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# the bâtonnière who fell from grace

It may have been the summer of her discontent but **Lu Chan Khuong** says she took one for the team and vows to carry on trying to better the profession.

By Mark Cardwell

FRANCIS VICHON







u Chan Khuong is one tough cookie. Three days and 21 interviews after her resignation from the top job at the Quebec Bar, she breezed in for interview No. 22 over lunch on the terrace of an upscale Quebec City restaurant looking fit, poised, and radiant. The resignation was a surprise move that put an end to a summer-long public and legal drama that dominated news headlines and divided lawyers in la belle province like never before.

"Call me Lu, everyone does," said Khuong (pronounced *kwong*), flashing the wide smile that Quebecers have grown accustomed to seeing in recent months as she fought to keep her job and defend her dignity. Khuong takes a sip of white wine, smiles, and begins fielding questions about her summer from hell.

It had all started so promisingly. On May 22, Khuong became the first elected *bâtonnière* in the 166-year history of the Barreau du Québec. She won nearly 63 per cent of the more than 10,000 votes that were cast electronically after a long and hotly contested campaign in which she promised to bring radical reforms to the staid law society. When she officially took office on June 11, the Cambodian-born Khuong also became the first person of colour to lead the 25,000-member professional order. She was also the first woman to break a major colour barrier in the Quebec legal profession since 1999, when Superior Court Judge Guylène Beaugé was elected president of the Quebec division of the Canadian Bar Association. "I start my mandate with pride and determination," Khuong said at her swearing-in ceremony at the bar's annual congress in La Malbaie. "I'm conscious of the honour that has been bestowed on me."

Just 20 days later, however, Khuong's storybook ascension suddenly nosedived. On July 1, *La Presse* reported that she had been arrested a year earlier for shoplifting two pairs of designer jeans worth \$450 from the Laval store of the Simons fashion retail chain. After initially denying the incident when first contacted by a *La Presse* reporter on June 30, Khuong called back later in the day to confirm it. She said she'd been caught off guard by the question because the matter had been dealt with non-judicially under a confidential Quebec diversion program for dealing with minor Criminal Code offences by adults who do not have a significant criminal history.

Under the rules of the program, which has reportedly been used in 100,000 cases since coming into effect in 1994, a Quebec Crown prosecutor has discretionary power to deal with cases non-judicially to avoid stigmatizing offenders who are unlikely to re-offend. When a decision not to prosecute is made, records of alleged infractions are maintained for five years in a registry that is available only to prosecutors, and it can be invoked only if a person is charged with another offence within five years. After that, the slate is wiped clean.

## Distracted

Khuong blamed the incident on a moment of distraction and inattention. "I never did anything wrong and I never acknowledged or admitted that I did," she said.

In a nine-page sworn and unsolicited statement dated May 27, 2014 that Khuong sent to Laval police and was leaked to *La Presse*, Khuong said she went to the Carrefour Laval shopping mall

on April 17, 2014 on an overnight birthday shopping trip for her 13-year-old daughter and two friends. According to Khuong, she entered the Simons store carrying a handbag and an overnight bag. The latter contained three pairs of black jeans that she had purchased a few days earlier for \$9.99 each at one of the chain's stores in Quebec City. "They were for my sister, who lives in Montreal," said Khuong. "I called her [and] said, 'Come and meet us at the mall and you can try them on. If they don't fit, we'll exchange them at the Simons store there.'"

As the three girls wandered around the mall, Khuong did some shopping while she waited for her sister. She tried on several items of clothing, including a bra, some blouses, and two pairs of black jeans worth \$235 each that were similar to the ones from Quebec City.

Khuong said she took the \$9.99 jeans out of her bag in the changing room to check the size, and took a phone call as she packed up her belongings and the items she intended to buy. "I must have mistakenly inversed the jeans then," she said. "I never look at the price tag on clothes, only the size."

At the cash register, she said she was watching her cellphone in case the girls called and keeping an eye out for her sister, and didn't notice she had paid for the cheaper jeans. When Laval police arrived an hour later, Khuong told them it was a mistake, and she would never steal from Simons because she was a family friend of the store's owner, Quebec City businessman Peter Simons. "They verified my identification [and] told me I was eligible for this non-judicial program, which I had never heard of," said Khuong. "They explained it to me, gave me a file number and a number to call, and let me go and rejoin my family."

