Quebec begins hearings in inquiry into relations between Indigenous people and province's public service *Mohawk elder Sedalia Fazio says the timing of the hearings is difficult given the not-guilty verdict in the death of Colten Boushie in Saskatchewan.*
Toronto Star
The Canadian Press
February 12, 2018

MONTREAL—An inquiry that has been examining the relations between Indigenous people in Quebec and the public service has begun two weeks of hearings in Montreal.

Sedalia Fazio, a Mohawk elder who presided over the opening prayer, says the timing of the hearings is difficult given the verdict in the death of Colten Boushie in Saskatchewan.

A jury deliberated 13 hours before finding a white farmer, Gerald Stanley, not guilty last Friday of second-degree murder in Boushie's slaying.

Fazio says the feeling of injustice in the 2016 death of Boushie, a resident of the Red Pheasant First Nation, brought back memories of her own son's experience at the hands of law enforcement.

She alleges her son was beaten by Montreal police in a shoplifting incident just after the Oka Crisis in 1990 when he was 13 years old and that nothing was done.

Last week, the province announced the commission, chaired by retired Quebec Superior Court justice Jacques Viens, will see its mandate extended by 10 months.

A final report is now due to the provincial government in September 2019.

The inquiry, announced in December 2016, was mandated to look into the way Indigenous peoples are treated by the police, the province's youth protection agency, the public health department as well as the justice and correctional systems.

Ontario judge blasts bail hearing 'tainted by legal error'
A new Superior Court ruling is critical of a justice of the peace who failed to abide by a "binding" Supreme Court ruling at a recent bail hearing.
Toronto Star
Jacques Gallant
February 12, 2018

A Newmarket judge has sent a message that it's time "to do things differently" in the province's notorious bail system to ensure it is easier for legally innocent people to be released pending their trials.

Superior Court Justice Joseph Di Luca was presiding in the case of Brendan Tunney, who faces allegations of criminally harassing his ex-girlfriend, and who was also charged with threatening to publish intimate images of her without her consent.

At his initial bail hearing before justice of the peace Adele Romagnoli, Tunney was released with a surety — a person who promises to ensure that the accused complies with the conditions of their bail, and who puts up money that they can lose if they fail in their surety duties.

Tunney applied for a bail review in Superior Court, where Di Luca found in a decision released last week that the bail hearing was "tainted by legal error," "procedurally flawed," and demonstrated the risk averse culture "underlying persistent calls for bail reform in Canada."

(At the outset of Tunney's bail review application, the Crown consented to vary Tunney's bail, including removing the surety.)

Sureties represent the option of last resort in the bail system before an accused person is ordered detained, and critics have long decried the overreliance on them in order to guarantee the liberty of people who are legally innocent.

In response to criticism and the ongoing issue of delay in criminal court, the Ontario government introduced a new bail policy last year, about a month after Tunney's bail hearing, which essentially reminds Crown attorneys to follow the recent Supreme Court of Canada decision known as R v. Antic when it comes to bail.

Antic reiterated that Crowns should follow the "ladder principle" at the bail stage, meaning starting with the least restrictive option for release (a release with no conditions), consider whether to accept or reject it, and then if they've rejected it, move up the ladder to the option of last resort: release with a surety.

In Tunney's case, Di Luca said the justice of the peace "erred in failing to analyze and provide reasons why lesser forms of release were insufficient in the circumstances."

The Crown at the bail hearing had also said from the outset that it was seeking a surety bail, and then later said that without an appropriate release plan, Tunney should be detained.

Di Luca said the justice of the peace was wrong not to grant the defence's request that she first rule on whether a surety was even needed for Tunney's release, before requiring the proposed surety to testify.

"The widespread use of sureties has consistently been criticized for, among other things, causing delays within the bail system, undermining the presumption of innocence, and, undermining the accused's right to reasonable bail," Di Luca said.

"Indeed, there have been repeated calls to restrict the 'near automatic' resort to the use of sureties."

The judge found the Crown's approach to the bail hearing was "flawed and contributed to the outcome."
He also took issue with the fact that justice of the peace Romagnoli, in discussing the Supreme Court's Antic decision, said at the bail hearing "each case, in my view, stands on its own."

"With respect, R v. Antic is not a simply a case that 'stands on its own,'" Di Luca said. "It is not a case that can simply be distinguished 'on the facts.' Any attempt to so misses the point. The Antic decision is a binding precedent from the Supreme Court of Canada and must be followed.

"In my view, the justice of the peace erred in law by failing to recognize the clear message of the Antic decision. That message, to repeat, is that in cases where the Crown bears the onus on a bail hearing, a surety release is one of the most stringent forms of release that should only be considered where all lesser forms of release fail to satisfy the concerns raised by the evidence."

In a separate case, Romagnoli is set to face a discipline hearing later this month at the Justices of the Peace Review Council for, among other allegations of judicial misconduct, failing to follow higher court decisions.

Her lawyer, Mark Sandler, told the Star "it would not be appropriate for her to comment" on the Tunney case. He disagreed that her conduct in the Tunney case is akin to the allegations she faces at the review council.

Senem Ozkin, manager of the criminal duty counsel office at the Newmarket courthouse and who represented Tunney at his bail review, called Di Luca's ruling an "amazing decision."

"After the Antic decision from the Supreme Court of Canada, this is a big decision that provides guidance with respect to the procedure to be used in bail court, and the ways in which bail courts across the province should govern themselves with respect to the procedure and give weight to what the Supreme Court said in Antic," she told the Star.

Still No Charges for the Company Behind Canada's Largest Mining Spill
Canada has one of the worst records on the planet for making polluters like Imperial Metals pay.
Vice News
Carol Linnitt
February 12 2018

The company responsible for the Mount Polley mine spill—one of the largest environmental disasters in Canadian history—has found out it's not going to face any charges in British Columbia.

The news likely has billionaire Murray Edwards, owner of Imperial Metals and the Mount Polley mine (and the Calgary Flames) toasting with his rich friends in London (where he lives to avoid paying taxes).

If you're not in BC, there's a chance the aerial images of the disaster haven't already scarred you forever. This is what the collapsed tailings pond at the Mount Polley mine looked like in August 2014.

The resulting spill was so enormous it lasted for 12 hours and, according to those who lived nearby, sounded as loud as a jet plane flying low overhead. The force of the 24 million cubic metres of mine waste, containing mercury, arsenic, selenium, copper, and other heavy metals, scoured the former Hazeltine Creek, tearing a 150-metre strip of forest clean from its roots.

Although a superficial cleanup of the creekbed has since taken place, the contaminated mine waste that entered Quesnel Lake—the source of drinking water for residents of Likely, BC, and home to about a quarter of the province's sockeye salmon population—remains there to this day.

And while researchers studying the effects of the contamination on the lake and its fish say they need a few more years before they'll fully understand the spill's long-term impacts, the deadline for criminal charges to be laid under BC's laws has already come and gone.

The door closed once and for all last week when the BC Prosecution Service announced it was staying charges filed against the company by Bev Sellars, the former chief of the Xat'sull (Soda Creek) First Nation in whose territory the spill occurred.

Back in August when Sellars realized the province wasn't going to lift a finger to hold the company responsible for the spill, she decided she'd do it her own damn self and filed a private prosecution.

But after reviewing her case, which claimed Mount Polley violated 15 laws under BC's Environmental Management and Mining Acts, prosecutors decided against seeking charges.

"The two reasons they gave for quashing the case was that it's not in the public's interest and they needed more evidence," Sellars told VICE.

"I was shocked. I don't understand how they can say there wasn't enough evidence," Sellars said. "Anyone can go out there or look online and see there was a spill."

"This is setting a dangerous precedent."

The BC Prosecution Service told VICE an investigation by the BC Conservation Service Office is ongoing but declined to comment further.

"There is an ongoing investigation that's continuing but because of that we can't speak too much to the specifics of the investigation," Alisia Adams, spokesperson for the Prosecution Service, said.

BC Green party environment critic Sonia Furstenau said there is a lot of work to do to restore a sense of trust in British Columbians when it comes to the mining industry.

"There are so many examples in BC of mining companies that come in, extract the resources, extract the profits from it and then they walk away. They're gone and it falls to government and taxpayers to clean up that mess," Furstenau told VICE.

Canada has had seven tailings spills in the last ten years—the second-worst record in the world, just after China. There are currently 120 tailings ponds across BC and the independent panel that reviewed the Mount Polley spill estimated BC could expect about two additional tailings dam failures every ten years if better practices aren't required (like moving away from building giant liquid waste pits, for one).

So far, BC has been criticized for introducing superficial changes to mining rules, which were written nearly 160 years ago. A major recommendation by an expert panel to end the practice of using wet tailings ponds has been largely ignored in BC.

“We absolutely need an update to the laws that govern mining in this province,” Furstenau said. “I think we’re talking about laws that were made in literally an entirely different era and don’t take in to account the reality of what BC is today.”

And Canada has a dismal record when it comes to actually making polluters pay. To see how other jurisdictions handle things like giant toxic spills we need look no further than the US.

In 2016 a massive sinkhole opened up under a tailings pit at a Florida fertilizer manufacturer, causing millions of litres of waste to spill into an underlying aquifer. The company was fined $2 billion USD for improper hazardous waste management.

Although Mount Polley may be one of Canada’s most notorious mines (and yeah, it’s back up and running with a new permit to pump mine waste directly into Quesnel Lake now) it’s a pipsqueak compared to other mines getting up and running in northwestern BC, home to some of the world’s largest untapped gold and copper reserves.

In fact, not long after the Mount Polley mine spill, Imperial Metals got the go-ahead to open up the much larger Red Chris mine, which has a liquid tailings pond that holds seven times the volume of Mount Polley.

The tailings facility for the KSM mine—another mine proposed for the same region—will hold more than 27 times the toxic gunk than the Mount Polley tailings dam did and will be 239 metres tall, which makes it higher than the tallest building in Vancouver. Originally, miners at KSM were going to have to dig under a glacier to get at a giant deposit of gold, but now that glacier has retreated (high-five to climate change).

There are at least 11 mines in various stages of development the region, which sits directly on the border with Alaska.

“The mines that are going up in BC drain right down in Alaska,” Sellars said. “Alaskans are worried.”

Earlier this week, a Lieutenant Governor and Senator from Alaska were in Ottawa pleading for someone, anyone, to deal with the risk BC mines pose to the state’s watersheds and salmon and, you know, way of life.

Ugo Lapointe, executive director of MiningWatch Canada, said what’s happened in BC is disconcerting.

“Something is wrong with BC laws. Something needs to change,” Lapointe told VICE. “If BC’s laws are too weak to bring about charges with such a disaster, it tells us that those laws need to be fixed at some level.”

In late 2016 Lapointe filed a private prosecution against Imperial Metals, Mount Polley and the government of British Columbia at the federal level. Those charges were stayed in early 2017.

But, Lapointe said, under the federal Fisheries Act, which prevents the pollution of fish bearing waters, charges can be brought for another 18 months. He's hopeful the federal prosecution service will resuscitate his charges or bring a case of their own.

A spokesperson for the BC Ministry of Environment, David Karn, said the results of the ongoing investigation in BC will be considered at the federal level.

"The Public Prosecution Service of Canada will consider all of the information gathered during the course of this investigation, should charges be recommended under the Fisheries Act or other legislation," Karn said in an emailed statement.

Holding the company accountable would help fight against the perception that there's rules for mining companies and then rules for the rest of us, Kai Nagata, communications director at the BC-based democracy advocacy organization Dogwood, told VICE.

"In this case you're dealing with literally a billionaire in London, who moved out of Canada to pay less tax...so you have this very 19th century situation where a rich guy in England runs a mine in the colony that is exempt or not accountable to local people."

"I think it's time to take a really close look at the rules that govern mines in BC and update them to a standard that reflects all the progress we've made over the last 150 years."

New provincial court judge for Northern Region
Peter Whyte is serving the Williams Lake Provincial Court and other courts in the region
The Williams Lake Tribune
Monica Lamb-Yorski
February 12, 2018

The newest judge serving the Williams Lake Provincial Court comes with a background in child protection, psychiatric social work and prosecution of drug, income tax and fisheries offences.

Judge Peter Whyte was appointed in mid-December for the Northern Region and started his new job early January.

When pursued for an interview by the Tribune Whyte requested receive some questions by e-mail and chose to answer them in writing, although he did agree to have his photograph taken outside the courthouse one snowy day last week.

Rather than paraphrase his responses, reporter Monica Lamb-Yorski (MLY) has included them for the readers in full.

MLY: Describe your professional life until now.

PW: I started my professional career in the mid-1990s as a child protection social worker in Burnaby and New Westminster. I transitioned from child protection work into a position as a psychiatric social worker with the Forensic Psychiatric Services Commission. I was able to continue to work within the forensic and community mental health systems in the summer months during law school, up until my graduation in 2005.

I began my career in law in 2006 with the North Vancouver firm Lakes, Whyte LLP.

My work with Lakes, Whyte was primarily as an agent prosecutor for the Public Prosecution Service of Canada (PPSC), and involved the prosecution of drug, income tax and fisheries offences. I also maintained a civil litigation and criminal defence practice.

This work brought me to the Peace River Region, as the firm held contracts for PPSC prosecutions in that region.

In 2015, I accepted a position as Crown Counsel with the BC Prosecution Service in Fort St. John.

I remained with the Crown Counsel office up until my appointment.

MLY: What are you most excited about with your new post?

PW: Firstly, I am truly humbled by my appointment to the Provincial Court of British Columbia. I have spent much of my career in law working within the criminal justice system. I am excited to be in a position to take on a larger role in the maintenance of a just and fair court system.

I am particularly excited to be posted to Williams Lake. I enjoyed my time in Fort St. John, and have come to appreciate the lifestyle that comes with living in a smaller community.

From what I have seen, Williams Lake has a tremendous amount to offer, especially for an outdoor enthusiast. I look forward to exploring my new community and surrounding areas over the coming months.

MLY: Where are you from originally?

PW: I grew up on the North Shore of Vancouver, where much of my family still calls home. I lived in Richmond for about 14 years, but moved back to North Vancouver in 2014. In 2015, I left Vancouver to take up my position with the Crown Counsel office in Fort St. John.

MLY: When you aren't practicing law what do you enjoy doing outside of courthouse?

PW: I like to stay active as much as possible. Judging involves a great deal of sitting, and when I am not in court, I like to move around. I try to get to the gym a few times a week. I took up running a few years ago, and look forward to continuing to improve as a runner. I am excited to get back into mountain biking, and see a kayak purchase in the near future; I look forward to exploring the local lakes surrounding Williams Lake.

Boushie case looms large over indigenous hearings in Montreal
CTV News
February 12, 2018

Quebec's public inquiry about indigenous people and how they are treated by public servants is now hearing from people in the Montreal area.

Over the next two weeks many individuals are scheduled to testify at the Viens Commission about their own encounters, or encounters they have witnessed, involving police.

This round of hearings comes as many people are outraged over a not-guilty verdict delivered Friday in the shooting death of Colten Boushie, a young Indigenous man in Saskatchewan. A vigil is scheduled to take place Tuesday at 4 p.m. at Norman Bethune Square at Guy and de Maisonneuve.

Ghislain Picard, Regional Chief of the Assembly of First Nations said the Boushie verdict was an example of something that will continue to happen until there is an acknowledgement of the racism that exists in Canada.

"And it goes back to the question I raised earlier about racism. If we continually deny that racism exists then we're nowhere near a solution," said Picard. “When you're treated differently because of your race, that's totally unacceptable.”

For the first of two rounds of Montreal hearings, indigenous leaders are going to explain some of the harassment and difficulties faced by their people with civil servants, including police officers.

Sedalia Fazio, a Mohawk elder originally from Kahnawake who presided over the opening prayer, said the Boushie case brought back memories of her own son's experience with law enforcement.

She said he was beaten by police in Montreal in a shoplifting incident just after the Oka Crisis in 1990 when he was about 13 years old and that she has little doubt he would have been treated differently if not for his Indigenous background.

"The killing of Colten brought back so many bad memories for me," Fazio said. "Yes, he (her son) was doing something he shouldn't have been doing, but he was 13 years old.

"He had four police men on him. I have pictures of my son with bootprints on his head."

Etuk Kasulluaq, 27, testified Monday to being seriously hurt by police last year after an arrest for breaking conditions by drinking alcohol.

Currently detained, he alleged he was thrown down a flight of stairs by police during an arrest and then left naked in a cell during a subsequent arrest in Puvirnituq, an Inuit village in Nunavik.

People will also discuss the difficulty indigenous people have getting healthcare and interacting with social services.

Members of the Akwesasne Mohawk Tribunal will describe some of the alternative methods to justice that have been used by indigenous groups in the region, while university professors will also explain some of the sociological and legal issues faced by indigenous people.

"You look at this commission and its work and its mandate, ultimately at the end of the day what it really brings about is the whole issue of our own relationship as a society between non-indigenous peoples and indigenous peoples," said Picard.

The commission, led by retired Superior Court judge Jacques Viens, began its work last June in Val d'Or, following an investigation into allegations of police violence against indigenous women.

That investigation found there were dozens of instances where police officers in Val d'Or, Schefferville, and other regions assaulted or sexually assaulted women, but could not confirm enough details to hold up in a court of law.

“We have to keep that in mind, because the whole relationship between the police forces and our community needs to be dealt with,” said Picard.

So far the commissioners have heard from 131 people in over 47 days, mostly in the Val D’Or area

The commission is now focused on Montreal, where up to 30,000 indigenous people live.

“Their situation might very well be different than what we see elsewhere in Quebec, in more isolated communities. So we need to come to Montreal to be closer to those people,” said Viens Commission chief counsel Christian Leblanc.

So far the commissioners have heard from 131 people in over 47 days, mostly in the Val D’Or area.

The second round of hearings in Montreal begins on March 12

Viens has already made several recommendations, but will offer a comprehensive report in September 2019.

The Most Lawyers In The World
Lawyers, lawyers, everywhere
Above the Law.com
Joe Patrice
February 12, 2018

When Stephen Magee developed the Magee curve, the measure of the optimal number of lawyers in a society, he noted that Uruguay had the most lawyers per capita, edging out the U.S. with 1 lawyer for roughly every 240 citizens. As recently as 2015, what country currently boasts the most attorneys per capita, with 1 lawyer for every 139 residents?

Hint: This country was 8th according to the 2010 data Magee used for his paper.
Answer: Israel, with 58,000 active attorneys registered with the Israel Bar Association.

The sparse use of Canada's notwithstanding clause
The National Post
Ken Norman, Emeritus Professor of Law, University of Saskatchewan
The Canadian Press
February 12, 2018

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https://theconversation.com/the-sparse-use-of-canadas-notwithstandin

For just over 35 years, we have pretty much let Canada's notwithstanding clause gather dust — except in Quebec and Saskatchewan.

The clause, negotiated to win provincial support for the Charter of Rights and Freedoms, allows a government to temporarily override basic Charter human rights and legal rights.

In his remarks at a gala dinner in December celebrating the retirement of his appointee, Chief Justice Beverly McLachlin of the Supreme Court of Canada, former prime minister Jean Chretien — who played a major role in negotiating the notwithstanding clause — took pride in the fact that Ottawa has never invoked it. He made the point as a tribute to McLachlin's stewardship of the Charter during her long tenure.

Stephen Harper's Conservative government toed this line, opting against invoking the notwithstanding clause on several occasions, lastly with regard to the Supreme Court's assisted dying judgment in 2015. It's not clear why Harper stayed his hand as he was none too pleased about various Charter losses before the Supreme Court.

This may be why.

In the 2004 election campaign, an open letter to Harper from some leading Canadians urged him to promise not to invoke the clause. The letter was entitled Can we trust you, sir, to defend the Charter?

Strangely, during arguments on an application by Ottawa in the wake of the assisted dying decision for more time to develop legislation, Justice Russell Brown, a Harper appointee, entered the fray.

He suggested there was no need for the application since the federal government could take all the time it needed by using the notwithstanding clause. Ottawa was unmoved, and the Supreme Court granted a four-month extension.

Sparsely used

Outside of Quebec, only Saskatchewan has lawfully proclaimed a bill invoking the notwithstanding clause. Premier Grant Devine wielded it in 1986 in order protect a back-to-work law from Charter scrutiny by the Supreme Court.

Yukon introduced a bill invoking the clause to protect a land development measure. However, it was never proclaimed.

Alberta threatened to use the clause to deny compensation to victims of forced sterilization.

And a private member's bill in Alberta, with the support of the government, purported to invoke the notwithstanding clause to block same-sex marriage. This was useless as provinces have no Constitutional jurisdiction over the definition of marriage.

Though not since the turn of the century, Quebec has invoked the notwithstanding clause a number of times. This was due to having been shut out of the 11th hour deal in 1981 that saw premiers resistant to the Charter get the notwithstanding clause in return for agreeing to a stipulation that it must have a five-year sunset clause.

Chretien, then the federal justice minister under Pierre Trudeau, cut this deal with his counterparts from Saskatchewan and Ontario late one evening in a kitchen in the Ottawa Conference Centre. It was known as the "night of the long knives."

In order to protect the rights of politically vulnerable minorities, Ottawa and Ontario won the concession that any government opting to override Charter rights would have to consider carefully whether it was confident of successfully defending this move come the next election.

Is Quebec about to use the clause?

There have recently been hints that Quebec might wall off its niqab law from the Charter via the notwithstanding clause.

Calls to have the notwithstanding clause taken down from the shelf and dusted off are usually issued by social conservative groups.

A notable example was the campaign to persuade former Alberta premier Ralph Klein to wield the notwithstanding clause to keep sexual orientation out of the Alberta Individual Rights Protection Act.

