’œil, car je fais référence à l’affaire Nadon. Avez-vous senti à un moment donné que vous étiez dans un affrontement avec M. Harper? Parce que c’était l’impression qu’on avait, de l’extérieur.

[Le juge Marc Nadon a été proposé par le gouvernement Harper pour siéger à la Cour suprême en septembre 2013. Dans une décision rendue en mars 2014, une majorité de juges de la Cour suprême a tranché qu'il ne satisfaisait pas aux critères pour être l'un des trois juges issus du Québec.]

Oui, évidemment, j’ai constaté qu’il y avait quelque chose qui semblait être un affrontement. Je ne pouvais pas entrer dans un combat ou un débat avec le premier ministre, les juges ne peuvent pas fonctionner comme ça. Alors, j’ai décidé que la seule chose que je pouvais faire était de mettre les faits dans le domaine public. C’est tout ce que j’ai fait.

Comment avez-vous réalisé que vous étiez dans un affrontement avec M. Harper?

J’étais à Moncton, j’avais donné un discours la veille. Quand je me suis levé et que j’ai quitté l’hôtel, j’ai vu la dénonciation du premier ministre dans le Globe and Mail.

[Mme McLachlin a prononcé son discours à l’Université de Moncton le jeudi 2 mai 2014. Le même jour, le bureau de M. Harper a publié un communiqué affirmant que la juge en chef avait tenté d'appeler le premier ministre pour lui parler de la nomination de Marc Nadon. Le vendredi 3 mai 2014, cette affirmation explosive se retrouvait à la une des journaux. C’est à ce moment que Mme McLachlin aurait pris connaissance de la controverse, en voyant la manchette du Globe and Mail à sa sortie de l'hôtel où elle logeait à Moncton.]

Avez-vous craint, à ce moment-là, que la réputation, voire l’autorité, de l’institution qu’est la Cour soit menacée?

Oui, je m'inquiétais pour l’institution, j’avais peur que la confiance du public envers l’administration de la justice, envers moi comme juge en chef, envers la Cour, soit entachée.

Est-ce que ç’a été le moment le plus difficile de votre mandat à la tête de la Cour ou y en a-t-il eu d’autres?

[Rires] Probablement, je n’ai pas vraiment évalué tous les moments difficiles. Oui, ç’a été difficile, mais les difficultés surviennent afin qu’on puisse répondre. Je n’étais pas particulièrement émotive, je pensais à ce qu’il fallait faire dans cette situation et j’ai fait ce que je pouvais. C’est tout.

Quel a été votre cas le plus marquant?

Il y a des causes qui restent dans ma mémoire comme très spéciales, par exemple le renvoi sur la sécession du Québec. On a beaucoup travaillé, tous ensemble, sur ce renvoi, à la Cour. C’était un renvoi très, très spécial, très important [consequential]. La Cour a dû vraiment étudier les sources de légalité sur lesquels repose l’État canadien démocratique. C’était fascinant. En fin de compte, je pense que la Cour a trouvé un moyen de trancher une question qui, à mes yeux, était presque impossible à trancher.

Il y a plusieurs causes sur le droit des Autochtones qui m’ont touchée de près. Je me souviens d’être très prise par le processus.

Comment vous sentez-vous maintenant que vous avez quitté la Cour?

Des émotions partagées [mixed emotions]. Ça va me manquer, il y a beaucoup de choses qui vont me manquer énormément, j'en suis certaine. J'ai passé 28 ans à la Cour, et je reconnais que c'est le temps de partir et de faire quelque chose de nouveau.

Que signifie « nouveau », pour vous? Qu'est-ce qui vous attend?

[Rires] J'espère écrire.

Je sais que vous avez des livres qui sont déjà écrits.

Oui, j'ai un roman qui va être publié le 1er mai.

Y a-t-il certaines ressemblances entre l'écriture d'un jugement et d'un livre ? Est-ce que le processus mental se ressemble?

Quand on écrit un jugement, on a des contraintes. On doit discuter de certains problèmes d'une certaine manière. Quand on écrit un roman, on est libre d'imaginer ce qu'on veut. Dans un jugement, l'imagination n'est pas beaucoup encouragée. [Rires] Pas trop, en tous cas! [Rires]

Judge gives stateless man a second chance to stay in Canada
A Federal Court judge has ruled that the Immigration Department must reconsider the case of a man who is in "legal limbo" with "no way out.
Toronto Star
Nicholas Keung
December 15, 2017

The Federal Court has chided immigration officials for refusing to let a 66-year-old stateless man be a permanent resident on humanitarian grounds even though there is no prospect of deporting him to any country.

In quashing the immigration decision and sending the case back to the department for reconsideration, Justice E. Susan Elliott said Francisco Suarez Abeleira can't continue to be trapped in "limbo" in Canada and deserves a chance to have a new life.

Abeleira was born in Vigo, Spain, but his parents fled the Franco dictatorship in the 1950s, shortly after his birth and the family moved to Mexico. Spain has no record of his birth, likely because he was never registered or the record was destroyed during the dictatorship.

After spending his formative years in Mexico and most of his adulthood in the United States, he was caught by American border officials in 2009. After being released from immigration

detention, he crossed the unguarded land border between Vermont and Quebec seeking asylum in Canada a year later.

Although the refugee judge accepted he was stateless, Abeleira was found not to be at risk of persecution in the U.S. and his claim was rejected. A subsequent humanitarian application was also refused.

“The only four countries to which Mr. Abeleira has any connection at all (Canada being the fourth such country) do not want him because he has no status in any of them. Yet, the Immigration Minister says Mr. Abeleira has not shown sufficient humanitarian and compassionate grounds to be permitted to apply for permanent residence from within Canada,” Elliott wrote in a recent decision.

“He must therefore apply for that status from another country. The conundrum is that there does not appear to be any other country who will accept him. Not only is Mr. Abeleira in a state of legal limbo, there is no way out of it. He appears trapped in an endless loop of ‘you have to leave Canada to apply for permanent residence,’ however ‘you can’t leave Canada because no country will take you.’”

Abeleira declined the Star’s interview request through his lawyer in Toronto, Daniel Radin.

Pot's Not Legal in Canada Yet – So Why Are Dispensaries Selling it?
The Canadian government announced last year that pot would be recreationally legal mid-2018 – but some dispensaries are getting a head start on sales
Rolling Stone Magazine
Chris Chafin
December 13, 2017

Walk down Queen Street West, one of Toronto's cooler shopping districts, and you'll find something new amid the designer boutiques and H&Ms: stores selling marijuana. The quality of these places varies widely, from unfinished rooms where weed is sold from folding tables, to chic storefronts with the sleek modernity of an Apple store. Whether they advertise themselves as medicinal or recreational, these shops all have one thing in common: as of now, they're completely illegal.

