Opening Submissions of Justice Camp

1. Introduction and Overview

Justice Camp is a justice of the Federal Court of Canada. Prior to serving on the Federal Court, he was a judge of the Alberta Provincial Court. This Hearing concerns his conduct in a criminal trial in the Alberta Provincial Court. Its purpose is to determine whether Justice Camp's conduct in the *Wagar* trial fell so far outside the bounds of acceptable judicial conduct or is so impossible to remediate that Justice Camp must be removed from his current office. Justice Camp respectfully submits that the answer is no.

Section 65(1) of the *Judges Act* sets out the basis on which an Inquiry Committee may recommend a judge's removal from office. In this case, the Notice of Allegations sets out three potential bases for Justice Camp's removal: that Justice Camp committed misconduct; that he failed in the due execution of his office; and that he has been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office. These bases for removal are variants of the same allegation: that Justice Camp committed misconduct, and that, as a result, he is unfit to remain in office. The test is whether an informed person, viewing the matter objectively, would conclude that Justice Camp's conduct is so "manifestly" and "profoundly" destructive of his impartiality and integrity that he cannot continue as a judge.[1]

The Notice of Allegations lists six categories of alleged misconduct with particulars for each. Justice Camp will agree that he committed misconduct under each of the six allegations. This Hearing will not be about whether or not Justice Camp committed misconduct. It will be about the nature and gravity of the misconduct and whether Justice Camp must be removed from office in light of the steps he has taken to remedy the misconduct.

The misconduct all relates to statements Justice Camp made in the *Wagar* trial. A transcript exists and there is no dispute about what he said. The Inquiry Committee will have to answer two related questions. The first question is: what is the nature and gravity of the misconduct? Justice Camp agrees that his comments in *Wagar* were insensitive, rude, and, in places, displayed an ignorance of the ways in which victims of trauma and/or sexual violence process and respond to events. However, Justice Camp will submit that his comments cannot fairly be read as displaying a wilful bias, a wilful refusal to follow the law, or an animus towards women.

The second question is: can Justice Camp's misconduct be remedied by something short of removal? The answer to this second question will depend on the answer to the first. If the Committee finds that Justice Camp is a rogue judge who was wilfully biased or refused to follow the law out of an animus towards women, his removal would be warranted. But, if the Committee finds that Justice Camp was merely insensitive, rude,

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[1] *Inquiry re Bienvenue J.*, pp. 57-61, citing Canadian Judicial Council; *Inquiry re Hart, Jones and MacDonald JJ. (the "Marshall" case)*, 1990; *Marshall*, p. 27.

or ignorant of the ways in which victims of trauma or sexual violence process and respond to events, it will have to consider whether his contrition and his effort to rehabilitate himself and gain insight into the areas in which he was deficient makes him fit to remain in office.

Prior to *Wagar*, Justice Camp received no training or judicial education on the sociology or neurobiology of sexual assault or even on the legal history of the sexual assault provisions. He was a civil lawyer with no experience in Canadian sexual assault law prior to his appointment. Since *Wagar*, Justice Camp has been mentored by a Superior Court judge, counselled by a clinical psychologist who specializes in abuse and trauma and taught by a professor who specializes in the law of sexual assault and feminist legal theory, all with a view to better understanding the law and science of sexual assault. He has studied the topics of sexual assault and trauma and has had his understanding in these areas tested by Professor Brenda Cossman and Dr. Lori Haskell. He engaged in intensive psychotherapy to interrogate his own beliefs about sex and gender. He will testify at the Hearing that this learning has led him to view his comments in *Wagar* in a new light. He will never make comments like those again, because he has a better understanding of the issues raised in sexual assault prosecutions and because he now understands *why* his comments were wrong. He has apologized unreservedly and will apologize again at the Hearing.

A comparison with other judicial misconduct cases supports the conclusion that Justice Camp should not be removed. The few cases where judges have been removed from office involved judges who committed wilful, deliberate misconduct that could not have been remedied through education. There is no precedent for removing a judge in a case like this – for making insensitive or rude comments for which the judge has apologized, or on the basis of a knowledge deficit that the judge has successfully remedied at the time of the removal hearing.