Klein resisted, saying that it was pretty hard to argue with the reasoning of the Supreme Court in the Delwin Vriend case. Vriend was a teacher who was fired from a Christian college in Edmonton in 1991 because he was gay; the Supreme Court later ruled that his Charter rights had been violated.

A onetime aide in Grant Devine's government, recently retired Saskatchewan premier Brad Wall, mused publicly about using the notwithstanding clause in 2015 to protect an essential services emergency law in response to a Supreme Court ruling against the province.

Saskatchewan's Bill 89

Last May, Wall served notice that Saskatchewan would wield the notwithstanding clause for a second time. The province is now debating the Wall government's Bill 89, which would invoke the clause to further privilege already constitutionally privileged "denominational schools," all but one of which are Catholic.

Bill 89, with third reading likely to come in March, is a response to the Theodore case. The proposed legislation would give a green light to religious schools recruiting from public schools, as the Theodore Catholic school had done.

In the Theodore case, Judge Donald Layh ordered the provincial government to stop funding non-Catholics to go to Catholic school. That ruling, which drew from the Supreme Court's Saguenay principle that the state must be neutral, noted that freedom of religion under the Charter required it to neither "help nor hinder" religion.

The court ruled that allowing a constitutionally privileged "denominational" Catholic school, with full taxpayer funding, to recruit students who are not of that denomination violates the Charter as it amounts to governmental "help" to a Catholic school.

But Wall's justification for wielding the notwithstanding clause was bigger than the Theodore case. He saw it as part of his government's current proud commitment to partially fund some 26 faith-based schools that aren't sheltered by the Constitution.

He seemed undeterred by the Ontario electoral defeat of John Tory, now the mayor of Toronto, a decade ago over his "flaky pledge to fund all religious schools" while he was running to become the province's premier.

The issue was political dynamite for the Progressive Conservatives in Ontario in 2007. It remains to be seen how it will play out in Saskatchewan, a province demonstrably not shy about using the notwithstanding clause.

No shortage on jury-fix ideas over the decades, but reform elusive
CTV News
Colin Perkel
The Canadian Press
February 13, 2018

The acquittal in the Colten Boushie killing that has angered many Indigenous people and sparked criticism from the justice minister has cast a harsh spotlight on Canada's criminal jury system whose shortcomings, particularly in cases involving minorities, have been well documented over the decades.

No law mandates the make-up of juries as long as, the Supreme Court has found, they are "representative" of the community -- a fuzzy concept at best.

In Boushie's case, critics have noted no Indigenous people were selected out of the 200 prospective jurors who showed up to sit on the panel that acquitted Saskatchewan farmer Gerald Stanley of shooting the 22-year-old Cree man as he sat in a SUV on Stanley's property.

The case is far from the first in which an all-white jury has sat in judgment of a white person accused of a crime against black or Indigenous victims.

In 1991, former Manitoba justice and now senator Murray Sinclair recommended changes after the murder of Helen Betty Osborne, an Indigenous woman, in Manitoba in 1971 in which one of four accused was ultimately convicted years later.

"The lack of aboriginal jurors gives the impression that the trial, from the aboriginal person's perspective, was not a fair one," Sinclair noted. "And in a sense, it was not fair -- the jury simply was not representative of the local community. We do not believe that this should be allowed to continue."

Former Supreme Court of Canada justice Frank Iacobucci, in response to challenges that threatened to grind the criminal justice system to a halt in northern Ontario, made similar observations in February 2013 in relation to the systemic dearth of Indigenous jurors.

"There is not only the problem of a lack of representation of First Nations peoples on juries that is of serious proportions, but it is also regrettably the fact that the justice system generally as applied to First Nations peoples, particularly in the North, is quite frankly in a crisis," Iacobucci wrote in his report.

Corrective proposals have been abundant, but fixes are elusive.

Werner Antweiler, a professor with the Sauder School of Business at the University of British Columbia who has written on juries, said in a blog post that one potential route is to abolish juries completely,

leaving judging to judges. Another possibility, he said, is a "hybrid" system in which ordinary citizens in judicial proceedings advise judges.

"A look at other countries shows that there are compromises along those lines," Antweiler said. "Several European countries -- Germany among them -- use hybrid systems that employ both professional and lay judges."

The reality, however, is that opting for a jury trial in serious cases -- a system dating back centuries -- is a constitutionally enshrined right in Canada.

But finding enough people in general to serve on juries, despite a legal obligation to do so, is a long-recognized problem -- especially when it comes to Indigenous and other minority groups. With little or no pay offered to panellists, many people simply can't afford what can be a disruptive and even traumatic experience.

Additionally, criminal law can be hugely complex, with judges' instructions to jurors on arcane legal points lasting hours or even days. That raises questions about how much an average juror really understands heading into deliberations, which in Canada -- unlike the U.S. -- are essentially top secret.

The result of that legally-imposed secrecy is a dearth of research or data about why jurors arrive at a verdict -- information that could help improve the system. Governments need to start collecting data on jurors -- who was called up and who was accepted or rejected, and socio-demographic information including gender, age, occupation, and education level, Antweiler said.

"We need to have solid data to understand which biases are present in juror selection, and how trial outcomes differ when juries are involved," he said.

Steven Penney, a law professor at the University of Alberta, said more effort is needed to ensure pools from which jurors are selected are more representative -- particularly in cases involving Indigenous people.

"It's hard to believe that either Canadians as a whole or Indigenous communities in particular can have faith in a system that seems to allow for the systematic and unjustified exclusion of Indigenous people or people who appear to be indigenous from juries," Penney said.

Both Penney and Kent Roach, a criminology law professor at the University of Toronto, said a key problem with current jury rules -- and one that could be fixed with a Criminal Code amendment -- is what's known as the "peremptory challenge." The challenge allows either prosecution or defence to nix a juror without giving any reason -- a process that could see potential jurors excluded because they are Indigenous or black -- or in sexual assault cases, because they are women.

"We should do what Britain has done and get rid of peremptories," Roach said. "Not that it's a magic cure, but it's going to respond to the discriminatory use of peremptories."

Such challenges are distinct from "challenges for cause" whereby defence or prosecution have been allowed since a Supreme Court ruling 20 years ago to question a prospective juror on sensitive issues such as racism and bias. The Crown in the Boushie case, however, did not ask such a question.

While the law allows for unlimited challenges for cause, the number of peremptories is limited, depending on the severity of the charge. For example, Stanley, who faced a second-degree murder charge, had a total of 14 peremptories -- as did the Crown. Had he faced a first-degree murder charge, the number of such challenges would have risen to 20.

In a case such as this, where there is a real danger jurors might be blinded by racism or stereotyping, it's baffling why the Crown didn't issue challenges for cause over potential bias, Roach said.

"If you imagine a situation where either the Crown or the accused wants to keep minorities off the jury, if you have 14 peremptory challenges and 200 prospective jurors, that's probably going to accomplish the task."

Why not just let jurors talk?
iPolitics
Susan Delacourt
February 13, 2018

"That may not be a bad thing - sunlight is the best disinfectant - but it will be messy."

It's too bad that the members of that now-infamous Saskatchewan jury aren't allowed to tell us why they found Gerald Stanley not guilty for the killing of Colten Boushie. Jury deliberations are strictly and legally protected in Canada, so outraged citizens can only guess at the reasons for the verdict, and a lot of them
Article is behind a pay wall

Review: Putting Trials on Trial is a damning indictment of how legal system handles sexual assault
The Globe and mail
Maggie Rahr
February 13, 2018

TITLE Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession
AUTHOR Elaine Craig
GENRE Non-fiction PUBLISHER McGill-Queen's University Press PAGES 320 PRICE $34.95

When Elaine Craig sent the final draft of her new book to her publisher, she didn't know that by the time it would appear in print, its subject would be gaining traction, not unlike a tsunami, becoming more germane and urgent on a near-hourly basis.

Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession – a rigorous and damning indictment of the justice and legal systems' handling of sexual-assault cases in Canada – was finished before the #MeToo and #TimesUp movements seized national headlines. But it is arguably now more relevant than ever.

The book spares no one as it seeks to answer the questions: Why, if this country's rape shield laws are held up as among the most robust in the world, are reporting and conviction rates so dismal? And why do complainants share the same devastating evaluation – that going through the legal system can be as traumatizing as the sexual assault itself?

It isn't difficult to grasp the answers after reading Craig's meticulously gathered study, featuring excerpts from trials and some of the country's most prominent legal minds. On the other side of the courtroom are some of the most vulnerable of victims. The read is, in a word, brutal.

The Globe and Mail's mammoth "Unfounded" investigation proves that women are unlikely to report cases of being raped or sexually assaulted, and more disturbingly, that among the statistically negligible few who do, there is a one in five chance of it being dismissed before the investigation even reaches a courtroom.

Craig, an associate professor at Dalhousie University's Schulich School of Law, sought to examine exactly how the (sometimes unlawful) behaviour of the Crown, defence and judge makes the process unnecessarily punitive and harmful for complainants.

Quoting transcripts from trials dating no further back than 2009 to ensure relevance, the most shocking insults to dignity, not surprisingly, take place during cross-examination.

For example, a defence lawyer asked a 19 year old, who was raped (at age 16) in a bathroom stall at a bar by a celebrated local hockey player, if her behaviour, caused by her alcohol intake, was to blame. Her friend discovered her vomiting in the stall, her pants bloodstained, and it was later shown in evidence that the teenager had suffered injuries to her vagina as a result of the attack.

But the heart of Craig's study is found in legal detail, demonstrated in her nuanced interpretation of what follows in this case:

During cross-examination, the defence lawyer begins to question the complainant about the "thinnest, smoothest, tightest of leggings" and the high heels she wore on the night of the attack, and goes on to describe the way in which she was dancing with another young man in the bar that night, even going so far as to suggest she could feel his "anatomy" as she danced with him, before the rape.

The defence is now in murky territory – because if he wishes to raise the complainant's previous sexual activity, he must apply to do so under section 276 of the Criminal Code, imposed by the Supreme Court of Canada to protect complainants from being unfairly judged based on previous sexual experiences, while simultaneously allowing potentially relevant information to be introduced.

Craig's writing allows us to observe – through transcript – as the judge warns the defence that if he continues in this line of questioning he'll be in violation of section 276. The defence lawyer goes on to explain that he is simply trying to establish the complainant's claims of intoxication. Would she be able to dance in the way previously described if she were that drunk? The judge allows him to proceed.

In cases such as these, Craig considers the responsibilities of all legal actors present: the defence for proceeding possibly unlawfully in this line of questioning, the Crown prosecutor for failing to object and the judge for allowing the questioning to continue.

As in all attempts to study systemic failure, the researcher must examine more than just data to understand what lies at the foundation of the problem. In this vein, Craig cleverly elected to offer anonymity to the lawyers she interviewed, to ensure that they would have no reason to hide their truthful opinions. One such belief, reflected among defence lawyers interviewed and articulated by one, is that "trial lawyers are frustrated with sex-assault cases" because of an "overcorrection" that "makes it very difficult to get someone acquitted … it's almost as if the burden of proof gets reversed and there's a presumption of guilt."

Craig shuts down these assertions with surgical precision, drawing her evidence from trials, appeals, legal research and even, gallingly, from the websites of defence lawyers who purport to promise favourable results, even bragging about "no convictions" in cases involving established sexual predators.

Perhaps the most heartbreaking story that emerges is this: The complainant is so traumatized by the end of her first day on the stand, she simply doesn't show up for the second day. The witness is then arrested and forced to return to testify, where she must endure demeaning repetitive questioning. The cases like these that Craig studied all involved Indigenous women.

Perhaps the most pressing question our society must now contend with in this post-Ghomeshi, post-Weinstein climate, is "what now?"

For actors in and outside the legal profession, there is no shortage of answers in Craig's excoriating study. This book will undoubtedly generate controversy as it delivers a verdict upon the Canadian legal system: guilty.

Justice minister defends saying Canada 'must do better' in wake of Boushie trial
National Post
The Canadian Press
February 13, 2018

OTTAWA — Jody Wilson-Raybould doubled down Tuesday on her controversial reaction to the Colten Boushie verdict, saying a federal justice minister should be responsive to Canadians who speak out and protest perceived injustices in the legal system.

Boushie's violent 2016 death and the acquittal of the man who killed him continued to reverberate on Parliament Hill as grieving family members met separately with Wilson-Raybould and Prime Minister Justin Trudeau, bent on rooting out what they say is systemic racism in Canada's courts.

Wilson-Raybould defended her comments on Twitter, which came last week after Saskatchewan farmer Gerald Stanley, 56, was acquitted of second-degree murder in the shooting death of Boushie, 22, a member of Red Pheasant First Nation.

"As a country, we can and must do better," Wilson-Raybould tweeted, prompting charges from opposition MPs and legal experts alike that she was straying too far into the independent territory of Canada's judicial system.

Rather, she suggested Tuesday, she was merely reflecting the broad sentiment among Canadians that an injustice had been done.

"We have elevated this discussion to a place where it needs to be, because we can always improve the justice system," Wilson-Raybould said.

In meetings with her and Public Safety Minister Ralph Goodale, the family discussed proposed improvements to the justice system, including jury selection, an ombudsperson for victims of crime and the need for compassion and support for victims.

Trudeau described his encounter with the family as a very good, very emotional meeting.

"They are very much focused on making sure we have improvements to our system to make sure that no family has to go through the kinds of things they went through," he said.

Boushie's mother, Debbie Baptiste, held a photo of her son up for the television cameras before expressing her gratitude for the chance to share her story with Trudeau.

Her family's fight will persist, she vowed.

"We continue praying that something is done, and that we can go home and tell the people that we tried hard and we're still going to keep trying and we're going to keep going," she said, clasping the picture against a Bible.
"This ain't going to stop until something changes for the better."

Justice reform has been in the works for months, but the Boushie verdict pushed the issue of jury selection to the forefront, said one Justice Department official, speaking on condition of anonymity because they weren't authorized to discuss the matter.

The federal government does have the power to change so-called peremptory challenges, which allow lawyers to reject jury candidates during the selection process without needing to provide justification.

The government's proposed changes to the justice system are expected before the end of the current legislative session.

Trudeau has also come under fire for remarks he made in the wake of Stanley's acquittal, telling the Boushie family on Twitter he was "sending them love."

Jade Tootoosis, Boushie's cousin, dismissed the suggestion that either Trudeau or Wilson-Raybould's comments were inappropriate or risked compromising the prospect of an appeal.

"The way I see it is that they're human beings and they're acknowledging that Colten was a human being and they see the loss and the pain that we've endured," she said.

"We are tired — we have heavy hearts," she added. "But we see the injustice. We've been quiet for so long and we are ready to speak out and share our entire story."

Chris Murphy, a lawyer and friend of the Boushie family, said the family filed a complaint with the civilian-led RCMP watchdog in mid-January over how the police handled the investigation into Boushie's killing.

That complaint process was underway, Goodale confirmed.

The family was scheduled to sit down later Tuesday with NDP Leader Jagmeet Singh. No plans had been made to meet Conservative Leader Andrew Scheer, though the family would be willing to do so, Murphy said.

"We're obviously open to meeting with anybody from any party who is willing to talk to us. This is not a partisan trip," Murphy said, adding that no one in the family had reached out to Scheer.

Canada has the opportunity to fix its justice system
Ottawa Sun
Michael Spratt
February 14, 2018

It is a rare occasion when a trial sparks a national conversation about systemic problems with the justice system. But that is exactly what happened when Gerald Stanley was found not guilty by an all-white jury in the shooting death of Colten Boushie.

Stanley is white. Boushie was an Indigenous youth.

The trial was relatively straightforward. It was almost irrelevant what Boushie did or did not do that night. The defence did not argue self-defence or defence of property. Stanley said he was not-guilty because his gun went off accidently. An expert firearms witness disagreed. But even if the shooting was accidental, Stanley could have been guilty of manslaughter. One fact was not contradicted: Stanley shot Boushie in the back of the head at close range.

But the jury acquitted. We will never know why; it is a crime for a juror to talk about what went down in the deliberation room. Maybe race had nothing to do with it.

But in the justice system perception can be just as important as reality and in this case the perception of racial bias can't be ignored.

Let's start with how the RCMP treated Colten Boushie's mother. The night of the killing the RCMP bluntly told Boushie's mom that her son was "deceased" and then they barged into her home and searched each room. Then they asked the grieving mother if she had been drinking. Maybe the RCMP's callous acts were motivated by a disregard for both the law and common curtesy. But probably not.

And then there was talk in the community of problems of "rural crime" – a notorious dog whistle term meaning Indigenous people. It was from that community that Stanley's jury was selected.

Questions of racial bias were raised again during jury selection. In every jury trial, both the Crown prosecutor and the defence can automatically reject a set number of potential jurors through what are known as peremptory challenges.

Stanley's lawyers used them to reject several Indigenous jurors.

But the deliberate and selective exclusion of jurors is not the only reason the Stanley jury – like so many Canadian juries – was all white.

Racial bias is baked into the jury selection process. Out-of-date, and inaccurate census information means that many potential Indigenous jurors' names are completely left of the jury rolls.

And then there are the practical barriers to jury duty. Some provinces disqualify people from jury duty for even the most minor of criminal records. When Indigenous people are stopped, charged and arrested by the police more often than non-Indigenous people, it means that they are more likely to be disqualified for a dated and minor criminal offence.

And let's not forget the fact that most of the time jurors don't get paid at all. That makes it hard for a single parent or those with precarious work to afford to do their "civil duty."

But this is no surprise, at least to anyone who had bothered to read former Supreme Court justice Frank Iacobucci's 2013 report into First Nations representation on Ontario juries.

There is no question the justice system treats Indigenous people differently than white people. There is a disproportionately high number of Indigenous Canadians in our jails; they serve longer sentences; are held in higher security; and are less likely to be granted parole than white inmates.

This is not because Indigenous Canadians commit more crime than other Canadians, it's because of deep-rooted problems in the justice system.

Prime Minister Justin Trudeau responded to the Stanley verdict by saying that he could not “imagine the grief and sorrow the Boushie family was feeling.” Minister of Justice Jody-Wilson Raybould responded that “as a country we must do better.”

I agree. But unlike you or I, Trudeau and Wilson-Raybould actually have the power to take meaningful action to fix this mess. That’s what they promised to do during the 2015 election campaign.

Transformative criminal justice legislation was promised last winter, then again last spring, and then again last fall. We are still waiting.

Trudeau and Wilson-Raybould can start to fix this mess – they just need to tweet less and legislate more.

Michael Spratt is an Ottawa defence lawyer.

Boushie family vows to seek justice-system changes
The Globe and Mail
Joe Friesen
February 14, 2018

The family of slain Cree man Colten Boushie left Ottawa on Wednesday vowing to continue their fight for justice after securing from the federal government a commitment to change the jury-selection process.

Mr. Boushie's relatives were invited guests of the Prime Minister as he made a major speech on Indigenous rights in the House of Commons.

Justin Trudeau said that, as a country, Canada must commit to ensuring no family has to face what they've endured. He committed his government to making changes to the justice system that will include the way juries are selected.

"Reforms are needed to ensure that – among other things – Indigenous peoples might once again have confidence in a system that has failed them all too often in the past," Mr. Trudeau said.

"That is why we will bring forward broad-based, concrete reforms to the criminal justice system, including changes to how juries are selected."

Mr. Boushie, a 22-year-old man from Red Pheasant First Nation, was fatally shot in August, 2016, after a car in which he was a passenger drove onto a property belonging to Gerald Stanley, a white farmer. A jury in Saskatchewan acquitted Mr. Stanley of second-degree murder last Friday in Mr. Boushie's death.

The verdict reverberated around the country and, within hours, the Prime Minister and Justice Minister offered words of comfort to Mr. Boushie's family on Twitter. Over the weekend, a thousand people rallied in Saskatoon under the banner of "Justice for Colten" and there were similar demonstrations in many Canadian cities.

Less than 48 hours after the verdict, Mr. Boushie's relatives got on a plane for Ottawa determined to push for political change.

At a news conference that took place before the Prime Minister's speech, Mr. Boushie's cousin, Jade Tootoosis, said she was grateful for the reception the family received in Ottawa. They were able to meet with the Prime Minister, the ministers of Justice, Public Safety, Crown-Indigenous Relations and Indigenous Services as well as the Leader of the NDP, Jagmeet Singh, and Conservative Indigenous affairs critic Cathy McLeod and other MPs.

"Our voices have been made a priority here and we feel like we are finally being heard," Ms. Tootoosis said. "Colten is not able to stand with us physically so we stand here for him. We speak for him and we will continue to do that."

Ms. Tootoosis said she sees this week's meetings as a beginning. She plans to be back in Ottawa to maintain pressure on the government to act.

"We will press for concrete changes within the system so that … no other Indigenous lives are taken before changes are made," Ms. Tootoosis said.

Eleanore Sunchild, a lawyer for the family, said that the work will also continue back in Saskatchewan. She mentioned pushing for reforms to legal aid, to ensure proper representation for Indigenous accused, as well as more sensitive treatment for the families of Indigenous victims of crime. "We hope that changes will be made to ensure the inclusion and fair treatment of Indigenous peoples in the Canadian justice system. The changes to jury selection is only one issue that needs to be addressed. There are other issues that were problematic in this case such as the RCMP's conduct," Ms. Sunchild said.

"The family chose to speak so that no more Indigenous people are forced to go through such a terrible ordeal. Justice for Colten is larger than the Gerald Stanley trial."