On a recent afternoon, a polite young woman who answered the phone at one Toronto dispensary told Rolling Stone that no prescription was needed to come in and purchase marijuana. When asked if this was legal, she gave a long, regretful "No," before explaining that shops like hers were "peacefully breaking the law." When asked if she wanted to discuss further in a formal interview, she hung up the phone.

Visiting the dispensaries open now in Toronto, Canada's most populous city, can be confusing for everyone involved. One Canadian who asked to remain anonymous said that before being

allowed to actually buy pot, he was given a form to fill out which asked for his personal information, medical need for cannabis, and a signature. After completing it, he watched it get fed it directly into a paper shredder. Another Canadian visited a recently opened dispensary with a well-built friend who vaguely looked like a cop. When they asked if they could buy marijuana and then left without actually purchasing anything, the spooked staffers shut down for the rest of the day.

The rise of illicit marijuana dispensaries around the country is one of many side effects of the confusing legal status of pot in Canada today. Its legalization was a major campaign issue of Prime Minister Justin Trudeau's Liberal Party in the general election of 2016. In April 2017, Trudeau announced in that marijuana would become legal in July 2018. While the federal government has set some rules, much of the on-the-ground implementation is falling to local governments. After speaking with officials from around the country, a picture emerges of lawmakers with different priorities, different views of the value of marijuana and a general reluctance toward legalization. Yet they're all scrambling to figure out a way to regulate the growth, distribution and sale of marijuana in barely a year – and the often very strict rules they're creating are building a paradoxical system where legalizing pot may lead to even more arrests than today.

Canada has a strange relationship with intoxicants. For most of the Twentieth Century, the distribution and sale of alcohol was totally controlled by government agencies in each of the country's ten provinces. These bodies set strict rules on what alcohol could be sold where, with several provinces making government-owned stores the only businesses that could legally sell. Today, most provinces have a patchwork system where government-owned stores sell all types of alcohol, and some private shops sell a limited selection of beer and wine. These rules have relaxed at different paces around the county. Ontario didn't begin allowing beer and wine in private grocery stores until 2015.

"It was very much like a shaming, trying to go there," says Tyler James, a Torontonian and the director of community outreach at cannabis dispensary Eden. "You'd have to get a piece of paper and a card, write down what you wanted on the card, and give it to an attendant, who walks into the back and brings you the bottle."

The majority of provinces are actively exploring a similar retail model for marijuana. Though most are still researching and consulting with citizens and have yet to make a decision, Ontario has formally proposed that weed only be sold through government-owned retail storefronts. It has said it will establish 150 locations by 2020; Colorado, which has less than half of Ontario's population, currently has more than 800. According to draft legislation, companies selling marijuana outside this system will be subject to fines of up to $250,000, and individuals of up to $100,000 and one year in jail.

Generally, marijuana enforcement is not the priority in Canada that it is in the United States. In 2015, the US had roughly three times more pot arrests per capita than Canada, according to a report from the American Civil Liberties Union and Human Rights Watch.

Still, Canada's slow legalization of cannabis has been as cautious as its approach to alcohol. While medical marijuana was legalized in 2001, patients were required to grow their own or designate another individual to grow it for them. After a legal challenge in 2013, this was broadened to create a system that included federally licensed industrial-scale producers. This system, called Marihuana for Medical Purposes Regulations, or MMPR, was again challenged in 2016. The ruling in that case, commonly referred to as Allard, scrapped the MMPR system on the grounds that it unreasonably limited access and increased costs, and gave Canada six months to make a new one. While it didn't explicitly call for the creation of dispensaries, it did say that "dispensaries are at the heart of cannabis access."

This ruling encouraged the idea that a dispensary could operate as long as it was strictly for medical reasons, even if they remained technically illegal. Following the announcement that legalization was coming in 2018, many existing operators felt they could drop the pretext that they were medical facilities at all, and many others jumped in, despite the fact that no laws had actually changed. Still, many thought, even if they were shut down and arrested, how could they be convicted for selling something that would be legal by the time their case came to trial?

"I'll be real clear with you: that's their position, but that is not the law," says Tracey Cook, executive director of Municipal Licensing and Standards in Toronto. "They are not, not, not in any way shape or form permitted to operate storefronts, even for medicinal [marijuana]." Cook, a tough but affable former police officer, is in charge of a variety of issues that most directly impact the day-to-day life of Torontonians. She's credited with winning a fight against the city's taxi union to allow Uber to continue operating there and, along with the police, has been leading the fight against dispensaries. So far, that's had inconclusive results.

Cook's office orchestrated a massive raid of the Canna Clinic chain of dispensaries in late June, eventually charging 90 people with more than 180 offences, from possession of cannabis to "possession of the proceeds of crime." In early July, it was announced that the vast majority of those arrested wouldn't go to trial. Other Toronto raids from September and early December have been smaller in scope, with as many as 15 arrests or as few as five.

Though similar raids have happened across Canada, many officials around the country see legalization as a chance for fewer, not more, arrests. "The main goals [of legalization] are that the end purchaser shouldn't end up in the criminal justice system, because that doesn't increase public safety," says Alberta's Minister of Justice and Solicitor General Kathleen Ganley.

Keeping Canada's marijuana users on the right side of the law is more difficult than it sounds. Legalization is creating many additional laws as the government tries to regulate all aspects of the growth and sale of pot.

"It's been a gold rush, and now the government is trying to regulate a gold rush," says Mike Farnworth, Minister of Public Safety and Solicitor General of British Columbia. "It's very complicated, on a tight timeline, and involves a lot of competing interests."

In July of 2018, when marijuana is scheduled to become legal across the country, a Canadian won't be able to do anything she wants with pot.. There will be laws, regulations and guidelines on its production, possession, consumption and cultivation. The federal government has set some minimums, including the legal age at which a person can possess cannabis (18), a number of plants you're allowed to grow for personal use (four) and the amount of pot you can legally possess (30 grams). Each province has the broad capability to change these rules to make them more strict, as well as the responsibility to oversee the distribution and sale of marijuana within its jurisdiction.

Lawmakers are facing many questions for the first time. If you're a renter, can a landlord prevent you from growing plants in your apartment? If smoking marijuana is illegal in public, how will people who live in places that prohibit smoking ever consume it? Already, some of the modest proposed federal regulations have fallen away. Originally, there had been a legal height maximum for personal-use plants, but its enforcement, which conjured images of bureaucrats crouched with tape measures in people's homes, was widely seen as unrealistic.

That's on a personal level. On a more industrial scale, the federal government is going to be giving out licenses to producers allowing them to grow large amounts of marijuana for the national market.

"Right now there are 58 legal production licenses, and I think 15 in British Columbia," says Farnworth. "There's a number of questions we're waiting on an answer for, such as how are we going to meet demand? Are we going to significantly increase production on existing license holders?" In other words, legalization isn't going to mean every pot farm in the black or gray market becomes legal overnight.