After sending an unsolicited statement of her version of events to Laval police, Khuong said she didn't hear anything back until June 2014, the same month she was sworn in as the barreau's vice president (in charge of finances). It came in the form of a letter from the prosecutor's office in Laval, informing that court proceedings would not be brought against her unless she gave notice to the contrary. When asked why she didn't take the matter to court, Khuong, who is the wife and legal partner of former provincial justice minister and firebrand victims' defence lawyer Marc Bellemare, told *Canadian Lawyer* essentially the same thing she told *La Presse*: "I wanted to avoid the media coverage, losing my time in court, and avoiding the whole process. It would have been a circus."

When asked why she didn't tell a barreau official about the incident, Khuong smiled wryly. "You don't know the bar," she said. "I have no regrets. I did nothing wrong."

## Suspended

She repeated those same arguments to the 11 members of the bar's 16-member board of directors who attended an emergency meeting in Montreal on June 30 to deal with the looming crisis. "We learned about her arrest from the journalist who called looking for comment," said Louis-François Asselin, one of the 12 newly elected board members and one of two vice presidents. "We asked [Khuong] about it and she told us some unbelievable version of events. We were shocked because she had never told us anything about it."

When the meeting adjourned two hours later, Khuong returned home to Quebec City. When the story broke the next morning, the board members met again without her in Montreal. At around 11





**"I told them I was happy to leave so I wouldn't have to deal with them anymore, and hung up."**

**LU CHAN KHUONG**

a.m., in what both sides say was a short, tense, and terse conference call, they asked the new president to resign. "I flatly refused," said Khuong. "They told me to stay by the phone, that they would continue to analyze my case and get back to me."

When they called back around 3 p.m., it was to inform Khuong they had passed a resolution to suspend her, effectively immediately, with pay but without access to her office or her electronic files. "I told them I was happy to leave so I wouldn't have to deal with them anymore, and hung up," recalled Khuong. "But I was very angry. I remember thinking, 'What kind of people are they?' Did I cry? No, I don't cry. I don't sleep and I don't cry."

The *barreau* soon released a statement, announcing the suspension. "The facts and comments connected to this private situation are incompatible with the functions of the president of the Quebec Bar," it read. "Considering that the primary mission of the Quebec Bar is the protection of the public, and that the *bâtonnière* is an important symbol that helps to maintain public confidence in the institution, the board of directors had no choice but to take such firm action."

The news reverberated across Quebec like a shockwave, triggering a weeks-long tsunami of accusations, recriminations, insinuations, and lawsuits that engulfed and submerged the legal profession, all of it under the glare of the media spotlight and before a bewildered and titillated public.

Khuong's many supporters, including several high-profile lawyers, cried foul. They notably accused the *barreau's* board of directors of failing to respect the rules of natural law. "Her suspension was entirely inconsistent with the principle of the presumption of innocence," eminent Montreal jurist Julius Grey told *Canadian Lawyer*. "It's a simple premise: No one can be removed from office for criminal reasons without a fair trial. Our society doesn't punish people for appearances; accusations must be proven. That's what protects us all."

Some suggested the board surpassed the powers prescribed to it by the Act Respecting the *Barreau du Québec*, the Professional Code, and the Civil Code of Québec. Finn Makela, a law profes-

sor at the Université de Sherbrooke, said nothing in the three laws "comes close" to allowing the board of a professional regulator to either remove or suspend its president.

Others blamed the situation on the *barreau's* new system of governance. "This sad and unprecedented episode is a result of the deficiencies and lack of legitimacy of Bill 17," said Julie Latour, a former *bâtonnière* of the *Barreau de Montréal* and in-house counsel with Loto-Québec, who spoke out against the new law before it passed the National Assembly in December. Enacted in May, it reduced the number of seats and recast the composition of both the *Barreau du Québec's* board of directors and the new sections council. It also provided for the *bâtonnier* and other directors to be elected for two-year terms by universal suffrage, and added a second vice president.