The reason the administration of justice provides continuing education to judges is because it is widely recognized that no judge starts off perfect and that judges can be taught things they do not know. Justice Camp is not a perfect judge. But he is a repentant good judge with a desire to learn from his mistakes. The Canadian Judicial Council has previously noted that "the wisdom required of a judge is to recognize, consciously allow for, and perhaps to question, all the baggage of past attitudes and sympathies that fellow citizens are free to carry, untested, to the grave."[2] Justice Camp will submit the evidence shows he has an ability and willingness to recognize and question his 'baggage' in a way that should give the reasonable member of the public confidence in his ability to do his job well. The reasonable, well-informed person would prefer judges like Justice Camp to learn and go back to the bench where they can use their knowledge.

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[2] Canadian Judicial Council, *Commentaries on Judicial Conduct* (1991), p. 12.

2. The Nature and Gravity of the Misconduct

On May 2, 2016, the Inquiry Committee delivered a Notice of Allegations to Justice Camp, setting out the allegations that will be raised against him at the Hearing. Justice Camp admits that these allegations constitute misconduct. His comments were insensitive, rude, and, in places, evince an ignorance of the ways in which victims of trauma and sexual violence process and respond to events. But they do not show that Justice Camp was a rogue judge who was willfully biased or refused to apply the law out of an animus towards women.

Justice Camp will also submit that a well-informed member of the public would reach the same conclusions. This is important because the Notice of Allegations raises s. 65(1)(d) of the *Judges Act*, which provides for removal if a judge is "placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office". Justice Camp will submit that the invocation of this provision does not allow for his removal because the public believes he is unfit to be a judge if their belief is based on an incorrect understanding of the facts. Justice Camp will invite the Committee to consider only well-founded public belief under s. 65(1)(d).

3. Comparisons with Similar Cases

Whether Justice Camp's conduct warrants removal should be based on a comparison with prior similar cases of judicial misconduct. The following two charts contain summaries of judicial bias cases within the last 20 years in which the impugned conduct occurred in-court or in the process of reaching a decision and in which the judge displayed bigotry or antipathy towards a person or a category of people. Removal was only recommended in two cases.

a. Cases in which the judge was not removed

Case	Facts and History of Case	Outcome
Canadian Judicial Council; Robert Dewar J.; Letter issued November 9, 2011	Judge Dewar made inappropriate comments in a sexual assault case including that "sex was in the air that night;" the accused was "a clumsy Don Juan;" and that the victim was dressed in a way that showed she "wanted to party."	The judge apologized and obtained sensitivity counselling. The Canadian Judicial Council ultimately concluded that this was an isolated incident in the judge's career and that as a result no further action was required by the Council.
Quebec Conseil; René Roy J.; 2011 CMQC 33	Judge René Roy made disparaging comments towards an individual for arriving in court in improper attire. He also made intolerant, discriminatory comments about the individual's country of origin, including that he would have	The Conseil held an inquiry and reprimanded the judge. It noted the comments and attitude of the judge, who had never been subject to a Conseil inquiry, were insufficient grounds for removal.

	been imprisoned for such behaviour in his home country. The judge reluctantly apologized after considerable delay.	
Quebec Conseil; De Michele J.; 2007 CMQC 97	The judge, De Michele J., made inappropriate comments to the complainant's daughter, the plaintiff in a small claim, including about her language, posture, education, lack of organization, and lack of legal knowledge.	The Conseil held an inquiry and reprimanded the judge. He apologized to the complainant and her daughter.
Quebec Conseil; Unnamed Judge; 2000/2001 Annual Report	The judge allegedly made comments condoning domestic violence. The judge was presiding over a case where a woman assaulted an officer and the judge said "…on Saturday morning, I had three arraignments and they were all for three men accused of beating women, so to have one who slaps her boyfriend, it feels a bit good, it's comforting" (translation). He also said, "Very often, it's always men who beat women." The judge apologized, but the Conseil found the judge's comments were nevertheless symptomatic of a sexist attitude.	The Conseil expressed disapproval of the judge's conduct. It concluded an investigation was unnecessary because: (1) the judge admitted his comments were inappropriate; (2) the judge did not intend to condone violence; and (3) the complainant accepted the judge's apology and felt he was still capable of performing his duties.
Ontario Judicial Council; 2013/2014 Annual Report; 17-030/12	A lawyer's association made a complaint that a judge had failed to conduct proceedings in a judicial manner. It alleged the judge had issues with, among other things, temperament, treatment of unrepresented persons and failing to consider counsels' submissions in a number of cases. It also alleged conduct giving rise to a reasonable apprehension of bias. The Review Panel reviewed the judge's response to the complaint and concluded the judge "may not fully appreciate the concerns and the impact on the confidence in the judiciary and in the administration of justice that had resulted."	The Review Panel referred the matter to the Chief Justice for discussion, on the condition that the judge was prepared to participate in a course of education as agreed upon by the Chief Justice. In referring the matter to the Chief Justice, the Review Panel considered that "[t]he complaints process through the Judicial Council is remedial in nature such that through the review of and reflection upon one's conduct, improvements can be made."
Ontario Judicial Council; 2009/2010 Annual Report; 14-028/08; 14-029/08	The judge made statements about domestic violence that gave rise to a perception of a lack of appreciation of the nature of domestic violence and the impact of the court process in situations of domestic conflict. He made comments suggesting that the historical purpose of the criminal justice system in domestic assault cases was to protect	The Review Panel referred the case to Chief Justice for discussion. The judge independently took steps to educate himself on domestic violence and apologized. The Panel found no further steps were required.