Ruling by Ontario judge aims to make bail courts less risk-averse
The Globe and Mail
Sean Fine
February 14, 2018

In a ruling that will make bail easier to obtain, an Ontario judge says the "best" or "safest" option for releasing accused people from custody – even in cases involving allegations of stalking – is the wrong standard to follow.

The ruling by Justice Joseph Di Luca of the Ontario Superior Court aims explicitly at making bail courts less risk-averse. It comes in a case in which a man faced charges that he criminally harassed his ex-girlfriend over a six-month period and published intimate images of her without her consent. The allegations included an assault that caused a bloody nose and mischief of damaging a cellphone, both of which he was not charged for, Justice Di Luca said.

Almost 60 per cent of adults held in provincial jails in Canada are waiting for their trials and have not been found guilty of an offence, according to Statistics Canada. Last June, the Supreme Court of Canada, in a case known as R. v. Antic, criticized judges who make bail too difficult to obtain.

Justice Di Luca called that ruling a "clarion call for culture change."

"Underlying Canada's broken bail system is a culture of risk aversion within the criminal justice system," he wrote in a ruling released last week.

In most cases, he said, it should not be necessary for an accused person to provide a surety – someone to promise reliable supervision – in order to be released.

"I want to be clear that in many cases a surety release will be the 'best' or 'safest' option. That is not, however, the test," he wrote. "An accused who is presumed innocent should not have his or her liberty restricted if lesser forms of restriction will meet the statutory test for release."

Mr. Tunney had been released with a surety after a hearing last October, but applied to Justice Di Luca for a bail review in November. Justice Di Luca ruled that the surety wasn't necessary. He changed the release order so that Mr. Tunney was freed on his own undertaking to respect the bail conditions (such as no contact with his ex-girlfriend) and to show up for trial.

The ruling, which is binding on lower court judges, sparked concerns from a clinic for women who have experienced violence. The Barbra Schlifer Commemorative Clinic in Toronto says Justice Di Luca did not appreciate that the Tunney case presented a high-risk situation.

"Thinking about criminal harassing behaviour and literally using an ex-girlfriend's intimate images for revenge, these [allegations] are indicators of violence, which is very escalating in nature," Deepa Mattoo, the clinic's legal director, said in an interview after reading the ruling at The Globe and Mail's request.

"There is a need to take these cases a lot more seriously."

Daniel Brown, a Toronto criminal defence lawyer who was not involved in the Tunney case, said the ruling marks an important turning point.

"You could call it revolutionary in its approach to bail," he said in an interview.

He said that bail courts in Toronto are already changing their practices to follow the principles set out by Justice Di Luca. He said that if an accused continues his stalking behaviour, he can be picked up again by police and returned to jail.

In most cases, outside of gun crimes and certain other serious offences, the prosecution bears the burden of showing why an accused should not be released. But in Mr. Tunney's case, the prosecution

had asked for a surety, and Justice of the Peace Adele Romagnoli insisted that Mr. Tunney's proposed surety testify first to determine whether there was a reliable person to provide supervision, before deciding whether he should be released. Justice Di Luca said that decision had the effect of putting the burden on Mr. Tunney to show why he should be released. And the Justice of the Peace had not explained first why a simple release on Mr. Tunney's own promise to respect the bail conditions fell short, Justice Di Luca said.

"A surety release is one of the most stringent forms of release that should only be considered where all lesser forms of release fail to satisfy the concerns raised by the evidence," Justice Di |Luca wrote.

Even where there is a need for a surety, usually he or she will not need to testify in a court, but instead should simply fill out the appropriate forms and supply an explanation in an affidavit, Justice Di Luca said.

Justin Trudeau promises new focus on rights of Indigenous peoples
"Going forward, recognition of rights will guide all government relations with Indigenous Peoples," Prime Minister says in speech to House of Commons in wake of controversial acquittal of Saskatchewan farmer in the 2016 shooting death of Indigenous man Colten Boushie.
The Toronto Star
Bruce Campion-Smith
February 14, 2018

OTTAWA—Prime Minister Justin Trudeau is committing his government to implement a new legal framework to advance the rights of Indigenous peoples, billed as a critical step to tackling chronic problems.

In a speech to the House of Commons Tuesday, the prime minister laid out a new vision for the federal government's relations with Canada's Indigenous peoples.

"We need a government-wide shift in how we do things," Trudeau said.

"We need to both recognize and implement Indigenous rights, because the truth is . . . until we get this part right, we won't have lasting success on the concrete outcomes that we know mean so much to people," Trudeau said.

At the heart of his pledge is a vow to create a "recognition and implementation of (an) Indigenous rights framework" that will include new ways to recognize and implement such rights.

"Going forward, recognition of rights will guide all government relations with Indigenous peoples," he said.

The exact make-up of this framework has yet to be determined. It will be developed over the coming months through national consultations, led by Carolyn Bennett, the minister of crown-Indigenous relations and northern affairs, and Justice Minister Jody Wilson-Raybould.

Trudeau painted the framework as a critical way to empower Indigenous communities and find lasting solutions to chronic problems such as overcrowding, unsafe water and youth suicides.

“All of these things demand real, positive action — action that must include the full recognition and implementation of Indigenous rights. We need to get to a place where Indigenous peoples in Canada are in control of their own destiny, making their own decisions about their future,” the prime minister said.

NDP MP Romeo Saganash cautioned Trudeau must “go from words to action” as he took aim at the government’s record to date on the file.

“The denial of Indigenous peoples rights continued under this government despite their promise for real change,” said Saganash, the party’s critic for reconciliation and himself a Cree from northern Quebec.

Section 35 of the Constitution sets out that “existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

That section was not originally part of the Constitution but came only when the government of the day – led by his father Pierre Trudeau — was persuaded by the “outspoken advocacy” of Indigenous peoples.

Yet in the years since, those rights have not been implemented by governments, forcing Indigenous peoples into costly, drawn-out court battles, Trudeau said.

“While there has been some success, progress has not been sustained, or carried out . . . And, so, over time, it too often fell to the courts to pick up the pieces and fill in the gaps,” Trudeau said.

As a result, he said that too many feel the country and its institutions “will never deliver the fairness, justice and real conciliation that Indigenous peoples deserve.”

Although the speech had been planned for some time, it comes in the wake of the controversial acquittal of a Saskatchewan farmer in the death of Colten Boushie, a 22-year-old Indigenous man fatally shot in 2016.

In the wake of that decision, questions have been raised about the fairness of the justice system to Indigenous peoples.

The Liberal government is expected to propose Criminal Code changes next month to reform jury-selection rules, bail processes and other justice measures.

The Boushie family has been on Parliament Hill this week and Trudeau highlighted their presence in his remarks.

“Through all their grief and anger and frustration, their focus was not on themselves and the tragedy they have endured, but on how we must work together to make the system and our institutions better,” he said.

Trudeau told MPs that the justice system is an area where reforms are “urgently needed.

“That is why we will bring forward broad-based, concrete reforms to the criminal justice system, including changes to how juries are selected,” he said.

RCMP telecommunications staff vote to join Canadian Union of Public Employees
Vacancy rate at Manitoba RCMP telecommunications centre was 32 per cent in October: report
CBC News
February 14, 2018

About 1,300 RCMP telecommunications staff have voted to join the Canadian Union of Public Employees.

CUPE made the announcement Wednesday, saying the decision by RCMP telecom operators and intercept monitor analysts to join will likely be certified by mid-March.

Intercept monitor analysts are responsible for "recording, monitoring, analyzing or transcribing live or pre-recorded intercepted telecommunications," according to a Government of Canada website.

"Our 650,000 members across the country warmly welcome the RCMP telecom operators and intercept monitor analysts into the CUPE family," said Mark Hancock, CUPE national president in a statement.

"They worked very hard to create their own union, and CUPE will proudly continue to defend their interests."

The vote breakdown was not disclosed.

The decision comes on the heels of reports of widespread understaffing, low morale and even bullying in RCMP telecommunication centres over the past several months

An internal report obtained by CBC in January suggested interpersonal conflicts were hurting morale among the people who handle 911 calls at the RCMP Manitoba telecommunications centre.

Numbers show the RCMP's operational communications centres across the country are understaffed, with the national vacancy rate hovering at 27 per cent, and some seeing rates as high as 50 per cent.

In Manitoba, the vacancy rate at the RCMP telecommunications centre was 32 per cent as of October 2017.

"You have people answering the phone that are stressed out of their mind. You have some people that are really just running on fumes," one OCC operator, who asked not to be named for fear of reprisal, told CBC last year.

Regular and civilian RCMP members won a long-fought battle for the right to collectively bargain in a 2015 Supreme Court of Canada decision, which struck down a law that specifically forbade the Mounties from unionizing.

CUPE said their organizing drive started in the fall of 2016, noting those who joined "had been without representation with their employer since May 2016."

CUPE wins vote to represent RCMP members
iPolitics
Kathryn May
February 14, 2018 3:43pm

The RCMP's dispatch operators and wiretap monitors voted to join the Canadian Union of Public Employees making them the first sworn members of Canada's national police force to unionize.

CUPE has notified the RCMP employees it will be representing that it was successful in the certification vote held between Jan 22 and Feb 4. A new local will be created representing some 1,300 RCMP employees.

The secret vote was conducted by the Federal Public Sector Labour Relations and Employment Board, which hopes to formally certify CUPE by mid-March. The results of the vote were not released.

If successful, CUPE had hoped to be at the bargaining table and negotiating the employees' first contract by the spring. CUPE is Canada's largest union with 650,000 members across the country.

"As soon as the local union is set up and the bargaining preparations completed, we will go to the table, and fight to improve our RCMP members' working conditions using CUPE's full collective strength," said CUPE's National President Mark Hancock.

CUPE's organizing drive for these civilian employees, which began in the fall of 2016, was touted as a dry run for the unionization of the force, set in motion by a Supreme Court of Canada decision that gave the RCMP the right to unionize.

It also marks a major shift in the way RCMP manages its human resources.

The telecommunications operators and wiretap or intercept monitors are among the nearly 4,000 civilian employees that the RCMP is moving to the public service, leaving the force with only two categories of employees: public servants and police.

Today, the force's 29,190 employees include 3,900 civilians and 6,670 public servants. Under the RCMP Act, civilians are sworn members of the force, just like gun-carrying police officers — except they are not peace officers.

Most of the civilians will become members of federal unions already representing public servants doing the same or similar work.

The only exception was telecom operators and the intercept, or wiretap, monitors. These employees could not be directly pay-matched with public servants belonging to a union, so they became a target of a union drive.

Once certified, CUPE will be the first union to tackle the transition of moving civilian employees into the public service, which has met much resistance among civilian members.

The move to the public service was scheduled for May but was put indefinitely on hold until the troubled Phoenix pay system is fixed.

The civilian members have traditionally had their pay increases and benefits tied to those of their RCMP police colleagues, some of which are more generous than those of the public service. A big issue at bargaining will be the protection of those benefits.

“As CUPE members, they will have access to all the resources necessary to meet their employer on equal terms,” added CUPE’s National Secretary Treasurer Charles Fleury. “Working together with RCMP telecom operators and intercept monitor analysts, we will succeed in negotiating the fair deal they deserve”.

With the vote, CUPE is moving to set up the new local, which needs new bylaws an executive and bargaining committee, which will consult members on priority demands for the first round of bargaining. The employees existing terms and conditions of employment will be frozen and remain until a new collective agreement is reached.

Un an après un retour au travail forcé, le moral des juristes est au plus bas
Un sur deux quitterait leur emploi s’il le pouvait
Radio-Canada
14 février 2018

Selon une enquête réalisée par l'Association des avocats et notaires de l'État québécois (LANEQ), deux juristes sur trois sont insatisfaits de leur employeur. S'ils le pouvaient, plus de la moitié d'entre eux quitterait leur emploi pour travailler ailleurs.

Le sondage interne de LANEQ, qui vient tout juste d’être présenté à ses membres, révèle que la loi spéciale qui a forcé le retour au travail des juristes « a mis à rude épreuve la fierté et le sentiment d’appartenance aux organisations ».

Le nouveau président de l’association, Marc Dion, n’est pas surpris. Le conflit a laissé des traces et le moral des troupes est certainement affecté.

S’il admet que cette démotivation peut retarder certains projets, il est convaincu que le professionnalisme des juristes demeure un gage de qualité.

Comparution du ministre Pierre Moreau

L’association, qui accuse le gouvernement d’avoir fait preuve de « mauvaise foi » durant les négociations, poursuit son recours devant le Tribunal administratif du travail.

Elle a d’ailleurs obtenu gain de cause dans sa requête demandant à ce que le ministre Pierre Moreau soit entendu. Celui qui était président du Conseil du Trésor lors des négociations devra donc comparaître devant le tribunal le 19 février prochain.

Le ministre Moreau maintient « qu’il a toujours négocié de bonne foi avec les juristes ».

Des nouvelles à temps pour les élections

Les avocats et notaires de l'État québécois réclament 36,75 millions de dollars en dommages et intérêts.

Ils s’attendent à ce que le juge prenne la cause en délibéré cet été, mais des dates d’audience sont prévues jusqu’en septembre.

Le président de LANEQ ne s’en cache pas : si les élections peuvent servir de levier pour ses membres, il ne se privera pas de les utiliser.

« Le PQ et la CAQ nous avaient témoigné leur soutien », rappelle Marc Dion.

Contestation de la loi spéciale

Dans un autre recours judiciaire, devant la Cour supérieure cette fois, les juristes contestent la constitutionnalité de la loi spéciale du 28 février.

En invoquant l’arrêt Saskatchewan, LANEQ estime que le gouvernement libéral a porté atteinte au droit de grève et au droit à la libre négociation de ses membres.

Les parties sont convoquées devant le juge en conférence de gestion, le 22 février prochain, pour déterminer l’horaire des audiences.

Compte tenu des procédures judiciaires en cours, le bureau du Conseil du Trésor a préféré ne pas commenter.

Arrêt Jordan : 15 % des causes criminelles en Cour supérieure ont dépassé le délai
La situation au Québec excède de loin les moyennes nationales
Radio-Canada
14 février 2018

Au Québec, 21 % des causes criminelles réglées en Cour supérieure et 17 % de celles en Cour du Québec ont dépassé les limites de temps établies par l'arrêt Jordan de la Cour suprême, lors de la période 2015-2016, soit la plus récente examinée par Statistique Canada.

Ces pourcentages excèdent les moyennes nationales : au Canada, les chiffres révèlent que 15 % des causes criminelles réglées en Cour supérieure et 6 % de celles entendues par les cours provinciales ont dépassé les plafonds établis.
Ces dépassements de temps ouvrent la porte à la présentation par un accusé d'une requête en arrêt des procédures, comme ce fut le cas du chef présumé des Hells Angels, Salvatore Cazzetta, et de l'homme accusé du meurtre de son épouse, Sivaloganathan Thanabalasingham, qui a été libéré l'an dernier sans subir de procès – une affaire qui avait choqué le Québec.

Ces statistiques dévoilées mardi sont en bonne partie antérieures à l'arrêt Jordan de la Cour suprême, rendu en juillet 2016. Cette décision du plus haut tribunal du pays a édicté que les causes devaient durer un maximum de 18 mois en Cour provinciale, lorsqu'il n'y a pas d'enquête préliminaire, et de 30 mois en Cour supérieure, sauf exception.

Depuis, le gouvernement fédéral a nommé des juges à la Cour supérieure et le gouvernement du Québec en a aussi ajouté à la Cour du Québec.

La liste des infractions dévoilée

Les données dévoilées par Statistique Canada permettent de constater que les infractions de conduite avec facultés affaiblies représentaient 13 % des accusations instruites devant une cour provinciale et dont le temps de traitement a dépassé le plafond présumé, lors de la période 2015-2016.

En Cour supérieure, ce sont les infractions relatives aux armes qui se démarquent, suivies des accusations de voies de fait majeures et d'agressions sexuelles.

Bien que l'arrêt Jordan précise que le plafond présumé s'applique à la période qui va du dépôt d'une accusation jusqu'à la conclusion réelle ou anticipée du procès, la date de départ utilisée par Statistique Canada est celle de la première comparution, et la date de fin est celle où une décision finale est rendue relativement à une accusation, qu'elle soit un verdict de culpabilité, un acquittement, un arrêt des procédures ou un retrait.

Les données de l'Enquête intégrée sur les tribunaux de juridiction criminelle (EITJC) ne permettent pas de déterminer si le temps de traitement supérieur au plafond présumé est attribuable à la Couronne ou à la défense, prévient l'organisme fédéral de statistiques.

Et il est à noter que les provinces n'ont pas toutes fourni leurs données à Statistique Canada pour les Cours supérieures.

Éviter les délais judiciaires

La note d'analyse de Statistique Canada rappelle aussi l'importance d'éviter les délais judiciaires, citant un rapport du Sénat du Canada daté de 2017.

« Les tribunaux ont énoncé que le système de justice doit faire en sorte que les personnes qui contreviennent à la loi soient tenues responsables de leurs actes, que les personnes accusées d'avoir commis des crimes voient les procédures judiciaires à leur endroit réglées en temps opportun. »
« (Cela) est aussi important pour les témoins, les victimes et leur famille. Cela favorise la collecte de renseignements précis au sujet du crime, en plus de permettre à ces personnes de faire leur deuil émotif et psychologique. Les longues procédures judiciaires peuvent aussi engendrer chez les victimes un sentiment de ¨revictimisation¨ », rapporte l'organisme de statistique.

Ottawa veut revoir le processus de sélection des jurés
L'affaire Boushie, ce jeune autochtone tué par un fermier en Saskatchewan, lance le débat sur la représentativité des jurés
Radio-Canada
14 février 2018

L'acquittement du fermier Gerald Stanley pour la mort de Colten Boushie, un jeune Autochtone de la Saskatchewan tué par balle en août 2016, a jeté un éclairage nouveau sur les tensions qui subsistent entre les communautés autochtones et les communautés blanches dans l'ouest du pays, et qui se refléteraient entre autres dans le système judiciaire.

Mardi, le premier ministre Justin Trudeau a de nouveau exprimé ses sympathies envers les proches de Colten Boushie, avec qui il devait s'entretenir au cours de la journée durant une rencontre privée.

« Quand les adultes autochtones représentent 3 % de la population du pays, mais 26 % de la population carcérale, il y a un problème », a ajouté le premier ministre.

Interrogé après la rencontre, Justin Trudeau s'est montré satisfait des discussions. « Ça a été très émouvant, et j'ai été touché par leur désir de voir des solutions naître de leur expérience. Je me suis engagé à travailler avec eux pour améliorer notre système. »

Au cours des derniers jours, les membres du clan Boushie ont multiplié les sorties pour dénoncer des failles qui auraient, selon eux, influé sur le processus judiciaire. La critique la plus fréquente concerne la sélection du jury, jugé « trop blanc » pour tenir suffisamment compte de la réalité autochtone.

Après 13 heures de délibérations, le jury, dont aucun membre n'était visiblement autochtone, a acquitté Gerald Stanley de l'accusation de meurtre au second degré. La défense a soutenu tout le long du procès que le fermier de 56 ans avait tiré accidentellement sur le jeune Cri.

Les critiques sur la composition du jury, qui avaient déjà été formulées avant le début du procès, ont su frayer leur chemin jusque sur la colline du Parlement, à Ottawa. Justin Trudeau ainsi que les ministres

Jane Philpott et Jody Wilson-Raybould ont tous trois donné leur opinion sur Twitter à la suite du verdict d'acquittement de Gerald Stanley, témoignant leur sympathie envers la famille Boushie.

Dans un tweet, Jody Wilson-Raybould, ministre fédérale de la Justice, a indiqué que le pays « devait faire mieux » et qu'elle s'« engageait entièrement à assurer la justice pour tous les Canadiens », ouvrant ainsi la porte à un débat sur la sélection des jurés.

La « récusation péremptoire » au coeur du débat
Mardi, les ministres Wilson-Raybould et Ralph Goodale ont quant à eux mentionné qu'ils étaient ouverts à des changements pour améliorer la représentation des Autochtones au sein du processus judiciaire.

Mme Wilson-Raybould a notamment évoqué la possibilité de revoir les dispositions de la « récusation péremptoire », un processus par lequel la défense comme la poursuite peuvent rejeter des candidats sans raison particulière lors de la sélection du jury.

La récusation péremptoire fait l'objet de critiques parce qu'elle peut mener à la création d'un jury homogène, moins sensibilisé aux réalités des personnes autochtones, des communautés culturelles ou même des femmes, selon la cause entendue. Les critiques les plus tenaces y voient une forme de discrimination.

« Nous essayons de déterminer les meilleures façons de faire pour améliorer le système judiciaire », a affirmé la ministre Wilson-Raybould, faisant écho à ces critiques.

Jody Wilson-Raybould en aussi profité pour lancer un message aux critiques qui l'ont accusée de menacer l'indépendance de la magistrature par ses commentaires, en particulier celui formulé dans les heures qui ont suivi l'acquittement de Gerald Stanley.

« Ce que je réalise encore plus maintenant qu'au moment où j'ai envoyé ce tweet, c'est que tant les Autochtones du pays que les non-Autochtones s'expriment sur les défis auxquels nous faisons face dans le système de justice, au point de manifester dans les rues », a-t-elle illustré.

Jagmeet Singh lance un appel à discuter
Les questions relatives à la récusation péremptoire ont également suscité des discussions au sein de l'opposition officielle. Le chef du Nouveau Parti démocratique, Jagmeet Singh, a indiqué qu'il songeait à demander à son équipe de se pencher sur sa possible abolition.
« C'est une discussion que nous devons avoir », a-t-il commenté.

