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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING
VOLUME 1

Calgary, Alberta
September 6, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta.

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4 _____
5 September 6, 2016

6

7 Associate Chief Justice Chair

8 Austin F. Cullen

9 Associate Chief Justice Committee Member

10 Deborah K. Smith

11 Chief Justice Raymond P. Whalen Committee Member

12 Ms. Karen Jensen Committee Member

13 Ms. Cynthia Petersen Committee Member

14

15 Ms. Marjorie Hickey, QC Presenting Counsel

16 Michael Murphy

17

18 Owen Rees For Inquiry Committee

19

20 Frank Addario For Justice Camp

21 Megan Savard

22 Andrew Burgess

23

24 S. Murphy, CSR(A) Official Court Reporter

25 K. Attrell Registrar

26 _____

27

1 (PROCEEDING COMMENCED AT 2:06 PM)

2 THE REGISTRAR: This Inquiry Committee of the
3 Canadian Judicial Council is now in session. The
4 Honourable Associate Chief Justice Cullen presiding.

5 THE CHAIR CULLEN: Thank you. I wonder if we
6 could start by counsel introducing themselves, please.

7 MS. HICKEY: Good morning, Chief Justice
8 Whalen and Panel Members. My name is Marjorie Hickey.
9 I'll be acting as presenting counsel in this matter,
10 and I'm joined by my colleague, Michael Murphy.

11 THE CHAIR: Thank you, Ms. Hickey,
12 Mr. Murphy.

13 MR. ADDARIO: Hi, Chief Justice Cullen, I am
14 Frank Addario. I act for Justice Camp, who's here on
15 the far left. I'm with my associates Megan Savard and
16 Andrew Burgess.

17 Opening by the Chair

18 THE CHAIR: Thank you, Mr. Addario.

19 I think it's customary for the Chair of these
20 committees to provide a few opening comments just to
21 put in context what it is we're doing, so I propose to
22 do that over the next few minutes before I call on you,
23 Ms. Hickey. I gather you have an application you wish
24 to make concerning a ban on publication of the identity
25 of the complainant; is that correct?

26 MS. HICKEY: That's correct.

1 THE CHAIR: We will deal with that very
2 shortly. Thank you.

3 This inquiry has been convened pursuant to Section
4 63(1) of the Judges Act following a letter of complaint
5 dated December 22nd, 2015, from the Minister of Justice
6 and Solicitor General of -- for Alberta to the Canadian
7 Judicial Council. The complaint relates to the conduct
8 of and comments made by Mr. Justice Camp, now of the
9 Federal Court of Canada, while he was a judge of the
10 Alberta provincial court in the course of a trial in R.
11 v. Wagar held in Calgary on several days between June
12 5th and August 6th of 2014. The accused was charged
13 with sexual assault of the complainant arising from
14 events which are alleged to have taken place on
15 December 13th of 2011. Justice Camp gave reasons for
16 judgment acquitting the accused on September 9th of
17 2014.

18 The acquittal was appealed by the Crown to the
19 Alberta Court of Appeal on October 15th of 2015, and on
20 October 27th of 2015, by memorandum delivered from the
21 bench, the Court of Appeal overturned the acquittal and
22 ordered a new trial. The committee understands that
23 the accused's retrial has not yet taken place. In
24 light of that, it is important to emphasize that
25 neither the fact of this inquiry nor anything said or
26 decided in the course of it has anything to do with the

1 guilt or innocence of that accused in that case.

2 This inquiry is not concerned with whether the
3 accused should have been or -- should have been or
4 should be acquitted or convicted. That is an issue
5 which is entirely within the province of the Court
6 before which he will be retried.

7 The Inquiry Committee was convened on March 22nd
8 of 2016. The Panel Members are as follows: My name is
9 Austin Cullen. I'm the associate chief justice of the
10 BC Supreme Court. I'm the Chair of the committee. To
11 my immediate left is Associate Chief Justice Deborah
12 Smith of the Nova Scotia Supreme Court, and to my
13 immediate right is Chief Justice Ray Whalen, Chief
14 Justice of the Newfoundland and Labrador Supreme Court.
15 Each of the three of us were appointed by the Canadian
16 Judicial Council. In addition the Minister of Justice
17 has appointed two lawyers to complete the committee.
18 They are, to my far right, Karen Jensen of Norton Rose
19 Fulbright in Ottawa, and to my far left Cynthia
20 Petersen of Goldblatt Partners in Toronto.

21 The Notice of Allegations made against Justice
22 Camp was issued on May 2nd of 2016, and a Notice of
23 Response to the allegations was filed by Justice Camp
24 on July 4, 2016. Both of those documents are posted on
25 the Canadian Judicial Council website and are available
26 to be reviewed.

1 On July 8th of 2016, the committee made an order
2 granted limiting -- I'm sorry, granting limited
3 intervener status to various organizations involved in
4 the provision of services to survivors of sexual
5 assault and representing certain equality-seeking
6 groups. Reasons for making that order were issued on
7 July 26th of 2016, the order and those reasons are also
8 available on the Canadian Judicial Council website for
9 review of the public.

10 The framework of this inquiry is established in
11 part by Part 2 of the Judges Act, which requires the
12 Canadian Judicial Council to commence an inquiry as to
13 whether a judge of a superior court or the Tax Court of
14 Canada should be removed from office when requested to
15 do so by the Attorney General of the province or the
16 Minister of Justice of Canada.

17 The reasons warranting a judge's removal from
18 office are set out in Section 65(2)(a) to (d) of the
19 Judges Act. Section 65(2)(a) is not applicable in this
20 case. The other subsections read as follows:

21 (as read)

22 Where, in the opinion of the council, the
23 judge in respect of whom an inquiry or
24 investigation has been made has become
25 incapacitated or disabled from the due
26 execution of the office of judge by reason of

1 province, having at least ten years'
2 standing, as may be designated by the
3 Minister, shall constitute an Inquiry
4 Committee.

5 The Inquiry Committee is specifically mandated to
6 engage legal counsel and other persons to provide
7 advice and to assist in the conduct of the inquiry. In
8 this case, as you've heard, the committee has engaged
9 Ms. Marjorie Hickey, QC, of McInnes Cooper in Halifax
10 and Mr. Owen Rees of Conway Baxter Wilson LLP in Ottawa
11 to assist in the conduct of this inquiry.

12 There is a requirement which is confirmed in the
13 CJC bylaws that this inquiry be conducted in accordance
14 with the principle of fairness. To fulfill that
15 obligation, the committee in this case has issued
16 directions to govern the respective roles of
17 Ms. Hickey, who has assumed the function of presenting
18 counsel, and Mr. Rees, who has assumed the role of
19 legal advisor to the committee. The manner in which
20 counsel are to perform their respective roles and their
21 relationship to one another and to this committee is
22 set out in directions to counsel issued by the
23 committee dated April 22nd, 2016. The document was
24 posted to the CJC website and is similarly available
25 for review by the public.

26 Justice Camp is, of course, entitled to counsel to

1 represent him and to present whatever evidence he
2 wishes the committee to consider and to generally
3 respond to the allegations contained in the notice. As
4 you've heard, Mr. Frank Addario, Ms. Savard and
5 Mr. Burgess act for Justice Camp, and, as with
6 Ms. Hickey and Mr. Rees, he has and will continue to
7 provide assistance to this committee as we progress.

8 The ultimate task of the committee is not to make
9 a final determination on whether Justice Camp should or
10 should not be removed from office. Rather the
11 obligation of the committee is to submit a report to
12 the Canadian Judicial Council setting out its findings
13 regarding the alleged misconduct and its conclusions
14 about whether to recommend a removal of a judge from
15 office or not. Thereafter the Canadian Judicial
16 Council will follow a procedure which includes
17 considering the Inquiry Committee's report to it and
18 ultimately will make its recommendation to the Minister
19 of Justice under Section 65(1) of the Judges Act.
20 Although Chief Justice Whalen and Associate Chief
21 Justice Smith are members of the council, we will play
22 no role in its deliberations or determination.

23 The committee is aware that although any time the
24 conduct of a judge is impugned, it engages public
25 attention and concern. This inquiry in particular
26 features issues that transcend the specifics of the

1 case and have had a widespread public impact. Our task
2 requires us to take into account the impact of this
3 case on the public in light of a close examination of
4 its factual, legal, and social context.

5 Before making our recommendation, whatever it may
6 be, we must also carefully assess its long-term
7 implications for the institution of the judiciary and
8 for public confidence in that institution. We
9 anticipate relying on the efforts and the submissions
10 of Ms. Hickey and Mr. Addario, the assistance and
11 advice of Mr. Rees, and on the submissions of the
12 interveners, which have been filed with the committee
13 to enable us to understand and come to grips with the
14 difficult issues with which this case presents us.

15 Just a few housekeeping type of matters. We will
16 be sitting commencing at 10 AM every morning until
17 12:30 with a 15-minute break at 11:00. We will then
18 resume sitting at 2 in the afternoon and sit through
19 until 4:30.

20 As far as members of the media are concerned,
21 texting and tweeting are permitted from the hearing
22 room. Obviously we would ask you to ensure that it's
23 done in a way that avoids disrupting the proceedings.
24 And there will be no further photographs or recordings
25 of the proceeding apart from the court reporter.

26 There is, I understand, already a publication ban

1 on the identity of the complainant in the case of R. v.
2 Wagar through the criminal process, but I understand
3 that Ms. Hickey, for clarity, wishes to make an
4 application in respect of that before this committee,
5 and I invite you to do so at this point, Ms. Hickey.
6 Submission by Ms. Hickey (Ban on Publication - Identity
7 of Complainant)

8 MS. HICKEY: Thank you, Associate Chief
9 Justice Cullen. Is it appropriate to speak from here,
10 or would you prefer that I spoke from the podium?

11 THE CHAIR: That's fine where you are.
12 Thank you.

13 MS. HICKEY: Thank you. Notice has been
14 given to a variety of media outlets of an application
15 for a publication ban with respect to any information
16 that could serve to identify the complainant in the
17 matter of R. v. Wagar. As Associate Chief Justice
18 Cullen has mentioned, when that trial proceeded and as
19 is customary, the mandatory publication ban required by
20 the Criminal Code of Canada was imposed to offer
21 protection of the identity of the complainant. That
22 mandatory publication ban continued through to the
23 Court of Appeal judgment in R. v. Wagar as well.
24 Arguably there's no formal need to make a subsequent
25 application before this Panel, as it's certainly the
26 position of presenting counsel that the ban that was

1 put in place during the trial and the appellate
2 proceedings in R. v. Wagar continue in place today.
3 But to avoid any confusion on that matter, it was
4 thought preferable to formally make this application to
5 this Inquiry Committee today.

6 There is authority, certainly, under the Judges
7 Act for the Inquiry Committee to issue a ban. That
8 authority is found under Section 63, subsection 5 of
9 the Judges Act that indicates that: (as read)

10 The council may prohibit the publication of
11 any information or documents placed before it
12 in connection with, or arising out of, an
13 inquiry or investigation under the section
14 when it is of the opinion that the
15 publication is not in the public interest.

16 Under other authority in the Judges Act by which bylaws
17 can be made, a bylaw was enacted, and it is subsection
18 6(2) of the bylaws made under the Judges Act that
19 indicates that an Inquiry Committee may prohibit the
20 publication of any information or documents placed
21 before it if it determines that publication is not in
22 the public interest and may take any measures that it
23 considers necessary to protect the identity of persons,
24 including persons who have received assurance of
25 confidentiality as part of the consideration of a
26 complaint or allegations made in respect of the judge.

1 So there's statutory authority, clearly, for this
2 Inquiry Committee to grant a ban that will serve to
3 protect the identity of the complainant in R. v. Wagar.

4 Beyond that statutory authority, members of this
5 committee will be familiar with the test that the
6 Courts have adopted in determining when a public
7 publication ban is appropriate, and it's usually
8 referred to as at Dagenais-Mentuck test. The test has
9 been adopted in the Supreme Court of Canada case of
10 Sierra Club of Canada versus Canada as follows:

11 (as read)

12 A confidentiality order should be only
13 granted when such an order is necessary in
14 order to prevent a serious risk to an
15 important interest, including a commercial
16 interest, in the context of litigation
17 because reasonable alternative measures will
18 not prevent the risk.

19 The second part of the test is that: (as read)

20 The salutary effects of the confidentiality
21 order, including the effects on the right of
22 civil litigants to a fair trial, outweigh the
23 deleterious, including the effects of the
24 right to free expression, which in this
25 context includes the public interest in open
26 and accessible court proceedings.

1 The specific issue of confidentiality orders with
2 respect to complainants in sexual assault trials was
3 addressed again by the Supreme Court of Canada in the
4 Canadian Newspapers case in 1988, when the mandatory
5 nature of the Criminal Code ban was challenged as being
6 contrary to the Charter. The Supreme Court of Canada
7 upheld the mandatory nature of the publication ban that
8 is established by the Criminal Code. And said this:
9 (as read)

10 When considering all of the evidence, it
11 appears that of the most serious crimes,
12 sexual assault is one of the most unreported.
13 The main reason stated by those who do not
14 report this offence are fear of treatment by
15 police or prosecutors, fear of trial
16 procedures, and fear of publicity or
17 embarrassment. Section 442(3), which was the
18 predecessor to the current section in the
19 Criminal Code, is one of the measures adopted
20 by parliament to remedy the situation, the
21 rationale being a victim who fears publicity
22 is assured, when deciding whether to report
23 the crime or not, that the judge must
24 prohibit upon request the publication of the
25 complainant's identity or any information
26 that could disclose it. Obviously, since

1 fear of publication is one of the factors
2 that influences the reporting of sexual
3 assault, certainty with respect to
4 non-publication at the time of deciding
5 whether to report plays a vital role in that
6 decision. Therefore, a discretionary
7 provision under which the judge retains the
8 power to decide whether to grant or refuse
9 the ban of publication would be
10 counterproductive, since it would deprive the
11 victim of that certainty.

12 And as a result the mandatory nature of the requirement
13 in the Criminal Code was upheld.

14 In the present inquiry, as mentioned, that
15 mandatory requirement under the Criminal Code was
16 applied at the trial and during the appellate
17 proceeding. In the Supreme Court of R versus Adams in
18 1995, the Court was asked to consider whether the
19 mandatory nature of the ban imposed during the criminal
20 trial had a continuing effect outside of the criminal
21 trial, which really is the issue before this Panel.
22 The Supreme Court concluded that it did, that the
23 mandatory provision in the Criminal Code continued,
24 regardless of the status of those court proceedings.

25 And the Court said this: (as read)

26 A revocable publication ban, like a

1 discretionary ban, would fail to provide the
2 certainty that is necessary to encourage
3 victims to come forward. If the trial judge
4 were given the power by the legislation to
5 revoke the ban, the complainant would never
6 be certain that her anonymity would be
7 protected. The ban would serve as little
8 more than a temporary guarantee of anonymity.
9 There is nothing in the language of Section
10 486(4) that purports to authorize revocation
11 of the order and, given the purpose of the
12 legislation, no such power can or ought to be
13 implied.

14 So the case went on to discuss some circumstances where
15 the consent of the complainant could be provided to
16 revoke the ban, but that is not the case here. The
17 complainant in R. v. Wagar has asked that the ban
18 imposed during the trial decision and at the appellate
19 level continue throughout this proceeding.

20 So, in short, in asking this Inquiry Committee to
21 impose a confidentiality order, publication ban with
22 respect to any information that could identify the
23 complainant, absent the consent of the complainant,
24 there can be no revocation or curtailment of a
25 publication made under 485(4).

26 Of particular note perhaps in this proceeding, and

1 reference has already been made to it, the trial
2 decision in R. v. Wagar resulted in the acquittal of
3 Mr. Wagar. On appeal, the Court of Appeal remitted the
4 matter for a new trial. That trial is scheduled to be
5 heard in November of this year. So we have the added
6 factual context in this case of a trial involving the
7 same allegations, involving the same complainant
8 proceeding before the Courts relatively shortly.

9 So to conclude then, this committee has the
10 authority to order such measures considered necessary
11 to protect the identity of persons involved in this
12 proceeding. Because of the R. v. Wagar decision, there
13 is already a Section 486(4) ban in place. It has a
14 continuing effect, as referenced in the Adams decision
15 to which I made reference. The balancing that's
16 referenced in the Dagenais-Mentuck test is met by this
17 inquiry being open to the public and, therefore,
18 upholding the important open court principle.

19 By ordering what I'm about to read as the
20 suggested ban or confidentiality order, this Inquiry
21 Committee will be acting consistently with the
22 requirements of 486(4) of the Criminal Code to continue
23 the effect of the ban and will be properly balancing
24 the open court principle with the important and
25 necessary objectives of protecting the identities of
26 complainants in sexual assault matters.

1 So, accordingly, presenting counsel requests that
2 the Inquiry Committee issue directions as follows:
3 That all present during the inquiry are to be advised
4 of the existence of the continuing publication ban
5 emanating from the Alberta Court under Section 486(4)
6 of the Criminal Code; clarifying that that ban
7 prohibits the publication, broadcast, transmission, or
8 disclosure in any format of any information in this
9 inquiry that may reveal the identity of the complainant
10 in R. v. Wagar; ordering that the complainant in R. v.
11 Wagar be referred to as "the Wagar complainant" or "the
12 complainant" in any oral or written material in
13 connection with arising out of or about the matters in
14 this inquiry; and finally imposing a ban on all
15 photographs, videos, or any digital images of the Wagar
16 complainant during or otherwise in connection with this
17 inquiry.

18 That is the request of presenting counsel for the
19 Inquiry Committee's consideration.

20 THE CHAIR: Have you had any response to
21 your application?

22 MS. HICKEY: There has been no response.

23 THE CHAIR: Mr. Addario, I take it you
24 have no position today?

25 MR. ADDARIO: I'm not opposed. I would
26 consider an order by this committee to be superfluous

1 since no one has moved to set aside Justice Camp's
2 order given at the beginning of the Wagar trial. But
3 it's open to you to make another order if you want.
4 Ruling

5 THE CHAIR: Thank you. I think in the
6 circumstances and for clarity, the committee has
7 discussed this, and I think we're all in agreement that
8 it would be appropriate to issue the order in the terms
9 sought by Ms. Hickey, which will, in effect, confirm
10 the existence of the 486 Criminal Code ban and serve as
11 notice that it continues to govern and will govern the
12 conduct of these proceedings as well. Thank you.

13 Ban on Publication - Identity of Complainant
14 Discussion

15 MS. HICKEY: Thank you. If I may,
16 Associate Chief Justice Cullen and Panel Members, there
17 has been a second issue that has recently arisen
18 involving issues of publication. Attending the
19 proceeding today, we have Mr. Flynn, who is legal
20 counsel for the defendant in the R. v. Wagar matter.
21 Mr. Flynn represented Mr. Wagar at the trial before
22 Justice Camp and is continuing to represent Mr. Wagar
23 in the retrial of this proceeding that's scheduled to
24 commence in November. Mr. Flynn is here. He's not in
25 a position today to make the representations to the
26 Panel, as he only had notice today of the matters that

1 are under review that may involve the disclosure of the
2 transcript in the R. v. Wagar matter.

3 So what the proposal is, is that we would proceed
4 this afternoon with introducing certain exhibits, in
5 particular an agreed statement of facts that has been
6 reached between presenting counsel and Justice Camp's
7 counsel. That agreed statement of facts for today's
8 purposes would exclude the transcript in R. v. Wagar,
9 so it will be marked as an exhibit on its own, the
10 agreed statement of facts, and then the exhibits
11 without the transcript that, given the presence of
12 media here today, that tomorrow Mr. Flynn, on behalf of
13 Mr. Wagar, may, if he considers it appropriate, attend
14 to make a request for a publication ban with respect to
15 the publication of the transcript in R. v. Wagar and
16 that by advising the media in attendance here today,
17 the media will have notice, as of today, that that
18 application will be made tomorrow by Mr. Wagar --
19 sorry, by Mr. Flynn, counsel for Mr. Wagar.

20 So there's nothing in the evidence that is to be
21 called this afternoon that would impact on the matter
22 of the availability of the transcript of R. v. Wagar,
23 and, accordingly, it is requested that we proceed this
24 afternoon with opening submissions from presenting
25 counsel, with the calling of the first witness, and
26 that to the extent that Mr. Flynn wishes to make an

1 application tomorrow with respect to any publication
2 ban, that he permitted to do so, but with this having
3 been given -- with this having been appropriate notice
4 to the media of that request.

5 THE CHAIR: Ms. Hickey, I wonder whether
6 it might be equally efficient to simply put in the
7 agreed statement of facts together with all the
8 exhibits including the transcript, and the committee
9 can issue an interim ban on publication until tomorrow
10 morning.

11 MS. HICKEY: Certainly that would be
12 equally and perhaps more conveniently appropriate.

13 THE CHAIR: Let's do it that way then.
14 Thank you. We can proceed on that footing then.

15 MS. HICKEY: Thank you. With that, Inquiry
16 Committee Members, I would like to make a few opening
17 comments.

18 THE CHAIR: Thank you.

19 Opening by Ms. Hickey

20 MS. HICKEY: In these opening comments, I
21 plan to lay out an overview to an extent of what
22 presenting counsel sees as occurring over the next
23 number of days of this proceeding from the perspective
24 of presenting counsel. I will be making some
25 reference, and I appreciate that Associate Chief
26 Justice Cullen has already made some reference to the

1 statutory framework, but I will be making some further
2 reference to that. I will provide an introduction to
3 the evidence that will be presented, a brief discussion
4 in addition to what Associate Chief Justice Cullen has
5 indicated with respect to the role of presenting
6 counsel and the role of this committee, and finally
7 some suggestions to the committee regarding some
8 questions to be borne in mind as this inquiry
9 progresses.

10 So to start then, with the statutory framework to
11 which reference has already been made, this inquiry is
12 conducted under the legislative authority of the Judges
13 Act, and I would suggest that that has importance for
14 two reasons: Firstly, the Judges Act defines the
15 jurisdiction of this Inquiry Committee. It lays out
16 the authority of this committee, both with respect to
17 the conduct of this proceeding and with respect to the
18 options that are open to it at the end of this
19 proceeding.

20 The Judges Act allows for bylaws to be made to
21 give some further structure to the role of this Inquiry
22 Committee, and such bylaws have indeed been made, and
23 among other things as has been noted, those bylaws
24 provide that the Inquiry Committee must conduct its
25 inquiry in accordance with principles of fairness.

26 The Judges Act and the bylaws also spell out the

1 dispositions or outcomes that are available once the
2 inquiry is concluded. And unlike statutes which govern
3 professionals such as lawyers or doctors or nurses and
4 others, which provide a variety of tools and
5 dispositions available to committees to respond to the
6 complaint, the Judges Act provides more limited
7 options.

8 Section 63(1) provides the Canadian Judicial
9 Council with the authority to commence inquiries as to
10 whether a judge of a superior court should be removed
11 from office for any of the reasons that have been set
12 out in 65(2), which have been referenced by Associate
13 Chief Justice Cullen.

14 This authority is picked up again in the bylaws,
15 Bylaw 8, where it indicates that the Inquiry Committee
16 is required to submit a report to the CJC setting out
17 its findings and conclusions about whether to recommend
18 the removal of the judge from office.

19 So I'll come back to that shortly, but I did want
20 to highlight at the commencement of this process, as I
21 will in closing submissions, that the focus of this
22 inquiry, then, is to make findings and conclusions as
23 to whether a recommendation should be made to the
24 Canadian Judicial Council to remove Justice Camp from
25 office.

26 So the first way, then, that the statutory

1 framework under the Judges Act is important is that it
2 establishes the jurisdiction of the committee. The
3 committee can only do what the Judges Act and its
4 bylaws give it authority to do.

5 The second way the statutory framework is
6 important is that the Judges Act defines the two
7 pathways by which a complaint can come before an
8 Inquiry Committee. The first is through a series of
9 staged processes following the receipt of a complaint
10 by someone other than the Minister of Justice and
11 Attorney General of the province. Under that scenario
12 a complaint is reviewed by the Chair of the Judicial
13 Council's Conduct Committee who does a preliminary
14 review of the evidence to determine whether it needs to
15 go forward to a review panel. Under that process, a
16 review panel is then convened to conduct a further
17 investigation to determine whether the matter warrants
18 a referral to an Inquiry Committee and from there, the
19 Inquiry Committee proceeds, as this committee is
20 proceeding.

21 So it can be seen from that initial process that
22 there are series of investigative steps and thresholds
23 that must be met before a matter reaches an inquiry
24 committee. The alternative procedure, which has been
25 referenced by Associate Chief Justice Cullen that has
26 brought us here today, is that under Section 63(1) of

1 the Judges Act there's a mandatory requirement for
2 referral immediately to an inquiry committee when the
3 Minister of Justice or the Attorney General of a
4 province requests it.

5 In this matter, both routes were initially
6 followed. The Alberta Court of Appeal rendered a
7 decision in R. v. Wagar. The appellate decision, short
8 as it was, raised concern about Justice Camp's comments
9 during the trial of Mr. Wagar among other things.
10 Following the release of the appellate decision, an
11 initial complaint was brought forward to the Canadian
12 Judicial Council by four law professors in November of
13 2015 respecting Justice Camp's comments during the
14 trial and the decision in R. v. Wagar.

15 While that complaint was proceeding through the
16 earlier staged process that I outlined, the Minister of
17 Justice of Alberta proceeded under Section 63(1) of the
18 Judges Act to request the Canadian Judicial Council to
19 commence an inquiry. And as a result, this Inquiry
20 Committee has been convened under that section.

21 In consequence of that, the initial complaint
22 filed by the law professors, and indeed additional
23 complaints about which we will be hearing more
24 throughout this proceeding, are being held in abeyance,
25 and the matter is proceeding solely on the basis of the
26 referral from the Attorney General of Alberta.

1 So the statutory framework, then, of the Judges
2 Act and its bylaws sets out the jurisdiction of this
3 committee in terms of how it conducts its process, the
4 disposition available to it, and also establishes the
5 process by which this matter has arrived at the
6 doorstep of the committee today.

7 Turning then to the evidence that will be
8 presented in the course of this inquiry. Unlike many
9 hearings or inquiries, there really are few, if any,
10 factual disputes in this case. The conduct in question
11 arises from the comments made by Justice Camp in the
12 course of hearing and determining the R. v. Wagar
13 matter in the Alberta provincial court from June to
14 September of 2014. All of the trial evidence and the
15 decisions were recorded and are transcribed and all of
16 that is available to this Inquiry Committee.

17 Unlike many inquiries and hearings, it is not
18 anticipated there will be much in the way of oral
19 evidence provided to this committee. Both presenting
20 counsel and defence counsel have reached agreement to
21 produce an agreed statement of facts that has earlier
22 been referenced, and it's that written document with
23 its various exhibits that form the bulk of the evidence
24 upon which this committee must do its work.

25 I'll be taking the committee through that agreed
26 statement of facts in some detail during closing

1 submissions, but by way of introduction, the agreed
2 statement of facts includes a summary of the factual
3 background of the trial in R. v. Wagar. It contains
4 the factum filed by the Crown to the Alberta Court of
5 Appeal and the Alberta Court of Appeal's decisions --
6 decision, rather, remitting the matter back for a new
7 trial. It confirms that the new trial is scheduled for
8 November of this year. It contains the letter from the
9 Attorney General of Alberta requesting referral to this
10 Inquiry Committee. It contains copies of some 69
11 pieces of correspondence that made their way to the
12 Canadian Judicial Council containing either complaints
13 or comments about the publicly reported conduct of
14 Justice Camp, which is submitted in the agreed
15 statement of facts as evidence of the public's reaction
16 to the comments in R. v. Wagar and the public's
17 interest in these proceedings.

18 The agreed statement of facts also contains a
19 listing of some of the various media reports that arose
20 following the filing of complaints to the Canadian
21 Judicial Council, and those are introduced to
22 illustrate the public interest in this matter and to
23 illustrate the widespread criticism of certain comments
24 and questions that were made during R. v. Wagar. These
25 media reports range from national television news
26 reports to reports in national newspaper, local

1 newspapers, magazines, ranging from Seventeen to
2 Chatelaine to Macleans to blogs and to some
3 international media reports.

4 The agreed statement of facts contains a letter
5 from Chief Justice Crampton, Chief Justice of the
6 Federal Court, describing the action taken by both
7 himself and by Justice Camp following the media -- the
8 initial media reports of the professor's complaint.
9 The agreed statement of facts contains a copy of the
10 public apology written by Justice Camp which was
11 published on the Federal Court of Canada's website in
12 November of 2015.

13 The agreed statement of facts also contains copies
14 of documents filed in the Federal Court of Canada in
15 two unrelated proceedings in which legal counsel in
16 those proceedings raised some issues respecting Justice
17 Camp's role in hearing those two Federal Court
18 proceedings, given the issues arising from his conduct
19 in R. v. Wagar. More reference to that will be made in
20 closing submissions.

21 The agreed statement of facts contains an expert
22 opinion from Professor Janine Benedet of the University
23 of British Columbia, which provides evidence about the
24 legislative and social history of sexual assault law in
25 Canada and statistical information on the reporting and
26 prosecution of sexual assault. Professor Benedet's

1 report is introduced by agreement of presenting counsel
2 and defence counsel, and given the agreement to
3 introduce the report, Professor Benedet will not be
4 called to give oral evidence and will not be
5 cross-examined on her report.

6 The agreed statement of facts contains an outline
7 of the steps taken by Justice Camp since the filing of
8 the professor's complaint, and those steps describe the
9 mentoring, counselling, and teaching he has received
10 respectively from a senior judge, a psychologist, and a
11 law professor. Each of these individuals, I understand
12 from Mr. Addario, will be called to give evidence in
13 addition to the summary of their evidence that's
14 contained in the agreed statement of facts. And the
15 CVs of these individuals, including as well the CV of
16 Professor Benedet, are all included in the agreed
17 statement of facts.

18 Finally the agreed statement of facts contains a
19 variety of letters written by, in one instance, a
20 member of Justice Camp's family and in other instances
21 by various members of the public. These letters are
22 written at the request of Justice Camp's legal counsel
23 and are introduced to show the reputation and character
24 of Justice Camp from the prospective of those authors.
25 Again, reference will be made to those letters in
26 closing submissions, both with respect to the content

1 as well as with respect to their weight.

2 So it is the combination of the documents in the
3 agreed statement of facts and the trial transcript from
4 R. v. Wagar that provide much of the evidentiary
5 foundation for the submissions that will be made by
6 counsel in their closing arguments. In addition,
7 presenting counsel will be calling one witness, the
8 complainant in respect R. v. Wagar. A number of the
9 allegations set out in the statement of allegations
10 from the Inquiry Committee address Justice Camp's
11 comments made during the Wagar trial to the
12 complainant. So the complainant will be called to
13 testify about how these comments made the complainant
14 feel. The complainant is not being called to address
15 the factual underpinnings of the matter that form the
16 basis of the trial in R. v. Wagar, and indeed that
17 would not be appropriate given that the trial of this
18 matter is scheduled for later this year.

19 As noted, in addition to the complainant who will
20 be called by presenting counsel, Justice Camp's counsel
21 will be calling evidence from the judge, the
22 psychologist, and the law professor who provided the
23 mentoring, counselling, and teaching referenced in the
24 agreed statement of facts, and I'm advised by
25 Mr. Addario that he will also be calling Justice Camp.

26 So following the completion of the oral evidence,

1 presenting counsel and defence counsel will then
2 provide closing submissions at which will refer both to
3 the evidence in the agreed statement of facts as well
4 as to the evidence that will be provided orally
5 throughout this inquiry.

6 So with that as an overview of the process that
7 will unfold over the next number of days, I will turn
8 briefly now to a few remarks with respect to the role
9 of presenting counsel that has already been referenced
10 to a degree by Associate Chief Justice Cullen and
11 ultimately to the decisions that the Inquiry Committee
12 will be called upon to make.

13 The role of presenting counsel is a unique one.
14 This inquiry has issued directions to presenting
15 counsel to outline the role to include the following:
16 To present all relevant evidence to the Inquiry
17 Committee and to be responsive to the direction from
18 the committee to adduce further evidence or engage in a
19 line of inquiry in order to assist the committee with
20 its mandate, to make submissions on questions of
21 procedure and applicable law that may be raised during
22 the inquiry, and to make submissions on the findings
23 and recommendations to be made by the committee, free
24 of direction from the Inquiry Committee or any outside
25 influence in accordance with the law and with
26 presenting counsel's best judgment of what is required

1 in the public interest.

2 And let me just pause there to emphasize that last
3 phrase, that presenting counsel is to make submissions
4 on the findings and recommendations in accordance with
5 the law and what is required in the public interest.
6 That phrase "the public interest" will be spoken of
7 several times during this inquiry, and variations of
8 that term will be emphasized during closing arguments
9 as the governing framework and interest by which this
10 Inquiry Committee should ultimately guide its
11 decision-making process.