	weak/disadvantaged women who were incapable of escaping their situations, not modern women who are not weak and are capable of leaving. He went on to tell the accused and the complainant that if they stayed together they should not return to the criminal courts to address any problems that might arise.	
Ontario Judicial Council; 2008/2009 Annual Report; 13-024/07	The complainant alleged the judge made inappropriate comments to an accused during a sentencing hearing that amounted to counselling the accused to commit suicide. The facts of the case indicated that the accused might have been suicidal.	The Review Panel referred the matter to the Chief Justice for a meeting with the judge to discuss the issue. The judge acknowledged the error. The Panel concluded no further action was required.
Ontario Judicial Council; 2008/2009 Annual Report; 13-031/08; 13-033/08; 13-038/08;	The judge commented that he would not continue the trial with a complainant in a sexual assault case who had Hepatitis C and was HIV positive unless the complainant wore a mask and/or the matter was moved to another courtroom. The judge rejected medical evidence from the Crown without submissions from the parties and indicated the court would have to be reconfigured so he could sit further from the witness. He dismissed the Crown's application for a mistrial. Several organizations filed complaints.	The Review Panel referred the matter to the Chief Justice for a meeting with the judge to discuss the issue. The judge independently educated himself on HIV/AIDS, acknowledged his error and apologized. The Panel concluded that no further steps were required.
Ontario Judicial Council; 2003/2004 Annual Report; 07–035/02	The complainant (the respondent in a spousal support proceeding) alleged the judge favoured the applicant because of his preconceptions about the respondent's employment. (The case summary does not indicate the respondent's profession.) The judge also made rude and unprofessional comments.	The Review Panel referred the matter to the Chief Justice. The judge acknowledged his comments were inappropriate and wrote an apology letter. The Panel concluded that no further steps were required.
Ontario Judicial Council; 03-043/98; 1998-1999 Annual Report	The judge terminated a trial when the complainant/victim indicated while testifying that she was a lesbian. The Review Panel concluded the judge exceeded his jurisdiction and interfered in court proceedings, giving rise to a real apprehension of bias, and the judge should have stopped and declared a mistrial, having apprehended the bias.	The Review Panel referred the matter to the Chief Justice. The annual report summary does not indicate what steps the Chief Justice took.
Canadian Judicial Council; 2013 Online Summaries; 20130001	A group representing certain First Nations communities filed a complaint against the Chief Justice for his	The Council decided to take no further action. Although the Chief Justice's response to the members