In the end, there's a sense that these initial regulations, whatever they may be, are little more than a starting point. "A lot of people think that this will end in July of 2018," says Farnworth. "It won't. Government will be dealing with this for years."

Cook agrees. "It'd be a hell of a lot harder if we just let all the horses out of the barn, realize it's causing massive public health and public safety issues, and then try to reign it in. That'd be an irresponsible approach."

In the interim, dispensaries continue to open and be shut down around the county, often with their operators re-opening within days in a new location. Local governments draft legislation they're not sure will last, or if they could enforce.

As Cook says with a chuckle, "I don't know where it's gonna end up."

Federal prisoners still wait for meaningful reform after two years of 'sunny ways'
Rabble.ca
Jarrod Shook,Bridget McInnis,Justin Piché and Kevin Walby
December 14, 2017

"Justice is absent behind these walls, which is evidenced from the lack of dignity and privacy afforded to us, our defective internal grievance system, the overuse of segregation, involuntary transfers based on allegations, and institutional charges."

-Rachel Fayter and Sherry Payne

There's a lot of talk in Ottawa about penal reform. Justice Canada is conducting a review of "criminal justice," mandated by Prime Minister Justin Trudeau. The Standing Senate Committee on Human Rights is studying the treatment of federal prisoners. Meanwhile, the Correctional Service of Canada (CSC) continues to make headlines for malpractice. We've heard from public servants like Nubia Vanegas, who've talked about the toxic work environment within CSC institutions and from correctional investigator Dr. Ivan Zinger, whose office continues to paint a bleak picture of life inside federal penitentiaries.

The words of Rachel Fayter and Sherry Payne quoted above, written from inside the walls at Grande Valley Institution, say a lot about the current state of our federal penitentiaries after a decade of sustained attacks against the criminalized under the previous Conservative government and two years of Liberal "sunny ways". They, along with dozens of other incarcerated writers who contributed to the latest issue of the Journal of Prisoners on Prisons (JPP), identify several areas for change to the laws, policies, and practices of the Canadian penal system to improve life and work inside federal penitentiaries, while enhancing public safety.

First and foremost, JPP contributors call for legislative reforms such as the restoration of accelerated parole review for first-time federal prisoners and reductions in the number of mandatory minimums. They also seek expanded access to community-provided mental health services with an emphasis on counselling and preventative care, as well as community-provided health and dental care services to prevent conditions that place them at unnecessary risk of injury, disease, or death. As well, JPP contributors want improvements to their health, while expanding training and work opportunities for prisoners by eliminating the centralized "cook-chill" food regime, restoring prison farms, and re-opening on-site kitchens in all CSC institutions.

Federal prisoners wish to promote safe reintegration through increased access to community-provided educational and vocational training opportunities that will better position them to obtain employment post-release, along with more gradual release opportunities. They also recommend measures to maintain contact with support networks in the community while incarcerated and to accrue a modest amount of funds to re-establish themselves in Canadian society post-release by (a) eliminating additional room and board fees, (b) increasing prisoner pay beyond levels

established in the 1980s to fairly compensate them for their work, (c) restoring Old Age Security payments for seniors behind bars, and (d) ending the centralized purchasing catalogue monopoly.

With the treatment of captives having deteriorated further during Prime Minister Stephen Harper's tenure, prisoners call for more training and accountability measures for CSC institutional staff to ensure they fulfill their obligations to respect the human rights of the incarcerated, while assisting captives with the completion of their correctional plan objectives prior to their parole eligibility dates to facilitate their timely, safe reintegration. JPP contributors also recommend restrictions to the ability of Parole Board Canada members to impose release conditions that aren't linked to prisoners' offences and often set individuals up for non-criminal breaches that return them to federal penitentiaries at a considerable cost to taxpayers. Finally, in working toward transforming their lives, JPP contributors seek a new pardon system that supports former prisoners with opportunities to redeem themselves, as well as obtain timely, reasonable access to employment, housing, and other necessities of life.

We call upon the federal government to enact these reasonable calls for change, while diminishing this country's reliance on incarceration and working towards justice that heals wounds, instead of creating new ones.

Jarrod Shook, Bridget McInnis, Justin Piché, and Kevin Walby edited Volume 26, Number 1&2 of the Journal of Prisoners on Prisons (www.jpp.org), a "Dialogue on Canada's Federal Penitentiary System and the Need for Change."

'We can do a lot better': Retiring Beverley McLachlin on what's wrong with our justice system
CBC News
December 14, 2017

In her final week as chief justice, Beverley McLachlin says with confidence, tinged with pride, that she's leaving the justice system the strongest it's ever been.

But she's also aware there's still a long way to go.

Changes to the justice system were largely the focus of her exit interview with The Sunday Edition's Michael Enright. She has been on the Supreme Court of Canada for 28 years and has served as chief justice for nearly 18, a record.

Her departing concerns include the need to appoint more judges and crown prosecutors to make the process more effective and clear up the backlog of cases, which a Senate report called a "crisis" this June.

Beverley McLachlin on her controversies, activism, Supreme Court legacy
'Shocked': Retiring chief justice was blindsided by Stephen Harper's public attack

"We need to have an effective justice system that is capable of rendering justice without breaching the charter, which is our fundamental law," she said. "We can do it. I believe we can do it."

McLachlin suggested several areas where more change is needed — here are a few:

Sexual assault
The recent wave of sexual misconduct allegations — from Jian Ghomeshi to Harvey Weinstein — have highlighted the justice system's shortcomings on how to deal with sexual assault.

McLachlin admits it is a difficult area to police because "it tends to come down to credibility." Remembering exact details that happened decades earlier can be impossible.

She suggests more work could be done with complainants to document their story early in the process, so there is no confusion later. McLachlin also wants to work on helping complainants understand the process "so they realize what's involved."

Quebec jurist Richard Wagner named next Supreme Court chief justice
Supreme Court of Canada chief justice hears final case, fights back tears
"I think we can do better and I hope we will in the future."

Young people
McLachlin said the justice system needs to pay more attention to vulnerable young people convicted of small crimes. She said they often enter the system "pretty innocent" but end up as criminals.

"We have story after story of people who started off with a minor offence and then end up doing more and more time, and then sometimes fail to appear," she said.

They end up racking up all sorts of administrative offences, which don't have anything to do with the original crime.

Chief Justice Beverley McLachlin says judges should speak out about delays
Beverley McLachlin calls on Ottawa to solve 'perpetual crisis' of judicial vacancies
"And their lives are lost. They are basically in and out of jail for the rest of their life. That is something we have to avoid," she says.

She suggests alternative sentences, like the options offered for cases when mental health is involved.

"We have diversionary courts [and] drug courts where people say, 'I want to get better. I want to get off and get clean,' and they work with the judge and with social workers and others to do that."