12 In the directions to presenting counsel, the
13 Inquiry Committee has also indicated that presenting
14 counsel must discharge duties with a full appreciation
15 of the objective concerns underlying the complaint or
16 allegations with fairness to the judge who is the
17 subject of the inquiry and conscious of the importance
18 of conducting the inquiry in a manner that will enhance
19 public confidence in the judiciary. And, finally, the
20 role of presenting counsel is to exercise best judgment
21 with respect to cross-examination of witnesses.

22 In the recent report of an inquiry committee of
23 the Canadian Judicial Council concerning the Honourable
24 Deziel in June of 2015, the Inquiry Committee
25 elaborated further on the role of what was then
26 referred to as independent counsel. Reference was made

1 to the judicial council's policy as follows: (as read)

2 Independent counsel is impartial in the sense
3 of not representing any client but must be
4 rigorous, when necessary, in fully exploiting
5 all issues, including any points of
6 contention that might arise. Where
7 necessary, independent counsel may need to
8 adopt a strong position in regard to the
9 issues. At the same time, it must be kept in
10 mind that the judge could continue to serve
11 as a judge in future, so that expressions
12 about the judge's credibility or motives
13 should be carefully considered.

14 That's outlined in the Deziel position at paragraph 85,
15 which is at Tab 5 of presenting counsel book of
16 authorities. So presenting counsel, then, will be
17 proceeding in accordance with the directions that have
18 been issued by this inquiry and with the guidance as
19 referenced in the Deziel case.

20 Presenting counsel's role is very much tied, of
21 course, to the function of this Inquiry Committee.
22 And, again, an extract from the Deziel case at
23 paragraph 87 has some relevance, where it was said:
24 (as read)

25 The Inquiry Committee's role must also be
26 viewed in relation to the fundamental purpose

1 which is emphasized in the ruling of another
2 decision of an Inquiry Committee in the
3 matter of Justice Douglas.
4 [The quote there says this:] The nature of
5 an Inquiry Committee was described by the
6 Supreme Court of Canada in Ruffo. There
7 Justice Gonthier, for the majority, discussed
8 the role of a committee under the Quebec
9 Courts of Justice Act, which is analogous to
10 the Inquiry Committee under the Judges Act.
11 He described its basic purpose as relating to
12 the welfare of the public. This observation
13 emphasizes the strong public interest that is
14 manifested in this committee's mandate. Its
15 role relates primarily to the judiciary
16 rather than the judge affected by the
17 sanction.

18 So what then is this committee's mandate in this
19 Inquiry Committee? To the extent that the Inquiry
20 Committees in the Douglas and Deziel cases refer to the
21 role as being one relating primarily to the judiciary
22 rather than the judge affected by the sanction, this
23 Inquiry Committee must examine not only the individual
24 comments of Justice Camp's made in the course of the
25 Wagar decision, but the impact of those comments on the
26 public interest and the judiciary as a whole.

1 The key mandate of this committee has been
2 articulated in a number of previous cases that have
3 come through inquiry committees of the Canadian
4 Judicial Council. And the test is as described by
5 Associate Chief Justice Cullen that was initially given
6 voice in the inquiry into the conduct of Justices
7 MacKeigan, Hart, Macdonald, Jones, and Pace, which we
8 know more commonly as the Marshall case. In that case
9 the Inquiry Committee articulated the key question for
10 determination as follows: (as read)

11 Is the conduct alleged so manifestly and
12 profoundly destructive of the concept of the
13 impartiality, integrity, and independence of
14 the judicial role that public confidence
15 would be sufficiently undermined to render
16 the judge incapable of executing the judicial
17 office?

18 So in considering the evidence then that will unfold in
19 this proceeding, it is important that the Inquiry
20 Committee focus not only on the comments of Justice
21 Camp in the Wagar trial and his actions taken to remedy
22 the comments following the filing of complaints, but
23 the focus needs also to be on how his comments impact
24 these principles of impartiality, integrity, and
25 independence of the judicial role writ large.

26 In the written opening submissions filed on behalf

1 of Justice Camp, the committee is urged to focus on two
2 questions: What is the nature and the gravity of the
3 misconduct and can Justice Camp's misconduct be
4 remedied by something short of removal.

5 With respect, presenting counsel differs
6 concerning the questions that must be considered by
7 this committee as it hears the evidence in this
8 proceeding. While the focus admittedly initially must
9 be on the nature and gravity of the conduct of Justice
10 Camp in R. v. Wagar since that is the only conduct in
11 issue in this inquiry, the question that flows from
12 that is not whether Justice Camp's misconduct can be
13 remedied by something short of removal, but whether the
14 conduct is so manifestly and profoundly destructive of
15 the concept of the impartiality, integrity, and
16 independence of the judicial role that public
17 confidence would be sufficiently undermined to render
18 the judge incapable of executing the judicial office.
19 In other words, the focus should not be on whether
20 Justice Camp's shortcomings can be or have been
21 remedied without the need to remove him from office,
22 but whether public confidence in the judiciary can be
23 remedied without removal of Justice Camp from office.

24 The two approaches have overlap, of course, but
25 the distinction and the emphasis is an important one
26 that is urged upon the committee now to bear in mind as

1 its framework as it's hearing the evidence and will be
2 urged upon the committee again in closing submissions.

3 As a final point of reference for the Inquiry
4 Committee, during closing submissions, presenting
5 counsel will be asking the committee to consider the
6 submissions provided by the groups of interveners that
7 Associate Chief Justice Cullen has referenced. At this
8 point, I urge the committee as they're hearing the
9 evidence to take note of the submissions that have been
10 made from the two intervener groups: The first group
11 being Women Against Violence Against Women Rape Crisis
12 Centre based in Vancouver and the Barbara Schlifer
13 Commemorative Clinic in Toronto, who collectively are
14 referenced as the "Front-Line Intervenors" in terms of
15 their provision of frontline support to survivors of
16 sexual assault.

17 The submission from these Front-Line Intervenors
18 emphasizes, among other things, the unique role of a
19 judge as having a place apart in our society, as that
20 phrase is used in the Supreme Court of Canada decision
21 of R. v. Therrien, which is found at Tab 11 of
22 presenting counsel's book of authorities. In referring
23 to a judge occupying a place apart, the Front-Line
24 Intervenors say this: (as read)

25 A judge is expected to display a commitment
26 to equality and non-discrimination and to

1 demonstrate that he or she does not make
2 decisions based on an attitude reflecting
3 stereotypes, myths, or prejudices. The
4 conduct of judges must also reflect modern
5 social norms and values that do not further
6 disadvantage and harm marginalized groups.
7 When a judge displays conduct in the
8 courtroom that is inconsistent with the
9 expectations of the proper conduct of a
10 judge, that judge imperils the reputation of
11 the entire judicial system and public
12 confidence in that system.

13 The second intervener group consists of the Coalition
14 of the Avalon Sexual Assault Centre, Ending Violence
15 Association of British Columbia, the Institute For the
16 Advancement of Aboriginal Woman, the Metropolitan
17 Action Committee on Violence Against Women and
18 Children, West Coast Women's Legal Education and Action
19 Fund, and the National Women's Legal Education and
20 Action Fund, more commonly referred to as LEAF.
21 Collectively this intervener coalition urges the
22 committee to approach its mandate with due appreciation
23 for the historical, legal, and social inequalities that
24 have challenged and continue to challenge public
25 perceptions of judicial impartiality and integrity in
26 the application of sexual assault law. The intervener

1 coalition notes that this inquiry occurs at a time of
2 heightened public concern about sexual assault and
3 sexual harassment in a variety of contexts. It submits
4 that the central concern of the committee must be with
5 promoting public confidence in the judiciary, which is
6 necessarily a forward-looking inquiry. It underscores
7 that the regime -- this regime for the review of
8 judicial conduct is essential to main [sic] public
9 confidence in the judiciary, and the intervener
10 coalition urges this committee to consider the impact
11 of the conduct of the perceptions of litigants who may
12 appear before the judge in the future and on the
13 public's perception of the judiciary.

14 The intervener submissions will be explored in
15 more detail during closing.

16 To conclude, then, it is perhaps trite to say that
17 this inquiry bears enormous consequence for Justice
18 Camp personally and for public confidence in the
19 judiciary generally. As this inquiry proceeds, as it
20 must in a fair and balanced way, the consequences for
21 both must be very much borne in mind, but above all,
22 the impact of any findings this committee may make in
23 terms of how the findings bear on the public's
24 confidence in the judiciary must be brought to bear in
25 its total consideration.

26 So that, Members of the Inquiry Committee,

1 provides an overview of where things will proceed over
2 the next few days and provides some thoughts from
3 presenting counsel's perspective that will hopefully
4 provide some guidance to you as you hear the evidence.

5 THE CHAIR: Thank you, Ms. Hickey.

6 MR. WHALEN C.J.: Just before we start,
7 Ms. Hickey has echoed the outline that Justice Cullen
8 commenced with by describing the inquiry, but a couple
9 of times during your presentation and opening remarks
10 drifted into reference to a Mr. Addario as "defence
11 counsel". It should be noted for the record that
12 Mr. Addario is counsel for Justice Camp. Justice Camp
13 is not a defendant. This is an inquiry.

14 MS. HICKEY: I apologize, Chief Justice
15 Whalen. You're absolutely correct.

16 THE CHAIR: Mr. Addario.

17 Opening by Mr. Addario

18 MR. ADDARIO: Thank you. I want to just
19 outline the evidence that is coming up that's not part
20 of the agreed statement of fact or the exhibits. As
21 indicated by presenting counsel, Justice Camp will
22 testify, itself a rare event in the life of a judge.
23 The evidence will show that Justice Camp, immediately
24 after the complaint was lodged, apologized, took steps
25 to interrogate his beliefs and to challenge his
26 assumptions. The evidence will show that he has

1 reformed in his thinking and sorry for his failings.
2 He is an ethical and empathetic judge. The evidence
3 will show he is not the caricature he has been made out
4 to be. The evidence will show he did not refuse to
5 apply the law, a common allegation made against him and
6 repeated numerous times in the media articles to which
7 presenting counsel made reference today.

8 On the other hand, the evidence will show that he
9 did not understand the degree to which pervasive myths
10 contributed to his thinking. He did not deliberately
11 choose, as some have alleged, to rely on rape myths out
12 of an animus towards women. He did not find women or
13 any other group of society to be unworthy of belief, as
14 has been publicly alleged. He will admit he
15 demonstrated insensitivity for which the evidence will
16 show he's been repeatedly and publicly excoriated, and
17 he was undereducated about a complex area of the law
18 which has a history he only partially understood. He
19 admits that some of his thinking was infected by myths
20 and discredited stereotypes. I'll say that right now.
21 He is not perfect, but he is a good judge. And at the
22 end of the hearing, the question for you will be
23 whether the limited evidence of the impact of his
24 behaviour on public confidence alone can justify the
25 removal of him, a judge who would otherwise make an
26 excellent contribution on the bench going forward.

1 The evidence will show that the calls for a
2 denunciatory message, some of which were echoed today
3 and have been aimed at the committee and at the
4 Canadian Judicial Council, are not supported. The
5 denunciatory message of recommended removal is not
6 needed because the solution of social context education
7 has been tested and proven to work for judges. I will
8 come back to that in final submissions, and Ms. Hickey
9 and I can have a friendly argument about how to
10 approach that as part of the Marshall test. It will,
11 of course, be for you to evaluate whether the social
12 context training Justice Camp received worked in this
13 case, but I will submit at the end that the hearing
14 can't be about punishing Justice Camp for everything
15 that's broken about the adversarial model in the
16 criminal justice system, particularly as it applies to
17 sexual assault prosecutions.

18 Let me just add parenthetically. I will ask you
19 to notice at the end of the evidence, I will ask you to
20 take notice that the trials can be humiliating and
21 terrifying, even when presided over by a perfect judge.
22 Complainants may be discouraged from coming forward;
23 defendants can lose their liberty. Ubiquitous social
24 problems almost certainly go unfixed in a criminal
25 trial. A criminal sexual assault trial often leaves at
26 least one or more devastated persons in its wake. That

1 was a given going into the Wagar trial, as it is in
2 many others.

3 Justice Camp is a judge who presided over a single
4 trial, now the subject of an investigation into his
5 general suitability. He admits that he made mistakes
6 in the Wagar trial and said things that he should not
7 have said. But the evidence will show that he did not
8 make the mistakes out of animus. He has gone to great
9 lengths to learn about areas in which his understanding
10 was deficient. He is fit and qualified to be a judge
11 of a Canadian court and will be an excellent judge with
12 enhanced sensitivity because of his experience in the
13 past ten months.

14 Thank you for your patience.

15 THE CHAIR: Thank you, Mr. Addario. I
16 think what we'll do now is take a brief adjournment.
17 We'll take our 15-minute adjournment at this point.
18 Thank you.

19 THE REGISTRAR: Order all rise.

20 (ADJOURNMENT)

21 THE CHAIR: Counsel, just before we
22 recommence, I understand there may be some confusion or
23 uncertainty about the nature and extent of the
24 publication ban that I issued with respect to the
25 transcript, which is included with the agreed statement
26 of facts, and I simply wanted to clarify, first of all,

1 that the ban on publication, the interim ban until
2 tomorrow morning relates only to the transcript, and it
3 does not cover what is contained in the Notice of
4 Allegations with respect to Judge Camp. So in other
5 words, what has already been revealed through the
6 Notice of Allegations is not covered by the ban on
7 publication, the interim ban. I hope that's clarifies
8 it.

9 Yes, Ms. Hickey.

10 MS. HICKEY: Thank you. I'd like to
11 proceed at this point by marking two exhibits.

12 THE CHAIR: Yes.

13 MS. HICKEY: The first exhibit is the
14 agreed statement of facts that I referenced in my
15 opening comments. It's a 24-paragraph document.

16 THE CHAIR: Thank you.

17 MS. HICKEY: If that can be marked, please.

18 THE CHAIR: That will be market as Exhibit
19 1 in these proceedings.

20 EXHIBIT 1 - Agreed Statement of Facts, 24
21 paragraphs

22 MS. HICKEY: The second exhibit is simply
23 the exhibits to the agreed statement of facts, and
24 those exhibits are in the three-ring binders that the
25 committee has. So if that could be marked as Exhibit
26 2, please.

1 THE CHAIR: Very well, Exhibit 2.

2 EXHIBIT 2 - Exhibits to the agreed statement
3 of facts

4 MS. HICKEY: There are two other documents
5 that I intend to mark as exhibits in the course of the
6 evidence of the next witness, and would it please the
7 committee to have those marked now so I don't have to
8 interrupt the witness?

9 THE CHAIR: All right.

10 MS. HICKEY: So Exhibit 3 will be the
11 signed statement of the complainant in R. v. Wagar that
12 she would be reading to this committee today.

13 THE CHAIR: Very well. Exhibit 3.

14 EXHIBIT 3 - Statement of the complainant in
15 R. v. Wagar

16 MS. HICKEY: And Exhibit 4 is a redacted
17 version of Exhibit 3, removing the name and signature
18 line and identifying information of the complainant.

19 THE CHAIR: All right. Exhibit 4.

20 EXHIBIT 4 - Redacted version of Exhibit 3,
21 removing the name, signature line, and
22 identifying information of the complainant

23 MS. HICKEY: If I may pass those now to
24 the --

25 THE CHAIR: Yes. Thank you.

26 MS. HICKEY: -- to the Panel and to my

1 friends.

2 With that housekeeping out of the way, presenting
3 counsel is prepared to call the complainant in R. v.
4 Wagar.

5 THE CHAIR: Yes, thank you.

6 MS. HICKEY: And the complainant has
7 indicated he would like to be sworn.

8 [REDACTED], Sworn, Examined by Ms. Hickey

9 THE CHAIR: Thank you. Yes.

10 MS. HICKEY: Panel Members, with the
11 consent of Mr. Addario and the request of the
12 complainant to provide, perhaps, some ease with the
13 complainant being on the stand, is it appropriate to
14 refer to the complainant as [REDACTED] in any questions
15 that are asked?

16 THE CHAIR: All right. That's fine, I
17 think. Yes. Please do.

18 MS. HICKEY: Thank you.

19 Q MS. HICKEY: [REDACTED], you're currently 24
20 years old?

21 A Yes, I am.

22 Q And you were the complainant in the decision of R. v.
23 Wagar?

24 A I am.

25 Q And did you attend the trial of that matter starting in
26 June of 2014 and continuing until September of 2014?

1 A Yes.

2 Q And the events that were the subject matter of R. v.

3 Wagar, they occurred in 2011?

4 A Yes.

5 Q And at that time you were 19 years old?

6 A Yes, I was.

7 Q [REDACTED], can you give the Panel a sense of your

8 background and where you were in your life in 2011?

9 A I -- I -- I've -- I've been struggling with -- with
10 homelessness when I -- at that time and addiction at
11 the time of my life and stuff.

12 Q Take your time.

13 A Yes.

14 Q May I pour you some water?

15 A No. I can pour myself some water. I can pour water.

16 Can I -- can I step out for a bit? Can I -- can I
17 step out to use the washroom, please.

18 THE CHAIR: All right. We'll take a brief
19 adjournment then.

20 MS. HICKEY: Thank you.

21 (ADJOURNMENT)

22 THE CHAIR: Just before we get started,
23 Ms. Hickey.

24 [REDACTED], please don't feel intimidated. I know
25 there are five of us sitting up here, and it must
26 appear that way to you, but feel as comfortable as you

1 can. Just listen to what you're asked and give the
2 best answer you can, and don't worry too much about
3 anything else, okay.

4 A Okay.

5 THE CHAIR: Thanks.

6 MS. HICKEY: Thank you.

7 Q MS. HICKEY: [REDACTED], when we broke, we were
8 discussing your background and you gave us a sense of
9 where you were in your life in 2011 when the events in
10 R. v. Wagar occurred. Just before we move on from
11 that, can you give the committee a sense of your
12 heritage as part of your background?

13 A I'm part of the Cree Nation, and my mom has very
14 similar -- similar stories like this one, where --
15 where she's been assaulted and are just kind of
16 overlooked and stuff. I struggle a lot knowing, like,
17 where -- where my family's come from and some of the
18 things that -- that have been overlooked -- overlooked
19 by -- by -- by the justice system and stuff. I've come
20 a long way since -- since the 2011 incident and stuff.
21 I've cleaned up my addiction, I've -- I've gotten a
22 job, so that's really good stuff that's happening.

23 Q Thank you, [REDACTED].

24 [REDACTED], at the end of the trial in R. v. Wagar,
25 Mr. Wagar was acquitted. When did you become aware
26 that the matter had gone to the Court of Appeal and

1 that a new trial was being ordered?

2 A The detective that has been working from the beginning
3 of the case gave me a phone call and told me about the
4 judge being put off the -- the stand and is under
5 investigation for comments he made during the trial,
6 and I was -- I was shocked to know that action was
7 happening and stuff.

8 Q What did the detective tell you?

9 A That the judge has been taken [sic] off the stand and
10 is under investigation for some of the comments that he
11 made during my trial, and that he -- he's going to go
12 to, like, a hearing trial and stuff. That's what the
13 detective told me.

14 Q Okay. Prior to the detective approaching you, had you
15 read or heard anything about this matter in the media?

16 A No. The detective did send me two news articles
17 about -- about the judge and the comments that he made
18 in those two articles that I read.

19 Q Okay. Now, in preparation for you coming here today,
20 did you meet with Penny Ferguson?

21 A I did meet with Penny Ferguson.

22 Q And is Penny Ferguson a crisis support coordinator with
23 Calgary police victim assistance?

24 A Yes.

25 Q Okay. And why did you meet with Penny Ferguson?

26 A I met with her so she could support me in writing the

1 statement against the judge.

2 Q What were you asked to do in connection with the
3 statement that we have in evidence before us?

4 A Can you repeat that?

5 Q Sure. You mentioned that you met with Ms. Ferguson
6 with respect to preparing a statement. What were you
7 asked to do; why were you asked to submit a statement?

8 A I was asked to submit a statement about how -- how the
9 things that he said at the trial affected me and to --
10 to, like, speak -- speak out about it at the hearing.

11 Q Okay. And when you were asked to do that -- there's a
12 document. I'll just find the exhibit. There's a
13 document that we have marked as Exhibit 3, [REDACTED].

14 A M-hm.

15 Q That indicates in the title that it's a statement given
16 in Calgary on the 22nd day of August 2016 in the
17 presence of Penny Ferguson. Is that the statement that
18 you're referring to?

19 A Yes.

20 Q And the content of this statement, [REDACTED], whose
21 content is that?

22 A That's my content.

23 Q [REDACTED], would you like to read that statement?

24 A Yes, I can read the statement. Do I have to read the
25 title?

26 Q You don't need to read the title.

1 A Okay. Okay.

2 MS. SMITH A.C.J.: Take your time.

3 A (as read)

4 I never thought that I'd -- I'd have to give
5 this statement. I don't think what Judge
6 Camp did was right. I was -- I was homeless
7 for several years before the trial, and I
8 moved -- moved around and was heavily into
9 drugs, but with the support of my girlfriend,
10 I turned my life around. By the time the
11 trial came, I had a steady job, and I was
12 clean.
13 I was -- I was told it would be hard in
14 court. I was the victim. I was told that
15 it'd be uncomfortable questions, and I should
16 just ask [sic] the best that I could. The
17 judge made me ask -- answer me questions
18 about my sexuality, and it made me very
19 uncomfortable and confused. He made comments
20 asking me why I didn't close my legs or keep
21 my ankles together or put my ass in the sink.
22 Like, what did he get out of asking me those
23 kind of questions. Like, what did he expect
24 me to say to something like that. I hate
25 myself because of his words, and I felt
26 judged. He made me hate myself, and he made

1 me feel like I should have done something
2 that I could -- that I was some kind of slut.
3 I felt physically ill and dizzy, and I hoped
4 I would've faint just so it would stop. I
5 was so confused during the trial. Jesus.
6 I lived in [REDACTED] at the time of the
7 trial. I was flown into Calgary. After the
8 trial, I stayed in Calgary. I couldn't get
9 on my plane by myself. I didn't want to be
10 alone. I had two friends with me in court,
11 and they didn't feel it was safe for me to be
12 alone.

13 Afterwards I got high for days. I just
14 wanted to love myself again. I hate myself
15 that I let that happen, that I let that judge
16 speak to me that way.

17 Since the trial, I second guess about
18 continuing on to the retrial. I'm so
19 disappointed and sad about the system. I
20 think my biggest worry is about the victims
21 that will never come forward because what
22 they read in the newspaper about Justice
23 Camp's words.

24 I continue to struggle with suicide thoughts
25 and depression and anxiety, and I continue to
26 think about the comments he made and blame

1 myself over and over. It's not supposed to
2 be the victim's fault. I was told it was my
3 fault. I am just thankful that you guys are
4 taking the time and trying to make it
5 different and I'm glad someone is taking
6 action. Well, trying to.

7 There we go.

8 Q Thank you very much, [REDACTED]. I don't have any further
9 questions for you.

10 THE CHAIR: Mr. Addario.

11 Ms. Savard Cross-examines the Witness

12 Q MS. SAVARD: Good afternoon. May I call
13 you [REDACTED]?

14 A Yes, please.

15 Q [REDACTED], I gather from your statement that you read that
16 you were told before the trial of Mr. Wagar that you
17 were going to be asked uncomfortable questions?

18 A Yes.

19 Q And was that the police victim assistance worker who
20 asked you -- who told you that, or is that a police
21 officer?

22 A The prosecutor.

23 Q And that person told you testifying would be hard?

24 A Yes.

25 Q And they told you that testifying would be hard because
26 you were the victim in a sexual assault case?

- 1 A (NO VERBAL RESPONSE)
- 2 Q They told you the lawyers would ask you intimate
3 questions?
- 4 A About describing the situation, yes.
- 5 Q The Crown attorney asked you intimate questions?
- 6 A What do you mean "intimate questions"?
- 7 Q She asked you about the details of sexual conduct --
- 8 A Yes.
- 9 Q -- that happened in 2011?
- 10 A (NO VERBAL RESPONSE)
- 11 Q The defence lawyer --
- 12 MS. SMITH A.C.J.: Counsel, I don't think you're
13 getting an answer to some of the questions. You're
14 getting a nod, and it won't be reflected in the record.
- 15 MS. SAVARD: I can maybe clarify that with
16 Madam Court Reporter.
- 17 Q MS. SAVARD: Just a reminder, [REDACTED], the
18 woman with the long brown hair there is taking down
19 everything that we're saying, so you need to give a
20 verbal answer.
- 21 A Verbal, okay. Verbal. Sorry.
- 22 Q Thank you.
- 23 The defence lawyer, and I think you were agreeing
24 with me, he asked you intimate questions as well?
- 25 A Yes.
- 26 Q And by "intimate" means referring to sexual activity?

- 1 A Okay.
- 2 Q Those questions made you feel uncomfortable?
- 3 A Well, they're not easy to answer or want to answer.
- 4 Q It was in a public courtroom that they were asking
- 5 those questions?
- 6 A Yes.
- 7 Q The judge asked you intimate questions?
- 8 A Yes.
- 9 Q And am I right in thinking you haven't had a chance to
- 10 review the transcript of the trial that you testified
- 11 in?
- 12 A No.
- 13 Q Your statement is based on your memory of what
- 14 happened?
- 15 A Yes.
- 16 Q And would it surprise you to learn that the judge
- 17 didn't ask you a question about your sexuality?
- 18 A What -- he -- he didn't or did?
- 19 Q Did not.
- 20 A He did.
- 21 Q Okay. You learned from a police officer that Alex
- 22 Wagar was acquitted --
- 23 A Yes.
- 24 Q -- found not guilty?
- 25 A Yes. From the detective, yes.
- 26 Q Was it the same time that you learned that there was

1 going to be a hearing in relation to Justice Camp's
2 conduct of the trial?

3 A Yes.

4 Q Is that in about November of 2015?

5 A I don't know. I don't -- I don't recall when it was
6 the detective got a hold of me. I don't -- I don't
7 remember.

8 Q I take it you were not happy to hear that Mr. Wagar had
9 been acquitted?

10 A Absolutely not.

11 Q You don't think it's fair that he was found not guilty?

12 A Not fair? Absolutely unfair.

13 Q Did you leave the courtroom right after testifying in
14 the Wagar trial?

15 A No.

16 Q You stayed 'til the end of the day?

17 A I stayed for a bit of it, 'til -- I stayed -- I stayed
18 'til -- 'til after I was -- I was done, and then I
19 listened to it a bit.

20 Q You heard one or two defence witnesses testify?

21 A Yes.

22 Q Both -- both defence witnesses or just one?

23 A Both.

24 Q And after that you didn't go back to court to see the
25 rest of the trial?

26 A No.

- 1 Q So your knowledge of the case from that point to now
2 comes from the police and from the prosecutor?
- 3 A Yes.
- 4 Q You didn't stay to hear Mr. Wagar's testimony?
- 5 A No.
- 6 Q You weren't in court when the judgment came out --
- 7 A No.
- 8 Q -- a couple of months later?
- 9 A No.
- 10 Q You haven't read the reasons for judgment, I take it?
- 11 A No.
- 12 Q Did you read the apology that Justice Camp published --
13 had published last year in November?
- 14 A What apology?
- 15 Q You're not aware of an apology that Justice Camp --
- 16 A Wasn't the apology in the newspaper?
- 17 Q My question was, have you read an apology that Justice
18 Camp had published?
- 19 A I read a brief, the judge was sorry, as a headline in
20 the newspaper.
- 21 Q Has anyone involved in this case drawn your attention
22 to the apology document itself, or is it just the
23 headline that you remember?
- 24 A Just the headline I remember.
- 25 Q Have you read any other documents relating to this
26 case?

1 A Yes.

2 Q Can you tell me what those are?

3 A About his comments he made during the trial.

4 Q The Notice of Allegations, does that sound right?

5 A I don't know what that means.

6 Q The document you read set out comments he had made
7 during the trial?

8 A Yeah.

9 Q Did you read a document called a "Notice of Response"
10 in relation to this case?

11 A I don't -- I don't know what that means.

12 Q You've read some news articles about this case?

13 A Yes.

14 Q You said the detective gave you two articles to read?

15 A Yes.

16 Q And apart from those, have you seen other articles?

17 A Just the one that I read in the newspaper.

18 Q The total of three articles?

19 A Three articles.

20 Q You read those before you met with presenting counsel
21 in relation to this case --

22 A Yes.

23 Q -- right?

24 And I should say you've met with presenting
25 counsel a few times, Ms. Hickey, to my right, your
26 left?

- 1 A I just met her today.
- 2 Q You spoke with her over the phone a few times?
- 3 A Oh, yes. Yes.
- 4 Q You exchanged emails with her?
- 5 A Yes.
- 6 Q The articles you read, you read before you met or spoke
7 with Ms. Hickey?
- 8 A Yes.
- 9 Q And before you wrote your statement?
- 10 A Yes.
- 11 Q And they were pretty negative about Justice Camp?
- 12 A Pretty negative.
- 13 Q Thank you. Those are my questions.
- 14 THE CHAIR: Anything arising, Ms. Hickey?
- 15 MS. HICKEY: No, thank you.
- 16 THE CHAIR: Thank you very much, [REDACTED].
17 You're excused and free to go.
- 18 A This is yours?
- 19 THE CHAIR: Yes. Thank you.
20 Yes, Ms. Hickey.
- 21 MS. HICKEY: Presenting counsel has no
22 additional witnesses to call. Tendered the agreed
23 statement of facts and the exhibits, the evidence of
24 [REDACTED], completes the case of presenting counsel at
25 that point.
- 26 THE CHAIR: Thank you, Ms. Hickey.

1 Mr. Addario, what do you wish to do now?

2 MR. ADDARIO: I'll be starting tomorrow
3 morning with Justice Deborah McCawley as indicated in
4 my Notice of Response. And I have -- I indicated to
5 Mr. Rees this morning, I was not able to get either
6 Professor Cossman or Dr. Haskell out for tomorrow. I
7 apologize. We really tried hard. But they couldn't
8 get out of other engagements. As you recall, we
9 originally thought tomorrow was going to be dedicated
10 to another witness whose evidence we've now turned into
11 agreed facts. So those two will give evidence on
12 Thursday.

13 THE CHAIR: All right.

14 MR. ADDARIO: And we are well within our
15 timeline of finishing the evidence.

16 THE CHAIR: All right. Thank you. So we
17 will adjourn then to tomorrow morning at 10:00, and
18 we'll deal with any motion at that time for a further
19 ban on publication, all right? Is there anything
20 further?

21 MR. ADDARIO: No. Thank you, sir.

22 THE CHAIR: Thank you. Adjourned.

23

24 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, SEPTEMBER 7, 2016

25

26

1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Sandie Murphy, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 8th day of September 2016.

10

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14 _____
Sandie Murphy, CSR(A)
15 Official Court Reporter

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EXHIBITS ENTERED IN THE HEARING

SEPTEMBER 6, 2016

PAGE NUMBER:

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paragraphs

EXHIBIT 2 - Exhibits to the agreed 45
statement of facts

EXHIBIT 3 - Statement of the complainant 46
in R. v. Wagar

EXHIBIT 4 - Redacted version of Exhibit 3, 46
removing the name, signature line, and
identifying information of the complainant

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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING
VOLUME 2

Calgary, Alberta
September 7, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta
3 _____
4 September 7, 2016
5
6 Associate Chief Justice Chair
7 Austin F. Cullen
8 Associate Chief Justice Committee Member
9 Deborah K. Smith
10 Chief Justice Raymond P. Whalen Committee Member
11 Ms. Karen Jensen Committee Member
12 Ms. Cynthia Petersen Committee Member
13
14 Ms. Marjorie Hickey, QC Presenting Counsel
15 Michael Murphy
16
17 Owen Rees For Inquiry Committee
18
19 Frank Addario For Justice Camp
20 Megan Savard
21 Andrew Burgess
22
23 S. Howden, CSR(A) Official Court Reporter
24 K. Attrell Registrar
25 _____
26

1 (PROCEEDINGS COMMENCED AT 10:00 AM)

2 THE REGISTRAR: This Inquiry Committee of the
3 Canadian Judicial Council is now resumed. Please be
4 seated.

5 THE CHAIR: Yes. Are we ready to proceed,
6 or is there a motion to be brought by Mr. Flynn?

7 MR. FLYNN: Yes, there is, sir. Thank
8 you. May I approach?

9 THE CHAIR: Yes.
10 Submissions by Mr. Flynn (Publication Ban)

11 MR. FLYNN: Thank you.

12 Good morning. For the record, Patrick Flynn,
13 defence counsel for Mr. Wagar. As the Court is aware,
14 Mr. Wagar has an upcoming trial set for Provincial
15 Court. This matter is set to occur, I believe, in
16 December of this year.

