

RULE OF LAW REPORT

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FOREWORD

Eric Wright
Chief Executive Officer
LexisNexis Canada



Welcome to the fourth issue of the Rule of Law Report. Since joining LexisNexis Canada earlier this year, I have been deeply impressed by our employees' and customers' commitment to justice and equality. We are delighted to highlight that commitment in this quarterly newsletter.

In late September I attended the launch of the Martin Teplitsky Memorial Fund at the Law Society of Ontario. The Fund supports Toronto Lawyers Feed the Hungry, a volunteer program serving more than a thousand meals per week to people in need. Martin Teplitsky led the effort to establish the program twenty years ago. [A new video](#) tells the story of the program through the words of guests and volunteers. I encourage you to watch the video (or visit www.lawyersfeedthehungry.ca) and consider [making a donation](#) or sponsoring a meal.

In early October I joined the members and supporters of Innocence Canada in marking Wrongful Conviction Day and the organization's twenty-fifth anniversary. It was moving to watch O'Neil Blackett, exonerated just one day before the event, as he embraced previous exonerees and celebrated with his lawyer. Miscarriages of justice are more than an affront to the rule of law; they are profound human tragedies. You can read more about Wrongful Conviction Day, and see some of the powerful images, in this issue.

LexisNexis Canada supports our charity partners in a variety of ways. Our employees give their time and money to dozens of excellent causes. We were pleased to sponsor both the Teplitsky Fund launch and Wrongful Conviction Day. We also support the rule of law by donating books and equipment. Most recently, our employees volunteered their time and skills to delete proprietary data from twenty decommissioned company laptops and prepared them for use by the staff and clients of Innocence Canada and other charity partners.

As a newcomer to the legal community, I want to thank you for your efforts to promote justice and the rule of law. I look forward to working with you.



Above: Donation of used company laptops by LexisNexis employees. Photo courtesy of Fardeen Firoze.

THE RULE OF LAW IN CRISIS IN CAMEROON

Heather MacIvor
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Canada's legal system is both bilingual and bijural. Private law in Quebec is subject to a Civil Code modelled on the French system; the rest of Canada applies the principles of Britain's common law to resolve private disputes. Our legal system works well, despite these divergent colonial legacies.

The situation is tragically different in the African republic of Cameroon. After World War I the victorious powers divided the former German colony of Kamerun between France and Britain. Each colonial power imposed its own language and legal system in its assigned region. By the early 1960s, when Cameroon gained its independence, French-speaking citizens outnumbered Anglophones by roughly three to one. Initially, Cameroon was a federation with two autonomous regions: English-speaking and common law in the west, Francophone and civil law in the east. But federalism was abolished by referendum in 1972. Since then, constitutional protections for the English language and the common law have been increasingly disregarded.

Beginning in 2016, Cameroon's English-speaking lawyers launched public protests against the government. Their leaders, including a sitting judge, were rounded up and jailed in early 2017. Government persecution of the Anglophone minority has become increasingly harsh and widespread. Internet access was cut off. English schools were torched. Police fired live ammunition at peaceful protesters, killing hundreds. At least 200,000 people have been driven from their homes; while some have found refuge in neighbouring Nigeria, most are internally displaced and in urgent need of humanitarian aid.



A conversation with Barrister Felix Agbor Nkongho.
Photo courtesy of the Law Society of Ontario.

Felix Agbor Nkongho, the founder and Executive Director of the Centre for Human Rights and Democracy in Africa, was among the lawyers detained in 2017. He spent eight months in detention, three of them in a cell with accused members of the Boko Haram terrorist network, until the charges against him were dropped by Presidential decree. Other distinguished English-speaking lawyers were convicted of various offences against the state and given lengthy prison terms.

On October 25, 2018, the Law Society of Ontario Human Rights Monitoring Group and Lawyers' Rights Watch Canada hosted a conversation between Mr. Nkongho and Gavin Magrath, a Toronto lawyer and Chair of Lawyer's Rights Watch (Legal Research) Canada. Mr. Nkongho described some of the obstacles confronting Anglophones in the Cameroonian legal system. There is no English-speaking law school in Cameroon; an Anglophone wishing to practice law has to study and gain accreditation in another country before being admitted to the Bar in Cameroon. The institute that trains the country's judges and magistrates does not teach the common law. Fewer and fewer judges sitting in Western Cameroonian courts are fluent in English and trained in the common law. Access to justice is systematically denied. Yet these violations of human rights and the rule of law are barely noticed by the outside world.