M. Singh, qui était criminaliste avant de faire le saut en politique, estime qu'il est peut-être temps de revoir cette règle de procédure, qu'il a lui-même déjà invoquée au tribunal.

Il a même reconnu que la récusation péremptoire peut mener à des jurys peu représentatifs de leurs communautés.

« Il y a une sous-représentation de certaines personnes dans les jurys. Ce qu'on remarque depuis longtemps, c'est que les communautés autochtones sont particulièrement sous-représentées durant le processus de sélection des jurés puis dans les jurys en tant que tels », a-t-il souligné.

More than jury tampering needed in Canada
Vancouver Sun
Ian Mulgrew
February 15, 2018

Prime Minister Justin Trudeau and Justice Minister Jody Wilson-Raybould don't have the power to eliminate the effects of colonialism and the residue of racism that remains to pervert the country's criminal legal system.

They can eliminate peremptory "challenges" to potential jurors because that is part of the criminal code and under their jurisdiction. The Mother of Our Legal System, the U.K., did it in 1988. It's no big deal.

The "challenge" is not the real issue, and removing it will not necessarily increase First Nations' participation on juries.
Each province provides its own legal administration, and the dysfunction and systemic problems plaguing First Nations cannot be remedied by federal fiat or decree.

Gerald Stanley's acquittal last week of second-degree murder in Saskatchewan for the 2016 killing of Colten Boushie, a 22-year-old Indigenous man, is only the latest tragedy.

There is a long history of travesties of justice involving First Nations from coast unto coast unto coast that stretches back from the Missing and Murdered Women and Girls through Donald Marshall Jr., to Louis Riel.

Over the last 30 years, we have seen major inquiries and initiatives by governments and the Supreme Court of Canada to address the inherent racism and overrepresentation of First Nations in the criminal justice system.

Criminal Code amendments at the end of the last century told judges to give greater consideration to the background of Aboriginal offenders and alternatives to prison.

In 1999, the Supreme Court of Canada supported those changes with a ruling that articulated principles to guide judges weighing the fallout of the systemic abuse suffered by Indigenous people.

Judges were also to consider traditions in Indigenous communities of restorative justice and social healing to avoid meting out culturally inappropriate sentences.

In 2012, the Supreme Court reinforced those principles because the situation had worsened.

In the mid-1990s when the Criminal Code was amended to help Aboriginal offenders, Indigenous peoples made up 16 per cent of those in custody.

Today, that number is at 25.2 per cent, even though Indigenous peoples constitute only about five per cent of the population.

The number of Aboriginal women in jail is even more disproportionate: 36.1 per cent of the prison population.

Eliminating the peremptory challenge isn't going to move those numbers because there are so many other factors at play.

First there is history — the legal system was used to strip Aboriginal people of their land, break up their families and imprison them for their cultural practices.

As the inquiry into the composition of juries in Ontario by former Supreme Court of Canada Justice Frank Iacobucci stressed in 2013, the vast majority of First Nations see their cultural values, traditional approaches to conflict resolution and their laws conflicting with European values and lawmaking. They view it as foreign, imposed and responsible for the discrimination that has left them paupers in a land they once ruled.

Just listen to the debate that led to the removal of the statute of B.C.'s first chief justice, Matthew Begbie, and imperils remembrances of Canadian icons.

There is inter-generational hatred and mistrust among aboriginal people of the government and the courts.

The composition of juries reflects that because jury rolls are the biggest impediment to Indigenous participation, not the peremptory challenge.

First Nations are massively underrepresented from the start because in many jurisdictions there have long been problems compiling lists of individual reserve residents that equate with voters lists to produce inclusive jury rolls.

Some provinces have turned to using health insurance information.

In part, though, many First Nations haven't wanted to be enumerated because they fear government-compiled lists will lead to violations of their privacy rights or worse, as such lists were used in the past to seize children to be "educated".

Then there are the issues around a jury summons and questionnaire that come with printed statements of fines or imprisonment for non-response (within 10 days in B.C.) — if you're marginalized and alienated that can sure sound intimidating and threatening. And if you are poor, live far from court, and have to give up work?

In northern or rural B.C., where many First Nations live, the barriers include the cost of transportation, inadequate allowances for accommodation and meals, the absence of child and elder care as eligible costs, and lack of income supplements.

And what about the questions you must answer to be a juror? The requirement to declare Canadian citizenship when many First Nations claim sovereignty and are still fighting to win back their land?

Or the language requirement — English or French? Some First Nations still speak their Indigenous language — perhaps that should be accommodated.

The need for a collaborative approach to develop a proper jury roll process for First Nations is viewed as a necessary step forward, more important than the peremptory challenge.

And that is only one hill — there is still a mountain to climb.

It will take much, much more. Mostly, it requires a sea change in Canadian attitudes toward First Nations.
And recognition that until now, even in the 21st century, we have been part of the problem in failing to demand governments provide the resources and programs First Nations need to recover and participate fully.

It's time to let Canadian jurors speak freely about their verdicts, experts say
Unlike in the U.S., juries in Canada are prohibited from disclosing any information about deliberations
CBC News
Mark Gollom
February 15, 2018

The jury's rationale for acquitting Gerald Stanley of second-degree murder in the death of 22-year-old Cree man Colten Boushie will likely remain a mystery.

That decision has sparked widespread anger and calls for reform of the justice system, and many Canadians want to know how the jury came to its conclusion.

But in Canada, jurors are prohibited by law from making any public comment about their deliberations or their reasons for a verdict, according to Section 649 of the Criminal Code. The penalty for running afoul of this law is a summary conviction, meaning the possibility of six months in prison, a fine of $5,000 or both.

Allan Rouben, a Toronto-based lawyer who has blogged and written about this subject, believes it's time to change the law in Canada and allow jurors to speak.

"I feel strongly about the issue," he said, "and I feel that way from the belief that the jury system is extremely important, and we need to have confidence in our institutions, and that fostering communication by the jury with the media will enhance confidence in the jury system."

'Helps the public to understand'
Rouben points to the United States, where jurors are allowed to speak freely to the press following a verdict.

"[It] helps the public to understand why a verdict was made, and to dispel any feelings there could be that the jury verdict was irrational or stained by some improper purpose," he said.
Jury secrecy in Canada is rooted in old English common law, but its validity has since been upheld by the Supreme Court of Canada, which looked into the constitutionality of Section 649 in 2001.

Jury secrecy, Justice Louise Arbour wrote in that decision, "promotes candour and the kind of full and frank debate that is essential to this type of collegial decision making."

Jurors "should be free to explore out loud all avenues of reasoning without fear of exposure to public ridicule, contempt or hatred," she wrote.

Jury duty: Unfair burden or civic obligation?
Jurors concerned about possible negative public exposure may be less inclined to argue for a verdict perceived as unpopular, Arbour wrote.

It's also important that jurors who hold minority viewpoints do not feel pressured to retreat from their opinions because of potential repercussions associated with the disclosure of their positions, she wrote.

'Overly broad'
Rouben agrees the Supreme Court offered "compelling" reasons for preserving jury secrecy provisions but says those provisions "are overly broad."

"I think there are ways of preserving the features of the secrecy provisions but at the same time allowing the public to better understand how jury verdicts are arrived at."

For instance, he said, judges could instruct jurors that they have no obligation to speak to the media, and that it's strictly voluntary.

Under current Canadian law, judges are also granted discretion in ordering a publication ban on the identities of jurors if they feel it's warranted.

"I kind of think the concern is either overblown or exaggerated," Rouben said.

Yet some jurors in the U.S. have spoken about fears for their safety after delivering a controversial decision. Some of the jurors in the 2011 Casey Anthony trial, for example, who found Anthony not guilty in the death of her two-year-old daughter, reportedly went into hiding after the unpopular verdict.

It is rare for a judge to impose restrictions on identifying jurors in the U.S., where that information is generally made available to the media and the public, but it has been done. Just last week, a New York

judge made such an order in the trial of accused Mexican drug lord Joaquin "El Chapo" Guzman, fearing for the jurors' safety.

U.S. District Judge Brian Cogan said the U.S. government "presented strong and credible reasons to believe that the jury needs protection." He wrote that the significant media attention on the case could raise the potential for juror names to become public, exposing jurors to the risk of intimidation or harassment.

Freedom of speech
Eugene Volokh, a law professor at UCLA, said there's always been a risk of public backlash to jury verdicts, but that shouldn't override freedom of speech.

"It's always been a danger, it's always been a cost of the jury system," he said. "That generally isn't a reason to restrict speech. It takes a lot to overcome free speech protections."

Another reason for allowing jurors to speak is that the judicial process is viewed as a governmental process, so it should be transparent, Volokh said.
"It's a government decision-maker that made an important decision, and he or she should be free to speak about why he or she made the decision," he said.

Federal stand in Russian spy citizenship case would fuel 'uncertainty': lawyers
CTV News
Jim Bronskill
The Canadian Press
February 15, 2018

OTTAWA - The federal government's rationale for trying to deny Canadian citizenship to the Toronto-born son of Russian spies leads down an "absurd and purposeless" path, the young man's lawyers argue.

They're asking the Supreme Court of Canada to dismiss the government's application for a hearing of the legal issues at the heart of the strange espionage saga that has left Alexander Vavilov, 23, in limbo.

Accepting the federal position "would result in uncertainty about an individual's fundamental right to citizenship," Vavilov's counsel say in a brief filed with the high court.

The Supreme Court will announce in coming weeks whether it's going to hear the case, though no date has been set for the decision.

The government is appealing a ruling that returned Canadian citizenship to Vavilov after it was revoked by Ottawa.

Vavilov, 23, was born in 1994 as Alexander Philip Anthony Foley to Donald Heathfield and Tracey Ann Foley. The following year the family - including an older boy, Timothy - left Canada for France, where they spent four years before moving to the United States.

The FBI turned up at the family's Boston-area home eight years ago. In all, 11 people - four of whom claimed to be Canadian - were indicted on charges of conspiring to act as secret agents on behalf of the SVR, the Russian Federation's successor to the notorious KGB.

Heathfield and Foley admitted to being Andrey Bezrukov and Elena Vavilova.

The FBI said Bezrukov had based his cover identity on the birth record of a baby with the surname Heathfield who died in Montreal at the age of six weeks in early 1963.

Bezrukov and Vavilova were among those sent back to Moscow - part of a swap for prisoners in Russia.

Alexander finished high school in Russia, studying in English.

He changed his surname to Vavilov on the advice of Canadian officials in a bid to obtain a Canadian passport. But he ran into trouble at the passport office and in August 2014 the citizenship registrar informed Vavilov the government no longer recognized him as a citizen of Canada.
The registrar said his parents were employees of a foreign government at the time of his birth, making him ineligible for citizenship. The Federal Court upheld the decision two years ago.

Last June the Federal Court of Appeal set aside the ruling and threw out the registrar's decision. It said the provisions of the Citizenship Act cited by the registrar shouldn't apply because Vavilov's parents did not have diplomatic privileges or immunities while in Canada.

In its application to the Supreme Court, the federal government says the registrar's original decision was "rational and defensible."

The appeal court's interpretation, on the other hand, means the legislative provisions in question deny citizenship to children of foreign intelligence agents posted to an embassy and benefiting from diplomatic privileges, while allowing citizenship for children of undercover intelligence agents engaged in surreptitious espionage.

In their filing with the Supreme Court, Vavilov's lawyers say the government's view of the Citizenship Act is unreasonable and would lead to absurd outcomes.

Aside from diplomatic or consular officers, many foreign governments employ people in Canada through a wide range of state-owned enterprises including banks, airlines, energy companies and other national ventures, they point out. The government's stance would expand the exception to citizenship by birth to encompass all children born to parents working for such employers.

"This would mean, for example, that children born to employees of foreign private oil companies operating in Alberta would be Canadian, while those born to employees of state-owned oil companies would not," the submission reads.

"Similarly, children born to employees of foreign private airlines working at Canadian airports would be Canadian, while children born to employees of state-owned airlines working in those same airports would not.

"These results are absurd and purposeless."

Limiting the exception to citizenship to children born to foreign officials or employees who enjoy diplomatic immunities and privileges provides far greater certainty, Vavilov's lawyers conclude.

In a reply, the government characterizes the examples as "hypothetical scenarios" that "would undoubtedly be more complex and benefit from this court's guidance in the present case."

Timothy Vavilov, 27, also went to Federal Court after being stripped of Canadian citizenship, and the outcome of his case could ultimately hinge on the result of his brother's proceedings.

Réactions prudentes des chefs autochtones au discours de Justin Trudeau
Radio-Canada
15 février 2018

Plusieurs dirigeants des Premières Nations ont commenté, certains avec scepticisme, d'autres avec prudence, le plan présenté mercredi par le premier ministre du Canada concernant la reconnaissance de leurs droits.

Justin Trudeau souhaite élaborer un cadre garantissant le respect des droits des Autochtones inscrits dans la Constitution canadienne.

Dès le printemps, le gouvernement fédéral consultera les Premières Nations, les Métis et les Inuits « en vue de poser des gestes concrets pour créer un avenir meilleur et bâtir une nouvelle relation », a souligné le premier ministre.

Un projet de loi sera déposé d'ici la fin de l'année, Justin Trudeau espérant son entrée en vigueur avant l'élection d'octobre 2019.

Plusieurs chefs autochtones se questionnent sur les consultations à venir particulièrement lorsque leurs droits ancestraux seront touchés.

C'est le cas de Judy Wilson, la chef de la Première Nation Neskonlith de Colombie-Britannique dont la majorité du territoire, considéré une terre autochtone non cédée, n'est pas couvert par des traités. « Comment nous assurer que ces territoires nous reviennent? » se demande-t-elle.

Au fil du temps, la Cour suprême du Canada a défini les droits des Autochtones en vertu de l'article 35 de la Loi constitutionnelle de 1982. Cet article reconnaît « les droits ancestraux et issus de traités existants », pour y inclure les titres fonciers et établir les dispositifs obligeant Ottawa à consulter en matière de développement des ressources, par exemple.

Mais le décalage entre la mise en place des politiques du gouvernement fédéral et les décisions du plus haut tribunal au pays, a obligé les Premières Nations à se tourner à plusieurs reprises vers les tribunaux pour défendre leurs droits.

La chef Wilson aimerait que le gouvernement Trudeau explique comment les changements affecteront les traités historiques et modernes négociés en vertu de politiques antérieures qui exigeaient l'extinction, sous une forme ou une autre, des droits prévus à l'article 35 en échange d'un accord.

Définir les droits autochtones

Justin Trudeau a indiqué que le gouvernement allait lancer un processus de « mobilisation » avec les peuples autochtones, les provinces, les territoires et la population canadienne afin d'élaborer un cadre reconnaissant et définissant les droits des Autochtones.

La ministre de la Justice Jody Wilson-Raybould a ajouté qu'il fallait « passer d'une conversation basée sur le déni des droits à la reconnaissance des droits autochtones ».

Pour le grand chef Serge Simon de Kanesatake, « le travail acharné commence maintenant » pour s'assurer que le cadre législatif reflète les « droits pour lesquels nous luttons depuis si longtemps ».

La communauté mohawk de Kanesatake, au cœur de la crise d'Oka en 1990, négocie toujours avec Ottawa pour régler ses revendications territoriales.

Serge Simon précise que les négociateurs fédéraux demandent toujours à la communauté de « suspendre » ses droits en vertu de l'article 35 de la Constitution en échange d'un accord.

Justin Trudeau mentionne que son gouvernement remplacerait sa politique sur les revendications globales - les traités modernes - qui exige l'extinction, sous une forme ou une autre, des droits ancestraux en échange d'un règlement.

Serge Simon aimerait que cette exigence s'applique à toutes les revendications, y compris les revendications historiques connues sous le nom de revendications particulières.

Justin Trudeau souhaite élaborer un cadre garantissant le respect des droits des Autochtones inscrits dans la Constitution canadienne.

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L’incontournable question constitutionnelle

Plusieurs chefs autochtones se demandent déjà si les provinces ne vont pas mettre à rude épreuve l'engagement du premier ministre de ne pas ouvrir la porte à une réforme constitutionnelle.

Les provinces, ayant le contrôle des ressources dans le cadre de la division constitutionnelle des pouvoirs, pourraient venir gâcher les plans du gouvernement Trudeau.

Au fil du temps, la Cour suprême du Canada a défini les droits des Autochtones en vertu de l'article 35 pour y inclure les titres fonciers et établir des règles obligeant Ottawa à consulter en matière de développement des ressources, par exemple.

« Ce changement fondamental annoncé par Trudeau est important ... car nous devons modifier la façon dont nous traitons nos terres et nos ressources en ce qui concerne la voie destructrice que nous empruntons et l'exploitation continue de nos terres et de nos eaux », a-t-elle déclaré.

Le chef régional de l'Assemblée des Premières Nations de l'Ontario, Isadore Day, a déclaré que même si la Loi sur les Indiens n'était pas expressément mentionnée, elle serait éventuellement remplacée par de nouvelles structures de gouvernance créées en vertu du cadre proposé.

« Je pense qu'il y aura un débat très divisé sur la nécessité ou non d'ouvrir la Constitution s'ils veulent aborder l'article 35 et s'ils cherchent à supprimer la Loi sur les Indiens et retirer la compétence aux communautés, » a déclaré Isadore Day.

Canada to create legal framework to guarantee indigenous rights
Reuters
Andrea Hopkins
February 14, 2018

Canada will create a legal framework to guarantee the rights of indigenous people in all government decisions, doing away with policies built to serve colonial interests, Prime Minister Justin Trudeau said on Wednesday.

In a sweeping speech that condemned past governments for failing to do enough to protect the rights of aboriginals, Trudeau said the planned legislation would ensure "rigorous, full and meaningful" implementation of treaties and other agreements and could establish new ways to resolve disputes.

While treaty rights with aboriginals are already recognized under Canada's Charter of Rights and Freedoms, the framework would ensure the constitution is the starting point for such matters as resource development, self-governance, land rights and social issues.

It will include new legislation, policy or other mechanisms to put those rights in action, Trudeau said. He did not provide details.

"We need to get to a place where indigenous peoples in Canada are in control of their own destiny, making their own decisions about their future," Trudeau said in the House of Commons.

The government will consult with indigenous groups as well as provinces, industry and the public as it writes the legislation, which will be introduced this year and implemented before the 2019 election.

If the government follows its words with tangible actions, "this can be an incredibly important step in Canada's journey of reconciliation," said Ry Moran, director of the National Centre for Truth and Reconciliation.

Trudeau is under pressure to make good on his 2015 election promise to repair the government's relationship with indigenous groups. On Tuesday, he met with the family of an aboriginal man who was slain by a white farmer after a not-guilty verdict on Friday in the high-profile case triggered calls for changes to Canada's justice system.

Indigenous Canadians, who make up about 5 percent of Canada's 36 million people and face more poverty and violence, have fought for generations to gain greater control of the development of the country's natural resources.

Thousands of legal challenges brought by aboriginal groups have ground their way through the court system at a huge cost, said Ken Coates, a professor at the University of Saskatchewan.

With the Supreme Court broadly accepting indigenous rights, the government appears ready to try to clarify and implement them in decision-making, rather than making decisions first and then fighting in court.

“I‘m really hopeful this will be a major reset of the relationship,” Coates said.

‘Significant backlog’ in drug testing could delay prosecution of fentanyl dealers
Health Canada says average turnaround time last year for the 124,731 drug analyses was 44 days
Vancouver Courier
Mike Howell
February 15, 2018

The Vancouver Police Department is concerned criminal charges sought against fentanyl dealers will be delayed if the federal government doesn’t increase the capacity of Health Canada’s drug analysis service that police say is backlogged by the opioid crisis.

The department suggested in a report going before the Vancouver Police Board Thursday that Health Canada is swamped with requests for drug analysis from police conducting investigations related to the overdose drug death epidemic.

“More resources for Health Canada would expectantly result in quicker analysis of results and, therefore, enable a quicker charge approval process,” the report said. “An accelerated process would ultimately reduce public safety threats with fentanyl traffickers taken into custody sooner.”

In most police investigations, the analysis of all drugs seized as evidence is required for a charge to be approved by the Public Prosecution Service of Canada. Health Canada has drug analysis labs in Toronto, Montreal and Vancouver and receives more than 120,000 drug samples each year from law enforcement agencies.

Over the last two years, the police report said, Health Canada analyzed in excess of 2,000 additional exhibits that contained fentanyl. To be clear, Health Canada’s drug analysis service is separate from the toxicology work done by B.C.’s Provincial Toxicology Centre on victims of drug overdoses.

More than 1,400 people in B.C., including 358 in Vancouver, died last year of a suspected drug overdose. Hundreds more died across the country. Fentanyl, the deadly synthetic narcotic 50 to 100 times more powerful than morphine, was connected to 81 per cent of overdose deaths in the province.

The report does not say whether any cases in Vancouver involving fentanyl dealers collapsed because of delays in analysis of drugs. But the report warns that a 2016 Supreme Court of Canada case known as Regina vs. Jordan established maximum timelines for the conclusion of criminal court cases.

“If these timelines are unfulfilled, it is presumed that the delays are unreasonable, unless proven otherwise by Crown Counsel,” the report said of the Jordan case. “The R v. Jordan decision has led to

Crown Counsel establishing charge approval guidelines where charges are not approved until substantial disclosure has been received. This disclosure includes drug analysis results from Health Canada."

The report pointed out the federal government announced in April 2017 that $116 million would be provided to support research for national measures to respond to the opioid crisis. That funding included "increasing national lab testing capacity," the report said.

"However, much of the $116 million in federal funding will be invested over five years and, given the magnitude of the opioid crisis, the VPD is concerned about potential delays and significant backlog at Health Canada," the report said.