17 The issue that I wish to raise with this Tribunal
18 is the issue of the media's availability of -- of --
19 availability of a transcript. My understanding is a
20 transcript is intended to be placed onto the website of
21 the Judiciary Council for the purposes of
22 assimilation -- or to be -- for the public.
23 Ultimately, as this Court's aware, one of our
24 fundamental purposes of justice is the exclusion of
25 witnesses so, in effect, that witnesses don't taint
26 each other's testimony. If there is any of the

1 evidence that is given from either Mr. Wagar or the two
2 civilian witnesses on this matter, in effect, we would
3 open up, I think, a can of worms that no Court would
4 want to. This is a matter where I think the perception
5 of justice is vital, that the Court is not tainted by
6 the possibility of these witnesses reading or being
7 told of each other's testimony through the transcript
8 available on the Internet.

9 I'm asking this Court -- and I believe I come
10 before the Court with somewhat of an agreement between
11 parties, is that we're asking for a limited publication
12 ban. From my perspective, the limited publication ban
13 would be solely on the evidence of Mr. Wagar and the
14 two civilian witnesses. Are there any questions that
15 this Tribunal may have?

16 THE CHAIR: So if I understand what you're
17 seeking, it's to prevent the transcript of the
18 proceedings and, in particular, the evidence of
19 Mr. Wagar and those two witnesses from being posted on
20 the CJC website?

21 MR. FLYNN: That is correct.

22 THE CHAIR: You're not seeking a general
23 ban on the publication of any other portion of the --
24 of the transcript, either indirectly, that is, by media
25 reporting on what was said in the transcript, or their
26 access to the transcript?

1 MR. FLYNN: That is correct.

2 THE CHAIR: All right. And you've

3 indicated you think there is a -- some consensus that's

4 developed around that?

5 MR. FLYNN: I don't wish to speak for my

6 friends, but when we had spoken earlier this evening --

7 or this morning, that is my belief, that there is a

8 general consensus to a limited publication ban, sir.

9 THE CHAIR: All right. And when you say

10 your "friends", you're referring to Ms. Hickey and

11 Mr. Addario?

12 MR. FLYNN: That is correct.

13 THE CHAIR: Okay. All right. Thank you.

14 Any other questions?

15 SMITH A.C.J.: When you said the "two

16 civilian witness", are you referring to Skylar and Mike

17 Skinner?

18 MR. FLYNN: Yes.

19 SMITH A.C.J.: Thank you.

20 MR. FLYNN: And I think the ban would also

21 go towards their identification as well, I think, on

22 the abundance of safety. Thank you.

23 THE CHAIR: All right. Ms. Hickey, maybe

24 we could hear from you.

25 MS. HICKEY: Thank you, A.C.J. Cullen. I

26 understand that Ms. Suzanne Kendall, chief Crown

1 prosecutor for Calgary, wishes to address the issue of
2 the ban in addition to Mr. Flynn.

3 THE CHAIR: All right. Thank you.
4 Submissions by Ms. Kendall (Publication Ban)

5 MS. KENDALL: Good morning, Associate Chief
6 Justice and members of the committee. Thank you for
7 allowing me to address you today.

8 As my friend Mr. Flynn has indicated, we were
9 advised yesterday by Ms. Hickey that there had been an
10 intention to place a copy of the entire transcript of
11 the proceedings in R. v. Wagar on the website of the
12 Judicial Council and to allow distribution of that to
13 the media for publication. The Crown's concern with
14 respect to this matter is that Mr. Wagar is set to have
15 his retrial heard in the Provincial Court in Calgary in
16 November of this year. The Crown's biggest concern
17 about the publication of the transcript, either on the
18 website or by the media, is with respect to the
19 evidence of the complainant. Arguably, when one looks
20 at the reasons of the Court of Appeal in this matter,
21 the Court of Appeal found that Justice Camp misapplied
22 Section 276 of the Criminal Code and allowed the
23 complainant to be cross-examined about other sexual
24 activity other than what made up the allegations
25 against Mr. Wagar. In particular, she was
26 cross-examined about sexual activity with the witness

1 Skylar and with another individual who was in the home
2 during the -- during the days around the sexual
3 assault. And, in particular, I'm looking at paragraph
4 4 of the memorandum of judgment of the Court of Appeal,
5 where they say that there were doubts about the trial
6 judge's understanding of the law governing sexual
7 assault and, in particular, the meaning of consent and
8 restrictions on evidence of the complainant's sexual
9 activity imposed by Section 276.

10 The concern of the Crown is, first of all, to
11 ensure that Mr. Wagar has a fair trial at his retrial
12 in November but, secondly, in protecting the
13 complainant in this matter. If she was improperly
14 cross-examined about other sexual activity that did not
15 form the basis of the allegation, that evidence was
16 improperly before the Court. To allow that evidence to
17 be published now, either on the CJC website or in the
18 media generally, would be extremely embarrassing to the
19 complainant in this matter and would perpetrate some of
20 the harm that has been already done in this matter.

21 So it is the respectful submission of the Crown
22 prosecution service that in approaching the balancing
23 of all of the interests that needs to happen here --
24 and I'm thinking about the application of Dagenais and
25 Mentuck -- you have, on one hand, the need for the
26 public to have information about this hearing and for

1 there to be transparency with -- transparency with
2 respect to the proceedings here so that the public is
3 satisfied that there's an appropriate and fair hearing
4 of this matter, balanced against the rights of the
5 accused to have a fair trial in November and the rights
6 of the complainant to be appropriately protected by the
7 law.

8 So in my respectful submission, a limited
9 publication ban with respect to these matters would be
10 appropriate, and what I'm proposing is that there be
11 allowed to be published in the media portions of the
12 transcript that relate directly to the evidence before
13 this Panel either in the Notice of Allegations or in
14 the evidence of witnesses who are called before this
15 proceeding. I would respectfully submit that the media
16 be given the entire transcript but there be a limited
17 publication ban that would limit the publication to
18 only those portions of the transcript immediately
19 relevant to these proceedings.

20 And in my respectful submission, that would
21 balance both the public's interest in understanding
22 these proceedings and Mr. Wagar's right to a fair trial
23 and finally the complainant's right to privacy, which
24 arguably was breached in the first trial, subject to
25 any questions you may have.

26 THE CHAIR: Thank you. So if I -- I'm

1 sorry. If I understand what you're submitting, it is
2 that the entire transcript can be reviewed by the
3 media. The media can report on those portions of the
4 transcript that relate directly to the Notice of
5 Allegations brought in connection with this hearing but
6 not report on the -- if I can put it this way, the
7 evidence at large on the trial?

8 MS. KENDALL: That's correct, Associate
9 Chief Justice.

10 THE CHAIR: All right. Any other
11 questions?

12 All right. Thank you.

13 MS. KENDALL: Thank you very much.

14 THE CHAIR: Yes, Mr. Addario.

15 Submissions by Mr. Addario (Publication Ban)

16 MR. ADDARIO: Thank you, Associate Chief
17 Justice. I don't -- I wasn't intending to participate
18 in this, but I do think I need to say a couple of
19 things, and it is first of all that, as you know from
20 the notice of response, part of Justice Camp's position
21 is that his comments, some of which were taken out of
22 context, have to be seen in the entire context of the
23 transcript, and so I'll be referring to it. You will
24 know -- and you'll know that when we get to final
25 submissions, so it would be for you to decide whether
26 or not the media's entitled to report on my submissions

1 about the entire context.

2 And I'll have lots to say about 276, and it's no
3 secret that my submission will be that she was not
4 cross-examined about prior sexual activity; that she
5 was not cross-examined about prior sexual activity.
6 And so I will be -- not be inviting you to accept the
7 submission that was just made to you that that's what
8 the Alberta Court of Appeal said or that you should act
9 on that.

10 And so it might be that you -- if you are, in the
11 course of your reasons, evaluating my submission, you
12 may be evaluating a wider portion of the transcript
13 than is envisaged by the parties to the R. v. Wagar
14 prosecution. That's upcoming.

15 Thank you.

16 THE CHAIR: Thank you.

17 Ms. Hickey.

18 MS. HICKEY: Associate Chief Justice Cullen
19 and Panel members, I was advised this morning that at
20 least one member of the media wished to address this
21 matter, and I think perhaps in my role as presenting
22 counsel, I prefer to hear that perspective prior to
23 giving you my submissions.

24 THE CHAIR: All right. Thank you. Would
25 that person come forward, please.

26 Yes, sir.

1 Submissions by Mr. Fine (Publication Ban)

2 MR. FINE: Hi. I'm Sean Fine of the
3 Globe and Mail. There is another reporter who wishes
4 to address you as well. Would it be possible to take a
5 very short break so that I may consult with the Globe
6 lawyer, Peter Jacobson, who's experienced in these
7 matters?

8 THE CHAIR: Yes, it would be.

9 MR. FINE: Okay. Thank you.

10 THE CHAIR: I will stand down. How long
11 do you wish?

12 MR. FINE: Seven minutes.

13 THE CHAIR: All right. Seven minutes it
14 is.

15 (ADJOURNMENT)

16 MR. FINE: Hi. Thank you for listening
17 to me, and where was I?

18 I don't think I need to elaborate very greatly on
19 the public interest here. I think we all know why
20 we're here, what the public interest is. It's -- this
21 is a moment when the conduct of sexual assault trials
22 is very much in the air. Everyone is concerned about
23 the quality of justice in sexual assault cases, and
24 that is what this hearing is about. And so we would
25 argue at the Globe that we need transparency,
26 transparency so that we can understand what happened at

1 the trial that is in question and what is happening
2 here with this -- with this hearing. We need to be
3 able to judge your Panel and how you -- you look at
4 this case. We need to be able to judge Justice Camp's
5 handling of the sexual assault trial, and because this
6 is about public confidence, to the extent that
7 information is kept off the record, people will wonder,
8 Well, can we really be confident? What aren't we being
9 told?

10 Now, let's look at the two arguments. One from
11 the Crown is about hurt and embarrassment, and one from
12 the defence lawyer, Mr. Flynn, is about tainting of
13 witnesses. Now, from my conversation with our lawyer,
14 Peter Jacobson, he thinks that that concern of tainting
15 of witnesses is more theoretical than real, and he says
16 that police can instruct the witnesses not to read the
17 transcript, and they can also be questioned in court at
18 the trial as to what they've read. We would also argue
19 again that transparency here is of the outmost concern
20 and outweighs any largely theoretical risk to the
21 trial. I would also note that as I understood the
22 Crown's argument, she did not accept that part of
23 Mr. Flynn's argument, if I'm correct.

24 So that -- that's basically it.

25 THE CHAIR: So what you're suggesting is
26 that there are less intrusive ways of preventing or

1 ensuring a fair trial in November for Mr. Wagar than
2 imposing the publication ban?

3 MR. FINE: Yes, that we would like to
4 have the transcript and to be able to post it on our
5 website. If any redactions are necessary to protect
6 the identity of the complainant, those could be made by
7 this body.

8 THE CHAIR: All right. Any questions?

9 MR. FINE: I guess there's one more thing
10 that I neglected to say, and that is addressing the
11 Crown's point of view, that in the context of this
12 hearing, if there was improper conduct, as the Crown is
13 saying there was, that as hurtful as some of that
14 information may be to the complainant, it also goes to
15 the heart of this hearing, that is, how Section 276 was
16 dealt with by the Court in the case at issue.

17 THE CHAIR: All right. Thank you.

18 Mr. Fine.

19 MR. FINE: Thank you.

20 THE CHAIR: And there was one other person
21 who wished to address the Panel.

22 MS. HICKEY: Yes, A.C.J. Cullen. I
23 understand that it's Kevin Martin from Post Media.

24 THE CHAIR: Thank you.

25 Submissions by Mr. Martin (Publication Ban)

26 MR. MARTIN: Thank you for allowing me to

1 address the Panel -- or the committee. As Ms. Hickey
2 said, I'm Kevin Martin from Post Media. I've also been
3 asked to speak for Meghan Grant from CBC.

4 One of the points I would like to make is that
5 this is a judge-alone trial that's going to be held in
6 November, and any issue of prejudicing the accused's
7 right to a fair trial by publishing of information
8 should be taken in terms of that, the fact that a judge
9 would not be prejudiced by anything the media
10 publishes.

11 Also, these transcripts have been available to the
12 public. Any Canadian citizen could have at any time
13 ordered a copy of these transcripts from Transcript
14 Management Services. And if the witnesses were that
15 interested in finding out what the other witnesses have
16 said, they've long since done that. They've also had
17 the opportunity to hear what witnesses who testified
18 after they did -- they would have been permitted to sit
19 in the courtroom after that, so any witness who gave
20 evidence and wanted to hear what other witnesses had
21 said could have sat in the courtroom. In fact,
22 Ms. [REDACTED] was asked if she wanted to remain in
23 the courtroom afterward, after her testimony, and she
24 said she did. So any prejudice that might exist exists
25 already, and publishing that information now wouldn't
26 exacerbate it in any way.

1 As for the issue of Section 276, that evidence was
2 ruled admissible, if Ms. Kendall is correct,
3 incorrectly, but it was publishable at that time and
4 has been publishable for months or perhaps -- or, in
5 fact, years. Anybody, any media outlet, could have
6 ordered the transcripts of that hearing and have
7 ordered them. And if they chose to publish that
8 information, there wouldn't have been anything unlawful
9 about it. And Ms. [REDACTED] would have been protected by
10 the fact that we could not publish her name so any
11 embarrassment that might have ensued wouldn't have been
12 grave because her name would not be included on any of
13 that information.

14 THE CHAIR: Thank you.

15 Any questions?

16 Thank you, Mr. Martin.

17 Ms. Hickey.

18 Submissions by Ms. Hickey (Publication Ban)

19 MS. HICKEY: Thank you. In my role as
20 presenting counsel, I think what I will do is outline
21 some of the different principles that we've just heard
22 and then suggest perhaps a position that the Panel may
23 want to consider; although, as presenting counsel,
24 ultimately, I'm leaving this decision certainly --
25 obviously, the decision is up to this Panel to make.

26 The starting point, of course, is the principles

1 that we outlined yesterday in terms of the test for a
2 publication ban, and I won't review the
3 Dagenais/Mentuck test again. Perhaps all I will do is
4 give a brief summary of it, as was mentioned in the
5 case of A.B. v. Bragg Communications, which was the
6 2012 Supreme Court of Canada case that considered and
7 applied the Dagenais/Mentuck case. In that case, the
8 Court looked at the open court principle that requires
9 court proceedings presumptively to be open and
10 accessible to the public and to the media, and noted
11 that that principle has always been described as the
12 hallmark of a democratic society, inextricably linked
13 to the freedom of expression.

14 Now, in that case, the applicant had sought a
15 publication ban with respect to two particular matters,
16 the right to proceed anonymously and a publication ban
17 on the content of a certain Facebook profile. And this
18 is what the Court has said in highlighting the test
19 from Dagenais/Mentuck: (as read)

20 The inquiry is into whether each of these
21 measures is necessary to protect an important
22 legal interest and impairs free expression as
23 little as possible.

24 So is it necessary to protect an important legal
25 interest, and does it impair free expression as little
26 as possible: (as read)

1 If alternative measures can just as
2 effectively protect the interest engaged, the
3 restriction is unjustified. If no such
4 alternatives exist, the inquiry turns to
5 whether the proper balance was struck between
6 the open court principle and the privacy
7 rights [involved].

8 So I think that's a helpful outline of the factors that
9 this Panel needs to consider in -- in making this --
10 this order.

11 So we've heard from Mr. Wagar's counsel. We've
12 heard from the Crown. We've heard from representatives
13 of the media and have heard from Mr. Addario. A
14 variety of interests have been identified: the
15 interests of Mr. Wagar to a fair trial, the interests
16 of the complainant, and while it's been described to a
17 degree as the complainant's interest involving not
18 being embarrassed by having potentially inadmissible
19 evidence disclosed in the court, there's always an --
20 there's also an element, I would suggest, of a fair
21 trial from the complainant's perspective in terms of
22 ensuring that there are no arguments made that the
23 trial is not fair that could then impede the trial
24 proceeding in having her complaint determined. So the
25 fair-trial argument, I think, applies to both Mr. Wagar
26 and to the complainant.

1 We've heard that there are interests of Justice
2 Camp in terms of some dangers that could exist if only
3 extracted portions of the transcript are allowed to be
4 produced. So to the extent that only those extracts
5 that are referenced in the allegations or that may be
6 referenced in submissions or evidence before this Panel
7 may not give the entirety of the context for which
8 Justice Camp feels is appropriate, Justice Camp does
9 not want to be, nor should he be, prejudiced by that.

10 So we have the interests of Mr. Wagar, the
11 interests of the complainant, the interests of Justice
12 Camp. We have the interests of the Canadian Judicial
13 Council, obviously, starting with their position in
14 this hearing, which is that this is an open public
15 hearing, and that, of course, is consistent with the
16 general open court principle.

17 Now, the transparency of this process is important
18 for the public's confidence in the role that this
19 Inquiry Committee plays in maintaining confidence in
20 the judiciary, so that very much has to be borne in
21 mind.

22 We then have the interests as reflected by the
23 media, which, of course, emphasize the open court
24 principle and the desire for transparency and suggest
25 that perhaps there really isn't an issue here, in any
26 event, because the transcripts are already available to

1 anyone who wants to go to court services and to obtain
2 those transcripts.

3 THE CHAIR: I take it it's -- I'm sorry.
4 I take it it's your position that this committee could
5 not issue a ban that would effectively prevent somebody
6 from going to the courthouse and looking at -- at the
7 transcript in the courthouse; is that --

8 MS. HICKEY: I think that's a fair comment.
9 I don't think that would be appropriate for this Panel
10 to -- to rule. I think this Panel can control its
11 proceedings in terms of what it chooses to make
12 available to the public through this process, but to
13 the extent there are other means available to
14 individuals in the public to access information, I
15 don't think that that is within the jurisdiction of
16 this Panel to -- to rule upon.

17 THE CHAIR: Thank you.

18 MS. HICKEY: So we've heard different
19 suggestions in terms of how to balance all of the
20 various interests that have been advanced. I'm going
21 to put forward one suggestion for the Panel to
22 consider. Obviously, it's one of many that have been
23 advanced here today, but as I look at the variety of
24 interests that need to be balanced here today, I would
25 suggest that the open court principle and the interests
26 that the media have expressed to this Panel today can

1 be appropriately served by providing access to the
2 media of the entirety of the redacted transcript,
3 redacted to the extent that it removes the identifying
4 information about the complainant that's already been
5 ruled upon by this Panel. And we do have a redacted
6 version of that transcript available.

7 So the suggestion from presenting counsel to
8 consider is the redacted version be made available to
9 the media through a stick of some sort but then there
10 be some restrictions placed on what the media can do
11 with that transcript, limited restrictions. They would
12 be free to report on any aspects of the transcript that
13 are referenced in the Notice of Allegations, that are
14 referenced in the evidence that comes out of this
15 proceeding, and that are referenced in any submissions.
16 And by saying that, I'm assuming that to the extent
17 Mr. Addario or presenting counsel believe that
18 additional aspects of the transcript need to be
19 referenced in addition to those set out in the Notice
20 of Allegations, that would come up in the closing
21 submissions of Mr. Addario or myself, so those would be
22 in the context of this hearing and then would be open
23 for reporting on by the media. And ultimately, of
24 course, to the extent that this Panel may choose to
25 reference other aspects of the transcript in its
26 reasons, those too would be available to the media for

1 reporting.

2 So in other words, any extract from the transcript
3 that is referenced throughout this proceeding by the
4 Panel, by presenting counsel, by Mr. Addario, or in any
5 other way throughout the hearing would be fair game for
6 reporting on by the media. The restriction, I would
7 suggest, would be to restrict the reporting of the
8 evidence of the two witnesses that Associate Chief
9 Justice Smith mentioned, but apart from that, the rest
10 of the transcript, to the extent that I've described,
11 should be available to the media. It appropriately
12 gives the media full right of access to it. It
13 minimally impairs the open court principle but does so
14 in a way that protects the right to a fair trial for
15 Mr. Wagar, taking into consideration the interests of
16 the complainant also in having the trial going forward
17 and taking into account the interests of Justice Camp
18 in terms of having any aspect of the transcript that he
19 wants put before this Panel to be also available to be
20 reported on in the media. So I offer that as a
21 suggestion, among the many that have been advanced, as
22 one method of balancing the variety of interests that
23 have been placed before you today. Thank you.

24 THE CHAIR: Thank you.

25 Any questions?

26 SMITH A.C.J.: Ms. Hickey, just clarify for

1 me; I think you mentioned a restriction on reporting of
2 the evidence of Skylar and Mike Skinner.

3 MS. HICKEY: Yes.

4 SMITH A.C.J.: But what if that evidence
5 comes out in the course of this proceeding?

6 MS. HICKEY: Perhaps I wasn't clear on
7 saying that. In indicating that, firstly, there would
8 be freedom to report on any of the evidence that comes
9 out. That would override the exclusion on the -- those
10 particular witnesses. So just to be absolutely clear,
11 any evidence coming out in this proceeding that makes
12 reference to the transcript, regardless of whose
13 evidence it is, would be available for publication.

14 THE CHAIR: Thank you.

15 MS. HICKEY: Thank you.

16 THE CHAIR: Any response to that,

17 Mr. Addario?

18 MR. ADDARIO: No, nothing. Thank you very
19 much.

20 THE CHAIR: I think what we're going to do
21 is consider the submissions we've heard and come back
22 and make a ruling on it. We may not give full and
23 complete reasons, but we will at least provide a ruling
24 on what we've heard. So we'll stand down for 10 to 15
25 minutes. Thank you.

26 (ADJOURNMENT)

1 Ruling (Publication Ban)

2 THE CHAIR: The committee has considered
3 the submissions made by the various parties and
4 representatives of the media. I think it is necessary
5 to start simply by reading the test in the
6 Dagenais/Mentuck test, which comes out of the -- comes
7 from the Supreme Court of Canada's decisions respecting
8 publication bans. The test is essentially that
9 publication bans only should be ordered where, one,
10 such a ban is necessary in order to ensure the fairness
11 of the trial because reasonably available, alternative
12 measures will not prevent the risk, and, two, the
13 salutary effects of the publication ban outweigh the
14 deleterious effects of the free expression of those
15 affected by the ban.

16 The essence of Mr. Flynn's application on behalf
17 of Mr. Wagar, as I understand it, is that this
18 committee should ban those portions of the transcript
19 that contain the evidence of Mr. Wagar and the two
20 other civilian witnesses, Mr. Skinner and Skylar. And
21 it's the committee's view that there are other
22 alternative methods which are less intrusive to the
23 process, the openness of the process that can be
24 engaged.

25 As pointed out during submissions, this committee
26 can't extend its ban to the transcripts which are

1 already in existence and have been created for the
2 purpose of the appeal to the Alberta Court of Appeal,
3 and this committee has no direct ability to order
4 anything in relation to the witnesses on the -- at
5 trial. But it is open, it seems to me -- seems to us,
6 to Mr. Flynn to make an application before the Trial
7 Court to prohibit any of the witnesses from accessing
8 the transcripts which exist, either in the Court of
9 Appeal Registry, in the Provincial Court Registry, or
10 which are made online, that the Trial Court has the
11 authority, it seems to us, to make that order, and that
12 is something which can be done to offset any risk to
13 the fairness of the trial by one witness becoming aware
14 of the evidence of another witness.

15 There are, of course, many other ways in which
16 witnesses can become aware of the evidence of other
17 witnesses, including talking together, and that is not
18 something that has been proscribed for the last few
19 years, and -- and it may be that what damage can be
20 done already has been done in that sense. So it's our
21 view that the first branch of the Mentuck test is not
22 met with respect to Mr. Flynn's application.

23 The -- insofar as the Crown's application is
24 concerned, as we understand it, it relates to
25 maintaining the integrity of the process insofar as the
26 complainant is concerned and avoiding -- avoiding

1 embarrassment to her by having portions of the
2 transcript published which may ultimately be ruled to
3 be -- consist of inadmissible evidence. It's the
4 committee's view that the current ban on the identity
5 of the complainant is sufficient to avoid that -- to
6 avoid that risk of embarrassment to her and sufficient
7 to abate any -- any harm to her that arises from the
8 publication of those portions of the evidence.

9 We did as well consider Ms. Hickey's submissions
10 concerning creating a ban which was simply responsive
11 to what was either called in evidence before this Panel
12 or made the subject of submissions, but we concluded
13 that that was too cumbersome a process and would leave
14 considerable confusion and uncertainty as to what the
15 media could and could not report on. In our view, the
16 interests of justice and the interests of an open
17 public hearing mandate that we dismiss the application
18 to ban publication of the transcript.

19 Is there anything further?

20 There was, of course, a previous interim ban, and
21 that ban no longer exists.

22 All right. Yes, Mr. Addario.

23 MR. ADDARIO: I have a witness, Justice
24 Deborah McCawley. She's here.

25 MS. HICKEY: Perhaps, Associate Chief
26 Justice Cullen, just before Justice McCawley takes the

1 stand, just to follow up, then, as an outcome of your
2 order, I will provide as an exhibit the redacted
3 version of the transcript that removes the identifying
4 information about the complainant because the version
5 included in Exhibit 2 right now is an unredacted
6 version.

7 THE CHAIR: Yes. Definitely, the version
8 that should be provided is the redacted version. Thank
9 you.

10 MR. ADDARIO: The witness's CV is at Exhibit
11 O in your hernia-testing binder.

12 DEBORAH JOAN MCCAWLEY, Sworn, Examined by Mr. Addario

13 Q MR. ADDARIO: You're a judge of the Manitoba
14 Queen's Bench?

15 A I am.

16 Q I understand you were called to the Manitoba Bar in
17 1976?

18 A Yes.

19 Q And you were in private practice from 1978 through
20 to -- oh, 1975 you articulated, and then 1978 through 1980
21 in private practice?

22 A Yes.

23 Q And then you were deputy chief executive officer at the
24 Law Society of Manitoba for seven years?

25 A Yes.

26 Q And then chief executive officer of the Law Society of

1 Manitoba for another 11 years?

2 A That's correct.

3 Q And did you deal with conduct and discipline matters
4 there?

5 A I did.

6 Q And continuing education?

7 A Yes.

8 Q And you were also a member of the Manitoba Working
9 Group on Gender Equality in 1992 and '93?

10 A I was.

11 Q The Manitoba Bar Association Implementation Committee
12 on Gender Equality and a founding member of the
13 Manitoba Bar Subsection on Gender Equality?

14 A Yes.

15 Q You were appointed to the Court of Queen's Bench in
16 1997?

17 A Yes.

18 Q Court Martial Appeal Court in 2004?

19 A Yes.

20 Q Since becoming a judge 19 years ago, you've been
21 involved in a number of activities outside the
22 courtroom?

23 A I have.

24 Q You're involved with the National Judicial Institute in
25 judicial education for judges as a program planner,
26 presenter, and facilitator since shortly after your

1 appointment?

2 A Yes.

3 Q And you're a member of numerous court-related
4 committees, including the judicial education committee?

5 A Yes.

6 Q You are also currently co-chair of the National
7 Advisory Committee on Judicial Ethics; is that right?

8 A That's correct.

9 Q One item missing from your CV, which is an exhibit, is
10 that in 2010 and 2011, I understand you took a
11 nine-month sabbatical and spent part of it working in
12 Geneva; is that right?

13 A Yes.

14 Q And that was with the Inter-Parliamentary Union, an
15 organization of parliamentarians?

16 A Correct.

17 Q And what did you do for them?

18 A I was asked to go and work with them, with their gender
19 equality group. They're an international organization
20 that, in fact, predated the United Nations, and the
21 United Nations is -- is modelled after it. And they
22 work not with countries but rather with
23 parliamentarians, and I was asked to work with their
24 gender equality group on a project on violence against
25 women and particularly helping them prepare some
26 conferences that were upcoming but also write a report

1 on how parliamentarians from the 240 member countries
2 could better enforce the international conventions and
3 their laws on violence against women. And so I did
4 that for the almost four months I was there.

5 Q Back in Canada, do you participate in continuing
6 education of other judges?

7 A Very much so.

8 Q And for how long have you been doing that, Justice
9 McCawley?

10 A Shortly after my appointment to the court, I got
11 involved with the National Judicial Institute and
12 particularly in their early efforts to look at the
13 social-context education of judges. So I was involved.
14 I was at the first -- basically the first meeting to
15 talk about how the NJI might be able to move forward
16 with all of that.

17 Q Well, what is social-context teaching? Can you just
18 give us a little outline of that?

19 A Well, up until that time, I think judicial education
20 had been focused largely on judges' knowledge of the
21 law and judges' skills, skill-based knowledge. And the
22 NJI was recognizing that increasingly the role of
23 judges was changing, and it was necessary to -- to help
24 judges understand more fully the social context in
25 which they were judging. And so those first meetings
26 were really to look at how that might be accomplished.

1 Q Were you involved in its development?

2 A I was.

3 Q And what year was this or years?

4 A I don't know exactly, but I know it was within a couple
5 of years of my appointment, so I would certainly say
6 starting in around 1999.

7 Q Was there resistance to developing social-context
8 teaching for judges?

9 A There was, and that was part of the concern.
10 Social-context education is a lot different than
11 teaching knowledge of law and teaching legal skills,
12 and the reason is that it -- it can be very personal
13 because it's designed to -- it gets at some of our very
14 fundamental beliefs in how the world works, how society
15 conducts itself, and sometimes we are teaching -- and
16 continue to do this -- that those beliefs that we grew
17 up with aren't necessarily the ones that work in the
18 world today, and we need to reconsider them. And for
19 everyone, not just judges, that can be a frightening
20 experience and -- and a difficult one.

21 So initially there was a fair amount of
22 resistance. I had personal friends who were highly
23 resistant, and I know that it was something that the
24 NJI had to deal with. So we looked at different ways
25 that social context could be taught, including whether
26 we could do it with social -- or with standalone

1 courses or whether it would be more effective if we
2 worked social-context education into various courses
3 dealing with other areas of law and different skills.
4 And in the end, the decision was made to do both, and I
5 think that's been the most effective approach.

6 Q Is it an entrenched part of the programming at the
7 National Judicial Institute?

8 A It is. The National Judicial Institute, for a number
9 of years, has said there are three pillars of judicial
10 education. The first is knowledge of law, the second
11 is skills, and the third is social context.

12 Q And does the social-context teaching at the National
13 Judicial Institute have the approval of the Canadian
14 Judicial Council?

15 A Absolutely. Every course that's taught -- and we're
16 largely the main educator of the judiciary in Canada --
17 gets approval by the Canadian Judicial Council. So
18 every specific course is approved by resolution.

19 I should also add that Canada's become a leader in
20 social-context education in the world, and I've
21 presented at conferences where we talk about our model
22 and our model of teaching, and we are considered to be
23 one of the best.

24 Q Do you know about a concept called "unconscious bias"?

25 A I certainly do.

26 Q And what is that?

1 A Well, unconscious biases are those things that I think
2 we all have -- it's not just judges -- where we might
3 think that we are open-minded and socially aware and
4 appropriate, but in fact unconsciously, some of the
5 vestiges of those things that we grew up with that
6 might not necessarily serve us well now are still
7 there, and I know from time to time with myself,
8 it's -- they, every once in a while, show up to -- much
9 to my astonishment, but it happens.

10 Q Have you taught about that topic in the context of the
11 NJI?

12 A Very much. A lot of -- a lot of what we have talked
13 about in terms of social conduct -- or context deal
14 with those understandings and those biases, and they
15 come up in every area of law. I've been involved in a
16 course called "The Art and Craft of Judging" for a
17 number of years and also "Communications in the
18 Courtroom", and they often will come up in those
19 courses, where even unconsciously we are communicating
20 messages that we don't -- don't intend to communicate,
21 but our language doesn't come out in the way that we
22 want, and we need to learn to do all of that better.

23 Q Justice McCawley, I want to ask you about your
24 relationship with Justice Camp. Did you develop one in
25 this case?

26 A Yes, I did.

1 Q And what was that relationship?

2 A Well, initially, when I was asked to go and meet with
3 him, I had not read the transcript, but I agreed that I
4 would go to Ottawa and talk to him. When I did read
5 the transcript, I was taken aback, to say the least.
6 I -- I was quite appalled at some of the words, some of
7 the language used, and some of the concepts, and I
8 wondered whether or not it would be worthwhile for me
9 to do this, whether, in fairness to him, I was wasting
10 his time and also his money.

11 And I guess this is a good example of unconscious
12 bias and how it can sometimes come up. I had
13 started -- I found myself thinking, Well, he, at the
14 time, was 63; he's white African -- South African male,
15 and I found myself guilty of the kind of stereotypical
16 thinking that I have spent an entire career rallying
17 against. And I thought that was terribly unfair of me,
18 and the least I could do was go and meet with him.