Mr. Nkongho reminded the audience at the Law Society of Ontario of the similarities – at least on paper – between the legal systems of Canada and Cameroon. Few countries can match Canada's experience in reconciling common law and civil law systems. Canadian lawyers and judges are uniquely positioned to help restore the rule of law in Cameroon.

WRONGFUL CONVICTION DAY RECEPTION SHEDS LIGHT ON SHORTCOMINGS OF CRIMINAL JUSTICE SYSTEM

A T-shirt boldly printed with the word “INNOCENT” was held high to a rousing round of applause by O’Neil Blackett, Innocence Canada’s most recently exonerated client, at the start of the Fifth International Wrongful Conviction Day reception.

Blackett, who was wrongfully convicted of killing a 13-month-old girl that was in his care, was exonerated on Oct. 2 after serving over four years in jail. His story has been added to the list of 22 exonerees that Innocence Canada, a non-profit organization, has fought for over its 25-year history.

The reception, held Oct. 3 at the Law Society of Ontario, drew attention to the plight of the wrongfully convicted as well as the efforts of the legal professionals who advocate on their behalf. Stories were shared, awards given and promises were made to never give up on fighting for the innocent.



Group Photo of the Wrongfully Convicted

“I know, and am sure, that the weight of that [wrongful conviction] burden is incalculable both for you and your families,” said Marlys Edwardh, a renowned civil rights lawyer and one of the first women to practise criminal law in Canada.

Edwardh was given the Rubin Hurricane Carter Champion of Justice Award at the reception for her work in defending the wrongfully convicted. The award highlighted her representation of Donald Marshall Jr., Guy Paul Morin and Steven Truscott.

In her acceptance speech, Edwardh said that the administration of criminal justice has “bitterly failed” each of the wrongfully convicted in attendance. She noted that when she turned to the practice of law in 1976 after completing a “law school education” the picture painted in her mind was that the “criminal justice system was finely tuned.”

“In fact, we were told, that the system was so finely tuned that the structure ensured that it was better to let 10 guilty men go free than convict one innocent. Many people believed we’d gone too far, created rules and procedures that coddled the criminally accused. We were not taught, as criminal defence lawyers, to step back, take stock and assess what work we had to do,” she explained.

Edwardh took this moment to draw attention to her award’s namesake, a professional boxer who spent almost 20 years in prison for a murder he didn’t commit.

“He never received an apology from the government. He never received a cent of compensation,” she said, adding that Carter’s efforts as an exoneree advocate helped in establishing Innocence Canada.

Upon receiving the award in Carter’s name, Edwardh thanked the room and said this “means more to me than you’ll ever know.”

Two other awards were handed out that night, the Tracey Tyler Award and the first Donald Marshall Jr. Wrongly Convicted Award.



Above: Rubin Hurricane Carter Champion of Justice Award winner Marlys Edwardh

The Tracey Tyler Award is named for the Toronto Star's former legal affairs reporter who spent most of her career helping shed light on the stories of the wrongfully convicted. The 2018 recipient was Tim Bousquet, of the Halifax Examiner, who was honoured for his investigative journalism.

Bousquet started a series called "Dead Wrong", which examined the murders of women and girls in the Halifax area. While accepting his award, Bousquet drew attention to Glen Assoun, a man who has maintained his innocence while being convicted of killing his former girlfriend, Brenda Way.

Although Assoun was released in 2014, Bousquet said he has not been exonerated.

"He's living in a legal limbo and for him it's a living hell," he explained, adding that this has led to mental health issues for Assoun.

"It's up to us to work on his file," Bousquet said, while thanking Innocence Canada for the award.

The Donald Marshall Jr. Wrongly Convicted Award was awarded posthumously to its namesake, who was wrongly convicted of murder when he was 17 years old. Marshall ended up spending 11 years in prison before he was exonerated in 1983.

Innocence Canada highlighted Marshall's case as the first to be recognized as a wrongful conviction in Canada, which led to the first inquiry into the cause of a wrongful conviction. The organization created the award to honour individuals who, despite devastating consequences, did not give up on the fight to clear their name.

Marshall died in August 2009. The award was accepted on his behalf by his brother, Terrance, his nephew, Paul and his former partner, Jane McMillan.