The Courier contacted the office of federal health minister, Ginette Petipas Taylor, for comment. A statement from Taylor's ministry did not directly respond to concerns raised by the VPD over delays and a backlog.

The ministry acknowledged the increased funding and said it allowed the drug analysis service to "expand its analytical services and expertise to clients beyond law enforcement agencies and a greater capacity to respond to an increased demand for drug analysis services."

In addition, the statement said, the funding allowed the service "to begin disseminating Drug Summary Reports, which provide an overview of trends in illegal drugs and emerging threats based on laboratory analysis of samples submitted by law enforcement agencies. It also allowed [the service] to provide timely drug alerts to law enforcement and provincial and territorial health authorities about emerging potent illegal drugs."

The statement noted Health Canada's drug analysis service responds to requests from municipal, provincial, territorial and federal police forces and institutions. The agency prioritizes requests "based on the needs" of law enforcement agencies.

"Typically, samples are analyzed on a 'first in, first out' basis and [the agency] has a 60-day service standard in returning the results to the submitting officers," the statement continued. "In 2017, the average turnaround time for the 124,731 analyses performed was 44 days. However, law enforcement authorities can request a rush analysis in which [the agency] can provide results in two business days."

The police board meets Thursday at the VPD's Cambie Street precinct and is expected to approve a resolution from the VPD to call on the federal government to increase funding to Health Canada to speed up drug analysis. The resolution, if passed, would be forwarded to the Canadian Association of Police Governance.

At last month's police board meeting, Insp. Bill Spearn of the VPD's major crime section said police took more than eight kilograms of fentanyl off the street in recent investigations. The majority of fentanyl associated with the opioid crisis is produced in clandestine labs.

Challenges to drug-impaired driving charges likely to clog up Canada's courts, police warn
Drug-impaired driving is already an offence in Canada but the new legislation creates a legal limit for THC levels and allows the use of roadside screening devices
National Post
Brian Platt
February 15, 2018

OTTAWA — At a time when the government is working to reduce delays in the court system, police are warning that its new legislation on impaired driving is likely to cause a dramatic spike in litigation and constitutional challenges.

Impaired driving is already one of the biggest drains on court resources, responsible for about 10.1 per cent of cases before Canadian courts, according to a Stats Canada brief prepared for the Senate legal affairs committee.

Mario Harel, president of the Canadian Association of Chiefs of Police, told the committee on Thursday that Bill C-46 will cause litigation to skyrocket around impaired driving. Speaking in French, he predicted an "exponential" increase in court challenges, and noted the legislation would also mean police officers will have to come to court more often to explain what happened.

Drug-impaired driving is already an offence in Canada. Police officers can screen drivers using a standard field sobriety test at the roadside (the test can include counting backwards or standing still on one leg), then later fully test for drugs with specially-trained Drug Recognition Enforcement officers or a toxicology report.

But the new legislation creates a legal limit for THC levels in a driver's blood and allows for the use of roadside screening devices that test saliva. Justice officials have acknowledged the science is still being refined on how to reliably screen drivers for drug impairment, which means the devices are likely to face heavy scrutiny from defence lawyers once put into use. Lawyers are also likely to challenge whether the legal THC limits truly reflect how impaired a driver is.

On top of that, the Stats Canada document says drug-impaired driving cases currently take about twice as long on average to litigate in court than alcohol-impairment cases do, and are less likely to receive a guilty verdict. However, that could change once legislation is passed that explicitly addresses cannabis impairment.

Bill C-46 also substantially rewrites the Criminal Code provisions around alcohol-impaired driving. Some of the changes are meant to improve the efficiency of prosecuting cases (for example, by removing some defences a driver can use), but last fall, experts warned MPs studying the bill that the changes would cause an avalanche of litigation in the short term.

In its submission, the Canadian Bar Association said the Criminal Code overhaul "would bring a substantial amount of uncertainty into an area of well-established, heavily litigated law … further burdening our criminal justice system at a time when system delays have become critical."

Another provision in the bill creates mandatory breath testing for drivers, meaning police would no longer need a reasonable suspicion a driver has been drinking in order to compel a breathalyzer test. The mandatory tests are almost certain to prompt a constitutional challenge.

This all comes as the justice ministry is preparing sweeping reforms to the criminal justice system to alleviate trial delays, following a controversial Supreme Court of Canada ruling, R. v. Jordan, that established general deadlines for how long trials can be delayed before charges are tossed. The government's justice reforms are expected to be announced in March or April.

The overhaul of impaired driving laws was introduced at the same time the government announced marijuana legalization in the spring of 2017. In October, the government promised to spend $36.4 million over the next five years on education campaigns around marijuana use and drug-impaired driving.

The police officers speaking to the Senate committee on Thursday — including officers from the chiefs association, the Ottawa Police, the Gatineau Police, and the Canadian Police Association — said the public awareness campaigns will be crucial in their fight to keep drug-impaired drivers off the roads.

They pointed out they've already been fighting this battle for years, so even if the roadside screening devices aren't available for use right away, officers will still be actively searching out drug-impaired drivers.

"We are already doing drug-impaired driving investigations, and we have seen an increase over the last couple of years across the country in terms of the types of cases where we're pursuing criminal charges," said Chuck Cox, co-chair of the CACP Traffic Committee.

The committee study of C-46 is expected to continue for a few more weeks with expert testimony, and then senators will consider amendments. Meanwhile, on Thursday the Senate set out a timeline for Bill C-45, the bill that legalizes marijuana, with the aim of passing it by June 7. Marijuana would likely become legal two to three months after C-45 passes.

Federal stand in Russian spy case would breed citizenship 'uncertainty': lawyers
National Observer
Jim Bronskill
February 15th 2018

The federal government's rationale for trying to deny Canadian citizenship to the Toronto-born son of Russian spies leads down an "absurd and purposeless" path, the young man's lawyers argue.

They're asking the Supreme Court of Canada to dismiss the government's application for a hearing of the legal issues at the heart of the strange espionage saga that has left Alexander Vavilov, 23, in limbo.

The federal government's rationale for trying to deny Canadian citizenship to the Toronto-born son of Russian spies leads down an "absurd and purposeless" path, the young man's lawyers argue.

They're asking the Supreme Court of Canada to dismiss the government's application for a hearing of the legal issues at the heart of the strange espionage saga that has left Alexander Vavilov, 23, in limbo.

Accepting the federal position "would result in uncertainty about an individual's fundamental right to citizenship," Vavilov's counsel say in a brief filed with the high court.

The Supreme Court will announce in coming weeks whether it's going to hear the case, though no date has been set for the decision.

The government is appealing a ruling that returned Canadian citizenship to Vavilov after it was revoked by Ottawa.

Vavilov, 23, was born in 1994 as Alexander Philip Anthony Foley to Donald Heathfield and Tracey Ann Foley. The following year the family — including an older boy, Timothy — left Canada for France, where they spent four years before moving to the United States.

The FBI turned up at the family's Boston-area home eight years ago. In all, 11 people — four of whom claimed to be Canadian — were indicted on charges of conspiring to act as secret agents on behalf of the SVR, the Russian Federation's successor to the notorious KGB.

Heathfield and Foley admitted to being Andrey Bezrukov and Elena Vavilova.

The FBI said Bezrukov had based his cover identity on the birth record of a baby with the surname Heathfield who died in Montreal at the age of six weeks in early 1963.

Bezrukov and Vavilova were among those sent back to Moscow — part of a swap for prisoners in Russia.

Alexander finished high school in Russia, studying in English.

He changed his surname to Vavilov on the advice of Canadian officials in a bid to obtain a Canadian passport. But he ran into trouble at the passport office and in August 2014 the citizenship registrar informed Vavilov the government no longer recognized him as a citizen of Canada.

The registrar said his parents were employees of a foreign government at the time of his birth, making him ineligible for citizenship. The Federal Court upheld the decision two years ago.

Last June the Federal Court of Appeal set aside the ruling and threw out the registrar's decision. It said the provisions of the Citizenship Act cited by the registrar shouldn't apply because Vavilov's parents did not have diplomatic privileges or immunities while in Canada.

In its application to the Supreme Court, the federal government says the registrar's original decision was "rational and defensible."

The appeal court's interpretation, on the other hand, means the legislative provisions in question deny citizenship to children of foreign intelligence agents posted to an embassy and benefiting from diplomatic privileges, while allowing citizenship for children of undercover intelligence agents engaged in surreptitious espionage.

In their filing with the Supreme Court, Vavilov's lawyers say the government's view of the Citizenship Act is unreasonable and would lead to absurd outcomes.

Aside from diplomatic or consular officers, many foreign governments employ people in Canada through a wide range of state-owned enterprises including banks, airlines, energy companies and other national ventures, they point out. The government's stance would expand the exception to citizenship by birth to encompass all children born to parents working for such employers.

"This would mean, for example, that children born to employees of foreign private oil companies operating in Alberta would be Canadian, while those born to employees of state-owned oil companies would not," the submission reads.

"Similarly, children born to employees of foreign private airlines working at Canadian airports would be Canadian, while children born to employees of state-owned airlines working in those same airports would not.

"These results are absurd and purposeless."

Limiting the exception to citizenship to children born to foreign officials or employees who enjoy diplomatic immunities and privileges provides far greater certainty, Vavilov's lawyers conclude.

In a reply, the government characterizes the examples as "hypothetical scenarios" that "would undoubtedly be more complex and benefit from this court's guidance in the present case."

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Timothy Vavilov, 27, also went to Federal Court after being stripped of Canadian citizenship, and the outcome of his case could ultimately hinge on the result of his brother's proceedings.

Trudeau propose une avocate commissaire à l'information
L'avocate québécoise est actuellement présidente et chef de la direction du Comité externe d'examen des griefs militaire
Droit Inc
Martine Turenne
16 février 2018

Le premier ministre Justin Trudeau annonce qu'il propose la nomination de Caroline Maynard comme prochaine commissaire à l'information.

Le Commissariat à l'information, créé en 1983 en vertu de la Loi sur l'accès à l'information, veille à ce que cette loi soit appliquée et d'une manière plus générale, à la liberté d'information au Canada.

La nomination de Me Maynard, dont le mandate s'échelonne sur sept ans, doit être approuvée par la Chambre des communes et le Sénat. L'avocate est actuellement présidente et chef de la direction par intérim du Comité externe d'examen des griefs militaires. Elle détient un baccalauréat en droit de l'Université de Sherbrooke et est membre du Barreau du Québec.

Le premier ministre Trudeau estime que Caroline Maynard « serait une excellente commissaire à l'information. Elle comprend profondément l'importance d'assurer que le gouvernement soit ouvert et transparent. »

La carrière juridique de Caroline Maynard au gouvernement du Canada s'étend sur 20 ans, au cours desquels elle a gravi les échelons. Avant sa nomination par intérim de présidente au Comité externe

d'examen des griefs militaires, elle a agi comme directrice générale des Opérations et avocate générale au sein de ce Comité pendant 11 ans.

De 2001 à 2006, elle a été conseillère juridique au Cabinet du juge‑avocat général du ministère de la Défense nationale. De 1998 à 2001, elle a occupé le poste de conseillère juridique au sein du Comité externe d'examen de la Gendarmerie royale du Canada. Auparavant, elle a travaillé à l'Agence du revenu du Canada et en pratique privée.

10 raisons pour devenir un avocat
Droit Inc
Mélissa Pelletier
16 février 2018

Devenir un avocat demande un investissement de temps et d'argent. Mais la profession a ses avantages, explique l'avocate, éditrice et écrivaine Sally Kane dans un article publié sur The Balance.

Voici 10 bonnes raisons de devenir un avocat. La semaine prochaine, nous ferons l'exercice inverse: 10 bonnes raisons pour ne pas devenir avocat!

Mais commençons par les bonnes nouvelles:

1. Un salaire alléchant

Les avocats font partie des professionnels les mieux payés de l'industrie légale, et beaucoup sont mieux payés que la moyenne du salaire au pays. Alors que la moyenne salariale aux États-Unis tourne autour de 118 000 dollars par année, les avocats les mieux payés du monde touchent un revenu de plus d'un million de dollars par année. Gardez toutefois en tête que ce sont pas tous les employés qui ont un aussi bon salaire, tout dépendant du bureau pour lequel ils travaillent, le degré d'expérience et la région. Les employés engagés dans de plus grandes firmes, dans les zones plus urbaines ou qui se spécialisent dans un domaine plus en demande ont souvent les meilleurs salaires.

2. Prestige

Depuis plusieurs générations, une carrière en tant qu'avocat est une marque de prestige. Un impressionnant parcours scolaire, un salaire généreux, et l'autorité envers d'autres placent les avocats dans une élite de professionnels qui appellent au respect. Aujourd'hui, les avocats peuvent toujours jouir d'un statut professionnel et d'une image glamour perpétuée par les médias.

3. L'opportunité d'aider les autres

Les avocats sont dans une position unique pour aider les individus, les groupes et les organisations avec leurs problèmes légaux. Les avocats pour l'intérêt public s'occupent de causes pour aider les autres, et permettent à certaines personnes qui n'ont pas les ressources nécessaires d'utiliser leurs services. Les

avocats en pratique privée s'occupent souvent de causes pro bono pour aider les personnes défavorisées comme les aînés, les victimes de violence conjugale ou les enfants.

4. Défi intellectuel
Travailler comme avocat est un des défis intellectuels les plus valorisants de la planète. De l'aide à des problèmes plus complexes, les avocats trouvent des solutions, analysent et innovent.

5. Divers domaines de pratique

Alors que la profession évolue, de plus en plus de spécialisations sont possibles. Les avocats peuvent décider de se concentrer sur une ou plusieurs niches, que ce soit le droit du travail, les droits civils, ou des domaines plus précis comme les lois vertes, etc.

6. Environnement de travail

La majorité des avocats travaillent dans des firmes, au gouvernement et des corporations. À un âge où les cubicules sont devenus légion, les avocats ont plutôt droit à leur bureau entre quatre murs. Les avocats qui travaillent dans une plus grande firme peuvent souvent profiter de plus beaux bureaux, beaucoup de ressources internes et une variété de commodités allant d'un abonnement au gym à des billets gratuits pour tel ou tel événement.

7. Compétences pertinentes

Même si vous pratiquez le droit, un diplôme en droit peut vous ouvrir des portes et vous permettre d'explorer d'autres domaines. Les compétences que vous développez à l'école de droit et comme avocat peuvent vous servir pour faire de la consultation légale, gestion, rédaction, médiation, etc.

8. Influence globale

En tant que faiseurs de loi, leaders et agents de changement, les avocats sont dans une position unique pour un changement de société. Pendant des siècles, les avocats se sont tenus au milieu de la société: ils écrivent les lois, gèrent des cours et possèdent une influence sur les positions du gouvernement. Dans ces rôles, les avocats sont capables d'avoir un impact sur le monde.

9. Flexibilité

Les avocats sont autonomes et peuvent gérer leurs propres heures, choisir leur milieu de travail et sélectionner leurs clients. L'emploi comporte beaucoup de flexibilité qui permet aux avocats d'assister à des événements personnels ou passer la journée hors du bureau si nécessaire.

10. Et autres plaisirs…

Une carrière comme avocat comporte aussi beaucoup d'autres avantages. Par exemple, certains avocats doivent voyager pour leur travail. D'autres sont en contact avec des leaders, des politiciens, des figures

sportives et même des célébrités. Un autre avantage de pratiquer le droit, c'est de se mettre à penser en avocat: en améliorant votre sens de l'analyse, votre raisonnement et votre esprit critique.

Pay public servants for Phoenix stress, unions tell PM
Letter to prime minister coincides with 2nd anniversary of troubled pay system's launch
CBC News
February 16, 2018

Unions representing more than 225,000 federal public servants are asking the federal government to compensate workers for the stress and lost time caused by the troubled Phoenix pay system.

In a letter to the prime minister timed to coincide with this month's second anniversary of the launch of the pay system, which has cost hundreds of millions of dollars more than expected so far, 17 union heads continue to push for assistance for their members.

The leaders continue to ask for a permanent fix that will ensure public servants are paid accurately and on time. They're also asking for compensation for the mental toll they say the debacle has taken on government employees.

"Our members no longer have any confidence in the pay process thanks to Phoenix," the letter states.

"We ask your government to accept that it owes its employees compensation for the suffering they have endured and continue to face."

Phoenix beyond repair, says union head
"We believe that Phoenix is probably too broken to be repaired," said Robyn Benson, national president of the Public Service Alliance of Canada in an interview with CBC News.

"This is two years that our members have been suffering. Two years of overpayments, under payments, no payments," she said. "People have had to borrow money. People have had to use credit cards. People have lost their homes because of what this government has done."

The letter also asks for changes to the way public servants are required to return overpayments.

Workers who don't manage to hand back the overpayments within the same calendar year are currently required to pay the gross amount up front. Union leaders want that adjusted so they only have to repay the amount after deductions.

"[The federal government has] an obligation to pay their employees and if they cannot do so, they have an obligation to pay them damages," Benson said.

Workers rally outside NRCan
Around a dozen employees gathered outside the Natural Resources Canada building on Booth Street at the lunch hour Friday to protest the plagued pay system.

"I'm still very wary of trusting the system because we still hear horror stories to this day. You would think two years after the implementation, some of these things would be worked out," said Dusica Glisic who works in the building. While she hasn't experienced pay problems, she said she's been discouraged by the number of employees who come to her for help and don't know where to go for assistance.

The situation has had an effect on employees' mental health and it's time for the government to take action, she said.

Minister's office admits ongoing problems 'unacceptable'
Last year, Public Services and Procurement Minister Carla Qualtrough apologized for the ongoing problems affecting employees. After the unions' letter was sent to the Prime Minister's Office, her office provided a response to CBC News.

"The problems faced by government employees as a result of the Phoenix pay system are totally unacceptable and our government is doing everything it can to resolve pay issues as quickly as possible," a spokesperson wrote in a statement. "We continue to work closely and collaboratively with public sector unions, and we take any suggestion that might help limit the financial hardship faced by our employees very seriously."

Tens of thousands of federal workers have experienced pay problems with Phoenix. The total cost of the system will rise to nearly $788 million if Parliament approves new funding.

That figure includes the $309 million it cost taxpayers to set up the system, and up to $402 million more it has cost to work on the problems that have arisen since.

Canada's Intelligence Reform: A Closer Look at Pending National Security Legislation
Lawfare
Craig Forcese and Kent Roach
February 16, 2018

Canada is undertaking the most substantial reforms to its national security law since 1984, when its first civilian intelligence agency, the Canadian Security Intelligence Service, was created. Like other democracies attempting to lawfully use emerging technologies, Canada is seeking to codify once-murky intelligence practices into statute.

The 150-page bill being debated in Parliament, known as C-59, responds to issues that have become common among democracies in the digital era: What roles should intelligence services play in disrupting threats and not simply collecting information on them? How can information be shared within the government and internationally while addressing concerns about privacy and potential misuse? How broad a remit should intelligence services have to compile troves of data in which to detect threats? And how can a liberal democracy best structure its oversight and review institutions to guard against improper conduct by security and intelligence services—and to assess their efficacy?

We have assembled a small group of national security lawyers and academics to examine how Canada proposes to answer these questions. In a series of Lawfare posts over the next several weeks, we will address:

The proposed role of the Communications Security Establishment—Canada's equivalent of the U.S. National Security Agency—in offensive cyber-operations and the support it might provide to Canadian forces in an armed conflict. This mandate raises difficult questions about the direct participation of a civilian agency in hostilities.

Proposed changes to the Canadian Security Intelligence Service's capacity to collect bulk data as part of its security intelligence mandate.

The way Canada manages its intelligence sharing internally and with foreign partners, with an eye toward privacy issues and minimizing the risk of torture and other forms of mistreatment.

The new oversight process proposed for the Communications Security Establishment's foreign intelligence and cybersecurity regimes, which would impose a form of quasi-judicial supervision in response to Canada's broad constitutional protections against search and seizure.

The new review system that would subject all government national security and intelligence functions to audit by a bolstered, independent body, supplementing a new security-cleared committee of parliamentarians on national security and intelligence.

A new approach to the Canadian Security Intelligence Service's controversial "threat reduction" role—the power this service has to act against threats and not simply perform intelligence functions.
Most of these changes would be implemented by bill C-59, which has attracted both praise and criticism. While some points are all but certain to be amended in the legislative process, Parliament is likely to enact the bill, possibly by this summer. This is the moment to examine its key features.

A More Muscular Intelligence Service
The Canadian Security Intelligence Service has no exact analogue in the United States. Unlike the FBI, it has no police powers; it was created 34 years ago as a pure intelligence service. But unlike the Central Intelligence Agency, which focuses on foreign intelligence collection, the service has a core mandate to investigate and advise on "threats to the security of Canada." In practice, that means espionage and sabotage, foreign-influenced activities, and terrorism. As a domestically oriented "security intelligence" service, its closest international analogue is the United Kingdom's Security Service (MI5).

With time, the intelligence work of this Canadian agency has become more outward looking, especially as the threat of internationally-inspired or -directed terrorism has grown. As that focus has evolved, the Conservative government of Prime Minister Stephen Harper moved in 2015 to equip the intelligence service with "threat reduction" powers: the latitude to take "measures," in Canada and abroad, to reduce threats to national security. In other words, the service may physically intervene to disrupt threats that previously it could only investigate.