	interruptions of defence counsel and the harsh manner with which he dealt with gallery members who the Chief Justice believed were interrupting the proceeding. Some gallery members responded especially poorly to the Chief Justice's manner because it reminded them of their experiences in the Residential School system. The Chief Justice expressed regret that his actions caused certain gallery members to relive painful experiences, but denied that his comments were motivated by stereotypes.	of the gallery were too forceful and his tone exceeded what was necessary, the Chief Justice had fully considered the complaint and apologized, the comments were not intended to be harmful and this was an isolated incident.
Canadian Judicial Council; 2011 Online Summaries; 20110004	Several complainants expressed concerns over a judge's ruling in a sexual assault case. The accused was convicted of the offence, but the judge ruled that the law, which prohibits using excessive intoxication as a defence, was unconstitutional. The complainants argued the decision undermined women's rights.	The Council dismissed the complaint, on the basis that the complaint did not relate to the judge's conduct, but rather, his decision. The complaint summary states that "Parliament has a responsibility to make, amend and pass laws in Canada, and the judiciary interprets those laws. … At the core is the principle of judicial independence, where judges hold the ability to hear and decide cases freely and without fear."
Canadian Judicial Council; 2010 Online Summaries; Complaint 2	The judge used inappropriate language and humour in case conferences about custody and care of children. The judge admitted he acted inappropriately and should not have used humour. He acknowledged that his comments offended some in the courtroom. He stated his intent was to make things easier for the children. He apologized to the complainant and children. He agreed to take a training course on courtroom communication.	The Council closed the file. It noted it was an isolated incident, the judge had apologized, and the judge was committed to learn from the incident. The summary of this case contains the following: "One of the goals of the complaints process is to make sure judges learn from any mistakes and are able to change any behaviour that is not in keeping with the high expectations we have for all judges."
Canadian Judicial Council; 2008 Online Summaries; Complaint 4	The complainant alleged that the judge, who presided over a sexual assault trial, made comments that were demeaning and vicious, and re-victimized the family in question. The complainant alleged that the judge said the complainant at trial did not "act like a victim" or like a sexually assaulted child.	The Council dismissed the complaint. It found that the complainant mischaracterized the judge's comments. The matters raised by the complainant were not matters concluded by the judge to be proven facts. They were *illustrations* of matters that caused him to have doubts about

		certain evidence before him. The summary states, “When the credibility of the parties is an issue, judges may have to ask difficult questions.”
Taylor v. Canada (Attorney General), 2003 FCA 55 CA Decision (*R. v. Laws* (1998), 128 C.C.C. (3d) 516 (Ont. C.A.))	In a 1993 trial for smuggling persons, Justice Whealy excluded individuals wearing religious headdresses from the courtroom. The lawyer for Laws filed a Canadian Judicial Council complaint in 1994. The Council initially dismissed the complaint, deferring to the Court of Appeal as the appropriate forum to address the judge’s conduct. The Executive Director, responding on behalf of the CJC Chair (Chief Justice McEachern), stated, “it is very unlikely that a single ruling in a single case would be considered conduct deserving a recommendation for removal.” The Court of Appeal found the judge had no evidentiary basis to distinguish between required and chosen practices in a particular religious faith. It also found the trial judge erred in suggesting that only certain communities are protected under the *Charter*. His rulings “may well have inadvertently created the impression of an insensitivity as to the rights of minority groups” and created an atmosphere that undermined the appearance of a fair trial. It did not determine whether this amounted to reversible error because it ordered a new trial on different grounds. Following the Court of Appeal’s decision, Laws’ lawyer applied to the Canadian Judicial Council for reconsideration. McEachern C.J. responded that the exclusion of Mr. Taylor was inappropriate and created the impression the judge was insensitive to minority groups. He said his actions merited an expression of disapproval. He declined to refer the matter for formal investigation.	The Federal Court of Appeal dismissed Taylor’s application for judicial review of McEachern CJ’s decision, finding it was not patently unreasonable. It held, in part: “[64] … the manifest impartiality of the judiciary is one of the pillars on which public confidence in the administration of justice rests. ... Protecting the manifest impartiality of judges also requires the assiduous protection of their independence. [65] At the heart of judicial independence is the freedom of judges to administer justice to the best of their ability, without fear or favour, and in accordance with the evidence and with what they believe is required or permitted by law. Hence, the appeal process is normally the appropriate way of correcting errors committed by judges in the performance of their judicial duties. …” The Court also concluded that McEachern C.J. did not breach his duty of fairness to the complainant by the manner in which he handled the complaint.
Canadian Judicial Council; 2002 Online Summaries;	Five Aboriginal groups lodged ten complaints against Justice Barakett of	The Panel concluded an Inquiry Committee was not needed