Indigenous people
Indigenous people make up a sizeable part of Canada's prison population: Indigenous men represent 25.2 per cent of all men behind bars, while Indigenous women represent 36.1 per cent of all female inmates.

McLachlin recognizes that's a problem and suggests tackling it at a young age.

"I think part of it is providing proper education and resources for kids when they're small ... and avoiding initial entry into the criminal law system."

She also brings up the need for alternatives if Indigenous people are convicted of crimes.

"We all talk about restorative justice but we need to do more to ... make up for the wrong and get on the right track and live a productive life. It's really an imperative that we put more focus on this."

Her advice for successor
McLachlin finishes her term on Friday, Dec. 15, but will spend the next six months writing up "reserved" decisions she has already made.

Her successor, Quebec jurist Richard Wagner, takes the oath of office Monday.

Her advice to him echoes some of the bigger changes she'd like to see.

"Do everything you can do to keep the court strong and happy," she says.

"You just have one vote amongst others. You don't have any particular levers you can push. But I said the one thing I thought I could do something about was ... help the eight other judges on the court be as effective and as happy and as productive and wise as I can."

OPINION: Chief Justice McLachlin made the Supreme Court accessible to the people
The Globe and Mail
Adrienne Clarkson
December 15, 2017

Adrienne Clarkson is the co-chair of the Institute for Canadian Citizenship. She was Canada's 26th governor-general from 1999-2005. The following was adapted from her tribute speech Thursday night.

I had known about Beverley McLachlin ever since she had been appointed to the Supreme Court by prime minister Brian Mulroney. Then John Ralston Saul had met her at the Canadian Bar Association meeting in the summer of 1999 where they both spoke. He described her to me as

"the most beautiful disguise for a steel trap mind that he'd ever seen." So, I was properly prepared when I met her. I was not disappointed.

Rarely does public life bring you into intimate contact with people for whom you instantly feel great personal affinity. And in my case, a sharing of a generation's strivings in the second wave of feminism. It's not easy to be a woman in public life in Canada. Chief Justice Beverley McLachlin and I, having been governor-general, have shared different kinds of travails, but we know what sharing means and we know what sisterhood means. Yes, I use that rather dated and old-fashioned word because I think it is really what I have found with her.

There are many reasons the country should be grateful to her, but I want you to know that one of the most interesting facts about her is that I am sure that she is the only Chief Justice we have ever had who knows how to deliver a calf. I don't think there is anything more revealing than going to Pincher Creek – which I have done – and seeing that beautiful little town nestled in the foothills of Alberta and to enter through the roadway that is now called Bev McLachlin Drive. I think that Bev McLachlin Drive really says a lot. It says that she comes from there. It says that she is known to everyone there. And it says that she is one of us.

In my years at Rideau Hall, I found that the Chief Justice was a tremendous support and an often hilarious and ironic commentator on public and private events. She never revealed secrets to me, but I revealed lots to her. I knew that I could take her into my confidence at every step.

What you've always been able to do, my dear Chief Justice, is to make us understand as Canadians that the Supreme Court is not only a superbly important Canadian institution, but it has a dramatic impact on all of our lives. It is a guarantor of our democratic process. You in your 28 years on the Court have embodied this.

Beverley McLachlin is able to put herself in others' shoes. She knows that law is not a mechanical cipher that is simply stamped to order through what has been done before.

I believe that we are in a period of what some scholars call "evolutionary democracy" and that in our parliament system we must pay attention to the public's right to be informed. This Chief Justice understands that law is an organic entity, or, "the living tree," which grows and evolves with the evolution of societal views. This Chief Justice knows that courts can justify the making of substantial changes to the law if in doing so they reflect clear changes in social values.

It is a wonderful thing to have had a woman as our Chief Justice for 18 years. Women of our generation were grateful to find a place in the hierarchy of power and often we don't understand that gender discrimination still shapes our work lives. I think Beverley McLachlin has understood it, interiorized it, acted upon it and has helped to make it irrelevant.

On the other hand, she has made it possible for all women to feel that they could aspire to be like her. She defines equality by living it.

Even before she became Chief Justice in 1997 - when her predecessor Antonio Lamer was Chief Justice - she contributed to the judgment that has perhaps had one of the greatest influences on our relationship to the Indigenous peoples than any other. It's the case commonly known as Delgamuukw, which recognized the validity of oral evidence of Indigenous peoples and establishes the test for Aboriginal title as continuous exclusive occupation from pre-Confederation times.

This was followed by a series of historic decisions over the past 20 years in which the court, led by its Chief Justice, showed all of us the way to restore our relationship with the Indigenous peoples, through justice. Chief Justice McLachlin has since been noted in other judgments and in speeches that range from her enlightened and once-controversial comments about the cultural genocide of the Indigenous peoples to the rulings of the Court that show that she understands the Indigenous basis of our country from the inside out.

The respect for the Court which she has brought about under her tenure is nothing short of remarkable.

She's very good at getting consensus and her Court has handed down more rulings than past courts that are signed "by the Court" – rather than any one judge – to emphasize unanimity and to provide legal clarity. The "by the Court" decisions of the Supreme Court of Canada have happened more than a dozen times: The Robert Latimer case; the same-sex marriage reference in 2004; and the 2010 decision on Omar Khadr. We all know about these judgments, and they are important ones for us as Canadians, and they were important to have been "by the Court."

We regard the Supreme Court with respect, and respect for our institutions is one of the most important attitudes one must have in a democracy. If any of our institutions – be it Parliament, or the courts — become agencies which we ignore, deride, or disdain, we are in deep trouble as a democracy.

Our Chief Justice has broken any number of records and we know that she has done her work and she has done it well. In her work and in her life, she has shown what it is to understand each other in a human and lawful way. She has helped us as Canadians understand the parameters within which we live. And in our treasured Supreme Court, she has led us all to learn the limits that human understanding can bring to human behaviour.

Canada’s top bureaucrat says government is ‘stabilizing’ Phoenix — not replacing it
iPolitics
Kathryn May
December 16, 2017

Canada’s top bureaucrat says his marching orders are to stabilize the federal government’s “mediocre” pay system, not replace it.

Privy Council Clerk Michael Wernick said the government is sticking with the troubled Phoenix pay system for the “foreseeable future” and examining options to stabilize it so public servants are paid on time.

“At this point, all the energy is going into getting people paid on time and making improvements to the pay system,” he said. “A complete re-set is not something under active consideration right now.”

The future of Phoenix has been the subject of much speculation — and debate over whether the government should scrap it and start all over — since a recent auditor general’s report on the Phoenix rollout found the system is all but unfixable.