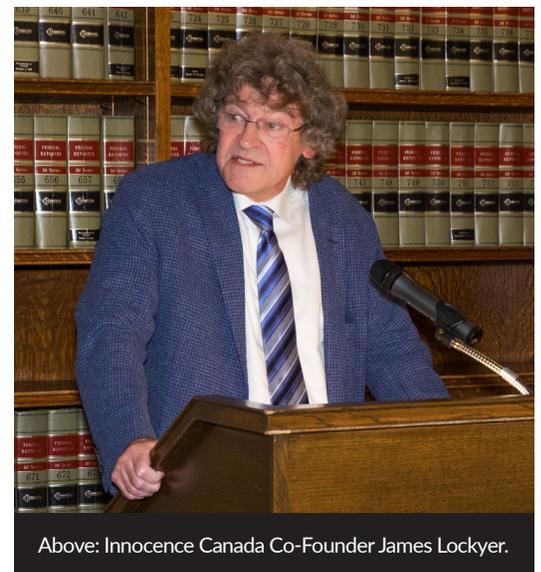
Edwardh said, "Junior was a man who symbolized the struggle for justice." She noted that the commissioners who led the inquiry into the wrongful conviction received Marshall's "full participation," which led to a list of important recommendations.

"A remarkable thing that they said was that the administration of criminal justice in Nova Scotia had failed Donald Marshall Jr. at every turn. They went on to say, in part, that failure was because he was a native man. Junior's shoulders were broad. He understood what the struggle for justice was for. He never wavered and never stepped back. And this is why today some of the important changes in the administration of justice have taken place," she explained.

Edwardh noted that in June an Indigenous court was established on a reserve in Nova Scotia, which was one of the recommendations made in the Marshall Inquiry.

"Remarkably the Nova Scotia government decided that they were going to do it with the encouragement of the Mi'kmaq community and some very, very thoughtful judges," she added, stressing that the First Nations need more support from the justice system.

Innocence Canada co-founder, James Lockyer, made one of the closing remarks and said he tried to find a single word to describe the organization's exonerees. Words such as calm, fight, dedication, determination, grit, trust, dignity and joy filled his mind as he remarked on the spirit of the wrongfully convicted.



Above: Innocence Canada Co-Founder James Lockyer.



Above: (from left to right) Win Wahrer, Director of Client Services for Innocence Canada; recent exoneree O'Neil Blackett; and Innocence Canada co-President Kirk Makin

"Where do we go from here?" he asked the room. "We've had 25 years, good years, but we need to catch up the numbers with the years," he added, noting that 22 exonerees in 25 years is not enough.

"We still need to recognize that our appeal courts across the country aren't doing their job because most of the people we have in front of us, they lost their appeals," said Lockyer, stressing that the courts need to catch these cases.

"They should be more prepared to look at cases and determine whether or not the individual whose case they're hearing is likely innocent. Not looking just at process, but questions of innocence as well," he explained. Lockyer emphasized that everyone in attendance believes in justice "no matter how difficult it might sometimes be to find."

"Twenty-five years ago, we started this. When you start something you never really think that it's going to last 25 years. But it makes you wonder if we'll perhaps be here 25 years from now in 2043, and there's every reason why we should because people will still be wrongly convicted between now and then," he said.