Complaint 15 And Public letter from the Canadian Judicial Council to Justice Barakett	the Quebec Superior Court, alleging he made derogatory comments about Aboriginal culture in a custody case. In addition to other comments, the judge stated, "Perhaps unwittingly and out of a totally misplaced expression of motherly love, they were brainwashed away from the real world into a child like myth of pow-wows and rituals quite different from other children on the reserve who had regular contact with the outside world." The judge also tried to calculate the amount of "Indian blood" in the children in an attempt to ascertain whether the children were actually Aboriginal. Further, he made statements suggesting "a stereotype of Aboriginal peoples related to alcohol and drug abuse". The Panel concluded his comments were insensitive and insulting to Aboriginal culture. His observations implied an inherent inferiority in the Aboriginal community. It expressed serious concern that the judge's conduct "did not involve merely an isolated outburst but a series of inappropriate comments". It was further concerned that his comments "may reflect an underlying bias against Aboriginal culture which may preclude [him] from treating all litigants with the equality required by the Charter in future." Barakett J wrote a public letter of apology, which the Panel believed to be sincere. He indicated he would pursue seminars to improve his understanding of Aboriginal culture. His Associate Chief Justice expressed confidence the judge could continue serving the public as a judge. The Panel noted the comments did not affect the outcome of the case.	because the judge's conduct was not serious enough to warrant removal. It closed the file with a letter expressing disapproval of some of his conduct. It released that letter to the public because of the publicity around the case. It stated, in part: "In this case, there is no evidence of malice or improper motive on your part. Your unfortunate comments appear to stem from ignorance of Aboriginal culture rather than contempt for it. In other words, the public could be expected to have confidence that you have learned from this experience and will approach issues related to Aboriginal culture with greater understanding and respect in future."
Canadian Judicial Council; 2001 Online Summaries; Complaint 21	During a property case, the judge said to the complainants' lawyer, "Sir, I understand that, long ago, your clients spent 40 years in the desert, they don't act quickly." The Panel found the comment was inappropriate and should not have been made.	The Panel sent a letter to the judge expressing disapproval of the comment.
Canadian Judicial Council;	A party in a family law hearing	The Panel sent the judge a letter

1999 Online Summaries; Complaint 24	complained that the judge cut off her arguments and made sexist comments to the complainant's ex-spouse that he give her daughter a gift "because lip-stick is expensive". The Panel found the judge had acted inappropriately in discussing child support directly with the ex-spouse, giving the impression he had already decided the case, and by making comments that were offensive and inappropriate.	disapproving of the conduct.
Canadian Judicial Council; 1997 Online Summaries; Complaint 8	Justice Binnie made comments at a banquet in Toronto that were alleged to be a slur against the gay community. As he read from a booklet on fraternity ritual, he said he was reminded of an expression he had read years earlier describing *MacBeth* as a "faggoty dress-up party". Binnie J sent a letter of apology to the Dean of Osgoode Hall Law School (the host of the banquet) before the Canadian Judicial Council received the complaint.	The Council took no further actions, considering the apology and that it was a "single inadvertent, descriptive comment made in a social context".
Canadian Judicial Council; 1997 Online Summaries; Complaint 16	The Chinese Canadian National Council lodged a complaint about questions that Chief Justice Lamer asked during arguments in the case of *R. v. R.D.S.*, [1997] 3 S.C.R. 484. The Chief responded to the CCNC before the Council received the complaint apologizing for any offence he caused. The Conduct Committee concluded the remarks did not amount to misconduct and that it was apparent from context that the questions were hypothetical in nature. The Chief's purpose was to test propositions being put to the Court and explore the dangers of a trial judge taking into account race or racial stereotypes when assessing the credibility of witnesses. [According to *Playing Second Fiddle to Yo Yo Ma*, by Avvy Y.Y. Go, "Lamer CJC was quoted as asking if judges have to take judicial notice of racism, whether that means they have to take judicial notice of the fact that Chinese have a propensity to gamble, and that gypsies are pickpockets. The day CCNC's complaint was made public, Justice Lamer 'apologized' to CCNC with a	The Council issued a media release but took no further action. It stated, "Under our legal tradition, often of necessity, hypothetical questions are posed by judges during the course of argument of a case. The purpose of doing so is to illuminate for the Court the full implications of the matters at issue from both a factual and a legal perspective . . . For this reason, exchanges between counsel and judges during the course of legal arguments are often wide-ranging, probing and exploratory in nature. It is in the interests of the administration of justice that the ability of counsel to engage in such unrestricted advocacy, and the ability of judges to engage in frank and wide-ranging discussion with counsel, continue." (Emphasis added.)