The Professional Institute of the Public Service of Canada, which represents government IT workers, was the first to push for a new system built by the government’s own computer specialists. Phoenix was developed by IBM using off-the-shelf Oracle software called PeopleSoft. Public Services Minister Carla Qualtrough recently suggested in interviews she is open to scrapping Phoenix — but not until it is stabilized.

PIPSC suggested a two-track process — building a new system while the government continues to pay employees with Phoenix. Wernick said that’s not in the cards right now.

“I am not spending a moment on a dual track. I am spending all my time and energy on getting people paid,” he said.

Wernick said the government is taking Auditor-General Michael Ferguson’s advice to stick by Phoenix because public servants have to get paid and a new system might run into all the same problems again.

Ferguson’s report established that Phoenix may not fixable, but it could be stabilized — at a significant cost. He concluded it would take years, and untold millions of dollars, to get to the state-of-the-art pay system envisioned eight years when Phoenix was approved.

“I don’t know that anyone thinks it can be fixed in the sense that it will suddenly become a high-performing system,” said Wernick. “But can the situation be stabilized and improved so people are being paid accurately and in a reasonable time frame, with a somewhat mediocre pay system?

“Then, yes, that is what Michael Ferguson recommended we pursue and that is the course we are on.”

Phoenix went off the rails for many reasons. Wernick said two major factors were the complexity of the government’s pay and human resource rules and the “somewhat mediocre” system that was built to accommodate all those rules.

The federal government has the most complex pay regime in Canada, which made it difficult and costly to customize the off-the-shelf software that was used to build Phoenix.

Over the past 60 years, Treasury Board and unions have negotiated more than 80,000 pay rules in dozens of collective agreements for some 80 occupational groups and 650 separate job classifications. Many experts argue the number of rules should have been reduced and simplified before work was even started on Phoenix.

Wernick said the government would be "receptive" to reducing those rules but that must be done at the bargaining table, with the unions on-side. He said IBM and Oracle also have a responsibility to build a working system.
"There is no question that if we had a less complex underlying set of HR structures, it would be easier to pay people … But that is only one piece of the puzzle, and every time we do a round of collective bargaining we seem to add to the complexity of those pay rules and never take anything away.

"And you have to build a piece of software that works and obviously Phoenix isn't a good enough solution, so we need a better software solution. Clearly, Phoenix is not Oracle and IBM's best work, and they have responsibilities to deliver a good technology solution."

Ferguson argued starting over wouldn't work because little has changed since Phoenix was launched by the previous Conservative government. The thousands of pay rules dogging the system are unchanged and the software alternatives to build a new system are largely the same.

Phoenix made 2017 a rough year for the public service. While Canada's public service was picked by the U.K.'s Institute for Government and the University of Oxford as the most effective in the world, Ottawa's high hopes that the system's errors would slow down and the backlog would disappear this year never materialized.

Then came the onslaught of newly negotiated collective agreements, with raises and retroactive payments which clogged the system with pay transactions, many of them which had to be done manually.

"It was a frustrating year. The numbers speak for themselves. I think we entered 2017 with some hope that issues would resolve more quickly and numbers could start coming down, and as we enter 2018 we are not a lot better off," said Wernick.

"It is also taking a strain on people in terms of workplace stress, personal considerations. It's not helping mental health issues and certainly caused reputational and brand damage to the public service. So, no, it was not a good year."

And it's not clear that 2018 will be much better.

Public Services and Procurement Canada, the paymaster, is still implementing collective agreements and a new batch probably will be settled in the new year, which will create another backlog surge for Phoenix. Departments are racing to have pay files and records updated for T4 slips to avoid another tumultuous tax season like last year's.

Ferguson will throw the spotlight on Phoenix again with a second report in the spring on how the $310 million pay project went off the rails, again resurrecting questions of who's to blame for the failure.

Wernick said "finding heads to put on tower bridge" may slake the public's thirst for retribution, but "it is far more important to me right now that people can paid accurately and on time" and that lessons are learned from the debacle.

PSPC has an action plan on the go, a massive new training program is underway and departments are looking for ideas by examining one another's efforts to stabilize Phoenix. Wernick further raised the stakes by linking all the performance pay and bonuses of deputy ministers to progress in stabilizing Phoenix.

It's not clear when Phoenix will be stabilized. Qualtrough has said she is "hopeful" it can be done by the end of 2018.

The Liberals are now in the second half of their mandate and a malfunctioning pay system could still turn into an election issue if it's not improved — especially in the Ottawa-area ridings where many public servants live.

Wernick says Phoenix was a "terrible failure in project management" but is not "reflective of the project management or the IT project skills across government." One of his jobs is to counteract Phoenix's dismal reputation by reminding public servants and Canadians of project successes like self-service kiosks at Canada's borders, Parks Canada's successful new app and the replacement of the Employment Insurance mainframe.

He said the recommendations of the Goss Gilroy report on the lessons learned from the Phoenix fiasco will become the government handbook for managing IT projects.

But Wernick said his biggest concern is still the impact of Phoenix on employees.

The pay crisis has undermined workplace morale, productivity and confidence, and dealt a blow to another management priority: the government's new mental health strategy. Wernick made mental health a priority in 2016 to improve the well-being of the workforce, which struggles with one of the highest volumes of mental health claims in the country.

"We have been called out on this and I accept that … if we are going to have a healthy place we have to pay people accurately and on time as a foundation of that," said Wernick.

“But the underlying reality is, when a think tank went to rate the effectiveness of public services across the planet and looked at 35 public services, the most effective public service on the planet still happened to be Canada.”

Phoenix backlog up by 70,000 cases, but 54,000 collective agreement cases are priority
The government is blaming the jump on the three pay periods between Oct. 18 and Nov. 29, as well as 44,000 reassessed cases determined to have affected the amount public servants were paid.
Hill Times
Emily Haws
December 15, 2017

A new Phoenix pay system update shows there remain 54,000 open cases related to collective agreements yet to be processed, signalling the lingering backlog will probably continue for several months.

There were 335,000 cases beyond normal workload reported as of Nov. 29, meaning a total of 589,000 open cases are waiting to be processed, according to updated figures from the Public Service Pay Centre released Friday. Up 70,000 cases from the 265,000 cases beyond normal workload reported Oct. 18, this is the fourth month of consecutive increases. Normal workload for the pay centre is 80,000 cases, and about half of the government’s 300,000 employees are experiencing a pay issue.

The government has been placing the backlog blame on the implementation of 20 of the 27 core federal public service collective agreements since early fall, with Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) saying the backlog would start to decline in the new year.

“It’s historic that our government was able to negotiate 20 collective agreements in less than two years out of the 27 that have expired,” she told reporters on the Hill Nov. 1. When the Liberals assumed power, all 27 agreements had expired.

Between Oct. 18 and Nov. 29, the pay centre received 132,000 cases, and processed 106,000, as well as staff processing the 21,000 collective agreement cases.