19 So I did, and I spent a day with him, a very
20 intense day, getting to know him, and initially, the
21 basis on which we met was that our meeting would be
22 confidential; my involvement would be confidential,
23 because at that stage, I wasn't sure whether I was
24 agreeable to taking him on. At the end of the meeting,
25 I realized that he was sincerely committed to learning
26 what had gone wrong, and on that basis, I agreed to

1 work with him.

2 Q In what capacity did you agree to work with him?

3 A So we decided ultimately that I would be his mentor,
4 and we talked about the role. I met with him -- the
5 first meeting was on December 3rd of last year, and
6 then we met a month later, again in Ottawa, on February
7 5th. And I wanted to talk to him about what our
8 relationship would be, how it would work. I thought it
9 was important that we put some structure around it and
10 also that we be clear about what our goals were and our
11 expectations were of each other.

12 Coincidentally, the NJI had decided to run a
13 workshop on mentoring, which was one of the reasons I
14 was in Ottawa. I was invited by the NJI to go, and the
15 workshop was about mentoring in family law, but I was
16 asked by the National Judicial Institute to go there to
17 look at whether or not a mentoring program could be
18 developed for the general courts as well. So I had
19 just spent two days talking about mentoring --

20 Q Does the --

21 A -- when it -- sorry.

22 Q No. I was just going to ask you: Does the NJI have a
23 formal mentoring program?

24 A No, it doesn't. It's something that's been under
25 discussion for a long time. It's something that
26 they're seriously looking at, and I actually came away

1 very impressed with what I heard. Mentoring is highly
2 developed and highly sophisticated in the United
3 States, including for judges, and we had some -- a very
4 persuasive and informative speaker from the United
5 States talking about whether -- and how it might be
6 implemented in Canada, and I've actually spoken with my
7 own chief justice about the possibility of having our
8 court as one of the pilot courts because I think our
9 size and our culture lends itself very much to that.

10 But back to my discussions with -- with Justice
11 Camp about our -- our relationship, I was obviously not
12 meeting with him as a counsellor. I did not see myself
13 as a coach, and the mentoring role was really, I think,
14 what he was asking me about because it was -- it's more
15 designed to look at working collaboratively to make
16 significant personal change. So I was there really to
17 guide him in that and to help him consider the various
18 options and choices that might be available to him.

19 Q So we will get into that in a moment, but could I just
20 ask you this: Have you mentored others before?

21 A I have.

22 Q Once or more than once?

23 A I've mentored another judge in a formal way once
24 before, because I've been in the court now for a number
25 of years, and I'm getting quite ancient. I'm
26 experienced in a number of areas, so I have developed

1 the -- I'm a go-to person for a lot of the younger
2 judges and particularly in the area of sensitive cases
3 dealing with language where sometimes it's difficult to
4 know how to express certain views. I've often been
5 asked to look over judgments before they've been
6 released to make sure that there's nothing in the
7 language that wasn't intended or appropriate.

8 Q Do you mentor judges about social context?

9 A I do, about social context as well as other things.

10 Q And is the public aware of those judges' names or their
11 need for social-context training?

12 A No. I think all judges need social-context training,
13 but, no, I mean, certainly it's done on an informal
14 basis.

15 Q And those judges who have approached you or have been
16 referred to you for social-context mentoring, are they
17 still sitting judges?

18 A Yes.

19 Q And as between improved or unimproved, how would you
20 describe the social-context outcome for those judges
21 who receive social-context training?

22 A I would say very positive. I mean, the fact of the
23 matter is, the context in which we judge changes all
24 the time. The context in which I'm a judge today as
25 compared to when I was appointed is extremely
26 different. I mediate; I engage in all sorts of roles

1 that weren't part of a judge's role at that time. The
2 social context changes, and also the makeup of our
3 court, the composition of our court, is continually
4 changing. So it's an evolving process for all of us.

5 Q Well, in your experience, how ubiquitous is the need
6 for social-context training in the 2016 federal
7 judiciary?

8 A Well, I think it's an absolute must, and it's certainly
9 why the NJI, a number of years ago, made it a third leg
10 of judicial education.

11 Q I want to turn to the number of times that you met with
12 Justice Camp. Just before I do that, Chief Justice
13 Cullen, I want to briefly alert the Panel to the issue
14 of judicial reasoning immunity. Justice Camp discussed
15 the Wagar transcript with Justice McCawley as part of
16 the mentoring process, but I'm not going to be asking
17 either Justice McCawley or Justice Camp about that,
18 about their discussions of the transcript or his
19 analysis of the legal issues in the Wagar case, and
20 those discussions are covered, as the Panel likely
21 knows, but perhaps members of the public may not know;
22 they're covered by the judicial reasoning immunity
23 described by the Supreme Court in the MacKeigan v.
24 Hickman case and by the Canadian Judicial Council in
25 the Marshall inquiry. And, for instance, in Marshall,
26 the Inquiry Committee stated that it was impermissible

1 to ask a judge, Why did you say this, or, Why didn't
2 you say something else, with respect to his reasoning
3 in the case. And so I -- I've interpreted that, and I
4 trust the Panel would as well, as creating an immunity
5 from those questions being asked and don't consider it
6 an appropriate area for me to canvass with Justice
7 McCawley nor with Justice Camp, and in short, I
8 understand the law to be that a judge's on-the-record
9 statements stand for themselves. The judge can't
10 testify about what he or she was thinking at the time,
11 and no other party can ask him or her about their legal
12 analysis. And so the review has to be done -- of the
13 reasoning has to be done on the record, and in this
14 case, the rationale for that is particularly apparent
15 as it would be entirely inappropriate for Justice
16 McCawley or Justice Camp to testify about how Justice
17 Camp evaluated the evidence in the Wagar matter and
18 legal issues in the case only months before the retrial
19 is coming up.

20 So with that caveat or parenthesis, I'd like to
21 ask you: Have you got that little aid in front of you
22 about the days and times you met, Justice McCawley?

23 A I do.

24 Q All right. I think I have Ms. Hickey's permission just
25 to read these aloud. You met initially in person on
26 December 3, 2015, in Ottawa for a day?

- 1 A Yes.
- 2 Q And then again on February 3rd, 2016, in person in
3 Ottawa all day?
- 4 A Yes.
- 5 Q You had a phone call on 18th of February 2016?
- 6 A Yes.
- 7 Q And then March 29, both you and Justice Camp attended
8 an NJI criminal-law seminar on how to conduct a sexual
9 assault trial together in Toronto?
- 10 A Yes.
- 11 Q And then for the next two days, there was -- the two of
12 you attended the continuing seminar on sexual assault
13 trials' complexities and challenges in Toronto also put
14 on by the NJI?
- 15 A The first day was sort of Sexual Assault Trials 101,
16 and then the remaining days were to get into more depth
17 in terms of how to conduct a sexual assault trial.
- 18 Q How many judges were at the Sexual Assault Trials 101
19 program?
- 20 A Oh, I think most were there for the full time. I'm not
21 very good at estimating crowds, but I would say there
22 were at least 60 judges there.
- 23 Q And then May 11 to 13, the two of you were together
24 again for two to three days at a judicial ethics
25 seminar put on by the NJI in Vancouver?
- 26 A Yes.

1 Q And then you had, I gather, dozens of weekly mentoring
2 telephone calls?

3 A We did.

4 Q All right. Did you give him readings?

5 A I did. What I should probably say is initially what I
6 wanted to talk to him about was the role of the judge,
7 and we had identified a number of areas that we should
8 deal with. Obviously, knowledge of law was one, but
9 the other related to things like judicial temperament,
10 communications, ethical obligations, and trial
11 management. And as a result of those discussions, I
12 had recommended to Justice Camp that he attend a number
13 of these courses, including the sexual assault one,
14 including the ethics one, and also communications in
15 the courtroom. So that was sort of the starting point,
16 and, I'm sorry, I have forgotten your question.

17 Q No. Thank you very much for adding that. Did you give
18 him anything to read in addition to talking to him?

19 A I did. I thought it was important for him to have a
20 good appreciation of the literature in the area of
21 sexual assault, victims of violence, and so I prepared
22 a reading list, a comprehensive reading list, with the
23 assistance of the National Judicial Institute. They
24 were in the process of finalizing the program for the
25 sexual assault course, which was in March, and they had
26 been working on this program for the previous three

1 years. So they had a comprehensive body of material
2 and articles, and they made a number of them available
3 for me to consider, and I chose ones that I thought
4 Justice Camp would benefit from. Some of them were a
5 little bit out there, but I thought it was important
6 for him to get a full sense of how broad the discussion
7 was and also that there are, you know, differing views
8 about what's appropriate and what isn't.

9 Q Do you have that list in front of you?

10 A I do.

11 MR. ADDARIO: Registrar, do you have copies
12 for the Panel?

13 THE COURT CLERK: Yes.

14 A I don't have it in front of me. I'm sorry. I've
15 certainly seen it.

16 Q MR. ADDARIO: All right. So he's got a
17 number of academic journal -- journal articles by
18 various law professors?

19 A Yes.

20 Q And he's got Professor Backhouse's famous book?

21 A Yes. "Carnal Crimes Sexual Assault Law in Canada".

22 Q He's got the Stats Can information about sexual assault
23 and domestic violence?

24 A Yes.

25 Q And he's also got Professor Tanovich's article about
26 the manner in which sexual assault prosecutions are

1 conducted?

2 A Yes.

3 Q And did you -- after you provided him with that reading
4 list, did you discuss it with him?

5 A I did. Justice Camp was very anxious to get on with
6 things and wanted to discuss these in considerable
7 detail. And he read voraciously. I gave him other
8 things to read. He also did a lot of independent
9 research and reading on his own, and I would frequently
10 hear from him about other things that he read, but
11 certainly we had a number of telephone discussions
12 about all of these issues, all of the issues raised in
13 these various articles.

14 Q Are you satisfied His Honour read and understood those
15 articles and books?

16 A Yes, I am.

17 MR. ADDARIO: I wonder if that list at some
18 point could be made an exhibit, Chief Justice.

19 THE CHAIR: Exhibit 5.

20 EXHIBIT 5 - Reading list prepared by Justice
21 McCawley

22 Q MR. ADDARIO: Did you discuss issues that --
23 with him that commonly arise in sexual assault
24 prosecutions?

25 A I did because I'm well aware that managing a sexual
26 assault trial is very difficult, and one of the things

1 that I was so pleased about was the fact that at the
2 criminal law seminar in this spring that he attended,
3 there were a number of exercises and workshops where
4 judges were called upon to consider the kinds of things
5 that come up in a trial and how to deal with them. And
6 one example was where, for example, counsel might ask
7 questions that could be considered to be based on
8 stereotypical thinking that I think we would consider
9 appropriate, others where the thinking might be
10 appropriate or not; there is different views, and the
11 importance of this was helping Justice Camp and others
12 to understand how quickly these things can come up in a
13 trial and how important it is to know how to respond.
14 And it's not easy, even for an experienced judge.

15 Q Did you discuss with him the distinction between
16 stereotypes and myths on the one hand and legitimate
17 credibility or lack-of-proof issues on the other that
18 might arise in a sexual assault prosecution?

19 A Yes, we did. We discussed that at length.

20 Q Is Justice Camp teachable?

21 A Very much so. I -- I have to say, he worked extremely
22 hard. He -- he and I had a relationship that, right
23 from the beginning, I had indicated that it was
24 critical that we be very honest with each other. He
25 had never met me. He didn't know who I was. I had
26 never met him. I told him he needed to trust me and

1 that he could and that he needed to -- he might need to
2 bare his soul when we talked about a lot of this stuff,
3 and he did.

4 And he -- I found him to be very amenable to
5 learning. For him, it was a gradual process because,
6 as you might imagine, this was getting at a lot of his
7 understandings and experiences developed over 63 years,
8 that a lot of this was new, at least in terms of how
9 you apply it in a courtroom and how you apply it to
10 your life. So that was what he was learning as we went
11 along, and he's continuing to learn and I think has the
12 capacity to continue to educate himself.

13 Q Does your mentoring include making judges aware of
14 knowing what they don't know?

15 A Absolutely. That's part of the challenging of
16 social-context education. It's an ongoing process for
17 all of us, and I include myself in that. My
18 understanding of my role in the profession, women's
19 role generally, has -- my education started a long time
20 ago when I started as a young lawyer in an all-male law
21 firm. It was very different than it is now, and I --
22 one of the things that is important is for all of us to
23 understand that it's an ongoing process, and we can
24 never stop educating ourselves and understanding
25 others. We live in a very multicultural society, and
26 we judge in multicultural courtrooms, and what we

1 learned in law school didn't equip to do -- equip us to
2 do a lot of things.

3 Q Did he appear to develop any qualities while you were
4 mentoring him in that area over the past nine months?

5 A He did. Justice Camp was brutally honest with himself.
6 He's probably the hardest critic he could have been,
7 and he was motivated to learn because -- and I think
8 this is one of the reasons that I agreed to work with
9 him initially, because I was struck by the fact that
10 his motivation was very much concern for the pain and
11 the embarrassment he had caused the complainant in this
12 case, the pain he had brought to his colleagues and his
13 court, and the damage he felt he had done to the
14 administration of justice. And what was going to
15 happen to him personally seemed to me to be almost
16 secondary, and I was quite surprised by that because
17 that was not what I had expected.

18 And that motivation never changed. I think it
19 grew, the more his understanding and the depth of his
20 understanding grew, the more he learned about the law
21 and the application of it. He was engaged in
22 counselling. I had recommended he do that in addition
23 to the academic programs I had recommended. The more
24 he grew in all of the areas, the more I realized he had
25 the capacity to -- to do the job and do it well. He's
26 a very compassionate, empathetic person.

1 Q Thanks very much.

2 Ms. Hickey Cross Examines the Witness

3 MS. HICKEY: Good morning, Justice
4 McCawley.

5 A Good morning.

6 Q Mr. Addario made some reference to judicial reasoning
7 immunity and indicated he wouldn't be getting into
8 issues of particular comments from the Wagar trial as a
9 result of that. My understanding is that you're not
10 prepared to discuss the specific comments from the
11 Wagar trial, more arising out of your desire to
12 preserve your role as a mentor with Justice Camp and
13 indeed with future judges; is that correct?

14 A I guess there are three reasons. One is I think it
15 would be inappropriate for me to be -- I should first
16 say, Justice Camp and I definitely talked about the
17 transcript and everything that was said in it in
18 considerable detail because I needed to understand who
19 I was dealing with and what work we had to do. But it
20 was important -- I think it's important that I, first
21 of all, respect the confidentiality of our discussions
22 because, as I indicated, I told Justice Camp that we
23 might have to get into things that were deeply
24 personal; this is social-context education, and that he
25 would have to bare his soul, and he did. And if I
26 were -- the understanding was that it was between the

1 two of us as part of the educational process. And if I
2 were now to come and talk about that in front of this
3 body in a public hearing, I think we could guarantee
4 that judges would not be looking for help when they
5 need it. He was looking for help, and we had to go
6 very deep, and we did, and I think that would have a
7 very chilling effect on a lot of the education that I
8 think is important for all of us to have.

9 But in addition to that, I don't think it's
10 appropriate for me to be talking about what I might
11 have thought about his analysis of the law,
12 particularly because it's sub judice, so I would be
13 very uncomfortable about doing that as well, and then
14 there's the issue of trial fairness, the upcoming
15 trial, to the complainant and to the accused.

16 Q So for those reasons, I gather, Justice McCawley,
17 you're not prepared today to discuss in what particular
18 ways Justice Camp bared his soul to you and provided
19 explanations for his conduct?

20 A That's correct.

21 Q Okay. And in my questions to you, Justice McCawley, I
22 want to respect what you're saying as much as possible,
23 particularly in the context of comments made by Justice
24 Camp during the Wagar trial but I'm hoping you can
25 answer a number of the other questions without perhaps
26 having to get into those particular comments, and we'll

1 perhaps take it on a case-by-case basis as we go along.

2 A Certainly.

3 Q Firstly, I wanted to confirm your method of retention.

4 How did you become involved with Justice Camp?

5 A I was approached by my chief justice, Justice Joyal,
6 but -- to see if I would be agreeable to speaking with
7 Justice Camp. My chief justice had been contacted by
8 Chief Justice Crampton of the Federal Court.

9 Q And through that, you initiated contact with Justice
10 Camp; is that correct?

11 A I -- I said I would be willing to speak with him. I
12 was actually going on holiday for a week, and when I
13 came back, I received a phone call that he -- he would
14 be contacting me.

15 Q And the initial purpose for which you were asked to
16 meet with Justice Camp was what?

17 A To see if there was a -- if I could work with him to do
18 what I ended up doing, which was to talk to him about
19 the role of the judge in the social context,
20 particularly in relation to this trial but also going
21 forward.

22 Q And you had mentioned material that you had reviewed in
23 preparation for your meeting with Justice Camp. I just
24 wanted to clarify what information you had. You had
25 the transcript from the Wagar trial?

26 A I did.

- 1 Q You had the complaint that the law professors filed?
- 2 A I did.
- 3 Q You had some number of newspaper articles?
- 4 A I didn't see a lot of them, but I had some. I was away
5 that week, so that was when most of them were there,
6 but I did see some.
- 7 Q And did you have an opportunity to review all of those
8 prior to your first meeting with Justice Camp?
- 9 A I did.
- 10 Q And you've given evidence in direct that following your
11 review of that material, you were taken aback, and I
12 believe you used the word "appalled"?
- 13 A I was.
- 14 Q What were you taken aback and appalled about?
- 15 A Because the language was clearly inappropriate. I can
16 say in all honesty that the complaint that was brought
17 forward and the concerns that had been expressed in it
18 were, in my view, legitimate concerns, and I was
19 appalled that that had taken place in a Canadian
20 courtroom.
- 21 Q And when you're referring to "the complaint that was
22 brought forward", that's the professors' complaint?
- 23 A Yes.
- 24 Q And that was the complaint that raised issues about the
25 choice of language --
- 26 A Yes.

1 Q -- of Justice Camp and also raised questions about his
2 understanding and application of the law?

3 A Absolutely.

4 Q And you were concerned about both aspects of those?

5 A Absolutely.

6 Q And you believed that the complaint had legitimacy to
7 it?

8 A Yes.

9 Q So when you agreed to meet with Justice Camp then,
10 you've mentioned that you wanted to discuss with him
11 his understanding of his role as a judge?

12 A Yes.

13 Q You wanted to meet with him about his understanding of
14 the knowledge of the law of sexual assault?

15 A Yes.

16 Q The management of trials in his courtroom?

17 A Yes.

18 Q And I take it that also includes the manner in which he
19 intervened with different counsel and witnesses
20 throughout the trial?

21 A Yes.

22 Q You also wanted to meet with him to address the
23 appropriateness of some of his comments and questions
24 in Wagar?

25 A Yes.

26 Q And his judicial deportment, I believe you referenced

1 as well?

2 A Yes.

3 Q And, finally, his application of ethical principles and
4 his knowledge and understanding of the ethical
5 principles that guide judges?

6 A Yes.

7 Q Anything else that you were planning to address with
8 him?

9 A Not that I can think of right now.

10 Q Okay. You mentioned that you were convinced very early
11 on that Justice Camp was sincere about wanting to
12 learn.

13 A I wasn't convinced. I had -- it was a large question
14 mark in my mind when I first went to meet with him, but
15 at the end of the time I spent with him, I thought that
16 he was the genuine article and really wanted to learn
17 for all the right reasons. And I guess at that time, I
18 had to make a decision about whether we were going to
19 meet again, and so part of it was going with my
20 instinct, and that was to say to myself, I think he's
21 very sincere and committed, and I never doubted that
22 again. He demonstrated that to me throughout all of
23 our dealings.

24 Q And is it fair to say that in your meetings with
25 Justice Camp, you believed that you could provide some
26 assistance in showing him where he had perhaps gone

1 wrong?

2 A I would put it more in how to do it better in terms of
3 the role. Certainly we talked about how -- how things
4 could have been said in a different way that would have
5 conveyed the appropriate message in an appropriate way
6 as well.

7 Q Did you suggest to Justice Camp that in addition to
8 showing him how he could do it better, that you could
9 assist in him understanding why he said the things that
10 he did during the Wagar trial?

11 A I knew that he needed to get some help about that, but
12 I also knew that I wasn't qualified to do that, and so
13 that was why I suggested that he get counselling either
14 with a psychiatrist or a psychologist, and he was
15 certainly quite willing to do so; there was no
16 question, and he made arrangements very shortly
17 thereafter. I should say that I found him to be
18 extremely cooperative throughout.

19 Q And were there any requests that you made of him that
20 he did not follow through?

21 A Not that I know of. I don't think so.

22 Q Did he ever push back in terms of some of the concepts
23 that you were suggesting to him with respect to how
24 things could be done better or differently?

25 A Justice Camp's somebody that -- someone who asks a lot
26 of questions. He's very bright. He's very

1 inquisitive. And so for him to learn, one of his
2 learning methods is questioning, and also he likes to
3 learn by doing. So that's why the courses that I
4 recommended were important, because the National
5 Judicial Institute is very committed to not just -- in
6 their teaching of judges not just saying, Here's the
7 law, but they make people sit in groups and go through
8 practical exercises. It's very skills-based as well.
9 He questioned, always in an appropriate way. I never
10 got the sense that he was pushing back in any way that
11 I felt was resistance but more it was intellectual
12 curiosity and also to ensure that he understood. And I
13 encouraged that. We had very open discussions as one
14 colleague to another.

15 Q I want to take you back to the variety of areas that
16 you indicated you spent time discussing with Justice
17 Camp, starting with his understanding of the role of a
18 judge. And again, without reference to particular
19 comments in the Wagar trial, what did you identify as a
20 concern there, and how did he respond to that?

21 A Well, you raised one that I think is an example, and
22 that is the extent to which he intervened with counsel.
23 All judges conduct trials differently. We all have a
24 different kind of manner in court in the way we comport
25 ourselves. We're all very different. I questioned him
26 about the extent to which he had intervened and -- and

1 talked to him about my style, which is certainly less
2 interventionist. We talked about those kinds of things
3 and why sometimes intervening is appropriate and
4 sometimes it's not.

5 And I guess, you know, in terms of interventions,
6 particularly in a sexual assault trial, I think it's
7 important for people to understand how very difficult
8 it is for judges in that role frequently and that the
9 judge has a responsibility to ensure that the trial is
10 fair and sometimes if counsel doesn't intervene, that
11 the judge has to know when trial fairness would require
12 an intervention from the Court.

13 So those were the kinds of things we talked about.
14 It was broadly based. It wasn't focused on -- to a
15 huge extent on what he did but looking broadly at what
16 the role of a judge is and the kinds of things that
17 needed to be taken into consideration.

18 Q And did you suggest, just sticking with that example
19 for a moment, that he had intervened too frequently
20 with counsel and witnesses?

21 A I can't remember, but I think that is getting a little
22 bit into, you know, what particular things we
23 discussed, what he might have thought, or -- I'm a
24 little uncomfortable with that.

25 Submissions by Ms. Hickey (Other)

26 MS. HICKEY: Well, I would perhaps look for

1 some direction from the Panel on that. I don't see
2 this type of questioning impacting in any way on issues
3 of judicial reasoning immunity. We're not discussing
4 here with Justice McCawley, Why did Justice Camp do
5 certain things? I'm asking firstly whether she felt
6 that the level of intervention was too much, and was
7 that expressed to Justice Camp, and how did he respond
8 to that? That's not judicial reasoning immunity, and I
9 don't think, either, that it crosses the line in terms
10 of Justice McCawley's other area of concern in terms of
11 preserving the ability to perform a mentorship role in
12 the future. Justice McCawley has agreed to give
13 evidence in this proceeding. She's been called by
14 Justice Camp to give evidence, and it's important for
15 this Panel to hear this evidence.

16 THE CHAIR: Perhaps we should hear from
17 Mr. Addario.

18 MS. HICKEY: Thank you.

19 Submissions by Mr. Addario (Other)

20 MR. ADDARIO: Well, the question as framed
21 is probably acceptable, but the follow-up question or
22 the other questions someone might have like, Well, why
23 did you think he intervened too much, or, What was your
24 analysis of what was taking place during the trial, is,
25 so far as I understand the law, an area about which no
26 one can be questioned. There is an absolute immunity

1 in that area, and it's not an area in which counsel
2 have the freedom to roam.

3 Ruling (Other)

4 THE CHAIR: I think it's appropriate to
5 permit the question, and we'll deal with the questions
6 on a case-by-case basis to see where you're going with
7 it, Ms. Hickey, but you can bear in mind Mr. Addario's
8 position on it as you proceed.

9 MS. HICKEY: Indeed, and I'm very much
10 trying to be conscious of that in the manner in which
11 I'm asking the questions.

12 THE CHAIR: Thank you.

13 Ms. Hickey Further Cross-Examines the Witness

14 Q MS. HICKEY: So, Justice McCawley, did you
15 believe that Justice Camp intervened too frequently
16 with counsel and witnesses during the trial?

17 A I certainly thought it was on the upper end of the
18 scale, and I -- we talked about the extent to which he
19 had intervened and that, certainly, my style would be
20 much less so.

21 And in response to your question, how did he
22 respond --

23 Q Yes.

24 A -- as he did to all the things we discussed, he
25 listened. I think he was very accepting and
26 appreciative of the advice.

1 Q Okay. You also mentioned that you discussed with him
2 more broadly the management of trials. Were there
3 particular issues that caused you concern about the
4 management of the Wagar trial?

5 A In all honesty, I can't remember. I know it was one of
6 the general things we talked about, and certainly
7 questioning would be -- intervening would be a question
8 of trial management, but I can't at this stage remember
9 exactly what that discussion was.

10 And I should say I didn't -- in these meetings
11 with Justice Camp, I did not keep notes particularly
12 other than a handwritten agenda about what areas I'd
13 like to cover with him, but other than that, it was a
14 very open and freewheeling discussion. These were the
15 kinds of topics we hit upon.

16 Q Did you discuss with Justice Camp concerns that you had
17 in a general sense? And again, I'm not asking you to
18 refer to particular comments in Wagar, did you discuss
19 in a general sense concerns you had about the
20 appropriateness of comments and questions that he would
21 raise?

22 A Yes, I did.

23 Q Okay. And what was the tenor of your concern there?

24 A Well, I had a number of concerns about the nature of
25 the questioning, about the language that was used and
26 the message that was conveyed by the language.

1 Q And how did Justice Camp respond to the observations
2 you provided him on those matters?

3 A He was very anxious to hear what I had to say about
4 them. That was -- obviously formed very much what our
5 discussions were, what his thinking had been and ...

6 Q Did he recognize the inappropriateness of those
7 questions and comments?

8 A He did. And the reason I raise my voice a little is I
9 think it's important to appreciate that his
10 understanding or the depth of his understanding grew.
11 I mean, obviously from the public reaction and from the
12 complaint and the fact of an inquiry that was looking
13 very likely, he understood this was serious and that he
14 needed to address what he had said and -- and how
15 better he could have done it. But mixed up in all of
16 that were his ethical obligations, his understanding of
17 equality, his understanding of respect for all those
18 who come before him, whether they're counsel or
19 witnesses, and how he can convey that through his trial
20 management and his choice of words and the manner in
21 which he gives a decision. And that level of
22 understanding increased considerably over time because
23 it was constantly what we were talking about when we
24 were talking about specific things.

25 Q So in connection, then, with the ethical principles
26 that you've mentioned, did you review with Justice Camp

1 the document, the "Ethical Principles for Judges"?

2 A I did, and he had already looked at the ethical
3 principles, the handbook --

4 Q Yes.

5 A -- and he was well acquainted with them.

6 MS. HICKEY: Okay. I'm just going to -- I
7 think perhaps I'll mark that document as an exhibit
8 just because there will be references to it. I --
9 subject to the guidance of the committee whether it
10 needs to be marked or not, but it's not otherwise
11 formally before you. I appreciate it's a publicly
12 available document, but it might be, for purposes of
13 recordkeeping, useful to have it marked as part of the
14 record.

15 THE CHAIR: Thank you. We'll mark it as
16 Exhibit 6, then.

17 THE COURT CLERK: Which exhibit is that?

18 THE CHAIR: That's the "Ethical Principles
19 for Judges".

20 Mr. Addario, do you have any problems with that?

21 MR. ADDARIO: No. That's fine.

22 THE CHAIR: Thank you.

23 EXHIBIT 6 - "Ethical Principles for Judges"

24 MS. HICKEY: Sorry, we'll just do a little
25 staple exercise here to get those put together, and
26 perhaps since I'm only making reference to one short

1 portion of it, I'll mark the exhibit and then
2 distribute copies later to the Panel, if that's
3 acceptable.

4 THE CHAIR: All right.

5 Q MS. HICKEY: And I'd ask you to turn,
6 Justice McCawley, if you would, please, to the ethical
7 principle of equality, which is Principle Number 5.
8 And you have to bear with me for one minute while I
9 just look for ...

10 I think I produced the wrong version for you,
11 Justice McCawley. My apologies. Perhaps I'll just
12 read this to you, and then I'll review the exhibit
13 later to ensure the correct version is before you.
14 There's a commentary in the equality principle that
15 indicates: (as read)

16 Judges should not be influenced by attitudes
17 based on stereotype, myth, or prejudice.

18 They should therefore make every effort to
19 recognize, demonstrate sensitivity to, and
20 correct such attitudes.

21 Did you review that with Justice Camp?

22 A I can't remember whether we specifically referred to
23 that commentary, but certainly in our discussions, that
24 was very much what our discussions were about, the
25 application of this principle.

26 Q And, indeed, did this principle form a large part of

1 the conversations that you had with Justice Camp? And
2 by that, I'm referring to the attitudes that he had
3 demonstrated in Wagar, based on stereotype, myth, or
4 prejudice?

5 A That's a difficult question. I -- he understood the
6 importance of the principle. He knows that principle.
7 In some respects, he -- because his intention was so
8 different than what was conveyed, what we needed to
9 talk about was the importance which he -- he assumed
10 but how that translates out into what happens in a
11 courtroom. I'm not sure if I directly answered your
12 question. I ...

13 Q Well, let's see if we can explore it a bit more. Did
14 you review with Justice Camp some of the stereotypes,
15 myths, or prejudices that can be brought to bear in the
16 course of a sexual assault trial?

17 A Yes. And that was something that was covered in a lot
18 of detail at the sexual assault seminar in March that
19 he attended.

20 Q And, for example, did you have discussions with Justice
21 Camp about the twin myths, that women who engaged in
22 other sexual activity are more likely to have consented
23 or are somehow less worthy of belief?

24 A Yes.

25 Q And did you discuss with Justice Camp and explore with
26 him prejudices, stereotypes, myths, unconscious bias,

1 whichever of those might apply with respect to that, to
2 determine whether he subscribed to that thinking?

3 A Yes.

4 Q And what was your conclusion?

5 A He understood. It's difficult for me to answer,
6 because we talked about a lot of personal things in his
7 life and in his experience that related to his
8 understanding of the importance of these principles. I
9 guess the short answer is: He understood them. He --
10 at the time, he got them, but he was -- obviously had
11 failed in his management of this trial to stay away
12 from them, and he got himself into trouble with that.
13 So we focused on that. As I say, the concerns, as they
14 have been expressed by the law professors, of
15 stereotypically thinking, it's something that all of us
16 need to guard against all the time. And we went into
17 discussing those things in a considerable amount of
18 detail.

19 Q And would that same thing apply with respect to some of
20 the other stereotypes or myths such as women say "no"
21 when they really mean "yes"; was that part of your
22 discussions with him as well?

23 A Yes.

24 Q Women will display resistance designed to counter the
25 perception that they are somehow easy?

26 A Yes.

1 Q Women who don't complain soon after events are less
2 likely of belief?

3 A Yes.

4 Q Women may lie about sexual assault out of shame of
5 giving in to their desires?

6 A Yes.

7 Q Women may lie about sexual assault out of spite at
8 being rejected by men after sexual activity?

9 A Yes.

10 Q So you reviewed all of those?

11 A We covered the waterfront.

12 Q Yes. And is it fair to say that with respect to those
13 variety of stereotypes or myths or prejudices, that
14 Justice Camp understood them intellectually but had not
15 internalized them to be able to apply them in the
16 context of a sexual assault trial?

17 A I don't think it would be fair to say he only
18 understood them intellectually. I also know he was
19 very inexperienced.

20 Q Yes.

21 A And I think he thought he had applied things
22 appropriately, the law and his understanding. We
23 discussed in a lot of detail what he said and why and
24 what he meant to say.

25 Q So he thought he had appropriately applied his
26 understanding of these myths and the law. Did you

1 suggest to him that perhaps he had not?

2 A Yes.

3 Q And how did he respond to that?

4 A As I indicated earlier, with respect to everything in
5 our discussions, he wanted to know, and he wanted to
6 understand, and he wanted to learn. He was always very
7 receptive. And I would often get phone calls out of
8 the blue from him saying, you know, I just thought
9 about this, or can we talk about that, or can I call
10 you after court today, because he had been thinking
11 about our discussions in between. And that has
12 continued for the last ten months.