	letter in which he 'corrected' himself by saying that it was in the 60's when he practised law in Montreal that he noticed that Chinese had the propensity to gamble."]	
Canadian Judicial Council; 1997 Online Summaries; Complaint 21	The complainant alleged that in his reasons for judgment a trial judge exhibited "ethnocentricism, a strong bias against Aboriginal peoples, their rights, their culture, and the legitimacy of their claims, and a distinct lack of cultural sensitivity." The Panel found that in his reasons for judgment, a judge invoked unnecessarily disparaging and offensive language in relation to Aboriginal peoples on matters of little or no relevance to the determination of the case. The Panel concluded that no malice of false motive was involved, and that no investigation under s. 63(2) of the *Judge's Act* was required.	The Panel wrote a letter to the judge disapproving of some of his language. The Panel advised the complainant "it was conscious of the fundamental importance of judicial independence in judicial decision-making, and that it is fundamental to the rule of law that judges exercise and candidly articulate independent thought in their reasons for judgment." Nevertheless, the Panel also recognized that judicial freedom of expression has inherent constraints arising out of the judicial office itself. "Freedom of expression must be balanced with the need for public accountability, ultimately, to preserve public confidence in the judiciary."

None of the above cases resulted in removal. In many cases the comments made by the judges were insensitive, rude, offensive, and evincing of stereotypes. The judges were not removed either because the comments were not sufficiently serious, or because the judge had apologized and/or had learned from the experience.

b. Cases in which the judge was removed

Moreau-Bérubé v. New Brunswick (Judicial Council), 2002 SCC 11	Judge Moreau-Bérubé made derogatory comments about the residents of the Acadian Peninsula while presiding over a sentencing hearing, asserting that the majority were dishonest. Several complaints followed that the judge was unable to perform her duty as a judge as the result of her comments. An inquiry panel found the judge's comments constituted misconduct. It found she was still able to perform her duties as a judge and recommended a reprimand. Despite this, the Judicial Council recommended that she be removed from the bench due to an apprehension of bias and loss of public	The Supreme Court allowed the appeal and restored the Council's decision to remove Moreau-Bérubé J. It found the Council's decisions were entitled to a high degree of deference. The Council was entitled to ignore the recommendations of the inquiry panel.

	trust. Judge Moreau-Bérubé filed an application for judicial review of the Council's decision and the Court of Queen's Bench overturned the Council's decision based on their finding that the Council had exceeded its jurisdiction. The Court of Appeal dismissed the appeal.	
Canadian Judicial Council; Inquiry re Bienvenue J., 1996	During a murder trial for a woman who killed her husband, the judge made statements conveying a sexist stereotype that both idealized and demeaned women compared to men, and said, "even the Nazis did not eliminate millions of Jews in a painful and bloody manner. They died in the gas chambers, without suffering." He made other inappropriate comments of a sexual nature, about a juror's sexual orientation, about suicide and about parking lot attendant. He also met with three jurors after the verdict but before sentencing and criticized their verdict. The judge apologized for the offence caused by his comments about the Holocaust and women but did not disavow the comments or acknowledge any error on his part. Rather, he confirmed his belief in his comments in subsequent media interviews and at the inquiry. The Council found that the judge did not grasp the implications of his comments to the jury. It also found that his views on women were deeply rooted in his mind. The Council found the judge violated s. 65(2)(b-d) of the *Judges Act*.	The Council recommended that Bienvenue J. be removed from office. It stated that had the case been limited to the judge's meeting with the jury, it would have only expressed disapproval with his conduct. However, his remarks about women and his deep-seated ideas behind those remarks casted doubt on his impartiality in the execution of his judicial office. The evidence was clear that Bienvenue J. did not intend to change his behaviour. The Council stated that: "Judges are, of course, entitled to their own ideas and need not follow the fashion of the day or meet the imperatives of political correctness. However, judges cannot adopt a bias that denies the principle of equality before the law and brings their impartiality into question" (p. 50). The Council then cites a 1983 article by Prof. A.W. MacKay, in which he stated, "To argue that the speech of judges should be limited by legitimate claims of equality expressed by lobby groups espousing the claims of those embraced by the equality guarantees of section 15 of the *Charter* and by Human Rights Codes is not to argue that judges must be "politically correct" in their speech. Judges should not respond to a public interest lobby just because it is persistent and in vogue. Judges should, however, take care that neither their speech nor conduct transgress the

		equality principles enshrined in the Charter. When they do commit such transgressions, they should be held accountable. The *Charter* provides the buoy to prevent the judiciary from allowing lobby groups to pull them down into the political waters."

Justice Camp will submit that the two cases above in which judges *were* removed from the bench are qualitatively different from the present case.

4. Justice Camp's Character, Remorse and Remediation

Justice Camp has apologized and has consistently shown remorse. He has also taken significant steps to educate himself and gain insight into his beliefs. Justice Camp will submit that there is no prior example of a judge who has gone to the lengths to which he has gone to remediate his problem.