Ms. Qualtrough testified at the House Government and Operations Committee on Nov. 28, saying she wa hopeful public servants would receive correct pay by December 2018.

The previous Conservative government decided to move to the Phoenix pay system to centralize payroll for federal public servants, but since the Liberals implemented it a year and a half ago it has left many employees overpaid, underpaid, or not paid at all. The system was supposed to save the government $70-million per year, but so far the government has sunk in $400-million to fix it. Originally the government promised to have the backlog of pay issues resolved in October

2016. Experts think the cost to fix the system will be significantly more time and money than planned.

The project included two parts: that the government replace its existing system with off-the-shelf payroll software configured to government human resources systems, and that compensation advisers for 44 government departments be centralized at the Public Service Pay Centre in Miramichi, N.B.

Between Oct. 18 and Nov. 29, 21,000 collective agreement cases were processed, slightly down from the 27,000 cases processed between Sept. 20 and Oct. 18. It will likely be mid-January or February before the 54,000 cases are cleared, however, this could be longer if more collective agreements are signed in the meantime. There are seven collective agreements still to be reached, including diplomats and federal lawyers.

Processing collective agreements turned out to be more time-consuming than originally planned, said an explanatory note on the Public Service Pay Centre dashboard—a government website tracking the Phoenix backlog. The agreements often involve retroactive pay stretching back to 2014, meaning compensation advisers have to manually access data from the government's old pay system.

Meanwhile the two largest public sector unions, the Public Service Alliance of Canada (PSAC) and the Professional Institute of the Public Service of Canada (PIPSC), have filed complaints and policy grievances with the Federal Public Sector Labour Relations and Employment Board for the missed collective agreement deadlines. Employers have a minimum of 90 days to implement the agreements after they have been signed, but the two parties negotiated longer ones due to the problem-plagued Phoenix system.

"The employer…should have planned for any possible delays due to Phoenix by hiring more compensation advisers," PSAC national president Robyn Benson said in the statement on Dec. 11.

The backlog increased by 8,000 cases between Sept. 20 and Oct. 18, detailed in the previous update. The government blames the bump in the backlog on the fact this update had three pay periods over the previous two; and they determined 44,000 transactions already at the pay centre to have financial impact, meaning they affected the amount someone was being paid.

The backlog started out this summer getting smaller—between June and the end of July, the backlog had decreased by 37,000 cases to 228,000. In August the number began creeping up again to 237,000.

Of the 589,000 cases waiting to be processed, 415,000 cases were found to have financial impact, which included both those that were within and beyond the normal workload. It also reported 90,000 cases with no financial impact, such as general inquiries or name change

requests, as well as the 54,000 collective agreement cases. There are also 30,000 cases waiting to be closed, although the update doesn't specify what that means.

As well, pay transaction data is collected from 35 of the 53 departments and agencies not covered by the Public Service Pay Centre, as they have compensation advisers in their own departments. Organizations with fewer than 50 employees, as well as Institutions, Officers and Agents of Parliament, are not required to report their findings. On Nov. 29 the government received pay data from 27 of the 35 departments and agencies, covering 90,000 employees.

These 27 organizations reported just under 30,000 transactions greater than 30 days old, for approximately 18,000 employees. These cases are not necessarily pay problems, said an explanatory note.

With the update comes more bad news for processing times: during the current period, the percentage of non-collective bargaining transactions meeting service standards decreased slightly to 41 per cent. In the October update it was 60 per cent, and the target is 95 per cent.

"We expect the percentage of transactions that meet service standards to continue to fluctuate as the implementation of collective agreements continues," said the website.

Government of Canada announces appointments to the Canadian Human Rights Tribunal
Newswire
Department of Justice Canada
December 15, 2017

CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, is pleased to announce the below appointments, following an open, transparent, and merit-based selection process:

Gabriel Gaudreault of Gatineau, Quebec, is re-appointed as a full-time member of the Canadian Human Rights Tribunal for a term of five years, effective December 30, 2017.

Kirsten Mercer of Ottawa, Ontario, is re-appointed as a full-time member of the Canadian Human Rights Tribunal for a term of four years, effective December 30, 2017.

Colleen Harrington of Whitehorse, Yukon, is appointed as a full-time member of the Canadian Human Rights Tribunal for a term of four years, effective January 28, 2018.

Quick Facts

The Canadian Human Rights Tribunal (CHRT) has a statutory mandate to apply the Canadian Human Rights Act (CHRA) based on the evidence presented and on the case law.

Created by Parliament in 1977, the Tribunal legally decides whether a person or organization has engaged in a discriminatory practice under the Act. The purpose of the CHRA is to protect individuals from discrimination. It states that all Canadians have the right to equality, equal opportunity, fair treatment, and an environment free of discrimination.

The CHRT applies these principles to cases that are referred to it by the Canadian Human Rights Commission. The Tribunal is similar to a court of law, but is less formal and only hears cases relating to discrimination.

In February 2016, the Government of Canada announced a new approach to Governor in Council appointments, supported by open, transparent, and merit-based selection processes that will result in the recommendation of highly qualified candidates who truly reflect Canada's diversity.

La GRC réexamine 25 000 dossiers d'agressions sexuelles
Ouverts depuis 2015, ils avaient été jugés sans fondement...
Radio-Canada
15 décembre 2017

Cette décision de la Gendarmerie royale du Canada survient après l'étude de 2225 dossiers datant de 2016 effectuée en réaction aux informations dévoilées par le quotidien The Globe and Mail en février dernier.

Le journal avait découvert qu'une plainte pour agression sexuelle sur cinq était classée par les services policiers comme « non fondée ».

« Nous n'avons pas encore tous les dossiers de 2017, mais nous nous attendons à recevoir environ 25 000 documents », a affirmé la sergente Wendy Smith.

L'équipe de révision, qui est passée de 4 à 17 membres, a trouvé dans les documents de 2016 des incohérences dans les informations contenues dans certains dossiers, ainsi que des problèmes liés aux méthodes d'enquêtes et à la supervision des dossiers.

L'équipe menée par Mme Smith a aussi découvert que les dossiers de certaines enquêtes n'avaient pas été suffisamment étoffés, ce qui a fait en sorte que la plainte avait été classée comme « non fondée ».

« Pendant l'enquête, nous nous sommes rendu compte que les déclarations n'étaient pas toujours notées », a dit par exemple la sergente Smith.

L'analyse des dossiers de 2016 a également montré une défaillance dans la formation des policiers.

« Les réviseurs ont noté que certains policiers présentaient comme malhonnêtes des incohérences dans les déclarations des victimes, ce qui montrait un manque de sensibilité face aux effets des traumatismes qu'elles ont subis et à leur habilité à raconter les événements », explique leur rapport.

En entrevue à Midi-Info sur les ondes d'ICI Première, la sergente Marie Damian a avoué qu'il y a eu « un gros manquement » et que la GRC va « réparer ces manquements par de la formation auprès de ses agents ».

