



To the House of Commons Standing Committee on Justice and Human Rights
BILL C-3 An Act to amend the Judges Act and the Criminal Code

BRIEF TO THE HOUSE OF COMMONS STANDING COMMITTEE ON
JUSTICE AND HUMAN RIGHTS

INTRODUCTION and OVERVIEW:

- [1] Bill C-3 was originally introduced by MP Ms. Rona Ambrose in the Harper government as Bill 337 and was approved by the Commons Committee on Justice and Human Rights, passed by the House of Common with all party support and sent to the Senate. Parliament was then prorogued.
- [2] The Bill was reintroduced by the Trudeau government as Bill C-5 with all party support. The hearings of the Justice Committee on Bill C-5 were interrupted when Parliament was again prorogued.
- [3] The Trudeau government has re-introduced the bill with all party support as Bill C-3
- [4] The extent of the court's jurisdiction is governed (and often limited) by the laws enacted by Parliament and the Provincial Legislatures. Laws are binding whereas "policies" are not.
- [5] Bill C-3 addresses a serious matter and should be approved by the Committee and enacted by Parliament.

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PREAMBLE:

Survivors of sexual assault should be able to have faith in the justice system. There have been some decisions from the Supreme Court of Canada to the effect that judges should be allowed to make decisions based on their own experiences.

"Thus, we now realize that having a variety of backgrounds and personal experiences is useful when it comes to judicial decision-making. each person's unique and individual personal histories provide insights and influences, which usually mean the decisions made are arrived at with a wider perspective in mind."

If, on that basis, it could be said that former judge Robin Camp's inappropriate comments at trial resulted from his beliefs or experiences, then Bill C-3 is an important step in the right direction.

Parliament needs to make clear, and echo the words of the Ontario Court of Appeal as follows:

"The Court is not a self-created body with original powers; it is not a benevolent autocrat with full powers to act as it should think fit; the Court is an institution organized by the people through their representatives for the purpose of giving to those who apply to it their rights according to law, the law not being made by the Court but laid down for it by authority: the Court has no right to give a decision in accord with its own views of equity and good conscience, as distinct from the rules laid down for it. The Court has no right to take power unto itself which is not conferred by the people" [Ontario Court of Appeal DLR53, 64OLR422]

REASONS:

In **'The Shifting Landscape of Judicial Education in Canada,'** The Canadian Bar Review, Vol 97, Rosemary Cairns-Way and Donna Martinson conclude that the most significant provisos in this Bill are the first three clauses which state that: 1) "[Survivors of sexual violence in Canada must have faith in the criminal justice system;] 2) "Parliament recognizes the importance of a free and independent judiciary"; and 3) "Parliamentarians have a responsibility to ensure that Canada's democratic institutions reflect the values and principles of Canadians and respond to their needs and concerns."

As a general principle, requiring that judges are educated in the law governing the matters that come before them does not in any way diminish judicial independence. It enhances it by ensuring that judges have freedom of thought and are not swayed by spurious or unlawful arguments presented by legal counsel for the parties.

According to a report published by the National Self-Represented Litigants Project dated June 3, 2020, the performance of the Canadian Judicial Council (CJC) in educating judges and in carrying out its claimed mandate of ensuring consistency in judicial decisions has been an abject failure.

Because "policies" of the CJC (if they exist) are not binding and do not carry the force and effect of law, Parliament has a duty to require in law that the CJC reports to Parliament concerning the educational courses that it claims to offer. The report should also include evidence of whether a judge passed the course. The enactment of Bill C-3 will ensure that this needed transparency becomes a legal requirement.

Rosemary Cairns-Way and Donna Martinson quote Ms. Ambrose as saying that in her view the CJC's conduct has been one of judicial foot-dragging on this important issue. They quote her as saying: "Frankly, the Judicial Council should just step up and say that we're going to have better training, it's going to be transparent, we're going to work with experts to make sure it's good, and we're going to mandate it." Bill C-3 is responsive to public concerns and distrust in the justice system's treatment of sexual assault. With that said, should not all Canadians in all court matters not be entitled to the same confidence? The Law Society of Ontario and other provincial law societies require their members to take courses annually to up-date knowledge. Is it unreasonable to expect judges to do the same? Although it is likely impractical to expect a judge to know all of the law, judges should not be assigned to hear cases unless the subject matter falls within the judge's knowledge base or expertise.

This was in part the defense that defense council for Camp raised. The current practice of assigning judges to cases at random produces random decisions rather than the consistent decisions that the CJC claims to champion. Most importantly the random practice has eroded public confidence in the justice system producing the sad situation that now exists.

According to the Ontario Judicial Council, **“Respect for the Judiciary is acquired through the pursuit of excellence in administering justice. A strong and independent judiciary is indispensable to the proper administration of justice in our society. Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as judges to be honourable and worthy of its trust and confidence...”**

CONCLUSION:

1. The Canadian Justice Review Board (CJRB) recommends that the House of Commons Standing Committee on Justice and Human Rights approve Bill-C-3 and Parliament should enact it.

2. The CJRB agrees that, *“We’re at a place that is very confusing and it’s not great. Different judges have reached different conclusions and it makes for a complete mess once people come to court,”* as stated by Jonathan Rudin, program director at Aboriginal Legal Services in Toronto. (1)

(1) Importance of Judge Shopping in Politically Driven Courts, Ottawa Citizen , January 10, 2015, Andrew Seymour

3. The CJRB agrees with University of Waterloo political science professor and constitutional expert Emmett MacFarlane who has described the CJC's opposition as merely a continuation of *“ a fight over whether the demands of justice should take a back seat to the more political tussle over judicial autonomy”*.

4.. The CJRB agrees with The Law Times, the publisher of articles, to the effect that judges themselves have no faith in the Canadian Judicial Council.

5. The CJRB agrees with Ms. Sandy Garossino who is a former Crown prosecutor and prominent media commentator. Winner of 'Best Column' in Canada in the 2017 Canadian Online Publishing Association's awards, In her words:

"Camp is the Calgary judge who set off an international media fracas by asking a sexual assault complainant why she didn't keep her knees together. Yet still thornier problems await, especially our culture of deference that tolerates bias, abuse or incompetence in the name of judicial independence. (Note to lawyers: the line between provincially and federally appointed judges is deliberately blurred here for easier reading). But it's the unsuspecting public I think of most, when I look back on it now.

It must be said that almost all judges in Canada maintain very high standards. But we're inexcusably bad at dealing with the exceptions. The afternoon alcoholic, the chronic abuser, the incurable procrastinator with a wake of desperate litigants waiting endlessly for verdicts. All surrounded by a system that knows it all and covers for them. Stories like Camp's dog every workplace, but no other profession has the impunity of Canada's judiciary. Canadians fired our prime minister twice in the last decade. Corporate CEOs get fired all the time, including Target, Empire, and Rogers, just in 2016 alone. Doctors, lawyers, and pilots lose their licenses regularly. Hell, even the Vatican fires priests—defrocking almost 900 between 2004 and 2014. But there's one job that you pretty much can't be fired from: Canadian judge. It's never happened. The Canadian Judicial Council (CJC) has recommended a judge's removal 5 times in 45 years, yet no government has ever followed through and actually fired anybody. Ever. For anything. That's your scandal right there, Canada.

While Robin Camp's atrocious attitudes during a sexual assault trial were irredeemable, they are symptomatic of an even deeper problem. The Canadian judicial system is permeated with cultural paternalism, a fact which even escapes most practitioners. Like fish in water, lawyers are often blind to the environment that surrounds, sustains, and protects them."

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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