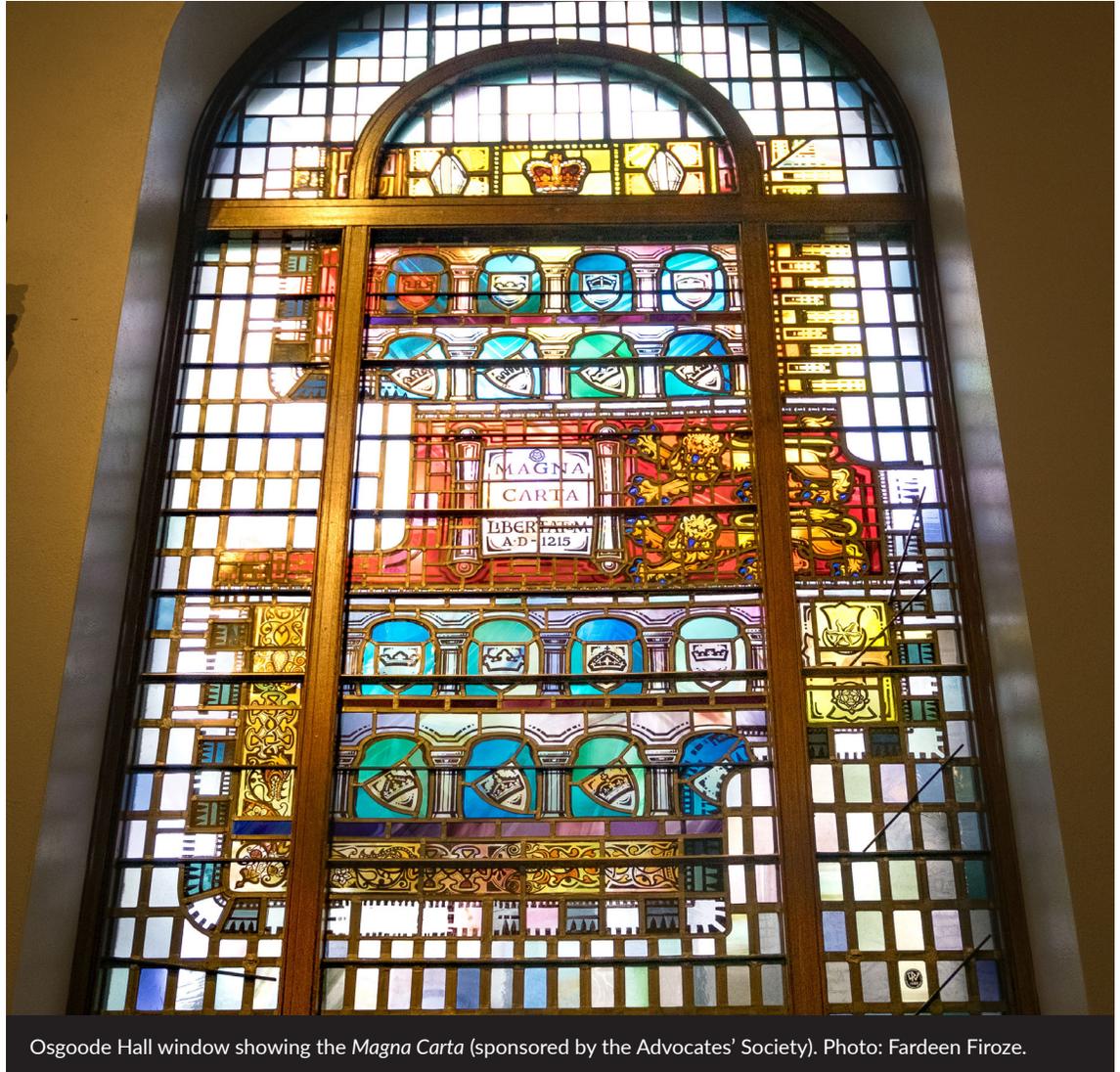
Lockyer asked everyone in the room to say to themselves, "if I'm still around 25 years from now, I'll still be here fighting this cause." Because then we'll know that we will still be here in 25 years making a small, but a very important contribution to the cause of justice in Canada."

This article was originally published in [The Lawyer's Daily](#). Event photos by Fardeen Firoze. LexisNexis Canada is a supporter of Innocence Canada.

DEFENDING THE RULE OF LAW: THE 60TH ANNIVERSARY OF *RONCARELLI V. DUPLESSIS*

In June 1958 the Supreme Court of Canada heard the case of *Roncarelli v. Duplessis*. Frank Roncarelli was a successful Montreal restaurateur. He was also a Jehovah's Witness. The Witnesses were persecuted by Quebec Premier Maurice Duplessis for their outspoken criticism of the Catholic Church. Hundreds of Witnesses were arrested while distributing religious tracts. Roncarelli provided surety in hundreds of cases. When Duplessis learned that the holder of a provincial liquor licence was bailing out his fellow Witnesses, he ordered the head of the Quebec Liquor Commission to revoke the licence. Roncarelli's restaurant lost customers and he was forced out of business. He sued Duplessis and won, but the Quebec Court of Appeal reversed. Roncarelli appealed to the Supreme Court.

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Osgoode Hall window showing the *Magna Carta* (sponsored by the Advocates' Society). Photo: Fardeen Firoze.

In January 1959 the Supreme Court restored the trial decision and increased the quantum of damages payable to Roncarelli ([1959] S.C.R. 121). The majority found that Duplessis had exceeded his lawful authority by revoking Roncarelli's liquor licence and he was personally liable for the resulting losses. Justice Ivan Rand wrote that Duplessis had replaced "an administration according to law" with "action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty". If allowed to stand, such behaviour portended "the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure". Sixty years later, Rand's scalding critique still reverberates in Canadian law.

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