Harper made this change in response to problems rooted in the division of responsibilities between the intelligence agency and the police. While the intelligence service has broad latitude to investigate threats, only Canada's police possess the power to arrest. Close coordination between the two is necessary if any physical disruption is merited. Timing issues sometimes complicate coordination. A threat reduction measure desired by the intelligence service might come before a target crosses into criminal territory and might be designed to inhibit a move to criminal conduct. Even after the changes, handoffs from the intelligence service to law enforcement can be challenging; these are not internal issues, as they might be within the FBI. Rather, such instances require close and intricate choreography between agencies that have their own distinct cultures.

Canada has not always managed this relationship well. A judicial commission of inquiry into the 1985 bombing of Air India flight 182—the most deadly act of aviation terrorism before Sept. 11, 2001—concluded that efforts to detect and then investigate the bombing were mired in suboptimal cooperation between the intelligence service and police. The 2010 inquiry also found that difficulties persisted beyond the bombing.

An intelligence service will always be wary of sharing information that may prejudice its sources and methods. This is especially true if sources and methods may subsequently be subject to release in a criminal trial governed by Canada's police and prosecutor disclosure obligations (standards that are broader than those used in the United States or the United Kingdom). Managing the relationship between police and the intelligence service to minimize disclosure risk may impair nimble reactions to security threats.

The Harper government's response to these issues was to provide the intelligence service with unilateral threat-reduction powers but not arrest powers. There were obvious downsides to this solution.

For one thing, in an assessment of the powers bestowed in 2015, we wrote that viable prosecutions risked being derailed if the intelligence service's conduct muddied the evidentiary record and attracted abuse-of-process claims in subsequent criminal trials. This could leave dangerous people out of jail amid an endless cycle of threat-reduction efforts. The result would be like a game of whack-a-mole.

Codifying the scope of the intelligence service's disruption powers in a democracy built on the rule of law posed its own challenges. How does one authorize an intelligence service to conduct potentially covert activities in the interest of stopping nascent threats, especially when those activities may violate the regular law? The Harper government opted for an expansive approach. It barely limited the service's threat-reduction powers, imposing prohibitions only on bodily harm, violations of sexual integrity and obstructions of justice. Most controversial was the proviso that the intelligence service could violate any law and breach Canada's Charter of Rights and Freedoms—the equivalent of the Bill of Rights—if pre-authorized by a warrant, issued after a closed, ex parte proceeding by a Federal Court judge. There is no obvious means by which such secret warrants might be appealed.

Canada's charter permits reasonable incursions on citizens' rights, prescribed by law and "demonstrably justified in a free and democratic society." But permitted abrogations are typically overt, articulated by Parliament in laws with intelligible standards and adjudicated according to a demanding test in open

courts, appealable up to the Supreme Court of Canada. The Harper government's changes abandoned this approach. It was impossible to predict which rights would be violated in which circumstances—the panoply in the Charter of Rights and Freedoms was fair game. Moreover, the 2015 actions made judges potential enablers of charter infringements in pursuit of undefined "measures," the precise scope and nature of which were left to be decided in closed-door proceedings.

C-59's Response

Opposition to the national security law was an issue in the federal election in October 2015. The government of the new prime minister, Justin Trudeau, pledged to expunge the "problematic" aspects, a promise that has culminated in bill C-59.

To the dismay of some commentators, the pending legislation preserves the concept of judicially authorized law-breaking (including possible infringements of the national charter) in the interest of threat reduction. It does, however, rein in the intelligence service's powers to reduce threats: First, it adds to the list of no-go issues. The proposed list of prohibited conduct would be expanded to include torture, cruel, inhuman or degrading treatment; detention; and, serious property damage endangering a person. (Maltreatment was arguably already precluded by the bodily harm restriction, but the prohibition on detention is an important change: Many possible rights violations have, as their predicate, detention.)

Second, the bill legislates a closed list of threat-reduction activities the intelligence service may employ, where its conduct would otherwise violate the law or infringe on Charter rights. The closed list includes altering or disrupting communications and goods, fabricating documents, disrupting financial transactions, interfering with persons' movements, and impersonating someone (other than a police officer) in order to take any of these measures. Most obviously, this list leaves the door open to constraints on constitutionally protected free expression (for instance, shutting down someone's communications) and mobility rights (such as interfering with a person's international travel). But the construction of bill C-59 allows the government to argue that Parliament has legislated these specific threat-reduction powers, prescribed by law. As long as these are applied proportionally to a threat, they may well be a reasonable and justified limit on rights enumerated in the Charter of Rights and Freedoms.

Whether the government has achieved proper balance with its reforms remains to be seen. It seems clear that threat-reduction measures cannot stand in for carefully developed cooperation between police and the intelligence service. The effect of disruptions on possible prosecutions continues to deserves special attention, especially given Canada's struggles in this area in the Air India incident and later terrorism trials. The Trudeau government and the security agencies are attuned to this—but what further reforms are in the works remains unclear.

In the meantime, the government has concluded there may be instances in which the Canadian Security Intelligence Service is best equipped to disrupt a threat. Squaring this power with the rule of law—and the national charter—will always be challenging.

On this point: It is difficult to imagine how the government might otherwise reconcile a viable threat-reduction regime with the rule of law, other than through C-59, with its double ratchet: a list of prohibited conduct and a closed list of permissible actions.
It remains unclear how often the intelligence service would go to judges for advance permission to break laws or how judges would respond. Canadian judges have the option to allow some adversarial challenge in the warrant process by appointing a security-cleared amicus to test the government's warrant application.

Ensuring that the entire system works properly will require careful back-end scrutiny by Canada's new accountability bodies. We plan to return to that topic later in this series.

New Federal Government Framework for Indigenous Rights
Fasken Bulletin
Tracy A Pratt and Kevin O'Callaghan
February 16th 2018

The Trudeau government announced yesterday that it will create a new framework for the recognition and implementation of Indigenous rights (see the news release from the Prime Minister's officer here). The Prime Minister spoke for over fifteen minutes in Parliament announcing this initiative, but provided little in the way of details.

The framework will be developed through consultation with Indigenous Peoples, industry and the public at large. The stated intention is to introduce the framework to the House of Commons in 2018 and to commence implementation by October 2019.

The government says that the framework at least will entail "new legislation and policy that will make the recognition and implementation of rights the basis for all relations between Indigenous Peoples and the federal government going forward." The Prime Minister's Office indicated that the framework also could include "new measures to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination, including the inherent right of self-government."

It is not known how "recognition" will be reflected in the framework. The "simplistic" option for "recognition" is that Canada accept the existence of any Indigenous right or title claimed. This option would raise issues of jurisdictional uncertainty and the real prospect of Indigenous Peoples holding a veto on resource development in Canada. There are many options, however, for addressing the "recognition" aspect, which demonstrates the importance of broad engagement on the framework.

It also is not known whether the federal government plans to draw any distinction between Indigenous title rights of treaty vs non-treaty lands. Under many of the treaties entered into by Canada, the Supreme Court of Canada has made clear that First Nations have given up claims to Indigenous title and rights in return for treaty rights. Current Canadian law requires an Indigenous group to successfully "strike down" a treaty before it could seek a declaration of Indigenous title. An important issue with which the government will need to grapple in structuring the framework is how "recognition" will apply to those Indigenous Peoples who are signatories to treaties but continue to claim Indigenous title.

Before long, provincial governments also may follow the federal lead. BC's NDP Government under Joh Horgan has promised to implement UNDRIP, but has yet to outline a process – the Alberta government has made similar promises. An Ontario Liberal government under Premier Wynne's leadership also would be expected to eventually adopt a similar approach.

A framework may be an innovative solution to a long standing problem. The reduction of litigation and the advancement of reconciliation are laudable goals. Regardless of the content, however, the framework will have far-reaching implications to resource development in Canada. The nature of those implications will need to await the results of the consultation and framework development over the next year.

Canadian justice system needs overhaul in light of Gerald Stanley verdict
There should have been a prison sentence for killing Colten Boushie, says columnist Steve Bonspiel
CBC News
Steve Bonspiel
February 17, 2018

How can someone get away with lifting a pistol, pulling the trigger and shooting someone in the back of the head, and not go to jail?

Saskatchewan farmer Gerald Stanley shot Colten Boushie in the head Aug. 9, 2016, and killed him. Last week he was found not guilty of second-degree murder, sparking outrage and protests across the country.

In many people's minds, Stanley is responsible for Boushie's death and should have been convicted of manslaughter in the very least, but he got off clean because he's a white man who shot an Indigenous youth.

Stanley's defenders say because Boushie was drinking and his friends were attempting to steal, he had every right to shoot, which is a facile justification to shoot Indians with a clear conscience.

You've heard about "hang fire" over the course of the trial – where there's a delayed discharge of the bullet. It was key to the defence's argument the shooting was a freak accident. But a Crown expert witness testified there was nothing wrong with Stanley's gun.

There is still such a long way to go to educate the masses about Indigenous issues, and this one has polarized the debate of "us vs. them," highlighting the huge divide that exists between the original peoples of what became Canada, and the descendants of those who stole the land from our people.

Real reconciliation has to start with being honest and truthful.

The younger generations need to learn that while our lands are ravaged every day in the name of resource extraction and money, our communities are still waiting for that so-called reconciliation

everyone loves to talk about. Make sure it sinks in real well that the prosperity farmers like Gerald Stanley receive from lucrative stolen land comes off of the backs of our ancestors.

We're not that far removed from a time when Indigenous Peoples had to get permission from the Indian Agent to visit a friend in another community, to have a drink, to hold public meetings on reserve. People point to residential schools and they are right, it was horrific and unjust, and we carry that with us. But, sadly, that's only a small part of our tumultuous dealings with Europeans, and it continues today.

Why do people feel it's OK to dismiss us as irrelevant when it is the very land they live on — our land — which enables their lifestyle and their communities, while we suffer and our people die?

You killed Colten Boushie, Gerald Stanley, and you deserve to go to prison for it, no matter what you say about the gun accidentally going off.

Were Boushie's friends wrong to drive drunk, to attempt to steal an ATV, to do some of the things they did that day? Sure, but that shouldn't mean you can just kill one of them and get away with it.

Accidental or not, using a firearm that results in the death of another man should be open and shut.

Stanley was charged with second-degree murder.

The definition of first-degree murder in this country is when it is planned and deliberate. Under Canadian law, any murder that is not first-degree murder should be considered second-degree murder, which still requires intent.

Alternatively, the jury could have chosen to convict him of the lesser charge of manslaughter. The Criminal Code says: "Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation."

Sadly, neither of these two options were chosen by the jury.

You know something is terribly wrong in this case when Prime Minister Justin Trudeau makes plans to meet the family, with the Liberals frantically looking at ways to repair the blatant omissions and obvious holes in juror selection.

The irony is politicians haven't done anything about it before, so why now?

Maybe they're scared our people are finally fed up and the protests against the verdict are only the beginning of a reawakening.

For Indigenous people, our uphill battle for justice and equality in Canada can be broken down with a simple analogy. We're sitting at the poker table with no cards in our hands, hoping to beat a royal flush. Canada is made up of the other nine players at the table, as well as the dealer, the server, and the

owner of the establishment, and they have taken the cards away from us long ago, yet continue to ply us with free drinks in an attempt to steal whatever we have left.

With Tina Fontaine's murder trial expected to render a decision in the coming weeks, I hope true justice prevails, but I won't hold my breath waiting for it to happen in a game so heavily stacked against us.

Steve Bonspiel is the editor/publisher of Kahnawake Mohawk Territory's award-winning weekly newspaper The Eastern Door. He has won numerous provincial and national awards for his articles and editorials. Bonspiel is Mohawk, from Kanesatake, currently based in Kahnawake, Que.

Lac-Mégantic : le DPCP n'ira pas en appel contre les 3 accusés
Les 3 ex-employés de la MMA ont été reconnus non coupables de négligence criminelle ayant causé la mort de 47 personnes
Radio-Canada
16 février 2018

Le procès de Thomas Harding, Jean Demaître et Richard Labrie a été officiellement clos vendredi, alors que le Directeur des poursuites criminelles et pénales (DPCP) a annoncé qu'il ne contestera pas la décision du jury qui les a blanchis le mois dernier.

Les trois ex-employés de la Montreal Maine & Atlantic Railway (MMA) ont été reconnus non coupables de négligence criminelle ayant causé la mort de 47 personnes lors de la tragédie ferroviaire de Lac-Mégantic. Le verdict a été rendu au palais de justice de Sherbrooke après neuf jours de délibérations, le 19 janvier dernier.

« Lors du procès d'une durée de quatre mois, les procureurs ont présenté au tribunal la preuve documentaire admissible et auditionné une trentaine de témoins. Faisant suite au verdict rendu, et conformément à leur rôle, les procureurs ont procédé à une analyse rigoureuse des questions de droit et ont conclu que, dans l'intérêt public, ce dossier ne serait pas porté en appel », a expliqué le DPCP dans un communiqué.

Soulagement

La décision du DPCP a été accueillie « favorablement » et avec soulagement dans le camp du chef de train Thomas Harding, selon ses avocats.

« C'est sûr qu'après tout procès, c'est une étape importante de savoir si le ministère public va décider d'aller en appel sur le verdict ou non. M. Harding est extrêmement soulagé de ne pas avoir à rembarquer dans un autre processus judiciaire en appel », a souligné l'avocat de Thomas Harding, Me Charles Shearson.

Même si le juge Gaétan Dumas a qualifié la preuve présentée contre les trois accusés de « faible », Me Shearson assure qu'on ne tenait rien pour acquis pour la suite des procédures.

« Le verdict ne peut pas être attaqué en appel, mais seulement des points de droit. (...) L'honorable juge Gaétan Dumas a fait un travail très rigoureux et il a aussi très neutre et a rendu de bonnes décisions en droit, ce qui a sûrement contribué à la décision de ne pas aller en appel », a-t-il résumé.

Editorial: Fix problems exposed by Stanley trial
Edmonton Journal Editorial Board
February 16, 2018

Few recent court cases in Canada have divided a nation as much as when a jury acquitted Gerald Stanley in the fatal shooting of Colten Boushie.

It unleashed an outcry of anger and anguish from Indigenous communities across the country that a Saskatchewan farmer could walk free after fatally shooting a 22-year-old intruder on his property.

From the other edge of the widening chasm split open first by the deadly encounter in August 2016 and then the verdict last Friday, some Canadians said justice was served.

Those in this camp proclaim the issue at hand is not race, but protection of property and the menace of rural crime — a legitimate frustration for those living on homes and farms far from the nearest police station.
But how can race not be relevant in a case where a jury that appeared to be all white decided the fate of a white man accused of murdering a Cree man, in a region already riven by hostility between white farmers and Indigenous people? Race may have been a factor when the defence blocked several prospective jurors who appeared to be First Nations members by using peremptory challenges, which allow the refusal of jury candidates without giving reason.

It's pure speculation to say that another jury, even a more diverse one, faced with the same evidence wouldn't have reached the same conclusion.

But there is a well-documented problem with fairness and representation in Canada's justice system and there are road maps already to offer guidance. Peremptory challenges, in particular, come up time and again as a trouble spot in the system. A 1988 Manitoba inquiry found Aboriginal people were excluded from a trial because of race and recommended abolishing the practice. Five years ago, a report from former Supreme Court justice Frank Iacobucci made 17 recommendations to fix a "crisis" for Indigenous Canadians in Ontario's justice system — including cultural training for justice workers, using government databases to expand the pool of potential Indigenous jurors and abolishing peremptory challenges. No recommendations have been adopted.

The federal Liberals have been quick to voice sympathy with Boushie's family. Justice Minister Jody Wilson-Raybould said she has not ruled out eliminating the use of peremptory challenges but stressed further study is needed before deciding.

Laws shouldn’t be changed based on a single case but there’s ample evidence from province after province that Canada’s legal system must do a better job to ensure that Indigenous people are better represented on its juries and among those who work in the administration of justice.

'We were innocent': How one survivor hopes to get justice for Duplessis Orphans
Montrealer is filing motion to launch class action
CBC News
Jaela Bernstien
February 17, 2018

Now 62 years old, Marc Boudreau has come to accept that he will likely never find peace, or be able to live a normal life, after a childhood spent in institutions.

Many days are a struggle for Boudreau, who still finds it difficult to talk about his past.

"It was a stolen childhood, because we were children and we were innocent," he said. "We were defenceless."

In a motion to be authorized to launch a class action lawsuit, Boudreau alleges that his mother handed him over to a Catholic-run organization as an infant. After some time in foster care, Boudreau spent most of his early years in orphanages and psychiatric hospitals in Quebec.

In the motion, he claims that physical and sexual abuse in those institutions left him with long-term scars — both physical and emotional — and that prevented him from forming stable relationships or finding steady work.

"I didn't have comfort, affection, love or tenderness," he said.

Boudreau kept his past a secret until a couple of years ago, when he opened up to friends. He said that's when he first heard about the Duplessis Orphans — and realized that he may be one of them.

Deemed 'illegitimate children'
The orphans were born in the 1940s and '50s and take their name from the Quebec premier at the time, Maurice Duplessis.

Most of them were born to unmarried women, deemed "illegitimate" children and handed over to Catholic-run organizations.

Since psychiatric hospitals at the time earned more from federal subsidies than orphanages, the children were falsely labelled as mentally deficient and institutionalized.
Boudreau's motion alleges a story that would be familiar to many of the Duplessis Orphans: He claims he was made to work, left in isolation, drugged and forced to undergo experimental electroshock therapy.

The motion alleges extreme beatings, which he said left him with permanent damage in his left eye and contributed to a disease that causes plaque build-up in his arteries.

"It's worse than a nightmare. I've watched horror films and that's nothing compared to what we lived through, endured and suffered," he said.

Boudreau recently filed a motion asking a Superior Court judge to authorize a class action against seven Catholic institutions, as well as the Quebec and Canadian governments.

The Quebec government made a public apology years ago and compensated some of the survivors, but Boudreau said it's not enough.

The government offered each survivor between $15,000 and $30,000. Boudreau is asking for $875,000.

That would cover damages, agony and stress due to suffering, as well as compensation for future therapy.

Boudreau's motion has not been heard in court and the allegations have not been proven. The defendants have not filed a defence and will be contesting the motion.

Montreal lawyer Alan Stein, who represents Boudreau, said more than 100 survivors are interested in joining the lawsuit if it gets the judge's authorization.

"I feel that this is a case where there has been a very serious miscarriage of justice," Stein said.

"His story is a very sad story, and I am hopeful that when I present this motion, the court will be very sympathetic to Mr. Boudreau's treatment and history as a Duplessis Orphan."

Because the case is before the courts, the provincial and federal governments, as well as three of the Catholic organizations, would not comment.

Pierre Baribeau, who represents the four other Catholic organizations named in the motion, said the legal action came as a surprise to the congregations. He said his clients will be contesting the suit.

"We think that this is now history," he said. "But someone is trying to revive this matter, so we will be respectful of his rights and we will see."

While the Church might feel the matter is history, Boudreau said for him and other survivors, the pain remains a part of their daily lives.

Boudreau said if he and fellow survivors are able to win financial compensation it will help. But for him, it's more about getting justice and reclaiming his dignity.

"The money will help us. It will ease our pain, but it won't remove the scars," he said. "It won't remove the torture or the atrocities that we suffered."

Do we want justice or a return to the Star Chambers?
iPolitics
Brent Rathgeber
February 16, 2018

“That no Freeman shall be taken or imprisoned or disseised of his freehold or liberties, or free customs, or be outlawed or exiled or otherwise destroyed and that the King will not pass upon him, or condemn him, but by lawful judgement of his peers, or by the law of the land.”

Those words are from a 1641 Act of the British Parliament, abolishing the Star Chambers, which possessed an unlimited discretionary authority in acting as accuser, investigator and adjudicator, resulting in the arbitrary fining, imprisoning and corporal punishment for all sorts of “offences” not known to the common law.

It is an understatement that the Crown and its Ministers were never disappointed by the verdicts of these dependent jurists.

The right to judged by a jury of one’s peers is a check on government authority and is fundamental to the right to a fair trial and to be judged according to law.

I was more than casually interested in the criminal trial of Gerald Stanley, accused of second degree murder in the tragic death of Colten Boushie. But by that, I mean that I read and heard snippets of the trial evidence, filtered by the journalists, who were assigned to cover the trial.

Based on that limited exposure to the evidence, I am far from qualified from opining on the fairness of the trial or the justness of the acquittal. Moreover, no one, not even the journalists and courtroom spectators were privy to what occurred in the jury room, what evidence the jury found compelling, which witnesses they discredited and which they believed and why, and on what basis, they decided as they did.

However, others, many others, including persons in positions in authority, apparently do feel qualified to publicly comment on the case, notwithstanding that I suspect they have had no more exposure to the evidence than I had and worse, by virtue of their positions of authority, have the potential to compromise future proceedings.

The “sub judice” convention generally deems it inappropriate for elected politicians to comment publicly on matters that are “sub judice” or still “under judgement.” The Stanley matter is subject to a mandatory appeal period and is therefore “sub judice,” and having the Justice Minister and the Prime Minister publicly comment can be viewed as potentially interfering with due process.

I was especially disappointed with the twitter comments of Justice Minister Jody Wilson-Raybould. Canada's Attorney General stated that "As a country we can and must do better," not so subtly implying that justice was not served in this case and she was expecting a different outcome (a "better" result). The federal Attorney General should not be coveting or advocating for a desired outcome — not if she respects her office. As Attorney General, she should be more concerned with fair process than with a preferred outcome in a particular case.

Our constitution is premised on a separation of the judicial branch from the executive and legislative branches. That is compromised when one inserts itself in the business of another. Although courts interpret statutes and pronounce on the constitutionality of legislation, it would be inappropriate for judges to comment on pending legislation or political machinations or electoral goings-on.