Latour slammed the new model as being too corporate and opaque. She said the *barreau's* executive committees were traditionally comprised *de facto* of the presidents of the Montreal and Quebec City bar councils, while the general council consisted of the presidents from the province's 15 regional bar councils, who were delegated by their respective associations. "The old system was more transparent and more deeply rooted in the local bar system," said Latour. "It ensured wider consultations, and decisions were made only after the *bâtonniers* had talked with their local councils."

"That's no longer the case," she added. "The procedure of checks and balances in the decision-making process has disappeared. Board members are now free to make decisions on their own."

For her part, Khuong maintained her innocence and claimed to be the victim of both a miscarriage of justice and a conspiracy by mutiny-minded board members loyal to her only rival, Luc Deshaies, in the recent election. She also suggested their big-firm backers were eager to get revenge against her and her husband, a political maverick whose accusations of influence peddling and corruption in the Quebec Liberal government he served in under former premier Jean Charest had led to the 2010 Bastarache commission of inquiry. "I will not be distracted by a few individuals who, by illegal and immoral means, attempt to sabotage the election result," Khuong said then. And she threatened legal action if the board did not rescind "its mistake" by overturning the suspension and issuing an apology.

## Layers of intrigue

To be sure, the optics of the situation only added to the onion-like layers of issues and possible intrigue that surrounded Khuong's election and subsequent suspension. During the first five months of 2015, she and Deshaies had waged an intense, and at times bitter, campaign for the hearts and minds of Quebec lawyers. Though she had a long experience in the bar, Khuong, a former president



of the Quebec City youth wing and of the bar section, presented herself as a voice for the little guy, a reformer who would, as she put it, "open the windows at the bar and let fresh air in."

She promised to reduce the bar's \$42-million budget by cutting projects, training, and conferences that she said "have nothing to do the needs of our members [and] always involve the same 500 lawyers who gravitate around the bar." She also promised to make a 40-per-cent cut in

the bâtonnier's annual salary — to \$185,000 from \$303,000 — to bring it more into line with what Superior Court judges in Quebec are paid.

Khuong pledged to pass those savings on to members by lowering their \$1,200 annual fees by \$140 in her first year in office, and to reduce insurance premiums, which can be onerous for small firms. She also promised to make legal fees affordable, and to pressure government to reduce delays in the justice system.



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Deshaies, a labour law specialist with the Montreal office of Gowlings who served as bâtonnier of the Barreau du Montréal in 2013-14, presented a five-point platform that notably promised to defend the interests of young lawyers, and to modernize bar practices through a "technological turn." He also headed a seven-member team of candidates for the 12 board positions that included Asselin, Antoine Aylwin (Fasken Martineau DuMoulin LLP), Thomas Davis (Norton Rose Fulbright Canada LLP), Rima Kayssi (Bernard Roy Justice Québec), Jamilla Leboeuf Rinow (BNP Paribas), Maryse Dubé (Sylvestre & Associés s.e.n.c.r.l. and president of the Richelieu bar section), and Robert Poitras (president of the Bedford bar section).

Both camps worked hard to reach lawyers across the province, using e-mails, telephone calls, and social media. In late April, a week before the vote, Khuong lodged a complaint after Deshaies e-mailed a list of lawyers who supposedly supported his campaign, but which included the names of a half-dozen prominent Khuong supporters. The complaint, which led to Deshaies having to send out an erratum update, and a related kerfuffle when two members of the barreau's electoral committee were found to be friends with Deshaies on Facebook, attracted media attention with sensational headlines like, 'It's war in the bar's election,' and 'A Montreal-Quebec duel at the bar,' a reference to the eternal rivalry between Quebec's two biggest cities.

In the end, nearly two-thirds of the lawyers who voted opted for Khuong. "I thought she had more experience and campaigned hard," said Louis Fortier, a legal translator in Sherbrooke and a part-time law professor at Université Laval in Quebec City. "I voted for her and was happy to see her elected."