13 Q So when you reviewed the variety of myths and
14 stereotypes that I just outlined for you, Justice
15 McCawley, did Justice Camp acknowledge that he held any
16 of those beliefs?

17 A I'm not sure that he really did, and that's -- in my
18 discussions with him -- in my discussions with him, it
19 was very difficult to reconcile what he saw his
20 understanding being with what was in that transcript.
21 That was one of the reasons it was so important that we
22 go over it at great length. He's not -- he's not a
23 misogynist. He is not a racist. He's extremely
24 fair-minded, and part of my difficulty was trying to
25 reconcile the transcript with the person in front of me
26 and the discussions we were having.

1 Q Was there a general recognition from Justice Camp that
2 his comments and his conduct during the Wagar trial
3 belittled the complainant in particular and perhaps
4 women more generally?

5 A I think he recognized that early on. Certainly he
6 felt -- felt very badly about it, and, as I indicated,
7 he was extremely concerned about the impact of all of
8 this on the complainant. It was always first and
9 foremost in his mind.

10 Q And with respect to the comments and conduct that
11 belittled the complainant in particular and women in
12 general, did you suggest to Justice Camp that the type
13 of approaches he took created perceptions of gender
14 bias?

15 A Yes.

16 Q And did he agree with you?

17 A He certainly understood how that could be, and he did
18 agree.

19 Q And what did you do to address that with Justice Camp,
20 this perception of gender bias?

21 A Well, as we did throughout, we talked about alternative
22 language that communicates a message more appropriately
23 or when the message isn't appropriate, it shouldn't be
24 there and why.

25 Q Did you discuss with Justice Camp the role he would
26 have in the Federal Court where he would be potentially

1 dealing with immigration cases, refugee cases, which
2 may involve women fleeing issues of sexual violence?

3 A Yes, we did very much.

4 Q And was there a recognition by him that participants in
5 the Federal Court system that would be involved in
6 those processes would have concerns about gender biases
7 from him?

8 A I think he recognized that that would be the case
9 regardless of what court he was in, but he certainly
10 appreciates that some of the people coming before him
11 would be victims of violence and fleeing countries of
12 violence and fleeing sexual violence.

13 Q Did he suggest to you what he would do to counter any
14 perception of gender bias in those kinds of cases?

15 A I think our whole discussion over the last ten months
16 has been about doing things differently. I think his
17 world view is certainly different. His understanding
18 of women and violence against women is different. He's
19 not the same person that he was when I first met him
20 last December.

21 Q Did Justice Camp recognize that through his conduct and
22 comments and the media reporting of them that there had
23 been reputational harm not only to himself but to the
24 judiciary?

25 A Yes, he did.

26 Q And what did he say about that?

1 A As I indicated earlier, he was deeply remorseful and
2 full of regret because he realized that his words had
3 wounded a number of people as well as the institution I
4 think he loves.

5 Q And, again, any particular strategies there, Justice
6 McCawley, in terms of how he would combat that
7 reputational harm that has been caused?

8 A Well, only the strategies I think that all judges
9 adopt, and that is to understand and to learn and to
10 keep learning. I have to say that we all know that we
11 are vulnerable, and I don't say this to in any way
12 minimize what happened in the Wagar case, but we all
13 worry about sometimes making a slip, saying something
14 that might communicate -- communicate a message that we
15 didn't want to communicate, and that's particularly so,
16 for example, in using gender-neutral language or using
17 language that identifies ethnic groups, particularly
18 when the -- it changes all the time. So what he has
19 learned is the importance of learning and practicing,
20 getting advice, and knowing that that's the best
21 preparation he can have for not making mistakes.

22 Q In your discussions with Justice Camp and your
23 observations of his conduct in the Wagar trial, did you
24 have concern that he wasn't listening enough?

25 A What I did learn from my meetings with Justice Camp is,
26 at least initially, he had a tendency to be somewhat

1 impatient, and it wasn't due to disrespect. His mind
2 would move ahead, and he would anticipate where he
3 wanted to be going or what he wanted to know. He's
4 also deeply curious and just generally has lots of
5 questions, not just in the courtroom but even in social
6 situations. And so when we talked about trial
7 management, we talked about the importance of what
8 legal educators call "active listening" but certainly
9 taking time to hear what's being said and consider it
10 before asking questions. Those were the kinds of
11 strategies we did talk about.

12 Q So when you say he had a tendency where his mind would
13 move ahead, is that another way of saying that he would
14 speak before thinking?

15 A I think he was thinking ahead and not -- it wasn't in
16 sync the way it should. He sometimes, I think, may
17 have asked a question without thinking. I think we all
18 do that, but -- from time to time, but, no, I think he
19 just -- he's deeply interested, deeply curious, and has
20 questions to ask, and sometimes that's not an
21 appropriate role for a judge presiding over a trial,
22 and certainly we did discuss that.

23 Q Are you continuing in your mentorship role with Justice
24 Camp?

25 A Yes, I have been.

26 Q And that's planned to be an ongoing role?

1 A We haven't discussed it, but I've certainly indicated
2 that I'm available, and I have been all along.

3 Q And if you could identify areas of focus for Justice
4 Camp moving forward, what would they be?

5 A I would say continue -- continue to do what we have
6 been doing. He was a Provincial Court judge, and
7 Provincial Court judges don't have the same kind of
8 access to the education that federally appointed court
9 judges do, and I assume, I'm sure safely, that he will
10 continue to attend programs that are relevant to his
11 work but also to his role as a judge. He knows that.
12 He certainly has been very grateful for the opportunity
13 to attend the ones that he was able to attend in the
14 last several months. They've been very helpful to him.

15 Q Thank you, Justice McCawley. Those are all my
16 questions.

17 A Thank you.

18 THE CHAIR: Mr. Addario, do you have any
19 re-examination?

20 Mr. Addario Re-examines the Witness

21 MR. ADDARIO: Thank you so much.

22 Q MR. ADDARIO: Just a couple of questions.
23 On that last topic of continuing education, you
24 mentioned that what's available to Provincial Court
25 judges is not the same as what's available to federally
26 appointed judges. Could you just elaborate on that a

1 little bit?

2 A Well, we're very fortunate, federally appointed judges,
3 to have the National Judicial Institute, which is the
4 biggest provider of legal education, and we have access
5 to top-notch educational programs that are designed to
6 meet the three pillars of judicial education:
7 Knowledge of the law, skills, and social context. And
8 they are broadly based, but some of them are considered
9 to be intensive courses as well where you can hone in
10 on particular skills. They have -- they are, in my
11 view, critical to staying on the bench and being a good
12 judge, and I think most judges in Canada avail
13 themselves of these programs on a consistent basis.
14 They're not available to Provincial Court judges the
15 same way; although, we do have Provincial Court judges,
16 on a very limited basis, attend some of them.

17 Q When you say "they're not available", Provincial Court
18 judges, in the same way, I don't think it's a secret.
19 They're primarily designed for federally appointed
20 judges, are they not?

21 A They're designed for federally appointed judges, but we
22 also have federal funding that allows us to attend, and
23 that's not the case in most provinces, or the funding
24 is very limited.

25 Q You were asked a question a few moments ago; is it fair
26 to say he understand the myths intellectually but not

1 how to apply them, and you replied, No, he thought he
2 had them, but he had insufficient experience, and it
3 made the application deficient or words along those
4 lines; do you recall that question and answer?

5 A Yes, I do.

6 Q Could I ask you this: Is he the first judge you've met
7 who didn't know what he didn't know of the application
8 of the law or policy underlying it?

9 A No. I think when judges are appointed to the court, we
10 all come from very different backgrounds and
11 experiences. I'm a case in point. I had no
12 criminal-law experience, and I would say that until
13 recently, when I went supernumerary, 75 percent of my
14 work was criminal law. So for most judges, there's a
15 very steep learning curve coming in. We have a new
16 judges' program which sort of assists, at least,
17 getting judges up to a certain level when they first
18 are appointed because if you're in a court like mine,
19 you hear all kinds of cases, whether they're criminal
20 or civil or family, and -- but that's just the
21 beginning of an ongoing process, and we need to learn
22 and grow and have a good understanding as we go along
23 what we don't know, which is sometimes very difficult,
24 and we sometimes think we know things a lot better than
25 we know, and it's -- I know good counsel spend a lot of
26 their time making sure judges learn to know what they

1 need to know, but it's a lifetime experience, career
2 experience.

3 Q Did you share any tools with Justice Camp on the topic
4 of inquiring into what you don't know as a judge?

5 A Well, we did -- when we talked about the role of a
6 judge and all the things that I've referred to in my
7 evidence, it wasn't a concern of mine because, as I
8 say, he's very inquisitive and very curious, and he
9 wants to know everything. And if there was any
10 problem, it was focusing on what we needed to do
11 initially and follow a structured process in what we
12 were dealing with. But I certainly feel confident that
13 he -- he understands in spade that he doesn't know it
14 all -- spades. That was never a problem. And,
15 certainly, the importance of continuing education for
16 himself as a judge is well understood.

17 Q Thanks very much.

18 THE CHAIR: Any questions?

19 Thank you, Justice McCawley. You are excused.

20 THE WITNESS: Thank you.

21 (WITNESS STANDS DOWN)

22 THE CHAIR: Yes, Mr. Addario.

23 MR. ADDARIO: As I indicated to you
24 yesterday, that's my evidence for today. I do expect
25 both of my witnesses will be arriving this evening and
26 will be available tomorrow.

1 THE CHAIR: All right. Thank you. We'll
2 adjourn until tomorrow at 10, then.

3 I'm sorry. I think there's one exhibit that needs
4 to be put before the Court --

5 MS. HICKEY: Yes. Thank you,
6 A.C.J. Cullen.

7 THE CHAIR: -- or the Panel. I'm sorry.

8 MS. HICKEY: We've just recognized the
9 problem was we copied the document on every second --
10 every second page is missing. So we will rectify that
11 and bring the --

12 THE CHAIR: We'll do that tomorrow.

13 MS. HICKEY: -- correct version tomorrow.

14 THE CHAIR: Thank you.

15 _____
16 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, SEPTEMBER 8, 2016

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CERTIFICATE OF TRANSCRIPT:

I, Sarah Howden, certify that the foregoing pages are a complete and accurate transcript of the proceedings, taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 9th day of September 2016.

Sarah Howden, CSR(A)
Official Court Reporter

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EXHIBITS ENTERED IN THE HEARING
SEPTEMBER 7, 2016

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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING
VOLUME 3

Calgary, Alberta
September 8, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta
3 _____
4 September 8, 2016
5
6 Associate Chief Justice Chair
7 Austin F. Cullen
8 Associate Chief Justice Committee Member
9 Deborah K. Smith
10 Chief Justice Raymond P. Whalen Committee Member
11 Ms. Karen Jensen Committee Member
12 Ms. Cynthia Petersen Committee Member
13
14 Ms. Marjorie Hickey, QC Presenting Counsel
15 Michael Murphy
16
17 Owen Rees For Inquiry Committee
18
19 Frank Addario For Justice Camp
20 Megan Savard
21 Andrew Burgess
22
23 S. Howden, CSR(A) Official Court Reporter
24 K. Attrell Registrar
25 _____
26

1 (PROCEEDINGS COMMENCED AT 10:17 AM)

2

3 THE REGISTRAR: This inquiry hearing is now
4 resumed.

5 Discussion

6 THE CHAIR: Counsel, just before we resume
7 the hearing, there are a couple of matters that the
8 committee wanted to deal with. First of all, I just
9 indicate that yesterday afternoon, the committee sought
10 some assistance from counsel as to the application of
11 the MacKeigan principle preventing judges from being
12 compelled to explain their judicial reasoning in the
13 circumstances of this case. We have now received from
14 counsel their representative positions, and we will
15 rule on that issue, if it's raised on the evidence
16 prospectively, as we move forward. We don't intend to
17 make any ruling in a vacuum at this stage but we are
18 appreciative that counsel have provided us with their
19 positions on the law respecting that issue.

20 The second matter that we wish to deal with, again
21 relatively, briefly is simply this, that if one of the
22 apprehended witnesses alleges confidentiality
23 precluding questions of a witness concerning that
24 witness' dealings with Justice Camp, we will expect
25 some argument on the admissibility of that evidence or
26 on the appropriateness of that line of questioning. We

1 note that in her submissions, Ms. Hickey referred to
2 refraining from asking certain questions of Justice
3 McCawley out of respect for her desire to protect the
4 confidentiality of her mentoring relationship of
5 Justice Camp, and while we understand the foundation
6 for that, we -- if that issue raises itself again, we
7 would like submissions on the appropriateness of that
8 and whether or not it attracts some privilege that
9 precludes delving into that area. So rather than
10 refraining from pursuing that line of questioning, we
11 would simply ask that counsel conduct the examination
12 as they see fit, and if an objection is raised on the
13 base of privilege, then we will deal with that
14 following argument.

15 The next matter that we wanted to deal with
16 relates to paragraph 2(b) of the Notice of Allegations
17 in relation to Justice Camp. And I'll simply read
18 those as they -- as they currently exist. 2(b) reads:
19 (as read)

20 In the course of the trial and in giving his
21 reasons for judgment, the judge engaged in
22 stereotypical or biased thinking in relation
23 to a sexual assault complainant and relied on
24 flawed assumptions which are well-recognized
25 and established in law as rooted in myths.

26 (b) reads: (as read)

1 By stating "young wom[e]n want to have sex,
2 particularly if they're drunk".

3 We accept the judge's counsel's assertion in his notice
4 of response that the correct quotation is this: (as
5 read)

6 If I accept his version and -- if I can't
7 reject it, then I have to go into the air of
8 reality. Is it -- is it unreal for me to
9 accept that a young man and a young woman --
10 young woman want to have sex, particularly if
11 they're drunk?

12 And "woman" is spelled W-O-M-A-N. So we accept that
13 the Notice of Allegations doesn't correctly quote the
14 portion of the transcript referenced, and it may alter
15 the meaning that was conveyed by the remark, but
16 counsel should address that ultimately in submissions.

17 The third or the final thing we wanted to address
18 is simply for our benefit and, I think, the benefit of
19 members of the media and the public who are present,
20 what the timing and scheduling is anticipated at this
21 point. As I understand it, we have three additional
22 witnesses to hear from, and I'm just wondering if
23 counsel can give us their best estimate of where we're
24 at in terms of timing and scheduling on a -- going
25 forward.

26 MR. ADDARIO: Chief Justice, we'll -- we'll

1 finish this week. We had a case-management conference
2 call in August, no secret, between counsel and the
3 Panel, and you asked then if we would finish the
4 evidence this week, and I said yes, and I spoke with
5 Ms. Hickey -- Ms. Hickey as recently as yesterday. We
6 will finish the evidence this week.

7 THE CHAIR: All right. Do you
8 anticipate -- how many witnesses do you anticipate
9 today, Mr. Addario?

10 MR. ADDARIO: Likely two, possibly three.

11 THE CHAIR: All right. So that would
12 consume all the -- or, at least, you'll start with the
13 third witness, which would be Justice Camp; is that
14 right?

15 MR. ADDARIO: Yes, sir.

16 THE CHAIR: All right. All right. Thank
17 you. That's helpful.

18 And I think there was some discussion with
19 Mr. Rees concerning the progress of the -- of the
20 hearing after the evidence is concluded, whether that's
21 today or tomorrow, and there was some suggestion that
22 we might sit on Saturday as a -- use it as a juridical
23 day. I think it's the consensus of the committee that
24 because the dates have been published on the website,
25 we ought to stay with the dates, rather than sit on
26 Saturday, to resume on Monday.

1 MR. ADDARIO: Fair enough. And in giving
2 you my estimate about possibly starting with Justice
3 Camp today, that assumes that we don't take a lengthy
4 detour on the MacKeigan and Marshall issue --

5 THE CHAIR: Right.

6 MR. ADDARIO: -- which might or might not
7 arise.

8 THE CHAIR: Right. No. Understood.

9 MR. ADDARIO: Fair enough. Thanks.

10 THE CHAIR: Thank you. That's helpful.

11 All right. We are ready to proceed, then.

12 MR. ADDARIO: Professor Cossman.

13 MS. HICKEY: Associate Chief Justice
14 Cullen, if I may, just before the witness is called,
15 just one administrative follow-up to yesterday.

16 THE CHAIR: Yes.

17 MS. HICKEY: We had discussions yesterday
18 about producing a redacted version of the trial
19 transcript.

20 THE CHAIR: Yes.

21 MS. HICKEY: And a hard copy of that has
22 now been prepared and has been marked as an exhibit,
23 Exhibit Number 7.

24 THE CHAIR: All right. Did we mark the
25 "Ethical Principles for Judges" yet?

26 THE REGISTRAR: Yes.

1 THE CHAIR: We have. All right. Thank
2 you. So that will be Exhibit 7.

3 EXHIBIT 7 - Redacted version of trial
4 transcript

5 MS. HICKEY: Thank you very much. And just
6 for the benefit of those in attendance, my
7 understanding from Mr. Rees is that all of the exhibits
8 are now available on the CJC website.

9 MR. REES: The exhibits to the agreed
10 statement of the facts are on the website. We can add
11 the additional ones.

12 THE CHAIR: Thank you.
13 Thank you, Ms. Hickey.

14 BRENDA COSSMAN, Affirmed, Examined by Mr. Addario

15 Q MR. ADDARIO: I'll just put Exhibit Q in
16 front of you. You got an LLB at the University of
17 Toronto and a master's in law from Harvard University
18 in 1988?

19 A Yes, I did.

20 Q And you've been teaching since then?

21 A Since 1988.

22 Q Right. So 11 years at Osgoode Hall Law School?

23 A Yes.

24 Q Two years at Harvard?

25 A Yes.

26 Q 15 years or so at the University of Toronto Faculty of

- 1 Law?
- 2 A That's correct.
- 3 Q You spent about four years as the director of the
4 Institute for Feminist Legal Studies at York
5 University?
- 6 A Yes, I did, at Osgoode Hall Law School.
- 7 Q For the last seven years, you've been the director of
8 the Bonham Centre for Sexual Diversity Studies at the
9 University of Toronto?
- 10 A Yes.
- 11 Q In 2015, you got the Ontario Bar Association award of
12 excellence for the promotion of women's equality?
- 13 A Yes, I did.
- 14 Q You are a fellow of the Royal Society of Canada?
- 15 A Yes, I am.
- 16 Q You have written several books and dozens of law review
17 articles on gender, sexuality, and the law?
- 18 A Yes, I have.
- 19 Q And I see from the CV you have spoken or lectured
20 hundreds of times on those same three topics?
- 21 A Yes.
- 22 Q I don't know that I'd go into that. The CV speaks for
23 itself. Is there anything missing from it relating to
24 those topics?
- 25 A The CV is comprehensive.
- 26 Q And I see that at page 17 is showing that you've taught

1 family law, feminist legal theory, introduction to
2 feminist theory, feminism and the law workshop,
3 sexuality and the law, and methods and theory in sexual
4 diversity studies?

5 A Yes.

6 Q And I wonder if you just tell the committee who you
7 teach?

8 A I teach undergraduate students at the Bonham Centre for
9 Sexual Diversity. I teach law students, formerly LLB,
10 now JD students. I also teach master's students,
11 master's of law, LLM's, and SJD students, basically
12 doctoral students in law. I also, from time to time,
13 teach at continuing education programs for lawyers.

14 Q And to just come to the point here, you met with
15 Justice Camp?

16 A Yes, I did. I met with him five times.

17 Q And when was the first time?

18 A The end of May 2016.

19 Q And how long did you meet each of those five times?

20 A Between two and three hours each session.

21 Q And what did you do when you met with him?

22 A Well, what we did mostly was discuss readings that I
23 had assigned to him that addressed the history of the
24 law of sexual assault. The first meeting was
25 different. The first meeting to me was about trying to
26 decide if a program of education was possible or

1 viable. I had read the comments in the media. I had
2 read the comments by -- the complaint by the law
3 professors. I -- when I was then contacted to meet
4 with Justice Camp, I was somewhat ambivalent, but I
5 thought about it, and I thought about the fact that I
6 believe in the power of education; I thought I would
7 meet with him to decide if a program of education was
8 possible.

9 So on the first meeting, it was really about
10 assessing that. And the person that I met was open and
11 earnest and sincere, seemed to be very open to
12 learning. My sense was that he had understood that he
13 had made some mistakes in his language but that he
14 didn't fully appreciate how his mistakes were rooted in
15 the history of the law of sexual assault. But because
16 I had the sense of a person who was very open and eager
17 to learn and because I believe in the power of
18 education, I committed myself to subsequent sessions
19 with Justice Camp.

20 In those subsequent sessions, what we dealt with
21 was what I felt was the gap in his knowledge. He
22 understood the provisions of the Criminal Code, but
23 what he didn't know was why we have the provisions of
24 the Criminal Code that we have, and he didn't know the
25 history of the law of sexual assault; he didn't know
26 the history of the law reform of sexual assault; he

1 didn't know the history of the ways in which that law
2 historically discriminated against women. And so for
3 our program of study, what we focused on then was that
4 history, was the history of the ways in which the law
5 discriminated against women complainants, against
6 victims of sexual assault. We looked at the waves of
7 law reform that were specifically intended to address
8 that discrimination. We looked at questions of rape
9 myths and how those have historically informed the law
10 and the way in which law reform has been specifically
11 intended to redress that discrimination.

12 Q So -- thank you. Did you give him a reading list?

13 A I did.

14 Q And I've prepared a reading list. I have given it to
15 Mr. Rees and the registrar. Have you seen that reading
16 list?

17 A I have. I don't have it in front of me right now.

18 Q All right. We can fix that. The registrar should have
19 six copies. Does that look familiar?

20 A Yes, it does.

21 Q And are those the books and articles you gave to His
22 Honour?

23 A Yes, it is.

24 MR. ADDARIO: I'll have that be the next
25 exhibit, Chief Justice.

26 THE CHAIR: Yes, thank you.

1 MR. ADDARIO: There's an additional copy for
2 the registrar to mark.

3 THE CHAIR: That will be Exhibit 8, then.

4 THE REGISTRAR: Yes. Thank you.

5 EXHIBIT 8 - Reading list prepared by
6 Professor Cossman

7 Q MR. ADDARIO: I'll just ask you, since
8 you -- while we're on that, are you satisfied from your
9 discussions with him that His Honour read those
10 articles?

11 A Absolutely.

12 Q And could -- and understood them?

13 A Yes.

14 Q And some of those articles, I know from reading them,
15 are critiques of the Canadian legal system?

16 A Yes, they are, historically and current.

17 Q And did you discuss those critiques with him?

18 A Yes, we did.

19 Q And did you discuss sexual assault prosecutions
20 generally?

21 A Yes, we did.

22 Q Did you discuss rape myths?

23 A Yes, we did.

24 Q Did you discuss the distinction between discredited
25 stereotypes and myths on the one hand and legitimate
26 credibility or shortage of proof on the other in sexual

1 assault prosecutions?

2 A Yes, we did.

3 Q And could you just turn up Tab M in the book in front
4 of you? And Exhibit A to Tab M is an opinion by
5 Professor Benedet.

6 A Yes.

7 Q Have you read that?

8 A Yes, I have.

9 Q All right. And did you review the contents of that
10 before you finished your work with Justice Camp?

11 A Yes, I did.

12 Q And did you discuss some, all, or none of the concepts
13 in there covered by Professor Benedet with Justice
14 Camp?

15 A We discussed all of the concepts. The one thing I did
16 not discuss with him were the statistics, as I am not
17 an expert in statistics.

18 Q Did he appear to understand the concepts laid out in
19 Professor Benedet's report?

20 A Yes.

21 Q How many students have you taught over the 28 years or
22 so you've been a teacher?

23 A Well, I teach at least a hundred students a year, and
24 apparently I've now been teaching for 28 years;
25 although, it doesn't feel like that. So I think it
26 must be approaching 3,000, if not more.

1 Q Do you teach small groups?

2 A I do.

3 Q Have you had to evaluate whether students are engaged
4 and have read and understood the material?

5 A Yes, frequently.

6 Q Once or more than once?

7 A More than once.

8 Q And is there a parallel with anything you've done in
9 the teaching world and what you did with Justice Camp?

10 A So typically I teach multiple students at a time, but I
11 would say that this is a parallel to when I have a law
12 student who is doing an intensive research project with
13 me, and I meet one on one. It's also more similar to
14 the kinds of meetings I have with my graduate students
15 where they will do readings, they will come in, and we
16 will discuss the readings.

17 Q Did you evaluate whether or not Justice Camp was
18 engaged and read and understood the material?

19 A So each session, the discussion was about the
20 particular materials, and we would not have been able
21 to have the discussions that we had if he hadn't read
22 the materials, but I also gave him, as is the wont of a
23 law professor, an exam at the end of our sessions and
24 effectively a kind of take-home exam that required that
25 he synthesized the materials and demonstrated to me
26 that he had understood them.

1 Q I'm sure the committee would be interested in the
2 nature of the exam, the topics covered.

3 A I asked him various questions about the history of the
4 law of sexual assault, the way in which rape myths have
5 historically informed that law, the series of law
6 reforms, the waves of law reform to the law of sexual
7 assault, the ways in which those law reforms have been
8 specifically intended to address rape myths.

9 Q What was your evaluation?

10 A He did quite well on the exam. He had synthesized the
11 material. It wasn't simply an exam that allowed for a
12 regurgitation of the material. In order to do a good
13 job on it, he had to synthesize the materials that we
14 had read, and he did a -- he did a very good job. Now,
15 having only had one student in the class, I couldn't
16 bell-curve him.

17 Q I was thinking about something else. I missed that
18 joke.

19 Did you tell him, by the way, how to think, or did
20 you tell him to reach his own conclusions or invite him
21 to reach his own conclusions?

22 A So what we did was each -- after each set of readings,
23 we would come in, and I would have a series of
24 questions for him, but as the engaged student that he
25 was, he would come in with a series of questions. And
26 we would just go through the questions. I would ask

1 him what he thought, and it was -- it was a -- it was
2 very much a teacher-student relationship where I was
3 getting him to tell me what he thought and what he had
4 learned about the readings.

5 Q You describe someone today who came to you with a
6 knowledge deficit, and then you worked with him. In
7 your judgment, is he teachable?

8 A That was my major concern right at the beginning. In
9 our first meeting, I wanted to make sure that he was in
10 fact teachable. I didn't want to simply be a kind of
11 window dressing. And what I assessed on that first day
12 was a person who was open and sincere and remorseful
13 and honestly committed to addressing his -- the gaps in
14 his knowledge.

15 Again, he knew he had made some terrible mistakes,
16 but my assessment was that he didn't understand how
17 those mistakes were rooted in the history of the law of
18 sexual assault, and so that's what we worked on, and he
19 was absolutely open to that learning.

20 Q Does he -- just finally, Professor, does he appear to
21 you to understand the law of sexual assault in Canada
22 today?

23 A Yes, he does.

24 Q Does he appear to you to understand the law of evidence
25 in criminal procedure as it applies to sexual assault
26 prosecutions today?

- 1 A Yes, he does.
- 2 Q Thanks very much.
- 3 Ms. Hickey Cross-Examines the Witness
- 4 Q MS. HICKEY: Good morning,
- 5 Professor Cossman.
- 6 A Good morning.
- 7 Q You mentioned, I believe, that you were first involved
- 8 with Justice Camp around the end of May of this year;
- 9 is that correct?
- 10 A That is correct.
- 11 Q And how were you retained?
- 12 A I was contacted by Mr. Addario.
- 13 Q And that was after the Notice of Allegations had been
- 14 issued by the Canadian Judicial Council?
- 15 A Yes.
- 16 Q And when you were asked to work with Justice Camp, were
- 17 you asked to be available to give evidence in this
- 18 proceeding?
- 19 A Not initially.
- 20 Q What were you asked to do initially?
- 21 A I was asked to meet with Justice Camp, and I was asked
- 22 whether I was willing to work with him on educating him
- 23 about the law of sexual assault.
- 24 Q And you've described to some extent your first meeting
- 25 with him where you were assessing -- these aren't your
- 26 words but -- his receptivity, if you will, to the

1 teaching that you were planning to do?

2 A Yes.

3 Q How did you make the determination that he was
4 receptive and that you would continue to work with him?

5 A It was simply based on our discussions. We discussed
6 the complaint. We discussed a little bit generally
7 about the law of sexual assault. And it was simply
8 the -- his demeanour, the kinds of questions that he
9 was asking. He just seemed very earnest and
10 remorseful.

11 Q And what was he remorseful about?

12 A I think that he understood that the language that he
13 had used was extremely problematic and extremely
14 insensitive. My assessment was that that wasn't
15 well-rooted in the history of the law of sexual
16 assault, and so that was my area of expertise, and so
17 that is what I committed to work with him on.

18 Q So just to be clear on that, then, when you say that he
19 was remorseful that the language that was used was
20 problematic and insensitive, when you then refer to
21 that it wasn't well-rooted in an understanding of the
22 law of sexual assault, are you indicating that with a
23 better knowledge of the law of sexual assault,
24 different language was potentially available to Justice
25 Camp?

26 A So -- so my comment is that the -- his comments were --

1 his understanding of his comments was not well-rooted
2 in the history of the law of sexual assault. It wasn't
3 well-rooted in an understanding of why we have the law
4 we have today. I do think that when he came to me, he
5 understood the provisions of the Criminal Code, that he
6 did know what the law of sexual assault was. The
7 knowledge gap was in why we have the law that we have,
8 what the history of the law reform was, what the
9 history of discrimination against sexual assault
10 victims has been, what the rape myths were going into
11 that law and into the series of law reforms.

12 Q Did you test him coming in on his knowledge of the law?

13 A Well, I didn't provide a test. I didn't -- nor is it
14 really what law professors typically do. We don't
15 usually assess our students at the beginning of the
16 course; although, it would be an approach. We just --
17 we discussed generally the case. We discussed
18 generally this law of -- the law of sexual assault, and
19 I -- my best assessment, based on our about
20 two-and-a-half-hour conversation, was that he did
21 understand the law of sexual assault, but he really,
22 really did not understand at all why we had it and the
23 history that led to that.

24 Q Did he understand how to apply it?

25 A I'm not sure that I can say in the first meeting, the
26 two-and-a-half-hour meeting, that I could actually say

1 that I knew the answer to that.

2 Q You've identified some knowledge gaps, I think was your
3 language, Professor Cossman. Did you identify those
4 fairly early on in your meetings with Justice Camp, or
5 how did you come to identify those gaps?

6 A This was really part of our first session, our first
7 meeting, two-and-a-half hours of just this sort of
8 general discussion, which was -- and my intention going
9 into that meeting was really to decide whether this --
10 whether an education program seemed viable, and I
11 wanted to assess, as I've already said, whether he was
12 open and sincere about learning. And in our
13 discussions, I just got the sense that as a judge, he
14 knew what the law was. He didn't know where that law
15 had come from and what the history of that law was,
16 what the history of the law reform was.

17 Q Now, prior to your first meeting with him, you had
18 reviewed the transcript in R. v. Wagar, did you,
19 Professor Cossman?

20 A I had -- first I read the media comments, then I read
21 the law professors' complaint, then I read the judicial
22 inquiry, and then I reviewed the record.

23 Q Sorry, "the judicial inquiry" being --

24 A Sorry, the --

25 Q -- the Court of Appeal?

26 A The complaint.

1 Q Oh, the Notice of Allegations?

2 A Thank you. The Notice of Allegations.

3 Q Okay. So when you were going through the process of
4 identifying knowledge gaps in the conversations that
5 you were having that you've described, did you also
6 suggest to Justice Camp, from your review of the
7 materials that you've just described, that you had
8 identified some areas where there may be issues with
9 his understanding of the law or his application of it?

10 A No. What I discussed with him was the need to -- the
11 need to undertake a program of study that would look at
12 why we have the law that we do, the history of
13 discrimination, the way in which rape myths have
14 historically and still may inform the law.

15 Q Did Justice Camp accept that there were gaps in his
16 knowledge?

17 A Yes.

18 Q And how did he convey that to you?

19 A He conveyed it by actually saying that he didn't know
20 the history of the law of -- the Canadian law of sexual
21 assault.