And there is real harm when elected officials do not reciprocate. Criticising the verdict actually makes it more difficult for the Crown to appeal the acquittal. It becomes less likely that the Crown could offer a fair retrial, because of the perception that any future jury would be tainted as a result of the negative comments on the trial by persons in authority.

NDP Leader Jagmeet Singh, although not an elected official, but a lawyer who should know better, went even further. He tweeted: "There was no justice for Colten Bushie." I am pretty certain that he was exposed to no more of the evidence than what he (and I) heard on media. There is simply no credible foundation for that pronouncement.

And the media bears some responsibility here. Most of the media framed the issue as: "Indigenous man killed by white man on farm." Why wasn't it reported "man kills other man on farm"? Sadly, the former headline is more provocative.

Advocates are suggesting, with the apparent ear of the Prime Minister and the Justice Minister, that if there were aboriginal members on the Stanley jury, that somehow the result would have been different. Given the secrecy surrounding Canadian juries, I do not know what scientific, or even anecdotal, evidence they have to support that proposition.

And if it were true, I would be even more opposed to a system that converts juries from deliberative bodies into representative ones. A jury cannot do its job of objectively assessing evidence if it is expected that certain members are actually there to represent the interests of various demographics. A juror's oath is to faithfully try the defendant and give a true verdict according to the evidence; not to defend the interests of some group they happen to be a member of.

It is becoming clear that those who are demanding "Justice for Colten" are actually not interested in justice at all. They are interested only in an outcome. They wish to design a system that would guarantee their desired result: a conviction for the man they have already prejudged to be guilty.

They would prefer a return to the Star Chambers, where due process is illusory and those expecting a finding a guilt were seldom disappointed.

NP View: The Liberals' retweet and hashtag strategy isn't actually helping First Nations
The Trudeau government can't seem to stop thinking its primary role is blurting out compassionate-sounding bromides rather than taking action
National Post
February 16th 2018

This week offered the federal government two opportunities to show real leadership and wisdom on matters impacting Canada's relationship with Indigenous peoples. And twice, the Trudeau Liberals disappointed.

First, came the reaction of the prime minister and his cabinet ministers to the acquittal of Saskatchewan farmer Gerald Stanley who shot Colten Boushie, a young man from the Cree Red Pheasant First Nation. The details of the case are not simple, but in short, Boushie and several friends, who had been drinking and were driving around with a rifle, were spotted by Stanley on his property. They were not just trespassing but allegedly causing trouble, including trying to steal a vehicle. Stanley armed himself with an old pistol and, during the course of a confrontation, the gun discharged in the direction of Boushie, killing him. The circumstances were certainly enough to warrant an investigation, and the Crown proceeded with charges of second-degree murder. Last week, a jury acquitted Stanley after he claimed, improbably but not impossibly, that the pistol's discharge was unintended, a tragic accident caused by balky ammunition.

The jury that acquitted Stanley was, as has now been widely reported, extremely white. Indigenous people were part of the jury selection pool, as required by the law, but in part because the Criminal Code allows lawyers from each side to somewhat engineer the jury with a limited right to veto potential jurors, no Aboriginals evidently made it on. In an already racially charged case, the acquittal immediately led to accusations of jury racism and demands to fix the system. That's a reasonable reaction, and it's a matter that deserves at least some debate. But what is not reasonable is the comments that emerged from cabinet ministers, who ought to know better, in the hours after the verdict, effectively taking sides in a criminal case that had just been decided by the courts.

The prime minister tweeted immediately after the verdict that he had been speaking about the trial with Justice Minister Jody Wilson-Raybould. He was "sending love" to the Boushie family, and could not "imagine the grief and sorrow" the verdict was causing them. Fair enough. But then the justice minister, a former Crown prosecutor herself, not so subtly denigrated Canada's justice system when she tweeted: "My thoughts are with the family of Colton Boushie tonight. I truly feel your pain and I hear all of your voices. As a country we can and must do better — I am committed to working everyday to ensure justice for all Canadians." Indigenous Services Minister Jane Philpott had much the same reaction, making it clear she thought Stanley would have been convicted but for Canada's unfair, racist justice system: "Devastating news tonight for the family & friends of #ColtenBoushie. My thoughts & prayers are with you in your time of grief & pain. We all have more to do to improve justice & fairness for Indigenous Canadians."
We see nothing wrong with the prime minister speaking with a bereaved family and expressing sympathy for their legitimate pain. But his cabinet ministers went much further. They went too far. A legally constituted jury oversaw a fair trial and rendered a verdict in a process that can be, at the

Crown's discretion, appealed. No one is obliged to like the outcome, but all Canadians — especially members of the government's executive branch — should respect the independence of the judicial process. Ministers of the Crown owe all Canadians, Indigenous and non-Indigenous, a better standard than justice by social media.

The Trudeau government as a whole, however, can't seem to stop thinking its primary role is blurting out compassionate-sounding bromides while failing to follow up with policy ideas that actually help people. First Nations people above all have noticed the act is wearing thin (even Wilson-Raybould's father, a long-time Indigenous rights leader, has become a critic). Like on Wednesday, after a meeting with the Boushie family, when the prime minister announced to Parliament that his government would be pursuing "a new recognition and implementation of Indigenous rights framework that will include new ways to recognize and implement Indigenous rights."

"This will include," he continued, "new recognition and implementation of rights legislation. Going forward recognition of rights will guide all government interactions with Indigenous peoples."

The speech had been long coming. Given the public outpouring of support by his cabinet for Boushie's family, it took on extra importance. And … there wasn't much there. Once you set aside the aspirational bits and progressive platitudes, all that was left was a promise that he would be "engaging the provinces and territories and non-Indigenous Canadians" and that said engagements would eventually produce legislation.

What will the bills propose? When will the engagements start? How long will they last? What's the goal? How will success be measured? Stay tuned, apparently.

It's not good enough. The prime minister can give a decent speech, we grant that (he gets a lot of practice). It's turning words into actions and tweets into change where this government has repeatedly come up short. Just this week, a new report measured the Liberals' performance on their vow to end long-term boil-water advisories on reserves. It came up with a failing grade. There are basic, pressing issues that matter much more than "frameworks" and retweets.

The Liberals will no doubt tell us they'll do better this time. That they'll clean up the water, decolonize our laws and deliver justice for the Boushies and every other First Nations person. They will sound like they mean it. But does anyone really believe it anymore?

A call for justice
Firestorm over jury makeup in Saskatchewan farmer's murder acquittal could finally prompt action to make juries reflect Indigenous population
Winnipeg Free press
Katie May
February 16th 2018

For 27 years, recommendations from the Manitoba Aboriginal Justice Inquiry to make jury selection fairer for Indigenous people gathered dust.

The issue resurfaced four years ago, but gained little traction, when former Supreme Court Justice Frank Iacobucci urged the federal government to amend parts of the Criminal Code that discriminate against Indigenous people when juries are chosen.

But last week's verdict — and the explosive aftermath — in a racially charged case may finally spark change.

This time, powerful reactions to a Saskatchewan farmer's acquittal reverberated across the country and reached the prime minister and federal justice minister.
"It's never too late to do the right thing," Sen. Murray Sinclair said this week.

The former co-commissioner of the Aboriginal Justice Inquiry and co-author of its 1991 recommendations for reform was speaking in response to the not-guilty verdict for Gerald Stanley after his bullet killed 22-year-old Colten Boushie in a shooting the farmer argued was an accident. He was acquitted of second-degree murder and manslaughter by a jury that appeared to be entirely white.

The case doesn't perfectly align with the AJI's recommendations for juries, which focused on the idea an Indigenous accused, not an Indigenous victim, should be able to see himself or herself reflected in the jury pool.

But it's the case that has restarted a national conversation about criminal-justice reforms within a cultural movement that draws on promises of reconciliation with Indigenous people and demands change.

"If there was ever an opportunity or a time to do it, it is now," said Manitoba NDP justice critic Nahanni Fontaine.

Would require changes to Criminal Code, panel infrastructure
It could all be the "political catapult" that paves the way to prioritize more inclusive jury panels in Manitoba, says a University of Manitoba law professor who has been studying jury representation in the province. But many of the challenges that slowed progress decades ago remain.

Richard Jochelson's research has shown that, according to a sample of Manitobans who participated in his 2015 study and strongly supported the idea, having a jury that is more representative of the population makes sense.

"This is something Canadians are ready for. I don't think this is a revolutionary idea, that if there's an Indigenous accused, there should be Indigenous voices on the panel," Jochelson said.

"I don't think that's shocking or particularly intimidating as an idea. I think where it starts to get controversial is where people start to think about the taxpayer implications of making this a reality."

The geographical remoteness of many Indigenous communities, particularly in northern Manitoba, is one hurdle that means it's more expensive to send notices, enforce jury-duty summonses and pay for

travel costs for people to travel from their home communities to serve on a jury. The large majority of jury trials in Manitoba take place in Winnipeg courtrooms.

Altering some parts of the jury selection process would require changes to Canada's Criminal Code — lawyers' ability to "challenge" and automatically dismiss potential jurors without having to give a reason, for example — but provinces control the way jury pools are formed.

"You could develop policies where you overtly aim to increase jury representation for marginalized populations like Indigenous persons, especially from remote communities," Jochelson said. "It would require the infrastructure to transport them, to lodge them, to compensate them and, perhaps most difficultly, to find them and get them to want to serve on juries.

"But in terms of the big challenges — traversing distance, place and time and compensating people to come and be involved, I don't think anything has really been done. We know what the issues are, but I don't think I know of any policy decisions or law reform to try to bridge those gaps."

No statistics collected on jurors' ethnicity
Roughly 10 per cent of Manitoba's population and 12 per cent of Winnipeg's urban population is Indigenous, but it's impossible to know how many potential jurors are Indigenous.

Anyone with a Manitoba Health card could be asked to report for jury duty after their names and addresses are randomly selected from the health card data. Manitoba's Justice Department doesn't ask prospective jurors their ethnicity, their sex or any other information beyond their birth date, their occupation and their contact information to find out if there are any conflicts. People over age 75 are exempt from jury duty, as are people working in certain jobs.

None of the jury pool information is collected or amalgamated, so no statistics exist about the demographics of juries in Manitoba.

"That's a point of procedure that has to change. There's no real reason for that other than, I imagine, they're trying to protect whatever privacy interests they imagine are there. But it might be that equality interests supersede privacy interests, and for that particular reason, they should be asking for and storing more information," Jochelson said.

"But people get nervous when you start asking questions about race in these sorts of processes."

Jurors drawn from neighbourhoods of accused, victim
Manitoba has not announced any plans to change its jury-selection process in the days following Stanley's acquittal.

One of the AJI's recommendations was for random jury pools to be drawn from neighbourhoods where the accused and victim live if the jury trial is happening in an urban area.
The provincial government implemented that practice beginning in November 2016, Justice Minister Heather Stefanson told the Free Press in an email Friday.

"Our government has taken steps to ensure that Manitoba juries are fully comprised of individuals from the district where an offence is alleged to have occurred," she said, adding her department uses plain language in its notices to jurors and on its Jury Declaration Form "in order to enhance accessibility and comprehension for jurors."

"We also continue to work toward enhancing educational tools available to the public about the jury selection process and the role of a jury," she said.

'Intrinsic distrust' of justice system

But the "unprecedented" response to the Stanley verdict from Prime Minister Justin Trudeau and federal Justice Minister Jody Wilson-Raybould is a sign the time is right to revisit jury the possibility of including First Nation band registration rolls along with health card data in the jury selection process, said Fontaine, the MLA for St. John's.

"We need to have a more robust system that would capture Indigenous peoples across the province. Not everybody has a health card," she said.

That, along with public education about the role of juries, could go a long way toward encouraging more Indigenous participation, she said.

"For Indigenous people... there is an intrinsic distrust of the Canadian justice system," she said, adding the province needs to do a better job of explaining the role of juries.

"I'm not even sure if we've done that at all — explaining those processes and why it would be important to have Indigenous people sit on those jury processes. I would suggest that there are a lot of people who don't understand that."

Indigenous rejections of a colonial-rooted justice system are understandable, Fontaine said.

"But the fact of the matter is that our people do deserve equitable and fair access to justice, and part of that is a responsibility for all of us to participate in that," she said. "If we don't participate in it, we just guarantee that the system continues as it has."

'Manitoba can be an international beacon'

A copy of the AJI report was "still encased in its original shrink wrap on the shelf," when Gord Mackintosh walked into his office as Manitoba's new minister of justice and attorney general in 1999, he remembers.

Under then-premier Gary Doer, the province launched the Aboriginal Justice Implementation Commission to look at putting the AJI's recommendations into action. More reports and more recommendations followed until the implementation commission ended in 2001. There was no mention of jury representation in its final report.

Now, in the midst of the Justice for Colten movement and federal reaction to the Stanley case, Mackintosh says he believes the potential for reform goes beyond jury selection and could make Manitoba a leader in restorative justice if the province takes "concrete action."

"This time, I am heartened by the response in Ottawa," said Mackintosh, who retired from politics after 23 years in 2016 and now teaches at the University of Winnipeg. "This is a change that has to come from the national government and I'm very heartened to hear of their interest and concern. So I have some optimism about change.

"It has to be broader than just looking at jury selection. There are Indigenous approaches to justice that can be far more effective, and I think that Manitoba can be an international beacon for restorative practices, not only for lesser offences but as part of the processes for more serious offences as well."

During a scrum with reporters in Winnipeg earlier this week, Sinclair was questioned about the work he did on jury representation 27 years ago, and whether change can happen now.

"There are laws that can be changed. And the laws that contributed to this need to be reviewed," he said of the Stanley verdict. "And that's my intention going back to Ottawa this week.

"It's not to simply come to that realization we need to do something about it. I've known that for a while. But now I believe others will see the importance of it. And to take advantage of that, by putting forward some remedies that I think will be acceptable now."

'No place' for racism in justice system, minister says
CTV News
Rachelle Aiello
February 18th 2018

OTTAWA -- Justice Minister Jody Wilson-Raybould says she's determined to rid Canada's criminal justice system of racism.

"There is no place in this country for racism, discrimination, bias of any sort in the criminal justice system or otherwise, and I will be vigilant in terms of insuring that that doesn't exist," she said in an interview with CTV Question Period host Evan Solomon.

Wilson-Raybould said that people "marching in the streets" after Gerald Stanley's acquittal in the death of 22-year-old Cree man Colton Boushie demonstrated that people are concerned with the current state of Canadian courts.

"I think that racism is something that we have to consider, that exists, that there are systemic challenges within the justice system, in terms of different peoples' perspectives, racism, bias, discrimination," she said. "This is what I view people that have been marching in the streets since the verdict last week, are coming out to talk about."

The Attorney General and Prime Minister Justin Trudeau took political heat last week over what the opposition characterized as “political interference” by taking to social media to comment that the justice system can “do better,” in response to Stanley’s acquittal by a jury with no visibly Indigenous members.

Though, Wilson-Raybould denies their comments took things too far, saying she “felt compelled” to say something.

“Following the lead of the Prime Minister, I acknowledged and recognized the angst and the emotion and the trauma that the Boushie family was feeling, and beyond that, Canadians right across the country. My comments were specifically about the justice system and the injustice in that system as it relates to Indigenous peoples,” she said.

“I in no way was questioning the decision of the jury,” she said. “I think it is incumbent upon me to respond to the lives and experiences of individuals and keep a constant vigilance in terms of the wellbeing of the justice system.”

On Wednesday, Prime Minister Justin Trudeau announced the government’s intention to create a legal framework to protect the rights of Indigenous people in Canada, during a take-note debate on the experience of Indigenous Peoples within Canada’s justice system.

The special debate came on the heels Boushie’s family meeting with federal ministers to discuss potential justice reforms.

Wilson-Raybould discussed potential changes the federal government is considering to the Criminal Code, including around jury selection by removing peremptory challenges.

“Marginalized individuals including Indigenous communities, black Canadians, other marginalized groups have not seen themselves in the justice system, have not played an active role in the justice system and so this is a comprehensive way in which we have to ensure that individuals are involved,” she said.

Though, Pam Palmater, associate professor and chair in Indigenous Governance at Ryerson University, said on CTV’s Question Period that jury selection won’t fix the fundamental problem.

“Unless we get at the root of it, fixing around the edges… is not going to cut it,” Palmater said.

Wilson-Raybould also said she is confident that “at some point in the not too distant future” an Indigenous person will be named to the Supreme Court of Canada.

Consent doesn’t mean a veto: Wilson-Raybould

As for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) -- which means requiring “free, prior and informed consent” before the approval of natural resource development -- Wilson-Raybould said to her, consent doesn’t mean a “veto” on projects.

“Consent is not equated to a veto,” she said. “We will make better decisions when we involve Indigenous peoples and Indigenous jurisdiction in decision making as we move towards consensus-based decision making, which doesn’t mean everybody agrees, but we have to actually put in place a process that respects the decision-making power of each of the parties.”

Palmater saw things differently, arguing the Liberal’s position is not consistent with current law.

“In what alternate universe does consent not require you to say yes or no? In every other context in society and in law, and in contracts, consent means you get to say ‘yes’ or ‘no.’ Only in the case of Indigenous peoples does it mean something else,” she said.

Quebec court to hear appeal of challenge to British royal succession law
Professors from Université Laval trying to get Canada's law on royal succession declared unconstitutional
The Canadian Press
Feb 18, 2018

The Quebec Court of Appeal is set to begin reviewing a case on Monday that challenges the rules governing the ascension to the British throne, and the result could have political consequences in Canada.

If the appeal is successful, the challenge could force Ottawa to undertake a round of constitutional negotiations, according to lawyers behind the suit.

The two law professors from the Université Laval are trying once again to get Canada's law on royal succession declared unconstitutional.

The conflict dates back to 2011, when leaders of Commonwealth countries agreed to modify the rules so that a woman can become queen if she is the oldest heir to the throne.

Before the change, a woman would have been passed over in favour of her younger brother.

The federal government implemented the change with a new law in 2013.

But law professors Patrick Taillon and Geneviève Motard argue that the change amends the Canadian Constitution and should have required the consent of the provinces.

Taillon and Motard went to court, contending that the British parliament lost its right to legislate for Canada with the repatriation of the Constitution in 1982.
A Quebec Superior Court justice rejected their claims in February 2016, concluding that the law did not require Ottawa to amend the Canadian Constitution.

In his decision, Justice Claude Bouchard invoked "the rule of symmetry," which means that the person designated king or queen of the United Kingdom is automatically Canada's monarch.

The appeal of that decision will be heard Monday and Tuesday.

Canada's independence from the United Kingdom questioned
For Taillon, the judge's "neo-colonial" interpretation of the law raises serious questions about Canada's independence from the United Kingdom.

"London's ability to legislate for us seems to reappear with respect to the monarchy," he said.

"This seems to call into question the achievements of the repatriation of the Constitution in 1982."

If the royal succession law were invalidated by the court, the federal government would be faced with a choice: refuse to touch the Constitution and default on Canada's obligations to the Commonwealth, or open a potentially contentious round of constitutional negotiations, where the provinces could bring demands to the table.

If Ottawa ultimately refused to open the Constitution to adopt the new rules of succession, it could be possible that one day there would be a queen in the U.K. and a king in Canada.

This hypothetical possibility would still be in the distant future, however, since it would depend on whether Prince George's offspring were male or female — and he's currently only four years old.

Defining 'Métis' is harder than you think
Times Colonist
Shannon Moneo
February 18, 2018

The year 2016 was noteworthy for Canada’s Métis. First was the Daniels Supreme Court of Canada decision, which in effect diluted the Métis waters, with the court writing: “There is no consensus on who is considered Métis or a non-status Indian, nor need there be. Cultural and ethnic labels do not lend themselves to neat boundaries. “Métis” can refer to the historic Métis community in Manitoba’s Red River Settlement or it can be used as a general term for anyone with mixed European and Aboriginal heritage.”

Without consensus, the flood gates have opened, as evidenced by the 2016 census.

It tallied almost 588,000 Canadians who self-identified as Métis, a 50 per cent jump from 2006. In Nova Scotia, 27 years ago, there were 225 Métis, but by 2016, there were 23,310. In B.C., the Métis Nation B.C. reports there are 70,000 self-identified B.C. Métis, but only 16,500 registered Métis. The Manitoba homeland had 33,230 in 1991, reaching 89,360 by 2016.

One reason for the bewildering growth could be the 2003 Powley Supreme Court of Canada decision, where the court laid out three nebulous conditions to determine Métis status: Be a member of a present-day Métis community; identify as a Métis person; have ties to a historic Métis community.

So what exactly is a Métis?

It looks as if author Joseph Boyden's muddy claims would float. No need to get a copy of scrip or track down a baptismal record from 1833. But where do Newfoundland's professed 7,790 Métis hang their sashes? Come By Chance perhaps? And what exactly does it mean to "identify" as a Métis? Can you identify with the royal family and get on the bejewelled gravy train, or as a white person, identify with black people and write a Civil War novel?

I've been a proud Métis since 2011, after completing the demanding, exhaustive process to prove that recent ancestors were French-Canadian and Aboriginal and hailed from Métis central, near Manitoba's Red and Assiniboine rivers. To go beyond claiming that I was Métis, I had to find Manitoba baptismal records from the early 1800s, because there were no birth certificates.

A piece of Manitoba scrip from 1876 sealed the deal. Signed by my great-great-grandfather, Joseph Hamelin, considered a "half-breed," he agreed to be "entitled" to 160 acres of land or $160 in the province of Manitoba.