### Formal legal demand

On July 9, Khuong sent a legal notice to the barreau, formally demanding a public apology and reinstatement. But the board wasn't backing down. The same day it passed a resolution to create a three-member ad hoc committee headed by former Quebec Appeal Court judge Paul-Arthur Gendreau to "study the situation," replacing the four-member ethics committee the board had struck with the same task a week earlier, on July 2, but whose members



quickly recused themselves, citing “the exceptional circumstances of this affair.”

On July 14, barreau vice president Asselin took the unusual step of writing a lengthy open letter in a rebuttal to an editorial in *Le Devoir* that called the decision to suspend the president as “false and manifestly illegal.” Asselin defended the board’s actions and rejected Khuong’s conspiracy theory and the editorialist’s call for all the board members to resign and new elections to be held. “Respect for ethical guidelines is not a popularity contest, and their violation cannot be resolved by an election,” Asselin wrote.

Khuong followed through on her threat of legal action on July 22. In addition to the demand to be reinstated as bâtonnière, her 317-paragraph statement of claim sought \$95,000 in damages to her reputation from the barreau and 13 board members. The barreau dismissed the suit as being “filled with wrongful facts, falsehoods, and pretentious elements.”

The next day, nearly 140 lawyers, all of them Khuong supporters, signed a petition calling on the regulator to organize a special general assembly to discuss the issue. Forced to comply by a regulation that allows for assemblies on petitions with more than 100 members, the barreau scheduled the meeting for 5 p.m. on Aug. 24 at the Sheraton Centre in Laval, right next to the Simons store where Khuong was arrested.

In an effort to find a non-judicial solution to the impasse, the barreau and Khuong agreed to mediation with former chief justice François Rolland on July 30. But the effort failed. “It was a waste of time,” said Khuong, who was in Las Vegas and participated by phone. “No one moved from their positions.”

The saga took another unexpected turn a week before the Laval meeting when the barreau suddenly announced it was launching a countersuit seeking \$90,000 in damages to its reputation. After filing the action in Quebec City, the barreau’s lawyer, Raymond Doray, told journalists on the courthouse steps that he had evidence of a second shoplifting incident involving Khuong at a Simons store in the provincial capital in March 2014.

For Khuong, who immediately denied the charge, the allegation was the cruellest blow yet. “When I heard it I couldn’t breathe, it was like I’d been punched in the stomach,” she said, the smile gone from her face. “I didn’t know what they were talking about. But it made me look like I was a criminal [and] really shook my parents and my husband and kids. But I was determined to stay strong and go on.”

### ‘A really well-run circus’

Her morale got a huge boost a few days later at the extraordinary meeting in Laval. Presided over by former Quebec Court of Appeal judge Pierre Dalphond, now a senior counsel in the Montreal office of Stikeman Elliot LLP, the three-hour meeting attracted 1,000 lawyers, including high-profile figures such as Anne-France Goldwater and Jean-Pierre Ménard, and Latour, who made a long and vibrant defence of Khuong.

One attendee — Montreal lawyer Pierre-Hugues Miller, who took time from his summer vacation to go “out of curiosity, because

this thing had caused so much commotion within the bar” — called the meeting “a really well-run circus.”

It notably ended with three resolutions to reiterate confidence in Khuong, and to task both the barreau’s syndic and the minister of justice to investigate the non-judicial program leak.

The next day, the director of the Ministry of Justice’s department in charge of the non-judicial program responded to the bar’s request. It noted that only the date, name, and birth date of the person involved with an infraction is inscribed in the program’s registry, and suggested others could be responsible for leaks because “the circumstances are not only known to the police force that carried out the investigation but also the complainant and witnesses.”

**“Nothing prevents people who were involved in the event from talking about it. People are people, and Quebec is a small place. The incident was sure to come out.”**

**GÉRALD TREMBLAY, McCarthy Tétrault LLP**

That makes sense to former Quebec bâtonnier Gérald R. Tremblay, of McCarthy Tétrault LLP’s Montreal office. “The facts of a case are not self-destructive,” he told *Canadian Lawyer*. “Nothing prevents people who were involved in the event from talking about it. People are people, and Quebec is a small place. The incident was sure to come out.”