Uniformiser les techniques policières

Les services de police d'un peu partout au pays ont aussi décidé de réviser de vieux cas d'agressions sexuelles jugés non fondés et se sont engagés à changer leurs méthodes dans le cadre de ces enquêtes depuis la nouvelle du Globe and Mail.

Au Québec, la Sûreté du Québec devrait entamer ce processus en 2018 tandis que le service de police de la Ville de Montréal l'a déjà commencé.

Pour Louise Langevin, professeure de droit à l'Université Laval et chercheuse au Centre de recherche interdisciplinaire sur la violence familiale et la violence faite aux femmes, cette démarche démontre que les policiers ont des préjugés par rapport aux femmes et que cela est généralisé dans tous les corps policiers.

« Ces chiffres ne devraient pas nous surprendre. Les groupes de femmes le disent depuis des décennies que ce n'est pas normal qu'en matière de violences sexuelles, ce soit le crime le moins rapporté et celui avec le moins d'accusation. Le système de justice ne répond pas aux demandes des femmes », présente-t-elle.

Stunny Marriner, la directrice de l'Ottawa Rape Crisis Centre, espère cependant qu'une approche concertée et coordonnée entre les divers services de police émerge aussi de ces révisions.

« J'aimerais voir tous les corps policiers discuter ensemble pour mettre en œuvre de meilleures pratiques pour que les victimes puissent recevoir le même appui et le même traitement, peu importe d'où elles viennent », a-t-elle dit.

Mme Marriner propose que cela passe par les ministres fédéraux de la Justice et de la Sécurité publique.

Supreme Court rules employees can allege workplace harassment against people from other companies

Ruling in British Columbia case redefines limits of workplace discrimination legislation

CBC News
Michelle Ghoussoub
December 15, 2017

The Supreme Court of Canada has ruled a B.C. worker who was harassed at a worksite by a contractor for another company can file a human rights complaint.

According to the ruling, "the code is not limited to protecting employees solely from discriminatory harassment by their superiors in the workplace.…This may include discrimination by their co-workers, even when those co-workers have a different employer."

University of British Columbia law professor Margot Young says the decision reflects the modern workforce, where employees are often brought in on individual contracts and have no formal employment relationship.

"It's really very significant for employees, because it confirms a broad, contextual understanding of what's going to count as your workplace," she said.

"It's not only those who have formal power over us who are prohibited by the code from discriminating against us."

The B.C. Civil Liberties Association applauded the ruling, saying it's especially important as workplaces evolve.

"This is really important, because in more and more workplaces these days, we see all kinds of different working arrangements," said BCCLA executive director Josh Paterson.

"It makes clear that discrimination in the workplace will be covered, whether it's a boss discriminating against an employee, whether it's employees against other employees or whether it's contractors who are an integral part of the workplace who are there almost every day."

Derogatory comments

In 2013, Mohammadreza Sheikhzadeh-Mashgoul was the target of repeated derogatory comments and emails concerning race, religion and sexual orientation while working as a supervising engineer for Omega and Associates Engineering Ltd. on a road project in Delta, B.C.

The comments were made by foreman Edward Schrenk, who was working on the same project but for a company called Clemas Construction Ltd., the primary construction contractor on the project. Sheikhzadeh-Mashgoul filed a complaint against Schrenk.

Omega had certain supervisory powers over employees of Clemas Construction Ltd.

Schrenk was eventually fired by his employer because of the comments, and Sheikhzadeh-Masgoul had his claim of employment discrimination upheld by the B.C. Human Rights Tribunal in 2014.

Schrenk applied to dismiss the complaint, arguing that section 13 of the Human Rights Code had no application because the pair were not in a direct employment relationship.

The B.C. Court of Appeal subsequently dismissed the complaint in 2015, ruling that the tribunal acted outside of its jurisdiction, stating that not all insults made in the workplace amounted to "discrimination regarding employment."

The appeal was sent to the Supreme Court of Canada in March 2017.

'U.S. model' for parole ineligibility likely to face court challenge: lawyers
Times Colonist
Bill Graveland
The Canadian Press
December 17, 2017

CALGARY — Legal experts say a sentencing provision that can keep killers in prison for the rest of their lives is likely to make its way to the Supreme Court of Canada.

The federal government enacted legislation in 2011 that allows a judge to order a multiple murderer to serve consecutive periods of parole ineligibility for each offence.

It has only been applied on six occasions.

The most recent was in the case of Derek Saretzky, who was sentenced in August for the first-degree murders of a man and his two-year-old daughter as well as a senior in southwestern Alberta.

Saretzky received the mandatory sentence of life in prison. But instead of the usual 25 years before parole eligibility, the judge ordered that Saretzky spend at least three times that long — 75 years — behind bars before he can apply to get out.

"This case hammers home the stark reality of the law as it is now. If you want to make it consecutive, you've got to make it 75 for three murders," said Calgary defence lawyer Balfour Der, who is challenging Saretzky's conviction and sentence in Alberta's Appeal Court.

"We're talking about a 22-year-old who would end up with ... no parole until he's 97.

"If we look at it that way ... maybe we should give him a break. On the other hand, this is a very serious crime. This is highly emotional because of the circumstances of the deaths and who are the victims."

Der said it's a tricky legal issue.
"One of the grounds of appeal will likely be that the consecutive minimums of 25 years amounts to cruel and unusual punishment and, because of that, the section is unconstitutional."

He suggests a sliding scale for consecutive parole ineligibilities that still recognizes the seriousness of a case.

A University of Calgary law professor said she wouldn't be surprised if the case shows up in Canada's top court.

"I don't know how or in what manner the court would deal with it, but I would suspect it will happen," said Lisa Silver.

She said she can understand the argument since it's a relatively recent provision in the Criminal Code.

"It does mean that someone is spending an amount in custody that was unheard of in the past," Silver said. "It is something that the Supreme Court of Canada needs to look at and needs to determine once and for all. Is this constitutional?"

Veteran Calgary defence lawyer Alain Hepner expects the provision will get a second look by the federal government.

"That's the U.S. model," he said. "It's not too extreme from a public perception, but ... the case law and the judges say we're not here to pander to the public opinion. We have to apply the law.

"A lot of these people may never see the light of day and the public may want that. There's got to be other ways of doing it."

Alberta's justice minister said consecutive parole ineligibilities can be a "useful tool" as a signal to criminals that multiple crimes may lead to a longer sentence.

"It can potentially have a beneficial effect in terms of signalling to people who are doing these things that it's not a good idea," Kathleen Ganley said.

"It can have a sort of deterrent effect. That being said, obviously it's only intended to be used in certain circumstances."