22 Q You indicated earlier on that you were satisfied he
23 knew the Criminal Code?

24 A Yes.

25 Q Were you satisfied that he had knowledge of cases such
26 as the Ewanchuk case when he came in?

- 1 A Yes, yes.
- 2 Q Okay. So when you say that you didn't feel that he
3 understood the development of the law of sexual
4 assault, would not that, to a degree, at least, be
5 outlined in the Ewanchuk decision?
- 6 A To a degree.
- 7 Q Okay.
- 8 A Sorry, could I just clarify though?
- 9 Q Certainly.
- 10 A When I say that he understands the Criminal Code, I'm
11 not speaking to the Criminal Code as a whole.
- 12 Q I understand. So you're referring to the sexual
13 assault provisions?
- 14 A Yes. I have absolutely no knowledge of whether he
15 knows the rest of the Criminal Code.
- 16 Q Certainly. So he had knowledge of the sexual assault
17 provisions of the Criminal Code. He had knowledge of
18 the Ewanchuk case as he came in, but there were still
19 some gaps in his understanding of the development of
20 the law; is that correct?
- 21 A That was my assessment.
- 22 Q And those gaps related, in part, at least, to some of
23 the myths or the stereotypes that sexual assault laws
24 were meant to address?
- 25 A Yes.
- 26 Q And just to review some of those, Professor Cossman --

1 and perhaps when you're identifying these, you could
2 give an indication of your assessment of Justice Camp's
3 understanding of these areas when you initially met
4 with him. So if we start with the twin myths, for
5 example, that women who engage in other sexual activity
6 are more likely to have consented or are less worthy of
7 belief, did he have an understanding of that concept
8 when you first met with him?

9 A So I do not think that he -- he had an understanding of
10 the ways in which those myths have historically
11 informed the law, no. I think that he himself was not
12 articulating those as -- as myths. He was not
13 articulating that as something that he believed, but I
14 think that he didn't understand that that was
15 historically a problem with the law of sexual assault.

16 Q But from your assessment, he wasn't applying those
17 myths in his decision in Wagar?

18 A Certainly not explicitly, no.

19 Q What about implicitly, as you've read the transcript
20 and the decision?

21 A Was he applying those myths? Now, I'm not sure if
22 this -- I'm not sure how much I am supposed to go into
23 the judicial reasoning here and how much I'm supposed
24 to go into the discussions I had with him about his
25 judicial reasoning.

26 Q Well, at this point, I'm asking for your assessment of

1 whether Justice Camp applied twin-myth reasoning in the
2 Wagar trial, your assessment.

3 A I don't -- so the twin myths, one being that a person
4 who has had sex in the past is more likely to consent
5 to sex in the present or that they are less likely to
6 be believed, I do not believe that he was applying
7 either of those two.

8 Q So he wasn't applying them, but I believe your evidence
9 was he didn't have an understanding of how they
10 informed --

11 A How they had historically informed the law and why we
12 have the law that we now have specifically to redress
13 those problems.

14 Q And what about the myth that women say "no" when they
15 really mean "yes"; did you get a sense that that
16 thinking permeated Justice Camp's decision-making?

17 A No, I didn't. I didn't.

18 Q The myth that women will display resistance designed to
19 counter the perception that they are easy, did you get
20 a sense that he applied that myth in Wagar?

21 A I did not. Now, to me, that -- so we discussed at
22 great length the history of utmost resistance and the
23 very troubling way in which historically that was
24 applied in sexual assault cases. When I look at the
25 comments that he made, the particular comments, and
26 particularly the two most egregious comments that he

1 made -- or the comments that are considered to be the
2 most egregious do seem to revolve around that idea of
3 resistance. What I found when I looked at the record,
4 to me, then, he was trying to address, albeit in a
5 not-very-sensitive manner, issues that had already been
6 put into play by -- by defence and the Crown. And
7 these were issues that may appear to be about utmost
8 resistance, but actually, when I -- in my reading of
9 the record, were really about trying to address factual
10 issues that were in play and that had been raised by
11 the defence and then followed up by the Crown.

12 Q Perhaps I'll just put in front of you, Professor
13 Cossman, a copy of the statement of allegations so I
14 can refer you to some specific comments.

15 A Sure.

16 Q So the comments that you're just referring to, are
17 those the comments that we find under Allegation 3,
18 where there are three specific questions, by asking the
19 complainant, why didn't she just sink her bottom down
20 into the basin so he couldn't penetrate her; by asking
21 the complainant, why couldn't she just keep her knees
22 together; and by suggesting, if she skews her pelvis
23 slightly, she can avoid him? Are those the three
24 kinds -- are those the three areas that you're
25 referring to that relate to the resistance type of
26 thinking that has found to be discredited?

1 A Yes. Although, I was referring specifically to (a) and
2 (b).

3 Q (a) and (b), okay. So despite the choice of that
4 language, it's your assessment that he wasn't applying
5 the myth that women will display resistance designed to
6 counter the perception they are easy when he made those
7 comments?

8 A That is my assessment.

9 Q What is your assessment with respect to the
10 appropriateness of the language he used?

11 A I think that the language was extremely insensitive to
12 the lived experiences of survivors of sexual assault
13 and that a judge who had gone through more sensitivity
14 education would have phrased these questions very
15 differently.

16 Q Did you discuss with Justice Camp other methods by
17 which he could have asked those questions?

18 A Yes, we did.

19 Q And how did he respond to your suggestions?

20 A He agreed.

21 Q Just while we have the statement of allegations turned
22 up, Professor Cossman, the first allegation relates to
23 Justice Camp's reference to Section 276 of the Criminal
24 Code, where he made a variety of references such as:
25 (as read)

26 Section 276 operates for better or worse. It

1 does hamstring the defence. It has to be
2 interpreted narrowly. It's very, very
3 incursive legislation which prevents
4 otherwise permissible questions because of
5 contemporary thinking, and no one would argue
6 the rape shield laws always worked fairly.

7 Did you discuss with Justice Camp that language that
8 I've just reviewed with you?

9 A Yes, we did.

10 Q And in reviewing that language, what was Justice Camp's
11 reaction to it in terms of how appropriate it was?

12 A He agreed that it was inappropriate.

13 Q And inappropriate in what way?

14 A It was inappropriate. It was inappropriate because it
15 would appear as if he was critical of the legislation.

16 Q And when you reviewed the language, was that the
17 conclusion that you reached when you reviewed those
18 words as well?

19 A Sorry?

20 Q When you reviewed the language, was that the conclusion
21 that you reached, that that type of language gives the
22 perception that there's a criticism of the legislation?

23 A It creates the perception that there was a criticism of
24 the legislation.

25 Q Allegation 2 refers to the suggestion that Justice Camp
26 engaged in stereotypical or biased thinking in relation

1 to a sexual assault claimant -- sorry, complainant and
2 relied on flawed assumptions. So we had started to
3 discuss some of those a few moments ago in terms of the
4 twin myths and in terms of the resistance myth. In
5 terms of the items that are found under Allegation 2 --
6 and perhaps I can refer to the first one, by
7 questioning whether the complainant abused the first
8 opportunity to report, that's another discredited myth,
9 is it not, Professor Cossman?

10 A Yes, it is.

11 Q And did Justice Camp recognize that by using the
12 language that he did that he was relying on the
13 discredited myth?

14 A Yes.

15 Q And you accept that as well?

16 A Yes.

17 Q The next one -- and I don't know if you were here
18 earlier today when Associate Chief Justice Cullen was
19 correcting the quotation in Section 2(b) to give it its
20 full context in terms of speaking how young men and
21 young women -- young women want to have sex,
22 particularly if they're drunk. Does that engage
23 stereotypical thinking or flawed assumptions?

24 A The one that says young women or young men and women?

25 Q The one that -- the full quotation that I just read,
26 young men and young women -- comma young women -- want

1 to have sex, particularly if they're drunk.

2 A I would say that if -- if it applies specifically and
3 only to women, it would be -- it would be, in fact, a
4 rape myth. If it's about men and women in general,
5 then I would say less so.

6 Q Okay. The next one refers to the recent complaint
7 doctrine, where Justice Camp indicated that the
8 doctrine was: (as read)

9 Followed by every civilized legal system in
10 the world for thousands of years and had its
11 reasons; although, at the moment it's not the
12 law.

13 That reflects another myth, Professor Cossman?

14 A I'm not --

15 Q The recent complaint doctrine; I'm sorry.

16 A I was going to say, because I don't think that that
17 comment reflects a rape myth. I think the comment was
18 unnecessary, insensitive, and there was simply no
19 reason to say it. But the -- if your question is, is
20 the doctrine of recent complaint reflective of a rape
21 myth, yes.

22 Q Thank you. The next one refers to Justice Camp judging
23 the complainant's veracity and whether she consented to
24 sexual activity by not fighting off her alleged
25 aggressor, or blaming the complainant. And I can grab
26 the transcript perhaps just to give you the specific

1 references.

2 So I'll just read the language in question here,
3 Professor Cossman. So the Crown had just said: (as
4 read)

5 And she does not have to repel what she
6 thinks could be coming. In her mind, she
7 didn't know it was coming, but how could she
8 possibly say those things?

9 THE COURT: Well, she doesn't have to do
10 any of these things. She doesn't have to
11 say, Don't lock the door. She can take her
12 chances. Foolishly, she could do that. If
13 she sees the door being locked, she's not a
14 complete idiot. She knows what's coming
15 next.

16 How does that comment relate to reliance on
17 stereotypical assumptions, Professor Cossman?

18 A So as we go through each one of these statements, I
19 just -- I want to be clear that I'm not in any way
20 defending any of these comments. I think that the
21 comments are extremely troubling. I think that the
22 comments were extremely insensitive. I think that many
23 of the comments did play into the kinds of rape myths
24 that have historically informed the law. And what I
25 did in my work with Justice Camp was actually go
26 through each of these problematic comments, put them in

1 the context of the troubling history of sexual assault,
2 for him to better grasp not only why they may just seem
3 insensitive in the current context but why these
4 comments seem so inappropriate, given the history of
5 the rape myths that have historically informed the law.

6 Q And what was your assessment in terms of Justice Camp's
7 acceptance of what you were telling him?

8 A I think that through the readings that we did where we
9 looked at the history of sexual assault, we looked at
10 the feminist critiques of the history of sexual
11 assault, you know, a 100-year history, a 30-year
12 history, a 10-year history, he was able to see very
13 clearly the ways in which his comments could be seen to
14 be playing into those kinds of rape myths.

15 Q Was that an immediate process, or was that an
16 evolutionary process over the time that you met with
17 Justice Camp?

18 A I'd say it was evolutionary because different readings
19 raised different issues. Different readings raised
20 different parts of the problematic comments. We
21 weren't dealing with all the problematic comments in
22 any given session. We were going through the history.
23 We were looking at various different rape myths and
24 various different comments that arose at different
25 times.

26 Q And just so I don't leave any wrong impression here,

1 Professor Cossman, when you're looking at the statement
2 of allegations in front of you, did I understand you to
3 say that you went through all of these, each and every
4 one of these, with Justice Camp? So in Allegation 2,
5 for example, you went through all of those with Justice
6 Camp?

7 A I think that I did.

8 Q And did you have the same conclusion with respect to
9 there being some problems with respect to his lack of
10 understanding of how some of the myths and stereotypes
11 affected the language that he used?

12 A Yes.

13 Q And in each of those instances, he accepted that the
14 language was inappropriate?

15 A Yes.

16 Q We've spoken about Allegation 3. Allegation 4 is
17 somewhat of a different ilk. It's referring to
18 a comment from Justice Camp to the Crown in the course
19 of a discussion involving the recent complaint
20 doctrine. And in the course of that discussion,
21 Justice Camp said: (as read)

22 "I hope you don't live too long,
23 Ms. Mograbee", when she submitted during an
24 exchange with the judge about the abrogation
25 of the recent complaint rule that "that
26 antiquated way of thinking has been set by

1 the wayside for a reason."

2 Did you find that to be a rude comment from Justice
3 Camp to the Crown?

4 A Rude and stupid.

5 Q And did he accept that?

6 A Yes.

7 Q The fifth allegation refers to: (as read)

8 In the course of the trial and in giving his
9 reasons for judgment, the judge made comments
10 tending to belittle and trivialize the nature
11 of the allegations made by the complainant.

12 And then there are a variety of quotations there,
13 beginning, for example, with: (as read)

14 Some sex and pain sometimes go together.

15 That's not necessarily a bad thing. Sex is
16 very often a challenge.

17 And then there's some further quotations in terms of
18 use of force and the complainant knowing she was drunk,
19 and "is there not an onus on her to be more careful?"

20 You reviewed those comments with Justice Camp?

21 A Yes.

22 Q And do you -- did you agree that those comments
23 belittled and trivialized the nature of the allegations
24 made by the complainant?

25 A I don't think all of them.

26 Q Okay. Which ones do you think did that?

1 A So in discussing (e), Section (e), that she knew she
2 was drunk, is an onus not on her to be more careful,
3 that was an area where we actually discussed the law in
4 relation to the law of sexual assault and in relation
5 to intoxication and whether there's any relevance for
6 the complainant and the complainant's intoxication.

7 And I believe that he now understands that there is
8 absolutely no onus on the complainant. When we --

9 Q So he had the law wrong there, but you don't view it as
10 a belittling comment of the allegation; is that what
11 you're saying?

12 A No, I don't think -- I think he was -- my best
13 assessment was -- reading the record is that he was
14 actually asking the Crown about, Is there an onus on
15 her?

16 Q Okay. The other allegations under this heading?

17 A So they strike me as being all very -- quite unique.
18 (a) and (b) are of a similar ilk; (c) and (d) are of a
19 similar ilk.

20 The question around "sex and pain sometimes go
21 together", my sense there, again, in reading the
22 record, was that this was questions with the Crown
23 about whether the mere existence of pain would be
24 enough to vitiate consent. That strikes me as not
25 necessarily -- not necessarily belittling.

26 The comments about "any talk of an attack really"

1 or "no real talk of real force", those seems to be
2 comments that were potentially belittling and
3 trivializing of the nature of sexual assault, yes.

4 Q And then the final allegation refers to Justice Camp
5 having made comments tending to belittle women and
6 expressing stereotypical or biased thinking in relation
7 to a sexual assault complainant. And the examples that
8 are given there refer to Justice Camp asking the Crown
9 whether there are: (as read)

10 Any particular words you must use like the
11 marriage ceremony to obtain consent.

12 What was your reaction to his choice of language there,
13 Professor Cossman?

14 A Once again, I think that this is not particularly
15 sensitive language, but in looking at the record, this
16 seemed to be a place where the Crown was suggesting
17 that words needed to be expressed and that on the
18 record, there seemed to be a question of, It's words or
19 conduct? The Crown seemed to be suggesting that there
20 are words that need to be used, and my sense on the
21 record, without going into judicial reasoning, was that
22 he was engaged in a dustup with the Crown over whether
23 it was words in particular or words and conduct.

24 Q The next example is where Justice Camp stated to the
25 accused -- and this is in his decision at this point,
26 not in the conduct of the trial: (as read)

1 The law and the way that people approach
2 sexual activity has changed in the last 30
3 years. I want you to tell your friends, your
4 male friends, that they have to be far more
5 gentle with women. They have to be far more
6 patient. And they have to be very careful.
7 To protect themselves, they have to be very
8 careful.

9 Did you review that comment with Justice Camp?

10 A Yes, I did.

11 Q Did you find that problematic?

12 A Yes.

13 Q In what way?

14 A In all possible ways. It may be the case that sexual
15 activity has changed in the last few years, but the
16 idea that this is about telling the accused that they
17 need to be more careful to protect themselves strikes
18 me as extremely problematic and extremely insensitive
19 to, again, the lived experiences of the survivors of
20 sexual assault.

21 Q And did Justice Camp express himself to you about his
22 view of this choice of language?

23 A I think that he expressed considerable remorse over
24 this language, as he did with much of the language.

25 Q And then the final quotation where Justice Camp stated
26 to the accused, again, in the course of rendering his

1 decision: (as read)

2 You've got to be very sure that the girl
3 wants you to do it. Please tell your friends
4 so that they don't upset women and so that
5 they don't get into trouble. We're far more
6 protective of women -- young women and older
7 women -- than we used to be, and that's the
8 way it should be.

9 What was your reaction to that, Professor Cossman?

10 A Now, that strikes me as -- there's a kernel of a very
11 important idea in this expressed in very insensitive
12 and inappropriate language. So one could imagine
13 saying that consent is crucial, and we need to
14 understand consent, and we need to educate people in
15 society about consent. We're more serious now about
16 sexual assault than we ever have been historically.
17 We're far more concerned about real, voluntary, and
18 enthusiastic consent in that men need to ensure that
19 there is real, voluntary, and enthusiastic consent
20 before they have sex with women. That would be a
21 really good way of stating what I think the underlying
22 idea here is. The way in which it was expressed seems
23 very problematic, but there does seem to be a core of a
24 very important idea about the way we take consent
25 seriously today.

26 Q And did Justice Camp express remorse for that comment

1 as well?

2 A I think that he -- I know that he would have phrased it
3 very differently.

4 Q And did he express that to you?

5 A Yes. One of the things that we did, going through all
6 of the statements that were problematic, was to either
7 discuss how he might have -- if there was a legitimate
8 issue, how he would have expressed it differently and
9 how some of the statements just ought not to have been
10 made in the first place.

11 Q Did Justice Camp accept the rationale for why the law
12 of sexual assault had changed in the manner it did?

13 A Yes.

14 Q How do you know that?

15 A So I can't -- as an educator, I can't actually go
16 inside of people's minds and find out whether they
17 really, really have changed their minds. The best I
18 have to go on is what they articulate and my best
19 assessment of the sincerity of those views.

20 In the exam that I gave him, he seemed to -- he
21 seemed to understand the history. He seemed to be able
22 to identify the rape myths. He seemed to be able to
23 identify the rape myths that may have arisen in the
24 Wagar case. My sense was that he -- he really
25 understood the materials that we were doing.

26 Now, you know, I believe in the power of

1 education, and I may be -- I may be overly optimistic
2 about the power of education. I cannot give two- or
3 five-year warranties on my education, but it does seem
4 that he was successfully educated. He seemed open. He
5 seemed remorseful. He seemed prepared to admit where
6 he was wrong. He seemed to be prepared to admit the
7 mistakes that he had made. He seemed to be prepared to
8 admit where there was simply no reason to say what he
9 had said.

10 Q Did your education or training specifically relate to
11 his choice of language?

12 A Yes.

13 Q And in what way did you test whether he had learned how
14 to use more appropriate language?

15 A So one of the things we did -- this was not part of the
16 written exam, but it was part of our -- our meetings
17 and very much in our last session, where I both
18 reviewed the exam that he had written, which was very
19 good, but then we went through a series of the
20 problematic comments, and I asked him, How would you
21 say this differently? How would you ask the question
22 differently today? And I was -- I was quite satisfied
23 by his responses.

24 Q Thank you, Professor Cossman. Those are all my
25 questions.

26 THE CHAIR: Mr. Addario, any

1 re-examination?

2 MR. ADDARIO: Just a little bit.

3 Mr. Addario Re-examines the Witness

4 Q MR. ADDARIO: Just on that last point that
5 you brought up, so how much of critical feminist legal
6 thinking is about education as opposed to denunciation
7 as a solution to the patriarchy or the unhappy
8 intersection of gender and law?

9 A Well, I think that there is some difference of opinion
10 within the feminist community about that, but for me, I
11 have spent 28 years believing in the power of
12 education, and I think that, in fact, many of the
13 reforms to the criminal law over the years, for me,
14 the -- one of the most significant dimensions of it has
15 been its educatory effect. And so for me, education is
16 really the most powerful -- the most powerful tool that
17 we have. But I'm an educator; I'm not a punisher.

18 Q Ms. Hickey asked you about the allegation, the first
19 allegation relating to Section 276 of the Criminal Code
20 and whether Justice Camp was implicitly applying myths
21 in relation to that. Did you look at his application
22 of 276 in this case?

23 A I did.

24 Q And what was your assessment of whether or not his
25 analysis was myth-infected or myth-free?

26 A In the actual application of the -- the application of

1 276 --

2 Q In this case.

3 A -- in his rulings seemed to be entirely reasonable,
4 without defending the comments.

5 Q We have not endeavoured to defend the comments.

6 If you turn up Tab A, which is the transcript, you
7 were asked about Allegation 2(f) and whether or not His
8 Honour commented on the character of the complainant,
9 and I'd ask you to tell me whether or not his comments
10 reflect a bad character opinion or a valid credibility
11 assessment, and in order to do that, would you look at
12 his comments on page 353 and 431 to refresh your
13 memory, neither of which you looked at, as I saw it,
14 before you answered that.

15 A What comments are you directing me to on 353?

16 Q 353 would be the comment beginning at line 27.

17 A M'hm.

18 Q Through to 32.

19 A Yeah.

20 Q And then 431.

21 A Line?

22 Q 23 through 30.

23 A M-hm.

24 Q And you were asked whether or not the allegation was
25 made out in the sense that did it show stereotypical or
26 biased thinking or myth-based thinking, and I'd just

1 ask you to -- with the assistance now of those
2 passages, to advise the committee of your view.

3 A My view of -- sorry. I need to go back to the
4 allegations, which is at tab what?

5 MS. HICKEY: I think it's a separate
6 document in front of you.

7 A Oh, yeah. Thank you. Which allegation?

8 Q MR. ADDARIO: (f), 2(f).

9 A Right. So as I think I said, I don't believe that, in
10 this context, he was -- that Justice Camp was, in fact,
11 applying the twin myths -- the twin rape myths about if
12 a woman had previously had sex, she is either more
13 likely to consent now or -- or less likely to be
14 credible. I do not think he was applying those two. I
15 think that the comments he made about an unsavory
16 witness were about the witnesses in general, and it
17 seems to me that in those passages of the record, he
18 specifically says, I'm not commenting on her sexual
19 morality; I'm commenting more generally that these
20 witnesses may lack credibility because of their
21 criminal records.

22 Q I just wanted to clarify whether you were agreeing that
23 those comments conveyed unacceptable sexist myth
24 thinking as set out in 2(f). I was a little unclear of
25 the answer when you were cross-examined.

26 A No, I don't think that they were. I think that -- I

1 think that the language of "unsavory witness" as
2 applied to a complainant runs the risk of appearing to
3 be commenting on her sexual morality. That doesn't
4 appear to me to be what was at play in this particular
5 case.

6 Q Thanks very much.

7 THE CHAIR: Any questions?

8 MS. PETERSEN: I do.

9 The Panel Questions the Witness

10 Q MS. PETERSEN: Professor Cossman, just by way
11 of clarification, I just need a clarification as to
12 what you found Justice Camp's knowledge gaps to be at
13 the outset of your educational program. And I
14 understood you say it was your assessment that he
15 understood the law of sexual assault in Canada today;
16 that was not one of his deficiencies. And I also
17 understood you to say that in your assessment, he did
18 not understand why the law had evolved to be what it is
19 today; he didn't understand the reasons for the change.
20 Where I need clarification is: What was your
21 assessment as to the state of his knowledge when you
22 first met with him with respect to the history and the
23 evolution of sexual assault? Whether he understood why
24 it had evolved, I believe you've already said you
25 thought he was deficient there --

26 A Yes.

1 Q -- but did he -- was he familiar with the evolution?

2 Did he know that it had evolved, in your assessment?

3 A I don't think he could have told me about the
4 particular reforms in '83 and the particular reforms in
5 '92. I think that he could have repeated some of it
6 based -- based specifically on, say, the Ewanchuk case
7 that reviews a little bit of the history, some of the
8 other Supreme Court of Canada decisions that review a
9 bit of the history, but that he really didn't -- that
10 he really didn't know, say, when the marital rape
11 exception was abolished from the Criminal Code or what
12 the traditional role of utmost resistance has been in
13 the law. Now, you know, we didn't actually -- it
14 wasn't an official doctrine, but the way in which it
15 has informed the law, I don't think that he understood
16 that.

17 And the one thing I would say, though, I said that
18 he understood the law -- the Criminal Code as it exists
19 today. The one place where I would correct that was
20 simply around intoxication and the complainant. That
21 was something where I think that there was -- and that
22 was what he was seeking advice from or seeking
23 submissions from -- from Crown counsel, and we had very
24 long discussions about intoxication and sexual assault
25 law. So that was one small lacuna in the actual
26 application of the law, but otherwise, it really was

1 about the history and the evolution.

2 Q Okay. Thank you.

3 THE CHAIR: Anything arising from that,
4 Ms. Hickey?

5 MS. HICKEY: No. Thank you.

6 THE CHAIR: Mr. Addario?

7 MR. ADDARIO: No. Thanks very much.

8 THE CHAIR: Thank you, Professor Cossman.
9 You're excused.

10 (WITNESS STANDS DOWN)

11 THE CHAIR: Counsel, I think we'll take
12 the morning adjournment now for 15 minutes.

13 (ADJOURNMENT)

14 THE CHAIR: Yes, Mr. Addario.

15 MR. ADDARIO: Thanks for coming back.

16 THE CHAIR: Thanks for inviting us.

17 MR. ADDARIO: Dr. Haskell.

18 LORI HASKELL, Affirmed, Examined by Mr. Addario

19 THE CHAIR: Thank you, Dr. Haskell.
20 Please be seated.

21 Q MR. ADDARIO: Looking at Tab P in the
22 exhibit to the Agreed Statement of Fact, Dr. Haskell,
23 you are a clinical psychologist registered in Ontario?

24 A Yes, I am.

25 Q And the clinical portion of your work involves you
26 providing psychological treatment to adults and

1 couples, diagnostic and assessment treatment, and
2 forensic assessments?

3 A Yes, it does.

4 Q And you're an assistant professor of psychology at the
5 University of Toronto?

6 A Psychiatry, yes. I'm in the --

7 Q Department of Psychiatry.

8 A Psychiatry, that's right.

9 Q And you're the research associate at the Centre for
10 Research on Violence Against Women and Children at the
11 University of Western Ontario, and you have been for
12 the last 14 years?

13 A Yes.

14 Q A member of both the College of Psychologists and the
15 Canadian Psychological Association?

16 A Yes.

17 Q You've written multiple books and articles?

18 A Yes.

19 Q Including a book on first stage trauma treatment, a
20 guide for mental health professionals working with
21 women?

22 A Yes, I have.

23 Q An academic article called "Taking a Trauma Informed
24 Approach to Law"?

25 A Yes.

26 Q Another article called "The Politics of Women's Safety,

1 Sexual Violence, Women's Fear, and the Public/Private
2 Split"?

3 A Yes.

4 Q I see you've written a monograph for the Centre for
5 Addiction and Mental Health on "The Front-Line Worker's
6 Guide to Supporting Women who Have Post-Traumatic
7 Stress"?

8 A Yes.

9 Q I see on page 4 that you've done a great deal of
10 trainer and expert-witness work?

11 A Yes.

12 Q Most recently, this summer, you were an expert witness
13 at a disciplinary hearing for the College of Massage
14 Therapists?

15 A In British Columbia, yes.

16 Q Right. And that concerned testimony on typical
17 assault -- sexual assault victim behaviour?

18 A Yes.

19 Q And I count numerous trainings for Crown counsel at the
20 Ministry of the Attorney General for various provinces?

21 A Yes.

22 Q You gave the keynote address at the British Columbia
23 Justice Summit on the Importance of a Trauma Informed
24 Justice System?

25 A Yes, I did.

26 Q And I see, just looking at pages 5 through 6, that

1 you've spoken to many other groups and agencies in the
2 administration of justice on the topic of trauma and
3 sexual violence?

4 A Yes.

5 Q And it looks like there are dozens of keynotes and
6 lectures to police, judges, and prosecutors on the
7 subject of trauma, sexual violence, and effective
8 responding in their work settings?

9 A Yes.

10 Q And that's all set out at pages 6 to 10 of your CV?

11 A Yes. Sorry.

12 Q And I'm looking at page 10 and following, and it's set
13 out there that you train professionals in the
14 administration of justice including judges, lawyers,
15 and law enforcement agencies about the subject of
16 trauma and sexual violence and how they might apply
17 knowledge in their workplace settings?

18 A Yes.

19 Q It seems -- maybe you could correct me if I'm wrong --
20 that roughly half your work is giving keynotes and
21 professional training to police, Crown counsel, and
22 other professionals on those topics; is that about
23 right?

24 A Yes, exactly.

25 Q And you've been a trainer and educator for about the
26 past ten years?

1 A I think probably around, yeah, about 12 years now.

2 Q And in your -- in the clinical side of your practice,
3 do you counsel men and women who are survivors of
4 abuse-related trauma?

5 A Yes, I do.

6 Q Childhood and adult?

7 A Childhood and adult experiences.

8 Q And for how many years have you been seeing clients?

9 A 35.

10 Q And would I be right that one recurring theme of the
11 articles that you've written is about women's
12 experience of male violence?

13 A Yes, it is.

14 Q And what topics do your keynotes cover?

15 A I address the -- I'm sort of now introducing
16 neuroscience so the neurobiology of fear and trauma
17 into different work environments. So I've trained
18 police in terms of understanding how victims respond to
19 a sexual assault or a domestic -- experience of
20 domestic violence, how it affects memory, victim
21 demeanour, the inability to give a coherent narrative,
22 why they have sensory fragments. So it talks a lot
23 about how they should be interviewing.

24 I've also trained Crown attorneys in terms of
25 looking through a different lens of understanding
26 neurobiological and trauma responses.

1 Q What else do you teach Crown counsel about?

2 A I teach them how to interview. I teach them about
3 victim demeanour, ways not to be threatening, ways to
4 take into consideration someone who neurobiologically
5 has been traumatized, ways not to trigger them to limit
6 their ability to be able to speak coherently about what
7 they've experienced, ways to understand victim
8 demeanour, that -- things that have been used to
9 undermine people's credibility because people didn't
10 understand the neurobiological responses.

11 And I also address rape myths, but I -- I think
12 rape myths are often presented not in their full depth.
13 I think they're multidimensional. I think there's a
14 neurobiological component as well as gender
15 socialization as well as social context, and I think in
16 order for people to dislodge their deeper assumption
17 about rape myths, I think they need more
18 comprehensible, thorough information so that it makes
19 sense. I mean, just directing people not to think
20 something is inadequate, but when they have deeper
21 information of, This is why those myths are so
22 persistent, so pervasive, and here's a different way of
23 understanding why they are, I've had many Crowns and
24 police come up and say, you know, I've missed this;
25 this is information that I didn't know. I mean, a lot
26 of people don't understand, I think, especially the

1 neurobiological implications of it.

2 Q What is it -- what's the knowledge deficit these Crowns
3 and police officers express to you about sexual
4 violence?

5 A Well, I -- I think, I mean, for instance, for police,
6 for police to go in and interview someone right after
7 they've been assaulted, when their brain hasn't even
8 processed the traumatic experience, people can usually
9 typically only talk about it in fragments. They can't
10 give a narrative. They can't talk about details.

11 I mean -- and the more that people are -- I mean,
12 I -- when I train police, they'll say -- you know, one
13 detective said, you know, We talk backwards and ask
14 them to tell the story, and people can't typically give
15 a narrative.

16 They also don't understand that people, when
17 they're traumatized, their perceptual field narrows.
18 Neurobiologically, we know this happens. So they're
19 not taking in lots of details about the room, the
20 colour, what these walls look like, how many people are
21 here. They're focusing on very limited information.
22 And so, again, people are asked all kinds of peripheral
23 information that isn't part of their experience. It's
24 not how the brain encodes information when people are
25 terrified or frightened.

26 Q What about Crown counsel, what about their knowledge

1 deficits?

2 A Crown counsel is very open and receptive. I mean, I --
3 because I've been an expert in the courts and I have to
4 read transcripts, I often read information that's
5 inadequate. I'm asked to give an expert opinion, but
6 people -- because they don't look at the
7 neurophysiological responses and simply look at
8 behaviour -- because if someone says, I did nothing --
9 I mean, you know, there was one expert case where, you
10 know, the offender was pounding at the door, and the
11 woman just opened the door, and they're saying, Well,
12 why didn't you call the police? Why didn't -- you
13 know, all these sort of very logical things. And she
14 had no explanation. But we now know through
15 neurobiology that once -- once the fear circuitry is
16 triggered, that parts of the left prefrontal cortex
17 shut down. People can't think through; they can't
18 strategize. They're no longer organizing a response.
19 They're typically just caught up in that moment of fear
20 and terror and how to survive.

21 So a lot of -- of course, someone who has been
22 traumatized doesn't understand what happened to their
23 brain. So they're asked questions; they're asked to
24 explain behaviour that they're unable to explain.

25 Q All right. So fair enough. That's the -- that's the
26 science. What about the knowledge deficit for people

1 who are involved in bringing these cases to court,
2 police officers and the lawyers; have you had an
3 opportunity to make observations about that?

4 A Very much so, and I -- I mean, one of them will say
5 they didn't have access to the -- this information.
6 They didn't know it. I mean, I've had lots of police
7 and Crowns and other, you know, people in the judicial
8 system say, I feel really badly; these are things I
9 didn't know, and I've made errors. You know, I've -- I
10 mean, police, I mean, surprisingly are very
11 self-reflective about it. I don't think most people go
12 into this work wanting to harm people, and I think a
13 lot of people, when they realize there was big gaps in
14 what they understood and then -- and their methods of
15 doing their work, they want to change it.

16 Q Do you ever teach at the National Judicial Institute?

17 A Yes, I did.

18 Q Once or more than once?

19 A Twice, I think, like, through a series.

20 Q And have you provided gender-sensitivity counselling?

21 A Yes, I have.

22 Q And have you provided other kinds of counselling around
23 the topics of rape myths or gender biases or trauma
24 responses?