According to Tremblay, Khuong should have been forthcoming about her arrest when it happened, and certainly before she put forward her candidacy to become bâtonnière. He likened her case to Richard Therrien, who was removed from the bench in 1998 for hiding his pardoned conviction and year in jail for harbouring members of the militant separatist group Le Front de libération du Québec during the 1970 October crisis. “Being bar president is a top slot in the profession and is great for your career and visibility,” said Tremblay. “But jobs like that carry a higher duty of transparency than most. Like the Therrien case clearly shows, people aspiring to such positions should tell people about the skeletons they have in their closets.”

### Another blow

Khuong’s legal case also took a blow on Aug. 28 when Quebec Superior Court Justice Michel Beaupré rejected her application to be reinstated immediately to the head of the regulator. In his written decision, the justice argued that normal operations at the barreau would be disrupted if Khuong was reinstated, and that bringing her back early would do nothing to correct the current crisis.

Beaupré also said it was unclear if the barreau’s board had surpassed its jurisdiction in suspending her, as Khuong’s lawyer had argued. But the judge did accept her request to have the barreau’s ad hoc committee suspend its investigation until that question was resolved in the trial, which was scheduled to begin in early October.



Five days later, on Sept. 2, another unforeseen twist occurred when four former Quebec premiers, three of them lawyers — Lucien Bouchard and brothers Daniel and Pierre-Marc Johnson — wrote an open letter imploring the *barreau* not to reinstate Khuong. Doing so, they argued, “would go against the very ethics and respect for the law that the bar is supposed to espouse.”

That letter was met with a mix of bewilderment and outrage by many Quebec lawyers. “It was an unacceptable and paternalistic interference in the affairs of the bar,” said Latour. “Who are they to judge [Khuong]? I think it was part of a counter-offensive intended to minimize the overwhelming support for Khuong at the Aug. 24 meeting, and to stroke the ego of self-important people.”

## Resignation

Khuong grabbed the headlines back a few days later when she publicly released the surveillance tapes of her two alleged infractions at the Simons’ stores. Obtained through an information request she made to the retail chain right after Doray’s bombshell, the tapes fail to show any crimes being committed.

Though the tapes appeared to put a dent in the *barreau*’s case, the weeks of crisis and high emotions had taken a toll on Khuong. Having already spent \$500,000 in the fight (compared to an estimated \$1 million for the *barreau*, which refuses to reveal that information), Khuong said she realized that “someone needed to sacrifice themselves to end this insane situation, which was really hurting my family and the profession I love. And I knew it had to be me.”

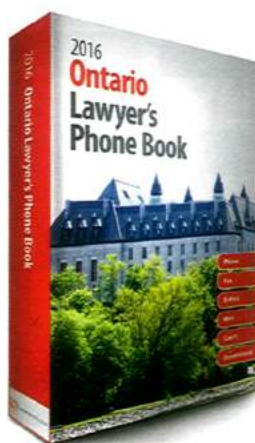
She said she initiated the contacts that led to a second round of mediation with Rolland at the Montreal courthouse on Sept. 11. She and Bertrand spent the day shuttling back and forth there in meetings with the judge, who also met with Doray and other *barreau* representatives, trying to find common ground. “We talked about a lot of things,” said Khuong. “When [Rolland] told me [the *barreau*] had accepted to continue pushing my program, to write me a letter of apology, and to consider [new *bâtonnière* Claudia Prémont from Quebec City] as my replacement, I agreed to resign and end my lawsuit.” Prémont, a board member from Quebec City who

was on vacation in Europe when the crisis broke, was officially named *bâtonnière* on Sept. 15. She will serve the rest of Khuong’s prescribed two-year term.

Leaving the restaurant, which is just up the street from the original Simons store where Khuong got her first credit card at 17, using the money she earned working as a waitress at her parents’ restaurant to build her first wardrobe, Khuong said she is happy with the deal and serene about her decision.

She was already thinking about running for *bâtonnière* again in two years. “There are a lot of things we need to fix in our profession and in our society, and lawyers can play a big role if they get motivated and express their views,” Khuong said. “I want to help make that happen. But right now I’m focusing on the many positive things in my life. And this is it for interviews. I’m leaving on a few days vacation to get away from all and relax, maybe do some shopping.” **CL**

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