Joseph's maternal and paternal grandmothers, both named Angelique, were Saulteaux, Ojibwa and Chippewa. His wife Julie was also Métis, with American Indian blood. Back then, Red River carts rolled south to North Dakota during the time when buffalo stampeded across invisible borders.

Why does this matter? Because Canada's growing Aboriginal population is asserting its rights, as it should. But with that, could it be that court cases, land claims, and the dollars and property that follow restitution are prompting some to get on the bandwagon? Did a robust birth rate or the obsession with finding one's roots, no matter how shallow, account for the vast growth of the Métis population?

I did not get Métis status to acquire freebies or government handouts. Curiosity and pride in my heritage were motivators. My life is comfortable. Benefits should be left to true Métis who truly need help. It would be unconscionable of me to draw from a limited well, just as it would be for pretenders.

Late last year, I was troubled by the amount of time it was taking to get Métis Nation B.C. paperwork processed and wondered if it had something to do with the wave of those who "identify" as Métis? The Métis Nation states that its programs and services are available to all who merely identify as Métis. They don't require the citizenship card. My application for a "harvesting" licence would take more than four months to handle due to all the applications.

I sent repeated emails to the nation's executive asking about this touchy subject and finally got a response from Michael Dumont, the nation's Vancouver Island director. Dumont told me that the federal government intends to make sure those who claim Métis status possess verification. He added that people who self-identify might not have access to funds, and there are plans to "weed out" those who want to game the system. What it will take is a "verified genealogy," Dumont said.

Verification is important, because as so-called Métis continue to come out of the woodwork, the meaning of Métis will be eroded. When an Aboriginal ancestor was eight or more generations away, should that count?

Not many countries can lay claim to having people who were a mix of Aboriginals, French and Scottish. They became a distinct people who spawned a colourful culture and language, Michif.

Métis are an intriguing part of Canada's history and for many years were disparaged and shunned as "half breeds." Now that the tables have turned, those late to the party want to fallaciously partake in a reservation-only feast.

Shannon Moneo, a freelance writer, lives in Sooke.

Trudeau, Wilson-Raybould justified in speaking out after controversial Stanley verdict, marked a turning point for Canada, say MPs
But former Conservative justice minister Peter MacKay called the justice minister's remarks 'dangerous.'
Hill Times
Peter Mazereeuw
February 19, 2018

Prime Minister Justin Trudeau and Justice Minister Jody Wilson-Raybould were right to speak out after the verdict in the Gerald Stanley trial, say Liberal and NDP Parliamentarians, who believe the government and Parliament have to "take a stand" on the justice system's failures for Indigenous people.

"It's addressing such a fundamental wrong in our system," said Liberal Senator Lillian Dyck (North Battleford-Saskatchewan, Sask.).

A Saskatchewan jury found Mr. Stanley not guilty of second-degree murder on Feb. 9 after he shot Colten Boushie, a 22-year-old Indigenous man, in the head on his farm in 2016. The jury did not include any Indigenous people, though several were removed from the jury pool by the defence team through the use of peremptory challenges, which allow the defence to remove a limited number of potential jurors without giving a reason.

Mr. Stanley's defence team had argued that his handgun had discharged accidentally after Mr. Stanley had fired warning shots after Mr. Boushie and his friends had driven onto the Stanley farm in Saskatchewan, and one of Mr. Boushie's friends had tried to start one of the Stanley family's ATVs.

The day of the verdict, Mr. Trudeau tweeted, "Just spoke with [Ms. Wilson-Raybould], I can't imagine the grief and sorrow the Boushie family is feeling tonight. Sending love to them from the U.S."

Ms. Wilson-Raybould tweeted, "Thank you [Mr. Trudeau]. My thoughts are with the family of Colton Boushie tonight. I truly feel your pain and I hear all of your voices. As a country we can and must do better—I am committed to working everyday to ensure justice for all Canadians."

Failing to speak out would have left the victim's family "feeling like nobody's listening, that nobody cares. And one of the most frustrating and hurtful parts of being the victim of racism is that everybody says it doesn't exist, and nobody is willing to listen and believe," said Sen. Dyck.

"In this case, people like the minister of justice and the prime minister are saying, 'We've heard you, and we plan to do something.' And I think that's so important, because it gives hope, not only to the family, but it also gives hope to all those other Indigenous people out there who maybe haven't had their son murdered, but who have faced other events in their life that are very frustrating, devastating, irritating, you know. You name it all.

"It validates the fact that we do live in a society where some people discriminate against us."

NDP MP Charlie Angus (Timmins-James Bay, Ont.), his party's critic for Indigenous youth, said "when you see the justice system failing an entire people, and one case comes forward that really becomes a symbol of that, it's incumbent upon political leaders to say, 'We need to take a stand, we need to examine what went wrong here,'" said Mr. Angus.

"This is not an attempt to overturn what was done in that courtroom, this is saying, 'Things failed.' The investigation failed, the family were treated, and the mother certainly was treated in an unconscionable manner, and the issue of the peremptory jury exclusions, that is something that belongs in the purview of Parliament, and I think it was responsible for Parliament to take this issue up," he said.

Perry Bellegarde, the national chief of the Assembly of First Nations, said he believed that by speaking out after the verdict, Ms. Wilson-Raybould and Mr. Trudeau were "showing that they're human beings, that they have care and they have compassion when a life has been taken."

"I think they're strong leaders in that regard," Mr. Bellegarde said.

Liberals crossed the line, says MacKay

Former Conservative justice minister Peter MacKay, however, said by speaking out after the verdict the Liberals could be stoking racial tensions, and undermining Canada's justice system.

"It goes to the very principle of the lines that you don't cross between politics and the sanctity of our justice system," said Mr. MacKay, who worked before his time in Parliament as a Crown prosecutor in Nova Scotia, and now works at law firm Baker McKenzie.

Mr. MacKay said the justice minister could look at reforming the justice system, but "saying that 'We can do better' within hours [of the verdict] undermines the legitimacy of the jury system, it casts aspersion on the jurors themselves.

"It's rendering judgement from a political standpoint—not an informed one, because they weren't sitting there in the courtroom throughout the trial—and saying that, 'We disagree.'"

“The implicit undertone here is that the jury were somehow biased, or they were wrong, or they made a decision based on race. And that’s where it gets dangerous, that’s where we start getting into the stroking of racial tensions,” he said.

It is very rare for a federal justice minister to make comments related to a criminal court case immediately after a verdict, and may be unprecedented for a prime minister to do so. While serving as justice minister in 2012, Conservative MP Rob Nicholson (Niagara Falls, Ont.) issued a statement that said so-called “honour killings” were “barbaric and unacceptable,” after a jury found Mohammad Shafia, his wife Tooba Yahya, and their son Hamed guilty of the murder of the couple’s three teenage daughters, Zainab, Sahar, and Geeti, and Rona Mohammad Amir, another of Mohammad’s wives.

Two days after the Stanley verdict earlier this month, Mr. Nicholson—now his party’s justice critic—tweeted “My thoughts and prayers go out to the Boushie family as they mourn the tragic loss of Colten Boushie. As difficult as this verdict must have been for all involved, I respect the independence of the judicial process.”

In 2005, then-Liberal deputy prime minister Anne McLellan said it was “not possible to say … that there would be a benefit from a public inquiry” into the Canadian Security Intelligence Service’s investigation of the 1985 Air India Bombing, after Ripudaman Singh Malik and Ajaib Singh Bagri were acquitted of the bombing by then-B.C. Supreme Court justice Ian Bruce Josephson, who said CSIS had been negligent in its investigation.

Mr. Trudeau and Ms. Wilson-Raybould have both insisted their remarks were not a commentary on the outcome of the Stanley trial itself.

“While it would be completely inappropriate to comment on the specifics of this case, we understand there are systemic issues in our criminal justice system that we must address. We are committed to broad-based reform to address these issues. As a country, we must and we can do better,” Mr. Trudeau said in the House Feb. 12.

The day after the verdict, on Feb. 10, Conservative MP Lisa Raitt (Milton, Ont.), her party’s deputy leader, tweeted that she was “concerned” about Mr. Trudeau and Ms. Wilson-Raybould’s “interventions on the result” of the trial.

“As they both are critical of the result—I don’t know if they are implying that the jury got the decision wrong. If they are, the individual jurors are prohibited from explaining themselves if they chose to do so.”

‘People look at him and they’re afraid of him’

Sen. Dyck is a member of the Gordon First Nation in Saskatchewan, and was appointed to the Senate by former Liberal prime minister Paul Martin in 2005. She sat for several years as an NDP and independent NDP Senator, despite being rejected by the party leadership over its support for abolishing the Senate. She has sat as a Liberal Senator since 2009.

She said the Stanley verdict was “shocking” to her, “because I have a son.”

“And when I woke up that morning, you know I just felt so afraid for him. He’s in his 40s, but you know, he’s brown-skinned, brown eyes, short black hair. That fits the description. And he’s a gentle giant, but people look at him and they’re afraid of him.”

Sen. Dyck said the government’s reaction to the Stanley verdict marked a turning point for Canada.

“I definitely believe it is, if nothing else because of the reaction across the country. The rallies were from Vancouver to Halifax to Yellowknife,” she said.

The public is now more aware than before of the “terribly racist” history of the federal government’s treatment of Indigenous people, said Sen. Dyck, thanks to the Truth and Reconciliation Commission’s 2015 report on residential schools.

“Minds and hearts are more open than they were in the past,” she said.

Eyes on the clock, as election nears

On Feb. 14, the government announced it would begin consultations towards a “Recognition and Implementation of Rights Framework,” which would include new legislation and policy to “advance Indigenous self-determination” and recognize Indigenous rights.

Crown-Indigenous Relations Minister Carolyn Bennett (Toronto-St. Paul’s, Ont.) will lead the consultations, and the resulting framework will be introduced in 2018 and implemented in 2019, before the next federal election, according to a press release from the Prime Minister’s Office.

Mr. Bellegarde said the government should begin implementing some of the recommendations from the numerous investigations already completed on the way Indigenous people are treated in the criminal justice system.

“The time frame is key. We want to get this done before the next federal election.”

On. Feb. 13, Ms. Wilson-Raybould told reporters her government was “considering” making changes to the practice of allowing peremptory challenges during jury selection.

Liberal MP Anthony Housefather (Mount Royal, Que.), who chairs the House Justice Committee, said he believed “that is one of a number of issues related to the justice system that we need to look at.”

Liberal MP David Lametti (LaSalle-Émard-Verdun, Que.), who taught intellectual property law at McGill before taking office in 2015, said the government had a “duty to act” on the fact that “our justice system doesn’t deal with these cases as well as it otherwise might.”

Mr. Nicholson, the Conservative justice critic, said in the House Feb. 14 that Mr. Boushie's death "warrants discussions about the challenges First Nations people face," and said the Conservatives would support "worthwhile" government initiatives to increase Indigenous representation in and input into the justice system.

Speaking in the House the day the framework promise was announced, NDP MP Romeo Saganash (Abitibi-Baie-James-Nunavik-Eeyou, Que.), who is Cree, said "we need to make sure that this time it is for real.

"One of the most unacceptable things politicians can do is to quash the hope of the most vulnerable in our society by breaking yet another promise. That cannot happen. I will not let that happen again."

La Cour d'appel étudie la Loi sur la succession au Trône britannique
Une bataille juridique pour le moins inusitée a repris ce matin au palais de justice de Québec
Radio-Canada
19 février 2018

La Cour d'appel se penche en effet sur la succession au Trône britannique.

Deux professeurs de droit de l'Université Laval veulent que la Cour d'appel renverse le jugement de la Cour supérieure qui a confirmé la constitutionnalité de la Loi sur la succession au Trône.

Les professeurs de droit constitutionnel Geneviève Motard et Patrick Taillon ont contesté la validité de cette loi, qui permet à une fille, si elle est l'aînée, d'accéder au trône.

Leur but n'est pas d'empêcher une fille d'exercer le rôle de Reine, mais plutôt d'ouvrir un débat constitutionnel en contestant la manière dont Ottawa a modifié la Loi, en 2013.
Ils reprochent au gouvernement fédéral de ne pas avoir consulté les provinces, un argument que le juge de première instance a rejeté, dans un jugement de 37 pages en février 2016.

Selon les professeurs Motard et Taillon, le juge Claude Bouchard a commis sept erreurs déterminantes.

Ils demandent donc à la Cour d'appel de réviser son jugement.

Les conséquences politiques de cette contestation pourraient être importantes, estiment les deux professeurs de droit constitutionnel.

Une victoire pourrait forcer Ottawa à tenir une ronde de négociations constitutionnelles avec les provinces canadiennes.

Quatre motifs pour faire appel de l'acquittement de Stanley, selon un avocat
Le fermier a été acquitté du meurtre au deuxième degré d'un jeune autochtone par un jury « blanc »
Radio-Canada
19 février 2018

L'avocat et professeur de droit à l'Université de Windsor, en Ontario, David Tanovich soulève des erreurs commises par le juge en chef lors du procès de Gerald Stanley qui pourraient permettre à la Couronne de porter le jugement en appel.

Gerald Stanley, un fermier saskatchewanais, a été acquitté du meurtre au deuxième degré de Colten Boushie par un jury de la Cour du banc de la reine de Battleford, en Saskatchewan, le 9 février.

Il était accusé d'avoir abattu à bout portant l'autochtone de 22 ans venu sans permission sur sa propriété le 9 août 2016 accompagné de quatre autres jeunes de la Première Nation de Red Pheasant.

Gerald Stanley a témoigné qu'il a eu peur pour sa sécurité et qu'il a tiré des coups de feu d'avertissement. L'un de ces trois coups de feu a atteint Colten Boushie à l'arrière de la tête.

L'avocat et professeur à l'Université de Windsor, David Tanovich, a suivi de près le procès de Gerald Stanley. Il souhaite que la Couronne en Saskatchewan porte le jugement en appel, malgré les défis importants que cela comporte.

Habituellement, les cours d'appel sont réticentes à autoriser l'appel d'un acquittement, sauf si une erreur manifeste en droit peut être établie, explique David Tanovich.

« Les appels faits par la Couronne sont très rares et très difficiles. Plus difficiles que ceux faits par la défense », explique le professeur.

La Couronne est limitée à des motifs basés sur des erreurs de droit, alors que ce n'est pas le cas pour la défense.

Le professeur a identifié quatre erreurs qui pourraient permettre à la Couronne de faire appel du jugement. Il s'agit d'erreurs qu'aurait commises le juge en chef Martel Popescul au cours du procès, notamment lors de ses instructions au jury.

1. Phénomène de long feu
   Le motif d'appel le plus important, selon le professeur, concerne le phénomène de long feu. La théorie de la défense reposait sur ce phénomène où une arme à feu se décharge avec un certain délai.

   Selon l'avocat de la Défense, Scott Spencer, ce phénomène explique pourquoi le pistolet s'est déchargé seul, alors que selon lui, Gerald Stanley n'avait pas le doigt sur la gâchette.

   Selon le professeur David Tanovich, le juge en chef Martel Popescul a commis une erreur en laissant cette théorie entre les mains du jury alors qu'il n'y avait pas d'évidence claire que c'était bel et bien le phénomène de tir de long feu qui s'était produit le jour où Colten Boushie est décédé.

« L'expert de la Couronne a dit que ce n'était pas possible et l'expert de la défense a dit qu'il ne savait pas », dit le professeur.

2. Preuves anecdotiques

Le juge a aussi fait l'erreur d'accepter des preuves anecdotiques pendant le procès, selon David Tanovich. Il fait référence au témoignage de Wayne Popowich, qui a raconté en cour son expérience de tir de long feu avec une arme d'épaule quarante ans plus tôt.

« Je suis très très surpris que la Couronne ne se soit pas opposée à cet élément de preuve et que le juge en chef l'ait acceptée », a dit le professeur.

« C'était une arme différente, un contexte différent, qui sait ce qui est arrivé? Le témoin n'était pas un expert », rajoute David Tanovich. « Je crois que c'est un important motif d'appel, cet élément de preuve n'était pas pertinent. »

3. Crédibilité

Un troisième motif, selon le professeur, serait les instructions insuffisantes du juge en chef aux membres du jury. David Tanovich estime qu'il n'a pas transmis des instructions sur la façon d'évaluer les éléments de preuve avancés par la Couronne et par la Défense en termes de crédibilité.

4. Préjugé racial

Selon le professeur, le juge n'a pas non plus fourni suffisamment d'instructions aux jurés pour s'assurer que ceux-ci ne se fient pas à un préjugé racial pour évaluer les preuves.

Le professeur dit que ce genre d'instruction est primordial dans les procès où les tensions raciales pourraient influencer les procédures.

La Couronne dispose encore de trois semaines pour porter l'acquittement de Gerald Stanley en appel, si elle détermine qu'une erreur de droit a été commise et que l'appel est dans l'intérêt du public.

Un jury représentatif, oui, mais jusqu'où ?

Jusqu'où doit-on aller dans la personnalisation d'un jury ? Poser la question, ce n'est pas nécessairement y répondre, disent des juristes

Droit Inc

Delphine Jung

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L'issue du procès de Gerald Stanley, acquitté du meurtre du jeune autochtone, Colten Boushie, a divisé le milieu juridique. Certains ont déploré le fait qu'il n'y avait que des « blancs » dans le jury.

En août 2016, l'homme avait abattu avec son fusil Colten Boushie, jeune autochtone de 22 ans, sur une ferme de la Saskatchewan.

Propos déplacés

Les communautés autochtones ont rapidement réclamé un changement au système judiciaire canadien à l'annonce du verdict.

Le premier ministre, Justin Trudeau et Jody Wilson-Raybould, ministre fédérale de la Justice, ont rapidement réagi.

« Je comprends à quel point ils sont peut-être tristes ou fâchés », a dit le premier ministre Justin Trudeau après avoir rencontré la famille du jeune Boushie. « Notre système de justice en général n'a pas toujours été très favorable ou très reconnaissant de la réalité autochtone. »

La ministre de la Justice a quant à elle indiqué sur Twitter que le pays « devait faire mieux ».

Ces commentaires ont fait sourciller bon nombre de juristes.

« Je trouve leurs propos totalement déplacés. Ce n'est pas leur rôle de commenter un procès. C'est comme s'ils insinuaient qu'il y avait eu un jugement déraisonné, comme si M. Trudeau disait que les jurés se sont trompés », lance Me Véronique Robert, criminaliste.

La juge à la retraite Nicole Gibeault reproche la même chose aux politiciens, mais souligne également leur volonté de s'impliquer pour améliorer la justice.

« Je pense que c'est délicat pour le premier ministre et la ministre de la Justice de commenter un dossier en particulier, d'autant plus que le délai d'appel n'est pas dépassé », ajoute-t-elle, en rappelant que le Canada n'est pas habitué à avoir ce genre de discussion. Le débat est, selon elle, bien plus vif aux États-Unis.

Un jury représentatif oui, mais jusqu'où ?

Me Marie-Hélène Giroux La plupart des experts interrogés s'accordent pour dire qu'un jury doit être représentatif. « Notre système de justice repose sur l'impartialité du jury et sa composition en est la garantie. Il est impératif de prendre les moyens pour diversifier la composition du jury afin qu'il reflète la réalité démographique, économique et culturelle de notre société », dit un porte-parole du Barreau du Québec à Droit-inc.

« Il faut parfois revoir le processus pour s'assurer d'avoir la meilleure pratique et nous sommes disposés à collaborer avec le gouvernement si cela est sa volonté, mais on doit se pencher sur des pistes de solutions d'abord », poursuit-il.

Pourtant, Me Marie-Hélène Giroux met en garde contre les excès auxquels peut conduire cette volonté de représentativité. « On ne veut pas non plus une justice à deux vitesses. Jusqu'où doit-on aller dans la personnalisation d'un jury ? Faut-il un tribunal de Blancs pour juger les Blancs, un tribunal autochtone pour les Autochtones ? Ça peut aller loin tout ça », dit la criminaliste.

Mais encore au-delà de la représentativité en elle-même, Nicole Gibeault et Me Robert évoquent l'importance de « l'apparence de justice ».

« Je suis persuadée que s'il y avait eu au moins un ou deux Autochtones dans le jury et que le verdict aurait été le même, il n'y aurait pas eu une telle polémique, car il y aurait eu une apparence de justice », dit Véronique Robert.

Récusations péremptoires

D'ailleurs, les deux juristes évoquent aussi le fait que peu d'Autochtones, « pour les raisons qui leur appartiennent », précise la juge à la retraite, ne sont pas inscrits sur les listes électorales. Or, ce sont ces listes qui sont utilisées pour constituer un jury.

« Faut-il faire une exception pour les régions particulières ? Doit-on fait appel aux volontaires ? Mais là encore, il faudrait pouvoir vérifier l'impartialité des membres », réfléchit à voix haute Mme Gibeault.

Me Giroux suggère de son côté qu'un travail d'éducation au niveau des avocats doit être fait. « Les avocats eux-mêmes ne doivent pas discriminer dans les récusations péremptoires », dit-elle en lançant la balle dans le camp du Barreau, qui devrait s'atteler à ce problème.

Me Robert par exemple, soutient que les procureurs de la Couronne vont presque systématiquement rejeter des personnes tatouées ou percées. Chaque avocat dispose en effet de quatre, 12 ou 20 récusations péremptoires qu'il peut utiliser sans même se justifier.

Ces rejets non motivés ont beaucoup fait parler d'eux puisque c'est, selon la famille de la victime, ce qui a permis aux avocats du procès Boushie de mettre à l'écart des Autochtones.

Les trois juristes semblent désemparées devant la situation. « Ce sont des questions d'une complexité incroyable ». Me Robert avoue même humblement : « je n'ai pas d'idées sur la manière de faire… ».