Advocates say N.W.T. justice system needs to rehabilitate, not incarcerate, vulnerable offenders

Government of Canada seeking public comment on criminal justice system until Jan. 15

CBC News

Kayla Rosen

December 18, 2017

As the Government of Canada prepares to wrap up public consultation in its review of the country's criminal justice system, advocates from the Northwest Territories are saying the territory's system incarcerates people with addictions, disabilities and poor mental health when it should be offering them treatment.

For over a year, the federal government has been promising changes to Canada's criminal justice system "to promote a safe, peaceful and prosperous society." The review is focusing on issues such as delays in the court system, better support for victims of crime and decreasing the number of marginalized and vulnerable people in jail.

The government is seeking comments from the public until Jan. 15, 2018.

According to Peter Harte, a Yellowknife-based criminal lawyer, the latter issue is a problem in the N.W.T. He said the justice system needs to focus on fixing underlying issues for vulnerable people, not punishing them after the fact.

"People end up in conflict with the law as a result of trauma and addictions issues," he said. "And the justice system, as it is currently set up, focuses on punishing people for misconduct and not treating problems like addiction and trauma."

Harte suggests one thing the justice system can do is send people to treatment facilities instead of jail. He says the way to help people who have experienced trauma is through therapy with a psychologist, addictions counselling and anger management classes.

"If a child saw his mother murdered [and ended up committing a crime] how on earth would you expect putting somebody in jail is going to have a therapeutic effect?" said Harte. "It just is inconceivable that jail is going to be a response for that kind of horror for that individual."

'We should never criminalize mental illness'

Lydia Bardak, a longtime community advocate in Yellowknife, says that it's up to the territory's Department of Health and Social Services to prevent the incarceration of vulnerable people by providing them therapeutic services before they commit a crime.

"These individuals should have never been criminalized in the first place and we should never criminalize mental illness, we should never criminalize disability," she said.

"[The justice system uses]
the after-the-harm-is-done response. This is back end responding, rather than front end responding."

Bardak said another problem in the N.W.T. is delays in the court system, despite the fact that it has some of the fastest moving courts in the country in terms of processing time and how quickly trials take place.

"It means victims of crime are waiting a long time for resolution and it makes it hard for them to go through healing and move forward," she said.

Harte said that the justice system would benefit from adopting a therapeutic approach, because it would give them more time and resources to focus on deliberate offenders, who really need incarceration.

The Government of Canada has said they will release the results of their review in the winter of 2018.

The false francophone-Indigenous conflict over SCC judges

The refusal by some to recognize mandatory bilingualism at the Supreme Court is indefensible and breeds its own sort of colonialism.

IRPP Policy Options

Maxime St-Hilaire, Alexis Wawanoloath, Stéphanie Chouinard, Marc-Antoine Gervais

December 18, 2017

Late in November, Sheilah L. Martin, a bilingual Anglo-Montrealer, who has had a prestigious career in Alberta, was nominated as a Supreme Court of Canada (SCC) justice, filling the vacancy left by Chief Justice Beverley McLachlin's retirement. This appointment has fuelled the debate over the requirement that SCC justices be bilingual and over whether this requirement prevents the appointment of an Indigenous person. We witnessed this debate when Raymond Théberge, who was recently appointed Official Languages Commissioner, appeared before Parliament on December 5.

Bilingualism as a requirement in the SCC selection process was implemented by the current government in 2016. Yet the House of Commons recently defeated a private member's bill seeking to enshrine in law this requirement that SCC justices understand both French and English. When pressed, Liberal MPs have justified their decision by citing the Nadon reference and the possibility that the Bill is unconstitutional because it alters the constitutional qualifications to be appointed to the SCC — a view questioned by many.

The defeat of the Bill was met with relief by NDP MP Roméo Saganash and his party leader, Jagmeet Singh, who consider the idea that SCC candidates should be bilingual "colonialist." This

point of view echoes those of some Indigenous leaders, including Senator Murray Sinclair, Chief Perry Bellegarde and former chief Koren Lightning-Earle.

Setting aside the bilingualism requirement would not be a tangible, fair or reasonable solution to the historical wrongs and present ills of Indigenous peoples. This solution falsely opposes the interests of Indigenous peoples and francophones, and amplifies the dominance of English in the Canadian judiciary. Only those who master English can realistically be considered for the SCC, whereas a unilingual francophone candidate has never been appointed. To illustrate with a hypothetical example: a woman who is a great Attikamekw lawyer, fluent in French, Attikamekw and Anishinabe, would not currently stand a chance at being appointed to the Court. In reality, removing the bilingualism requirement (a passive knowledge of one's second language, be it French or English) would effectively be consecrating English as the sole language of the SCC and unfairly labelling French as the "colonialist" language par excellence. We would argue the contrary, that support of the French language contributes to the decolonization of Canada.

Recognition of Indigenous languages and legal systems in the Canadian legal system is certainly something we must strive for. If we are to decolonize Canadian law, non-Indigenous scholars and jurists must learn Indigenous languages, and resources must be made available for Indigenous legal scholars to learn French and English. This would lead to better appointments to the SCC, including the appointment of Indigenous justices. By the same token, the appointment of an Indigenous justice who speaks several Indigenous languages but only one of the two official languages (in all likelihood English) would not be a viable solution.

First, regarding oral pleadings, we should face the fact that simultaneous translation has practical limits. Often translation does not render lawyers' arguments with all of the nuance they deserve, given their importance. Nonsensical arguments have emerged from both oral and written translations. Second, judges who don't understand or read French may fail to consider jurisprudential and scholarly sources in that language, even highly relevant ones. The confusion may be compounded when clerks do not understand both official languages, and this weakens the quality of the jurisprudence produced by the SCC.

In other words, that judges be bilingual is essential for the proper functioning of the judiciary, inside and outside the courtroom. Canada is officially bilingual, as are its laws, its case law and its legal scholarship. In order to fulfill their duties, it is not only reasonable, it is essential that SCC justices be bilingual, even if they have only a passive knowledge of the second language. This requirement exists in the constitutional courts of other bilingual countries, notably Belgium. The refusal by a number of jurists in Canada to recognize that bilingualism has to be mandatory at the SCC is indefensible.

In sum, the discourse that places francophones and Indigenous people in opposition is in effect ceding the higher ground to anglophones, who may not accept the need to learn a language other than English in Canada, particularly in order to sit on the country's highest court. The situation

not only harms the quality of the Canadian legal and justice systems, it is also politically destructive, and it flies in the face of the nation(s)-to-nation(s) relationship with Indigenous peoples we should be seeking. Opposition to requiring a passive mastery of the French language for all SCC candidates is incompetence disguised as a cry against injustice; a race to the bottom masquerading as a call to righteousness. Let us not be duped.

Frédéric Bérard, Co-director, National Observatory on Language Rights, and Pierre Foucher, a law professor at the University of Ottawa, also contributed to this article.