After being made aware of the complaints against him, Justice Camp issued an apology, which was posted to the Federal Court website. In addition to apologizing, Justice Camp sought to improve his understating of the science and law of sexual assault. To this end, he obtained mentoring, counseling and teaching, from a senior judge, a psychologist and a law professor, respectively.

Justice Deborah McCawley, a Superior Court judge, mentored Justice Camp. She discussed with him the role of the judge and the ethical guidelines that apply. They had extensive discussions about social context and judging. She provided suggested reading material to Justice Camp. Her Honour spoke to Justice Camp several dozen times and met with him in person four times at seminars and elsewhere. She will give evidence about this mentoring.

Dr. Lori Haskell, a psychologist and expert in the neurobiology of trauma, taught and counseled Justice Camp about the ways in which victims of abuse respond to trauma. She taught him about how trauma affects reaction and memory and about the neurological impact of trauma. She assigned reading material for Justice Camp, discussed the material with him in detail, and tested him on his understanding of the assigned material. Justice Camp additionally underwent psychotherapy with Dr. Haskell so that he could interrogate his own beliefs and experiences with a view to better understanding the perspectives of a sexual assault complainant. With the exception of the private psychotherapy, Dr. Haskell will give evidence about this counseling.

Brenda Cossman, a law professor and expert on feminist legal theory and sexual assault law, taught Justice Camp about the history and current state of sexual assault law. Professor Cossman taught Justice Camp about the ways in which gender intersects with

law, the myths surrounding sexual assault, and the purpose of the substantive and evidentiary provisions in the *Criminal Code* relating to sexual assault. She assigned reading material, discussed the assigned material with Justice Camp, and tested him on his understanding of the assigned material. Professor Cossman will give evidence about this teaching.

Each of Justice Camp's counselors is expected to testify at the Hearing that he took the process seriously and that he read and understood all of the material assigned to him.

Various people also filed letters of support on Justice Camp's behalf. Counsel will tender these letters at the Hearing. These letters show that he is a person of good character with a sincere respect for litigants, women, victims and other vulnerable groups. He is a person who genuinely wants to treat all people with dignity and respect for equality.

5. Should Justice Camp be removed from office?

Justice Camp will submit that he should not be removed from office. His misconduct is of the type that can be remedied by education. It is anticipated the evidence will show it has been remedied in this case.

Judges can be educated, even about pervasive sexual assault myths. The National Judicial Institute offers courses, seminars and materials on this exact subject. If judges could not be educated on social context and on sexual assault myths and realities, there would be no point in providing this type of continuing education. With respect to sexual violence mythology in particular, judges are presumably provided training and education because rape mythology is by definition a pervasive societal belief. It is difficult for any person (judge or not) without the lived experience of victimization to intuit and understand the wide range of responses to sexual violence.

Justice Camp received no training at all in this area prior to presiding over the *Wagar* trial. No such seminars or educational programs on this topic were even available for Alberta Provincial Court judges during his tenure.

Justice Camp will submit that removal of a judge is only warranted on the basis of conduct that is "manifestly" and "profoundly" destructive of the judge's impartiality and integrity.[3] To adopt the test used by the *Marshall* Inquiry Committee, "Unless it can be attributed to improper motives or to a decay of mental power…any error of judgment will not justify the interference of Parliament."[4] In that case, "strong disapproval" of "grossly inappropriate language" was not a basis for removal or even a finding of misconduct.[5]

In the present case, Justice Camp accepts he made insensitive and inappropriate comments. He is remorseful and he will not make such comments again. He spent the last year getting educated about gender sensitivity and sexual assault from expert

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[3] *Marshall*, p. 27.
[4] *Marshall,* p. 25.
[5] *Marshall,* pp. 32-36.

counselors. They will give evidence that he has absorbed their teachings. (This is no small feat: In the words of Justice Kennedy, "Bias is easy to attribute to others and difficult to discern in oneself."[6]) He has good character and the evidence shows that going forward he is fit to be a judge. His comments, while insensitive and discouraging to victims of sexual assault and those who represent them, were not made in bad faith and do not reflect an inherent disrespect for litigants, women, victims, equality-seekers or other vulnerable groups. They do not meet the high bar for removal.

All of which is respectfully submitted

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[6] *Williams v. Pennsylvania*, 15-5040 (2015) at p. 6.