25 A Yes, I have.

26 Q Have you trained judges about traditional

1 misperceptions and biases?

2 A Yes, I have.

3 Q Lawyers, we've already covered --

4 A Right.

5 Q -- Crown lawyers.

6 A Right.

7 Q Have you provided counselling and advice to other
8 professionals besides lawyers and judges?

9 A Yes, I have.

10 Q And we've covered the one hearing where you testified
11 at the BC College of Massage Therapists.

12 A That's right.

13 Q Have you testified other times?

14 A Yes, I have.

15 Q As an expert?

16 A Yes.

17 Q On this topic?

18 A Yes.

19 Q And you're here because you met with Justice Camp?

20 A Yes.

21 Q How many times did you meet with him?

22 A We met from November to August. And I counted it up;
23 it was 13 clinical hours.

24 Q And I'm just going to ask you to describe slowly, so
25 the committee can write, what domains you addressed
26 with him.

1 A I talked about -- I talked about the neurobiology of
2 fear and trauma. I talked about typical responses that
3 victims have to sexual violence, to overwhelming,
4 traumatic experiences. We discussed how the -- I mean,
5 the fear circuitry is one of the most studied areas of
6 neuroscience and how that changes victim responses,
7 that one of the things that happens -- a lot of people
8 don't realize -- is that as soon as the fear circuitry
9 is triggered, the brain stem is inhibited, and so
10 people go into a freeze response. And as well, certain
11 parts of the left hemisphere are deactivated, including
12 the Broca's area. So people often don't have access to
13 speech. They can't yell. The idea that people scream
14 or say things is not available oftentimes.

15 In order not to go into a freeze response, people
16 need to have conditions, responses of -- I mean,
17 soldiers, police have this response, where they're
18 trained to be able to still go into fight response.
19 But typically, most women don't. Women are not trained
20 to have a fight response, and so when women's fear
21 circuitry is triggered, women often go into a freeze.

22 Q Is that part of what you mean by the "neurobiology of
23 trauma"?

24 A Yeah, exactly.

25 Q And --

26 A Those weren't all the domains. There's more domains.

1 Q Oh, sorry. Go ahead.

2 A Sorry. That was just the neurobiological part. So
3 then we talked about traumatic responses, dissociation.
4 We talked about the fact that some women, who -- if
5 they've been sexually abused early in their lives, when
6 they are threatened or approached by someone, they
7 often go into an automatic dissociative response. So
8 it looks like they did nothing to defend or protect
9 themselves because that response is now a conditioned
10 response, and it happens immediately. So they're more
11 vulnerable to dissociate than other women.

12 So we talked about long-term traumatic responses
13 as well as more immediate. Then we talked about a
14 gender socialization, how women have been socialized to
15 accommodate, how women have -- are socialized not to
16 have the same kind of control and power, and we also
17 talked about social location and class, how a young
18 street woman who's impoverished, what are the -- what
19 are the factors that shape her behaviours and
20 responses?

21 So we looked at those domains, and then we looked
22 at Justice Camp's assumptions, experiences that would
23 have motivated his thinking, his understanding. So we
24 then deepened it to go into the psychological realm.

25 Q Did you do psychotherapy?

26 A Yes, I did.

1 Q Were your meetings with Justice Camp lecture style,
2 keynote? Did you give him keynote addresses?

3 A No.

4 Q Were they therapeutic, or a little bit of both?

5 A It was -- it was an ongoing dialogue. Sometimes it
6 would -- there would be -- I mean, no one learns if
7 they're threatened, so it was a sense of a dialogue
8 back and forth of challenges, of adding information, of
9 deepening the process, asking for a lot of personal
10 reflection. I mean, I think education is
11 transformative and relevant when people reflect on what
12 it means for them in terms of their own life, their own
13 thinking, their own thoughts. And people have to feel
14 things. So I -- you know, to make that information
15 relevant and deeper, we went into much more of a
16 psychological realm. So it would be an ongoing, you
17 know, discussion.

18 Q As between motivated and resistant, how would you
19 describe Justice Camp?

20 A I would never say he's blatantly resistant. I think --
21 I think initially he was defensive, protective. He had
22 been humiliated. He wanted to believe that he didn't
23 get the law completely wrong. So there was a sense of
24 listening to what things -- and his thinking about
25 the -- why he made the decision he did, and then we
26 went from there in terms of me offering, then,

1 alternative interpretations and a reason why, reason
2 why there would be a gap in thinking.

3 And I don't think there was ever resistance to
4 those interpretations. I think there was a -- a
5 curiosity, an interest. And they -- there wouldn't be
6 one thing we would talk about once. We would circle
7 back and reflect and integrate it deeper in another
8 session.

9 Q And did you offer him your perspective on sexual
10 violence and complainant behaviour?

11 A Yes, I did.

12 Q As between resistant or receptive, how would you
13 describe Justice Camp?

14 A I would say receptive, curious, interested. He told me
15 that many of the things were new information, which
16 I -- I suspected they would be because they are when I
17 do a lot of my trainings. There were things he -- he
18 had no idea about. He never received that information.

19 Q Were the things that he had no idea about, were they
20 consistent with knowledge gaps that you've experienced
21 with other professionals in the administration of
22 justice?

23 A Yes.

24 Q Was there reading involved?

25 A Yes.

26 Q I put a list in front of you. The registrar has a copy

1 of it. Is that the reading list?

2 A Yes, it is.

3 MR. ADDARIO: Is that Exhibit 9, Chief
4 Justice?

5 THE CHAIR: Yes. Thank you. We'll mark
6 that.

7 EXHIBIT 9 - Reading list prepared by
8 Dr. Haskell

9 Q MR. ADDARIO: Are you -- did you ask him to
10 read those articles and books?

11 A Yes, and I -- he also, on his own, looked up things on
12 the neurobiology of fear and the neurobiology of trauma
13 and attended to it. And this was -- these are more
14 legal documents, but I was -- you know, I think
15 changing thinking happens when people have access to
16 how other people are thinking about things. So it's
17 not just what you think, but what are other people
18 thinking about these same issues and why? It's a
19 pedagogical approach to help someone with a more
20 expansive way of looking and perceiving and
21 understanding.

22 Q Are some of these critical of the way the legal system
23 approaches sexual violence?

24 A Yeah, definitely. I mean, David Tanovich's is quite
25 powerful in talking about what happens in the
26 courtroom, what's tolerated, with all kinds of

1 examples. But, yes, these are looking at a lot about
2 the myths, why there's been legal reform, and I
3 think -- I think David Tanovich, he's a law professor
4 at Windsor. I think he gets at why we need legal
5 reform as well as why we need individual change in
6 terms of judicial thinking and understanding and
7 education.

8 Q And Tanovich's article is quite recent.

9 A Yes, it is.

10 Q And, again, as between resistant and perceptive, how
11 was Justice Camp in relation to those articles?

12 A Very interested.

13 Q Are you satisfied he read those articles and books?

14 A We -- we didn't discuss all of them in depth, but we
15 definitely reviewed and went back to some of the
16 issues.

17 Q Are you satisfied he understood the concepts
18 identified?

19 A Yes.

20 Q And how did you reach that conclusion?

21 A I -- so I think for a long time, we were discussing,
22 Here's the gaps; here are the things that are missing.
23 Justice Camp immediately had, in his early meetings
24 with me, talked about the fact that he knew he made
25 mistakes, and he knows that he created a harm, and he
26 wanted to, of course, apologize for that harm and make

1 amends. But I wanted him to understand, Why those
2 harms? It wasn't just, Here's an understanding, but
3 why those mistakes? What was it about your life
4 experience, your thinking? What are things in your
5 life that motivated you to say the things you did, to
6 make these kinds of comments, to have these kinds of
7 gaps in your thinking? And so through our discussions
8 we would, of course, keep reviewing it and having an
9 ongoing dialogue about those things. And I think it
10 got to the point where he was reacting in a similar way
11 to -- many of us in the anti-violence sector have said,
12 you know, that judicial education is inadequate, and so
13 he started to see there's inadequacies; there's things
14 that should -- everyone should have access to.

15 He also started to say things that, again, all of
16 us in the system found as legal players and
17 violence workers would say that it's very hard to -- to
18 think that the criminal justice system, the way it is
19 right now, can grapple with these complexities 'cause
20 once we understand the complexities of women's
21 responses and how they've been understood, it's hard
22 to -- you know, we see time after time, how it's failed
23 in the system.

24 Q You mean that actors in the system under-
25 some of the science associated with sexual violence?

26 A Yeah. And so women's credibility's undermined,

1 especially if they can't -- they don't remember things.
2 So when you look at -- yes. And so he was saying to
3 me -- he said, You've now -- I haven't understood these
4 complexities. And he was on his own. He wasn't just,
5 you know, saying back -- he was talking about how
6 difficult this is now to -- to look at the kind of
7 legal reform we need in the judicial system. So that
8 to me -- that would be where I would want someone to
9 go. That's my goal in terms of education, that someone
10 would start to apply it and integrate it and have a
11 critical experience.

12 Q Is he teachable, Justice Camp?

13 A Yes, definitely.

14 Q Why is that?

15 A I -- he's very motivated, and I think people learn best
16 when they're motivated. He really wanted to understand
17 his errors. He wanted to be able to do things better.
18 He's, I think, besides that, intellectually curious and
19 really wanted to have an in-depth understanding. But I
20 was also wanting him to be able to mentalize, which is
21 the process of reflecting on your own biases and
22 assumptions, your own thinking moment to moment, while
23 you take into consideration someone else's thoughts and
24 thinking and what would shape their behaviour. So I
25 think it's not just applying the law but, what we would
26 want from judges would be to consider, Why am I

1 thinking this way? You know, what's shaped my
2 thinking, and why is this person thinking differently
3 and acting differently? Being able to hold both those
4 perspectives.

5 Q One issue the committee is investigating is whether
6 some myths were so well-known and so obvious to anyone
7 that only a determined sexist or incorrigible
8 misogynist would repeatedly express them in the course
9 of the trial. And so with that in mind, could I just
10 ask you if you read the Wagar transcript?

11 A I read sections of it that were relevant to our work.

12 Q All right. And accepting that you've counselled,
13 lectured, and treated judges, police officers, and
14 Crown counsel, could I ask you this: In counselling
15 and lecturing judges, Crown counsel, police and others,
16 have you encountered misunderstanding or ignorance
17 about trauma and myths in the sexual violence context?

18 A Yes.

19 Q And have you encountered any confusion about how or why
20 rape myths have been discredited?

21 A Yes.

22 Q And in dealing with those members of the legal,
23 judicial, or law-enforcement community, have you
24 encountered such misconceptions once or more than once?

25 A More than once. Many times.

26 Q Okay. Thanks very much.

1 Ms. Hickey Cross-examines the Witness

2 Q MS. HICKEY: Good morning, Dr. Haskell.

3 A Good morning.

4 Q You mentioned, Dr. Haskell, that you were initially
5 retained in November of 2015; is that correct?

6 A Yes.

7 Q And who were you retained by?

8 A Frank Addario.

9 Q And you've given evidence that you had sessions with
10 Justice Camp between November of 2015 and August of
11 2016 for roughly 13 clinical hours?

12 A That's right.

13 Q I know you reviewed this to a degree in your evidence,
14 but I'd just like to pinpoint a little more precisely;
15 what was the purpose for which you were retained?

16 A I was retained to do training and education with
17 Justice Camp around gender sensitivity, understanding
18 trauma responses. I believe Mr. Addario understood
19 that I had expertise in this area and was given my
20 name.

21 Q And do I understand that in the course of your
22 retention, you not only did the training and education
23 on gender sensitivity and understanding trauma
24 response, but that your role evolved into providing
25 psychotherapy services as well?

26 A I never separate those issues.

1 Q I see.

2 A And when I'm working with someone in an individual way,
3 even if I'm doing a broad training, I would have
4 portions of the training that I would ask people to
5 reflect on their own thinking, their own processes,
6 belief systems. I think learning has to be more
7 experiential. I think people have to feel things. So
8 that was always my assumption, that in terms of coming
9 in to see me, that I would take that approach. Why do
10 you think this way? What is it about your life, your
11 experiences? So it would definitely always go into a
12 psychological realm.

13 Q Okay. So just while we're on that, do I understand
14 that -- through your discussions with Justice Camp that
15 you're not here today to discuss with us those issues
16 that arose during the psychotherapeutic component? I
17 appreciate you saying they're not separate, but to the
18 extent you explored personal issues of his that may
19 have led to him acting the way he did or saying the
20 things that he did, do I understand that
21 confidentiality is being claimed over that aspect of
22 the discussion?

23 A Yes.

24 Submissions by Ms. Hickey (Other)

25 MS. HICKEY: And I just wanted to direct
26 that to the -- to the committee. My understanding is

1 Dr. Haskell is here to speak to the type of training
2 and education and sensitivity aspects of her
3 counselling with Dr. -- sorry, with Justice Camp, but
4 to the extent that some of that involves probing
5 personal background issues, that there is
6 counsellor-patient confidentiality being claimed such
7 that those issues are not going to be inquired about.

8 I have had discussions with Mr. Addario about
9 this. It's my view that it's Justice Camp's choice as
10 to whether he's prepared to waive that confidentiality,
11 and if he is not, it's my view that given that Justice
12 Camp may continue to sit as a justice of the Federal
13 Court, that in a public inquiry, the probing of the
14 kinds of background issues that Dr. Haskell has gone
15 into don't add enough probative information to outweigh
16 the potential prejudice of the disclosure of
17 background, potentially sensitive personal matters. So
18 that's the approach that has been taken, and I wanted
19 to convey that to the committee.

20 THE CHAIR: I take it, Mr. Addario, that
21 from your perspective, you're not advancing any sort of
22 defence based on Justice Camp's psychological state?
23 Submissions by Mr. Addario (Other)

24 MR. ADDARIO: There's no medical defence
25 here, no, sir, and I think Ms. Hickey has fairly
26 described the agreement. There is a doctor-patient

1 relationship, and I invited Dr. Haskell to discuss
2 intimate matters, if I could put it that way, as a
3 doctor would with a patient, and I didn't intend in any
4 way to introduce them into a public hearing, nor the
5 fruits of them.

6 THE CHAIR: All right. Ms. Hickey, is it
7 your position that delving into that area would not
8 produce any evidence that's relevant to the committee's
9 inquiry or that it simply doesn't ascend to the level
10 of probative value that would outweigh its potential
11 prejudice?

12 Submissions by Ms. Hickey (Other)

13 MS. HICKEY: It's really the latter,
14 Associate Chief Justice Cullen. These kinds of
15 processes don't allow for discovery examinations. They
16 allow for limited kind of will says. Quite frankly, I
17 don't know the information that Dr. Haskell is relying
18 on and has had discussions with Justice Camp about. My
19 approach to this was unless Justice Camp felt that the
20 information that was discussed should be disclosed in
21 this hearing in terms of providing some explanations
22 about why he made some of the comments that he did,
23 what formed the beliefs that he had that were reflected
24 in some of the comments that were stated, if he did not
25 choose to put that before this committee, then he does
26 so recognizing that this committee will make its

1 determinations without that knowledge. It will make
2 its decisions based on the information that Dr. Haskell
3 is prepared to disclose, and based on that, when it's
4 considered that the psychotherapeutic aspects of this
5 relationship do involve reviews of background personal,
6 intimate matters in a public forum for potentially a
7 sitting judge, it was my view that the probative value
8 doesn't outweigh the potential risks associated with
9 that.

10 THE CHAIR: Is it your view that this
11 attracts the -- the Wigmore test for -- for privileged
12 evidence?

13 MS. HICKEY: I wasn't framing it in the
14 context of Wigmore privilege. It really was simply
15 framed in counsellor-patient confidentiality, which is
16 waivable by the patient but has not been waived in this
17 instance.

18 Just so the committee understands where my
19 questions were intended to go, given that constraint, I
20 was going to review with Dr. Haskell some of the same
21 territory that was reviewed with Professor Cossman in
22 terms of discussions about stereotypical assumptions
23 that were recognized by Justice Camp, the type of
24 dialogue that Dr. Haskell had with him about those
25 areas, an exploration of the kinds of myths that
26 underlined the comments that were made in the Wagar

1 case, and then go beyond that to just have some general
2 discussions about Dr. Haskell's observations about the
3 kinds of attitudes that were displayed during the Wagar
4 trial and then have a look at some of the particular
5 allegations and Dr. Haskell's observations of those and
6 her interaction with Justice Camp about those. So
7 those are the general areas that I was intending to
8 pursue.

9 THE CHAIR: I just want to confer with my
10 colleagues.

11 MS. HICKEY: Certainly.

12 THE CHAIR: All right. Thank you,
13 Ms. Hickey. I think it's our consensus that if you
14 just carry on with your cross-examination on the
15 footing that you've identified, the committee will have
16 a chance over the lunch hour just to consider what you
17 and Mr. Addario have said.

18 MS. HICKEY: Certainly.

19 THE CHAIR: And we'll -- if there's a need
20 for a ruling, we'll make one at some stage this
21 afternoon.

22 MS. HICKEY: Thank you.

23 THE CHAIR: All right. Thank you.

24 MR. ADDARIO: Could I just say that if you
25 want further or more detailed submissions, I'm happy to
26 make them.

1 THE CHAIR: Right.

2 MR. ADDARIO: I'm also happy to outline why

3 I believe that if it were argued out that you would

4 reach the conclusion that the evidence is inadmissible.

5 THE CHAIR: We may ask for that,

6 Mr. Addario, but we'll -- we'll certainly contemplate

7 that over the lunch hour. Thank you.

8 MR. ADDARIO: Thank you very much.

9 THE CHAIR: Thank you.

10 Yes, Ms. Hickey.

11 MS. HICKEY: Thank you.

12 Ms. Hickey Further Cross-Examines the Witness

13 Q MS. HICKEY: So, Dr. Haskell, you've

14 outlined the purpose for which you were retained.

15 You've mentioned earlier that you reviewed portions of

16 the transcript, I believe. Did you review the

17 complaint that the law professors had filed?

18 A Yes, I did.

19 Q And did you review some of the newspaper articles that

20 were in existence at that time?

21 A I certainly did.

22 Q Okay. What was your reaction to all of that?

23 A When I read them, I was -- I found them disturbing. I

24 found them exactly the kinds of issues why I'm

25 dedicated to working on education and social change and

26 legal reform. When I was asked to see Justice Camp, I

1 worried that he would be resistant, contemptuous,
2 arrogant, and not open to learning. And part of --
3 that's what motivated me to do it, because I feel that
4 in my work with every sector, I learn a great deal
5 about how to do this work more effectively, and I
6 like -- and I thought this would be a great opportunity
7 to think of, when someone is resistant and has flawed
8 thinking, how do you actually help that person change
9 and think differently? How do you influence that
10 process?

11 Q And as you started your meetings with Justice Camp, did
12 you find him to be resistant and to have some flawed
13 thinking?

14 A Yes, I -- not resistant. I think self-protective.
15 What I did realize, that he wasn't contemptuous. I --
16 I didn't see -- I thought he would be a misogynist. I
17 thought he would have a contempt -- a generalized
18 contempt for women and would, you know, assume a
19 male-entitled dominant position and see women in
20 diminished capacities. And that wasn't my experience.

21 I believe he had some sexist assumptions that were
22 misinformed. I mean, it was -- you know, it was
23 interesting not to have to deal with that, to think of,
24 Okay, this -- we can get into a deeper process of
25 looking at what has shaped this thinking, and how can
26 this -- how can this thinking now shift?

1 Q So can you distinguish for me sexist assumptions and
2 misogynistic thinking?

3 A I think misogyny is a -- is a more pervasive,
4 all-encompassing demeaning -- I think it's an attitude
5 and behaviour that gets addressed in all kinds of --
6 you know, and I've worked with people who have come
7 into my office, have been very contemptuous, and it's,
8 you know, there's a lot of hostility expressed;
9 whereas, a sexist belief or attitude is -- is really
10 one of misinformation of -- based on gender
11 stereotypes, of -- of misinformation. I don't see it
12 as a pervasive attitude.

13 Q So what type of misinformation or stereotypes leads one
14 to become a sexist?

15 A I think not understanding why women don't assert
16 themselves, not understanding women's accommodation,
17 how women are socialized to still want to please, how
18 not having equal power and influence in society means
19 women have to come up with all kinds of different
20 adaptations and approaches to be able to live their
21 lives, and that a lot of those adaptations and
22 behaviours that women develop in order to live in a --
23 in a society where we still have profound gender
24 inequality, those very adaptations that are used often
25 to criticize women or to demean them.

26 Q In addition to having some sexist assumptions, I

1 believe is how you phrased it, did Justice Camp
2 demonstrate some gender assumptions and biases?

3 A Yes.

4 Q And is that different from having sexist assumptions?

5 A I -- I see them as similar. I think just different
6 ways of sort of framing those issues.

7 Q Okay. And when you first met with him, how did you
8 determine that he had those kinds of gender biases or
9 sexist assumptions?

10 A We had very in-depth discussions around -- I mean, I --
11 I would present -- we looked at the problematic things
12 he said during this trial and explored them.

13 Q Were there other biases or assumptions that you felt
14 were at play with Justice Camp in how he conducted the
15 Wagar trial?

16 A I think he also missed some things around social
17 location and class, that someone who's disempowered,
18 impoverished -- you know, I think someone who has very
19 little agency and power in life would -- a behaviour
20 like shoplifting, rather than seeing it as a moral
21 issue would be, perhaps, what I mean by an adaptation.
22 Someone, I mean, not -- a lot of shoplifting isn't
23 about survival; it is about having a way to have some
24 kind of power, right, to be able to express agency the
25 person doesn't have in their life.

26 So looking at the choices and the coping. Someone

1 who would live on the street, why would they have those
2 kinds of behaviours and responses? So it wasn't just
3 gender. We also looked at social class. We also
4 looked at history of abuse. How would someone who's
5 been harmed earlier in their life by sexual or physical
6 abuse or abandonment -- how does it change who they
7 are, how they behave, how they respond?

8 Q What level of understanding would you say Justice Camp
9 had with respect to these issues of gender assumptions
10 or some of the social-location matters that you've just
11 referenced when you first met with him?

12 A I mean, there was definitely gaps. I don't know how to
13 talk about level. I mean, there's -- in this specific
14 arena of what we were discussing, there was gaps that
15 needed to be addressed and explained differently to
16 offer an alternative explanation.

17 Q What were those gaps?

18 A Again, not understanding how the history of trauma or
19 abuse would limit someone's capacities to be able to
20 resist, to express their needs, how it would undermine
21 their ability to have social power.

22 Q So when someone holds these biases or assumptions, are
23 they easy to change?

24 A It depends on the person's motivation. I mean, I -- I
25 mean, those are the questions I am always asking myself
26 because I spend, like Mr. Addario pointed out, over

1 half my work doing education and training. So I'm
2 always wondering, Why are some people so -- so able to
3 grasp it? And I find that the people who are really
4 easily changed and want this information are people who
5 are working on the front lines, are seeing this every
6 day, and say, I see these behaviours, I react to them,
7 and I really, truly realize I didn't understand the
8 meaning of them. So I think those people are really
9 motivated. I think when it applies to people's work,
10 when it's relevant to their -- to their daily lives,
11 there could be high motivation.

12 I think oftentimes if it's didactic or abstract,
13 people may not see it as relevant. And I also realize
14 even training with different sectors, if I'm training
15 police or giving police information, it has to be
16 relevant to their work. I can't give general, sort of
17 theoretical understandings around sexual violence. It
18 has to -- it actually has to be translated. What does
19 this mean for what you do? What does this mean for
20 what you see? And I think that people are really
21 motivated and interested and curious.

22 Q And how did you rate Justice Camp's motivation?

23 A Very high.

24 Q And what approach did you take with him to effect some
25 changes of these attitudes, assumptions, and biases?

26 A Well, once we had a relationship where there was enough

1 trust and safety, I was able to challenge him --
2 challenge him on his thinking and never in a harsh way
3 or a shaming way -- I don't think that's really
4 productive -- but a way of saying, There's a different
5 way of thinking of this, of understanding this, and
6 interpreting this. Here's different information,
7 here's ways that people miss, and here's things you
8 should think about.

9 Q Dr. Haskell, I'm wondering if you could use some of the
10 examples in the Statement of Allegations to illustrate
11 what you're just saying in terms of how you challenged
12 him. I'll just put a copy in front of you.

13 Certainly, some of the questions that have been
14 frequently reported on in this case fall under
15 Allegation 3.

16 THE CHAIR: Ms. Hickey, I'm sorry to
17 interrupt you. We've hit the lunch-hour period. Is
18 this an appropriate time? I think you're launching off
19 on a --

20 MS. HICKEY: Certainly.

21 THE CHAIR: -- different area. All right.
22 We'll take lunch now.

23 MS. HICKEY: Thank you very much.

24

25 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

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CERTIFICATE OF TRANSCRIPT:

I, Sarah Howden, certify that the foregoing pages are a complete and accurate transcript of the proceedings, taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 9th day of September 2016.

Sarah Howden, CSR(A)
Official Court Reporter

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EXHIBITS ENTERED IN THE HEARING

SEPTEMBER 8, 2016

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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING
VOLUME 4

Calgary, Alberta
September 8, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta
3 _____
4 September 8, 2016
5
6 Associate Chief Justice Chair
7 Austin F. Cullen
8 Associate Chief Justice Committee Member
9 Deborah K. Smith
10 Chief Justice Raymond P. Whalen Committee Member
11 Ms. Karen Jensen Committee Member
12 Ms. Cynthia Petersen Committee Member
13
14 Ms. Marjorie Hickey, QC Presenting Counsel
15 Michael Murphy
16
17 Owen Rees For Inquiry Committee
18
19 Frank Addario For Justice Camp
20 Megan Savard
21 Andrew Burgess
22
23 S. Murphy, CSR(A) Official Court Reporter
24 K. Attrell Registrar
25 _____
26

1 (PROCEEDINGS COMMENCED AT 2:03 PM)

2 Ruling (Other)

3 THE CHAIR: Ms. Hickey, just before you
4 resume, I just want to indicate to counsel that the
5 committee has discussed the issue of the
6 confidentiality of that portion of Dr. Haskell's
7 dealings with Justice Camp relating to his, what's been
8 described as his psychotherapy. We're satisfied, in
9 light of Mr. Addario's assurance and your agreement,
10 that he's not advancing any sort of medical
11 psychological reason for Justice Camp's conduct in the
12 Wagar trial; therefore, that portion of her evidence
13 has marginal, if any, relevance to the issue
14 confronting us, and, accordingly, we're satisfied that
15 the position which presenting counsel has taken should
16 prevail.

17 MS. HICKEY: Thank you.

18 LORI HASKELL, Previously Affirmed

19 Ms. Hickey Cross-examines the Witness

20 Q MS. HICKEY: Dr. Haskell, when we left off
21 this morning, we were discussing the exercise that you
22 went through with Justice Camp to challenge him with
23 respect to some of his beliefs, and I believe your
24 evidence was that that is the approach that you take to
25 try to assist someone in changing their beliefs, by
26 challenging them and questioning them about that. And

1 we were just about to look at some of the specific
2 comments in the statement of allegations. Do you have
3 that in front of --

4 A Yes, I do.

5 Q -- you, Dr. Haskell?

6 A Yes, thank you.

7 Q And Allegation 3, I think, was the first one I had
8 asked you to turn to. And appreciating what Associate
9 Chief Justice Cullen has just indicated in terms of the
10 non-disclosure of the psychotherapeutic element of your
11 relationship, what can you say as to how you challenged
12 Justice Camp about his choice of language in using
13 phrases like: (as read)

14 Why didn't she just sink her bottom down into
15 the basin?

16 Why couldn't she keep her knees together?

17 If she skews her pelvis slightly, she can
18 avoid him.

19 What did you do to address those issues?

20 A I offered alternative ways to understand those
21 behaviours, so I delineated from different, I think,
22 domains that explain and help deepen our understanding
23 of rape myths and applied them to the situation. So
24 I'm not -- I don't know anything about this
25 complainant, but I suggested that if she was someone
26 who had been abused early in her life, there's a chance

1 that she dissociated as soon as she felt there was a
2 threat. And if she disassociated, she wouldn't be
3 connected to her body, and she certainly wouldn't be
4 able to be, most likely, strategizing what's a way to
5 actively resist. And I'm not suggesting that she needs
6 to actively resist. I understand there's affirmative
7 consent. But I think oftentimes, and this is the
8 training idea with Crowns, when there's
9 counterintuitive or complex behaviours that people
10 don't understand, of course, there's difficulty in
11 being able to explain them or follow through with them.

12 So I explained in terms of a possible history
13 where she would disassociate. I talked about
14 accommodation, whereas women learn that they have to do
15 whatever is expected of them to please the person
16 because there might have been a social personal
17 expectation already and so that would've also hindered
18 and limited her resistance. As well neurobiologically,
19 there's a good chance that as soon as she realized the
20 encounter was one that was moving beyond one of her
21 control, perhaps she went into a freeze response, and
22 she -- her brain, the fear circuitry would've been
23 triggered and again the strategizing of where -- other
24 ways to resist or move.

25 So it's -- it looks like it's straightforward, but
26 there's actually complex reasons why people respond

1 this way, and for people who are trying to understand
2 well, why won't someone just do something. You know, I
3 think we need deeper explanations, so people can let go
4 of that expectation that women should be able to do
5 something.

6 Q So is it fair to say that in challenging him, in terms
7 of his questions that are listed under Allegation 3,
8 you explored these various dimensions that you just
9 discussed in terms of possible freeze responses, other
10 neurobiological responses to sexual assault to question
11 the appropriateness of the questions in the first
12 place?

13 A Exactly.

14 Q Aside from that, aside from the appropriateness of
15 asking the questions in the first place, what did you
16 do to challenge the language that he chose?

17 A The why didn't or what --

18 Q Well, the "sinking her bottom down into the basin".
19 Let me just ask you firstly whether, in your
20 understanding of the evolution of the law of sexual
21 assault, what do you say as to the appropriateness of
22 the type of language used here: Sinking her bottom
23 down into the basin and then why couldn't she keep her
24 knees together?

25 A I -- I under -- I'm not familiar with the evolution. I
26 didn't look at this from a legal perspective. So I'm

1 looking from this from a psychological perspective.
2 So, I mean, we did look at more personal attitudes and
3 socialization that Justice Camp had in terms of the
4 ways that he looked at these kinds of encounters, and
5 that would be a process that I'm not allowed in this --
6 in this hearing to -- to discuss.

7 So that the actual -- the -- you know, we talked
8 about the inappropriate and the awkward language, and
9 we talked a lot about, of course, these questions
10 shouldn't be asked. But even, you know, in terms of
11 ways to ask questions that are completely -- like is
12 there anything you felt you could do, in a wide open
13 way, and without getting into any specifics, any
14 awkwardness of trying to sort of delineate moment by
15 moment what someone is doing, but is there anything
16 that you thought you could do.

17 And so, you know, we discussed those kinds of
18 interventions because I've -- I -- same with Crown, you
19 know, with police, people get caught in these awkward
20 moments of trying to get into very complex behaviour
21 and these -- and it's very often defensive and, you
22 know, misunderstood and distorted.

23 Q Was there a recognition by Justice Camp that his choice
24 of language was inappropriate or awkward and offensive?

25 A Absolutely. He -- yes.

26 Q And just to ensure I understand what you said, without

1 violating your patient/counsellor confidentiality, can
2 you provide any explanation for that awkward,
3 inappropriate, or offensive choice of language?

4 A In terms of our exploration, he told me -- it really
5 then went into his judicial reasoning, what he was
6 trying to ascertain. And, again, I think inexperience.
7 I think there was a lot of inexperience of not dealing
8 or being well trained around asking these kinds of
9 questions and obviously regret, knowing how badly --
10 and how hurtful and offensive they were.

11 Q And do you accept that inexperience could lead to that
12 choice of language?

13 A I think it's -- and I don't want to be put in the role
14 of making excuses. I try to generalize because I feel
15 often, in terms of reading transcripts and reviewing
16 what people ask victims, that even people doing it for
17 a long time ask really inappropriate, insensitive ways
18 of trying to get at this information. You know, and
19 trying to educate people of doing this differently.

20 Q Dr. Haskell, in the course of your dialogue with
21 Justice Camp, did you test some of the assumptions and
22 stereotypes on which he relied during the Wagar trial?

23 A I'm not sure what you're asking me.

24 Q Well, did you discuss some of the myths and stereotypes
25 that you earlier alluded to exist in the evolution of
26 sexual assault law? Did you explore with him the twin

1 myths, for example?

2 A I'm sorry. You're using a -- a legal paradigm, which
3 is not the one that I operate in.

4 Q Fair enough, okay.

5 What stereotypes, if any, did you review with
6 Justice Camp?

7 A Okay. Now you're talking -- again, looking at, you
8 know, women's -- the reasons why women -- and I think
9 the reason why we fortunately have an affirmative
10 consent law, the reasons why women are inhibited or
11 limited or constrained by their ability to physically,
12 emotionally, verbally be able to resist things. Based
13 on, as I said, socialization, based on their early
14 experiences in life, based on in terms of the power
15 differential or their level of fear at that moment. So
16 I -- you know, we came at all of these in many
17 different domains to sort of understand that.

18 Q But it's fair to say you didn't explore it in any way
19 by using some of the legal language that we've just
20 discussed?

21 A No, I didn't go into a legal paradigm.

22 Q Fair enough.

23 A I didn't think I'd be very influential in the legal
24 paradigm because I'm not familiar with it, so that
25 would not be a strength I would bring to the process.

26 Q So, again, Dr. Haskell, as you went through a number of

1 the comments in the Wagar trial where inappropriate or
2 offensive language was used and, again, without
3 violating your confidentiality with Justice Camp, how
4 did you satisfy yourself that these issues were being
5 addressed?

6 A I -- I satisfied myself by looking at does he have a
7 different understanding of why he was -- what he was
8 thinking, what his assumptions were, what his beliefs,
9 his attitudes, were there shifts. And, again, after
10 looking at the level of the domains I've talked about
11 in terms of neurobiology or trauma responses or gender
12 socialization, many of them then went into his personal
13 life experiences, his personal psychology of, you know,
14 what shaped his thinking, what shaped his assumptions,
15 what shaped his attitudes about his life. And so that
16 did go into more of a personal realm. And I felt that
17 that deepened the process and made it much more
18 relevant, and I was -- I was satisfied with the level
19 of self-reflection in that process.

20 Q Did you have any discussion with Justice Camp about
21 concerns that may arise if he goes back to the Federal
22 Court and is hearing cases that have some gender
23 sensitivity? Did you have those discussions with him?

24 A Yes.

25 Q And what concerns did you reflect to him and how did he
26 respond?

1 A We got into discussions around context in terms of, I
2 think we always have to be in a continuous process of
3 looking at our assumptions and our bias. I don't
4 really think -- I think this is the part of the problem
5 in the legal system. I don't really think we have one
6 case in front of us and think Okay, now I understand
7 these biases and these assumptions. I think context,
8 victim presentation -- victim presentation, I think it
9 has to be a constant process of what am I thinking
10 about this person right now. How I am mentalizing this
11 person. And I think the mentalization which is trying
12 to understand the heart and mind of another, which
13 means what possibly could that be -- person be
14 motivating that behaviour, what could that person be
15 feeling, and what's my process. What am I -- what am I
16 thinking right now; why am I making this assumption.

17 I don't think we can, sort of, come up with every
18 contingency, but what I think we can have is a context
19 of constant reflection and understanding there's many
20 different perspectives of understanding behaviours and
21 to be checking those biases and those assumptions and
22 trying to get into the framework of another person and
23 not imposing, and there's one way of how someone should
24 respond.

25 Q Can the beliefs and inappropriate comments that led
26 Justice Camp to -- well, let me start with beliefs.

1 Can the type of beliefs that you've described that led
2 to Justice Camp making the comments he did resurface
3 when the person is no longer in counselling?

4 A I would -- I would, personally, based on my work with
5 Justice Camp, I would be very surprised if these
6 particular beliefs which we worked through deeply and
7 which, you know, he -- and at the same time he was also
8 coming in and having trainings with Deb McCawley and
9 Brenda Cossman, so he was -- he had other influences
10 and things he was reading. So lots of times I would
11 think he's getting information and getting critical
12 framework from very many different perspectives.

13 It would be -- I think sometimes when we know
14 something differently, it's pretty hard to turn around
15 and, you know, make that same error. I mean, as a
16 psychologist, before I knew a lot of information, I can
17 look at the many mistakes I made. I doubt I would make
18 those mistakes again based on new information I now
19 have, because neuroscience just came out in the '90s.
20 So I can look back at my earlier work and think there's
21 so much I missed that I should have been able to do
22 differently had I had that information, and I'm
23 certainly not going to make those mistakes again.

24 Q And I can accept that when you're speaking about
25 science of neurobiology, but when it comes to choice of
26 language, there really hasn't been significant

1 developments in time over that. Isn't that really a
2 matter of common sense --

3 A I --

4 Q -- and good judgment?

5 A I don't think so. I think -- I don't think it's common
6 sense. I really don't. I really do think -- even the
7 ways that we would understand racism or, you know, when
8 you think of different paradigms and different
9 information we have of how people's lives are lived and
10 our assumptions and how that's shaped our language, I
11 think there's been -- we have movement in all kinds of
12 domains in our life. Any errors that people make,
13 often it's based out of ignorance and lack of knowledge
14 and biases and assumptions based on different life
15 experiences.

16 Q Thanks, Dr. Haskell. Those are all my questions.

17 A Okay. Thank you.

18 THE CHAIR: Anything arising, Mr. Addario.

19 MR. ADDARIO: Thanks very much.

20 Mr. Addario Re-examines the Witness

21 Q MR. ADDARIO: An early question that you
22 were asked was about how you got retained. Do you
23 recall that question?

24 A M-hm.

25 Q Now just to clarify for the committee, who paid your
26 bill?

1 A M'mm, it wasn't you, Mr. Addario. It was Justice Camp.

2 Q Did he pay?

3 A Yes, he did.

4 Q And you were asked another question -- all your bills?

5 A Yes.

6 Q For all of the work you did with him?

7 A Yes. Yes, he did, fully. He wasn't allowed out of my
8 office until he paid up.

9 Q Of course.

10 You were asked a question by presenting counsel
11 about what level of understanding did he have when you
12 first met him with respect to gender assumptions and
13 bias. Do you remember that question?

14 A M-hm, yes.

15 Q And I'd just like to ask you to just tidy that up.

16 What level of understanding does he have now?

17 A The level question is hard for me. I think he has -- I
18 think he has an extremely strong critical framework and
19 expansive knowledge now.

20 Q Fair enough.

21 You were asked a question just a few moments ago,
22 do you accept that inexperience could lead to some of
23 those questions that were asked, and you replied,
24 People often ask inappropriate questions trying to get
25 at information. Do you recall that question and
26 answer?

1 A Yes.

2 Q And I wanted to ask you, does that include people in
3 the violence against women sector that you work in?

4 A No, we're perfect. No. That's a hard question.

5 Q All right. Let me ask a different one.

6 A Okay. What I would say, I'm not sure what the
7 inappropriate questions would be, but I think there is
8 definitely a refinement and a way of doing it better.

9 Q All right. Do people who would not be challengers or
10 judges but allies of victims of sexual violence often
11 ask inappropriate questions trying to get at
12 information?

13 A Of course. I think everyone can make those mistakes.

14 Q For example, police officers --

15 A Yes.

16 Q -- or sexual assault prosecutors?

17 A Yes. Absolutely.

18 Q All right. And do people ever say they were using
19 common sense or --

20 A Who is the people?

21 Q That ask those inappropriate questions.

22 A I -- I -- I think there -- they're asking the questions
23 not based on common sense but inadequate understanding.
24 I mean, I don't think -- I think this information is
25 beyond common sense. I think we need to be educated
26 and informed. I think we can't have common sense about

1 complexity this way.

2 Q Thanks very much.

3 The Panel Questions the Witness

4 Q MS. PETERSEN: I have some question for you,
5 Dr. Haskell, in, sort of, three general areas, I guess.
6 And the first is really just a matter of clarifying
7 some of the testimony that you gave.

8 You said that you met with Justice Camp between
9 November and August of this year for a total of 13
10 clinical hours, and I'm just wondering, I realize you
11 may not know the precise dates on which you met, but if
12 you could give us a sense of how those dates were
13 distributed because that's a fairly lengthy period of
14 time.

15 A Yes.

16 Q Was it more sort of front-ended or distributed across?

17 A No, no. We made an initial contact in November, and I
18 went away for a month, and he travelled as well. So we
19 didn't get together again 'til January. He actually
20 requested more appointments than I could give him
21 because I had a very busy travel schedule and so he --
22 he had requested regular sessions, and I was unable to
23 give them. So I would say it was -- they was pretty
24 evenly distributed, in terms of over the months. I
25 can't think a period of time that was heavier.

26 Q In terms of the reading list, do you recall when you

1 gave him the reading list?

2 A Maybe first or second session.

3 Q Was it all at once, the reading list?

4 A Yes.

5 Q Yes. And in terms of you being satisfied that he had
6 read those readings, was that early in the time you
7 were spending with him?

8 A No. That was ongoing discussion and then listening to
9 the integration of those ideas.

10 Q Okay. And the readings that you provided to him, I'm
11 familiar with some of them but not all of them. I
12 think you alluded to at least one of them relating to
13 the evolution of sexual assault law. So I'm just
14 wondering, and I think you may have the list in front
15 of you, if you need to refresh your memory, can you
16 tell us the -- just generally what is covered by the
17 readings?

18 A That I've covered?

19 Q The readings that you assigned to him --

20 A Right.

21 Q -- the general topics that are covered.

22 A Okay. So we have readings on "Pernicious Myths and
23 Other Problems With Sexual Violence Prosecutions". We
24 have readings on "Rape: On Coercion and Consent", a
25 reading on "Sexual Assault: Availability of the
26 Defence of Belief in Consent", one on "Affirmative

1 Sexual Consent in Canadian Law", "Sexual Consent as
2 Voluntary Agreements: Tales of Seduction and Questions
3 of Law", and then the last one is "Whack No More:
4 Infusing Equality Into the Ethics of Defence Lawyering
5 in Sexual Assault Cases".

6 So we're looking at -- Tanovich is looking at the
7 inappropriate questions that are asked victims and that
8 there's got to be a way to do an ethical defence and
9 part of the responsibility of an ethical defence is
10 judges taking more responsibilities of limiting what's
11 inappropriate or persistent questions, whether he was
12 coming at someone over and over.

13 Q Do you know whether the readings address the reasons
14 for the law reforms that have happened in the area of
15 sexual assault?

16 A I -- he was doing work with others on that, so I didn't
17 get into that issue with him.

18 Q Okay.

19 Different area --

20 A Sure.

21 Q -- of questioning. You talked about the education and
22 training that you did with Justice Camp, and I believe
23 it sort of falls into two areas, although I suspect you
24 may say they intersect. One is the neuroscience, the
25 neurobiology, and the other you described as gender
26 sensitivity, and I do understand that they're not

1 completely distinct.

2 And you talk quite a bit about the neuroscience
3 aspect of the training that you provided and what the
4 gaps were in his knowledge. So I just -- I guess I
5 want to hear more about the gaps that you identified
6 with respect to gender sensitivity and what training
7 you provided to address those gaps?

8 A Okay. So the gender sensitivity would be more around
9 the sexist idea of how women accommodate men around
10 women's -- women can have all kind of sexual
11 flirtation, and yet they can actually, at the last
12 minute, decide they don't want a sexual encounter.
13 They're not obligated or responsible. So the idea
14 that, you know, looking at women's sexuality. But also
15 breaking down the assumptions around male sexuality, in
16 terms of what's oftentimes seen as normal masculine
17 behaviour of being sexually intrusive or persistent,
18 and that was related more to the closing comments
19 Justice Camp made to the offender in terms of almost
20 the kind of "boys will be boys" kind of attitude. So
21 breaking down, looking at gender, both in terms of men
22 and women.

23 Q Okay. And so you've answered my question in terms of
24 some identified areas where you thought that the
25 training was required. Can you just elaborate on what
26 it is that you did in the training with him and I guess

1 your assessment of how effective it was?

2 A A lot of it -- a lot of that information wasn't just
3 like, Here's a cognitive or here's information.
4 That -- a lot of that would be we went into his
5 understanding based on his own assumptions in his life
6 around gender roles and sexuality.

7 Q And maybe just to reiterate some of the questions that
8 were asked earlier, but the answer wasn't specific to
9 this gender sensitivity. Ms. Hickey asked you about
10 how easy is it for people to change those types of
11 views and what is the risk of relapsing into that kind
12 of thinking, and you did give a clear answer to that.
13 But your answer, as I understood it, was in part about
14 the neuroscience and gaining that information --

15 A Yeah, the --

16 Q -- integrating it. So if you're talking about people's
17 attitudes and their thinking patterns and how easy is
18 it for that -- for you to be able to shift that in
19 someone and what is the risk that they would relapse
20 into that type of thinking?

21 A That is hard, because our whole culture and society is
22 so immersed with those ideas, racist ideas, sexist
23 ideas, gender ideas. I don't think we ever get to an
24 endpoint. So I really do think it's an ongoing process
25 of, like I said, self-reflection, really a constant
26 examination of our assumptions and our beliefs and

1 checking them out. So it's not so much that there's
2 ever a complete body of knowledge. I now know all
3 these things. It's rather taking a position of
4 thinking, I have to be diligent, I have to be very
5 aware and reflective of checking my biases and my
6 assumptions; why I'm thinking this, how I'm going to
7 express this.

8 So I -- it's more a process, and it's more
9 experiential than thinking we could ever cover every
10 type of sexist bias or gender bias, and the person has
11 full expansive knowledge and will not repeat those
12 things. And I think that's for all of us, you know, in
13 terms of, you know, racism, sexism; we have to
14 constantly be checking ourselves.

15 Q I have one other area --

16 A Sure.

17 Q -- where I had some questions for you. And before I
18 ask you the actual question, I just want to make sure
19 that I understand your areas of expertise --

20 A Right.

21 Q -- in the work that you've done.

22 You talked about training with the police?

23 A Right.

24 Q And you made it very clear that you try to make the
25 training relevant to their work so that it's more
26 engaging for them. And I believed you talked about,

1 for example, talking to them about how to interview --

2 A Right.

3 Q -- a survivor or complainant with respect to sexual
4 violence.

5 Do you also, when you train the police, talk to
6 them about the phenomenon of survivors sometimes being
7 reluctant to report to the police?

8 A Right.

9 Q You do?

10 A Absolutely.

11 Q With respect to Crown attorneys, similarly, do you
12 train them with respect to the experiences that some
13 survivors have, in the criminal justice system, you
14 know, difficult experiences or some people refer to it
15 as revictimization?

16 A Yes, absolutely.

17 Q That's something you deal with?

18 A Yes.

19 Q That training that you do, is it informed in part by
20 the clinical work that you do with survivors?

21 A Yes.

22 Q And I understood you to say that you do clinically
23 treat survivors of sexual violence?

24 A Yes, I do.

25 Q So the question that I have -- I want to make sure I
26 was asking you something within your field.

1 With respect to the types of comments, and perhaps
2 you could just refer to the Notice of Allegations, I
3 think you have it in front of you.

4 Does the witness have it?

5 A Right.

6 Q I want to ask you your professional opinion of the
7 impact of those types of statements on survivors of
8 sexual violence, not on the particular complainant in
9 this case, I appreciate you don't know her, but
10 generally?

11 A They -- I think what's -- it shames people, but more
12 importantly, what happens to people when they're asked
13 questions like that is it feels like a threat. You
14 know, when you talk about revictimization and that
15 language is so often used because the person feels,
16 once again, as if they're under a threat. Their brain
17 operates in a very similar way where they can't think
18 clearly, so what happens when police have a demeanour
19 harsh or fast or disbelieving, first of all, 90 percent
20 of communication is non-verbal. So demeanour means so
21 much in terms of -- and you can silence and you can
22 shut someone down by a certain tone, way of -- a
23 certain distance. And so that revictimization of
24 making someone feel threatened and ashamed, people feel
25 a lot of despair, agony, fright. They feel like they
26 won't be safe.

1 Is that what you're asking?

2 Q It's not exactly what I was asking.

3 A Okay.

4 Q So perhaps I didn't ask the question clearly. I'm not
5 talking exclusively about specific comments or
6 questions asked of the complainant.

7 A Okay.

8 Q But just generally, if you look at the entire Notice of
9 Allegations, a number of the comments that are cited
10 there were not made to the specific complainant; they
11 were made --

12 A Right.

13 Q -- in exchanges with counsel --

14 A Okay.

15 Q -- and so on.

16 A That's right.

17 Q And I'm speaking more broadly --

18 A Right.

19 Q -- of the community, if you can call it that --

20 A Yes.

21 Q -- of survivors of sexual violence hearing those
22 complaints.

23 A Right.

24 Q Whether they were present in the courtroom or heard
25 them reported in the media, whatever, what the impact
26 of that is on the survivors or what it could be, I

1 suppose.

2 A Well, I have firsthand experience with that because I
3 have many of those survivors in my therapy office who
4 obviously read the paper. They feel angry. Some of
5 them, it makes them -- they're angry, and it makes them
6 more determined. Some -- I mean, many of them have
7 said, This is -- this is -- this is what we expect.
8 These are the kinds of failures. There's not a lot of
9 shock, there's a lot of anger. There's a lot of people
10 feeling hopeless that this will never change.

11 Q Thank you.

12 Q MS. JENSEN: Dr. Haskell, in your
13 discussion about some of the explanations as to why
14 women behave in certain ways and in helping Justice
15 Camp to see that, you talked about the conditioning
16 that women received, the compliant and cooperative, and
17 in the Notice of Allegations, there is reference to
18 portions of the transcript where Justice Camp seems to
19 suggest that there's a sort of a hypothetical situation
20 posited whereby the complainant might be seeking
21 revenge. And so in the transcript, he's -- he's quoted
22 as saying, In our law, she doesn't have to say unlock
23 the door, I'm getting out; she can take her chances
24 perhaps in the hope of getting him into trouble.

25 I'm just wondering if that topic came up in your
26 discussions with him and how you would have dealt with

1 that?

2 A No, we didn't really speak about that one specifically.

3 I missed that one as one that we explored.

4 Q Do you have any comments in general as to whether that
5 fits in with some -- some of the rape myths?

6 A Absolutely, that would be a rape myth, in terms of
7 women being vindictive and lying and accusing people,
8 wrongfully, of sexual assaulting, yeah, definitely see
9 that as a rape myth.

10 Q Thank you.

11 A Did I miss your question? Was there more that you --

12 Q No. I was really looking at whether that came up in
13 your discussions, whether that was part of --

14 A That one we did not explore.

15 Q Okay.

16 THE CHAIR: Anything arising from those
17 question, counsel? Ms. Hickey?

18 MS. HICKEY: No, thank you.

19 THE CHAIR: Mr. Addario?

20 Mr. Addario Further Examines the Witness

21 Q MR. ADDARIO: Just in relation to the last
22 series of questions asked by Ms. Petersen, you
23 mentioned that some people were not surprised a justice
24 system actor would make insensitive or inappropriate
25 comments? Yes?

26 A I mean, it wasn't so much a surprise, no. I mean, a

1 lot of my clients are very well aware of the problems
2 in the criminal justice system. Most of my clients are
3 not going to go forward. They don't trust the system.
4 So they weren't surprised that they felt anger about
5 it.

6 Q Could you just, you know, maybe just elaborate a bit on
7 why they're not surprised, in your judgment?

8 A They're not surprised because I think it's -- it's
9 pervasive in terms of -- I mean, look at David
10 Tanovich's paper in terms of recent, you know, legal
11 cases where horrendous things are said, questions are
12 asked intrusively over and over again. And I think
13 that most people who are in that vulnerable position of
14 being assaulted are really wanting to be cautious of
15 whether they're ever going to go to try and get help.

16 Q Thanks very much.

17 THE CHAIR: Thank you, Dr. Haskell.

18 You're excused.

19 (WITNESS STANDS DOWN)

20 THE CHAIR: Yes, Mr. Addario.

21 Submissions by Mr. Addario

22 MR. ADDARIO: Associate Chief, my last
23 witness is Justice Camp, and unless there are strong
24 feelings otherwise, I'd like to start him fresh in the
25 morning. If there are strong feelings, otherwise I
26 won't, but I'd like to just raise an issue with you,

1 and it's this: Based on the cross-examination of
2 Professor Cossman and to a lesser extent Dr. Haskell,
3 it would make sense to anticipate that presenting
4 counsel intends to take Justice Camp through the
5 allegations and portions of the trial transcript, and
6 if the committee is of the view that the judicial
7 reasoning immunity which we've been speaking of a
8 little bit in the last couple of days does not apply,
9 then one option available to me would be to take him
10 through those allegations in direct examination. And
11 if the committee is of the view that it does apply,
12 obviously I won't do that. And if the committee is of
13 the view that there are some allegations that don't
14 engage that but others do, which is, frankly, my view,
15 then I would address those that don't engage it in
16 examination-in-chief and not the others, secure in the
17 knowledge that the committee would think that the
18 immunity covers those others. And so I'd like some
19 guidance from the committee. I think it's a matter of
20 fairness to know in advance, and I could say --

21 THE CHAIR: Go ahead.

22 MR. ADDARIO: I wouldn't want to examine him
23 on the basis that the immunity is intact and then for
24 presenting counsel to cross-examine him on his
25 reasoning, I don't -- without knowing whether you'd
26 permit it. I did raise the issue several months ago

1 with presenting counsel, and we did have a case
2 management conference on it and undertakings were given
3 to you. And so I have an understanding that it
4 applied, but I also have a feeling that the ground may
5 have shifted a little bit on me, and I'd like to know
6 before I examine Justice Camp.

7 THE CHAIR: All right. Well, we received
8 the benefit of your respective submissions on the
9 issue. I just want to understand what you're
10 suggesting we do right now. Are you looking for some
11 sort of decision by the committee based solely on your
12 written submissions, or are you proposing to argue
13 allegation by allegation which part of the allegations
14 are part of the judicial reasoning and which part may
15 simply be comments that don't fall within the
16 proscription in MacKeigan. I'm just trying to
17 understand what it is you're asking us to do at this
18 point.

19 MR. ADDARIO: I think the submissions that
20 we made overnight to the committee --

21 THE CHAIR: Right.

22 MR. ADDARIO: -- I thought focused the
23 issues.

24 THE CHAIR: Right.

25 MR. ADDARIO: And I -- but what wasn't in
26 play then was counsel taking Justice Camp through the

1 statement of allegations, but it's clearly in play now;
2 you can see that. So I think we can start there, and
3 that would give me a fair idea of the committee's
4 thinking, and if you want submissions from me, I'm
5 ready to do that. If you don't want submissions from
6 me, you want to give a little guidance, that would be
7 helpful too. We've done that before in case management
8 conferences; it's been helpful. I'm willing to follow
9 your guidance, but I do think fairness requires I get
10 some.

11 THE CHAIR: Right. All right. I think
12 what we should do is retire and consider what you put
13 before us, and we'll try and come up with a guidance
14 that's helpful to you.

15 MR. ADDARIO: Thanks so much.

16 MS. HICKEY: May I make a few comments
17 first?

18 THE CHAIR: Yes, of course.

19 Submissions by Ms. Hickey

20 MS. HICKEY: I too am just trying to
21 clarify the request that Mr. Addario is putting
22 forward. My understanding or at least the submission
23 that I made to the Panel is that there is a distinction
24 between the competence of a judge to testify with
25 respect to reasoning versus the compelability of a
26 judge to testify with respect to judicial reasoning.

1 The intention of presenting counsel is not to ask
2 Justice Camp why he reached the decision he did to
3 believe the complainant -- sorry, to believe the
4 accused and to acquit. That's not the intention. So
5 from presenting counsel's perspective, the judicial
6 reasoning immunity in that context doesn't arise.

7 Justice Camp is choosing to testify at this
8 proceeding. He's competent to testify about whichever
9 aspects of the allegations he wishes to testify. So in
10 terms of Mr. Addario's examination of Justice Camp,
11 that would be up to him to determine, and I would take
12 the view that if some of Mr. Addario's questions
13 crosses into the reasons or the whys of what Justice
14 Camp did, it is permissible for Justice Camp to enter
15 into that arena, because he is competent to do so.

16 So I just wanted to make that distinction between
17 the competence and the compelability very clear, and
18 it's certainly not the intention of presenting counsel
19 to get at issues through cross-examination that Justice
20 Camp is not getting into himself of his own volition
21 where he is competent to do so.

22 THE CHAIR: So if I understand what you're
23 saying, that if Justice Camp chooses not to go into
24 that area, it doesn't permit you to raise it for the
25 first time in cross-examination?

26 MS. HICKEY: That's the position I'm

1 prepared to take with the Panel.

2 THE CHAIR: All right. Thank you. We'll
3 consider that as well. I think we'll take a break and
4 consider what counsel have said.

5 Mr. Addario, did you have something further?

6 Submissions by Mr. Addario

7 MR. ADDARIO: Sure. Just the issue is not a
8 simple one, and if you just look at the allegations,
9 you'll see that one of the allegations refers to some
10 of his, what would be admitted to be insensitive and
11 inappropriate language being used to ascertain a
12 witness's veracity. So he's either going to be called
13 upon to comment on that or not. And no case makes the
14 distinction that presenting counsel is making today
15 about competence and compelability. That's known in
16 other areas of law; it's not known in this area of law.
17 I'm trying to make that clear in my submission. I'm
18 willing to elaborate on that. Most of the allegations
19 relate to reasoning as it's understood in Marshall. So
20 I'll just leave that with you. If you want full
21 argument, I'm happy to make it.

22 MS. SMITH A.C.J.: If I can just ask Ms. Hickey a
23 question for clarification. Am I understanding
24 correctly, Ms. Hickey, you're saying that if Justice
25 Camp doesn't wade into why he said what he said, you're
26 not going to ask him why he said what he said.

1 MS. HICKEY: Unless so directed by the
2 Panel.

3 THE CHAIR: All right. Thank you.

4 MR. ADDARIO: That would make it easier,
5 Associate Chief. I wouldn't be asking him why he said
6 what he said. I think it's engaged by the immunity.

7 MS. SMITH A.C.J.: Does that resolve the matter
8 then from your perspective, Mr. Addario?

9 MR. ADDARIO: It does, Associate Chief.

10 THE CHAIR: All right. I think we will
11 take a break, and you're seeking to call Justice Camp
12 tomorrow, Mr. Addario?

13 MR. ADDARIO: Yes, sir, and I expect to be
14 about 45 minutes with him. I do anticipate we'll
15 finish the evidence by the noon recess tomorrow.

16 THE CHAIR: All right. I think what we
17 better do is retire and consider what's just been
18 discussed amongst ourselves, and if we have any
19 contrary thoughts, we will bring them back to you,
20 otherwise we'll simply resume tomorrow at 10:00.

21 MR. ADDARIO: Thank you very much.

22 THE CHAIR: But we'll let you know within
23 15 minutes if we're resuming this afternoon to give
24 further directions. All right.

25 (ADJOURNMENT)

26 Ruling

1 THE CHAIR: Thank you. Counsel, we've
2 considered both the written submissions we've received
3 from counsel yesterday afternoon and this morning and
4 the submissions that were made orally just before we
5 broke, and we've, I think, reached a consensus on the
6 progress of the examination and cross-examination of
7 Justice Camp insofar as we can, without knowing exactly
8 what will arise in the course of his evidence. But I
9 think I can give the guidance that's being sought this
10 way: That the committee agrees on the basis of the
11 MacKeigan and Marshall cases that generally this is --
12 that generally there is a proscription against asking a
13 judge to explain his or her reasoning process in
14 rendering judgment or making a ruling in the course of
15 a proceeding.

16 We're also aware that in the case of *Allen v.*
17 *Manitoba, Judicial Council*, 1993, 3 WWR 749 MBCA, a
18 judge confronted with a judicial conduct hearing
19 arising from comments made in the course of his
20 judgment raised an issue that because of that
21 proscription against explaining judicial reasoning, he
22 was unable to make full answer and defence. And the
23 result in that case, the Manitoba Court of Appeal ruled
24 that he was not incompetent to testify and thus his
25 right to make full answer in defence was not
26 compromised.

1 We are not minded to deviate from the important
2 principle in MacKeigan and Marshall which protects the
3 integrity of judicial independence, unless the issue is
4 raised by counsel for the judge that it would
5 compromise his ability to respond to these allegations.
6 Accordingly, if counsel for the judge is content to not
7 delve into questions which may implicate the MacKeigan
8 principle and presenting counsel, similarly, will
9 refrain from cross-examination in that area -- in the
10 area not touched on by the judge, we will proceed on
11 that basis.

12 MR. ADDARIO: Thank very much.

13 THE CHAIR: Thank you.

14 MS. HICKEY: Thank you. I do expect we may
15 find some gray areas --

16 THE CHAIR: I'm sure we will.

17 MS. HICKEY: -- in there, but that gives us
18 some guidance. Thank you.

19 THE CHAIR: Thank you. We'll adjourn
20 until tomorrow.

21 _____
22 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, SEPTEMBER 9, 2016

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Sandie Murphy, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 9th day of September 2016.

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14 _____
Sandie Murphy, CSR(A)
15 Official Court Reporter

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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING
VOLUME 5

Calgary, Alberta
September 9, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta
3 _____
4 September 9, 2016
5
6 Associate Chief Justice Chair
7 Austin F. Cullen
8 Associate Chief Justice Committee Member
9 Deborah K. Smith
10 Chief Justice Raymond P. Whalen Committee Member
11 Ms. Karen Jensen Committee Member
12 Ms. Cynthia Petersen Committee Member
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14 Ms. Marjorie Hickey, QC Presenting Counsel
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17 Owen Rees For Inquiry Committee
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19 Frank Addario For Justice Camp
20 Megan Savard
21 Andrew Burgess
22
23 S. Howden, CSR(A) Official Court Reporter
24 K. Attrell Registrar
25 _____
26

1 (PROCEEDINGS COMMENCED AT 10:01 AM)

2

3 THE REGISTRAR: This inquiry hearing is now
4 resumed. Please be seated.

5 Discussion

6 THE CHAIR: Yes, Mr. Addario.

7 MR. ADDARIO: Thank you very much. Good
8 morning.

9 In one matter of clarification and housekeeping,
10 the other day, when Justice McCawley was testifying,
11 she said that in her initial meeting with Justice Camp,
12 she wanted to ascertain whether or not he should be put
13 to the time and expense of meeting with her, and it
14 left the impression in some quarters that she had been
15 paid, and, of course, under the Judges Act, she
16 couldn't be paid, and she was not paid a penny, of
17 course, for the many hours she spent with Justice Camp.
18 And she, in fact, sent me a note asking me to clarify
19 that she wasn't paid, that she was referring to the
20 cost to him of travelling around the country to meet
21 with her at his own expense for the purpose of the
22 mentoring that you heard about.

23 THE CHAIR: Thank you.

24 MR. ADDARIO: Ms. Hickey knows that and is
25 content that I give you that information.

26 THE CHAIR: Thank you for that

1 clarification, Mr. Addario. I don't think any of us
2 took it that she was paid for her efforts.

3 MR. ADDARIO: Thank you.

4 MS. HICKEY: If I may as well, excuse me,
5 Associate Chief Justice Cullen, one short
6 administrative matter just before we begin.

7 THE CHAIR: Yes.

8 MS. HICKEY: And I'm speaking with the
9 agreement of my friends on this point. There has been
10 a letter that has been under some discussion between
11 Mr. Addario and myself, and we've reached agreement
12 with respect to its introduction. We've reached
13 agreement that it would be introduced as part of the
14 case of presenting counsel, and the reason for that is
15 Mr. Addario does not wish to have it perceived in any
16 way as being entered through agreement to the extent
17 that that may raise issues of any form of waiver of
18 judicial immunity. So it's being introduced; I think
19 technically I would be seeking a reopening of
20 presenting counsel's case in order to introduce this
21 document to you this morning --

22 THE CHAIR: All right.

23 MS. HICKEY: -- if that's acceptable. And
24 there are some redactions on the document that -- that
25 Mr. Addario and myself have agreed upon where we have
26 redacted portions that may engage issues of judicial

1 reasoning immunity.

2 THE CHAIR: All right.

3 MS. HICKEY: And, again, that's been done
4 by agreement.

5 So if I could mark that, please.

6 THE CHAIR: All right. Thank you. That
7 will be marked as Exhibit -- the next exhibit. And
8 just for the sake of the record, the presenting counsel
9 has applied to reopen her case in order to present that
10 exhibit. Thank you.

11 EXHIBIT 10 - A letter submitted on December
12 14, 2015, from Justice Camp to the Canadian
13 Judicial Council, redacted

14 MS. HICKEY: The letter is undated. I can
15 advise -- and I don't think my friends will have any
16 objection to this -- that the letter was submitted on
17 December 14, 2015, from Justice Camp to the Canadian
18 Judicial Council. Thank you.

19 THE CHAIR: All right. Thank you. We'll
20 just take a minute while the committee reads the
21 letter.

22 All right. Thank you, Mr. Addario.

23 MR. ADDARIO: Thank you, Chief Justice.
24 Justice Camp.

25 ROBIN BRIAN CAMP, Sworn, Examined by Mr. Addario

26 Q MR. ADDARIO: Good morning.

- 1 A Good morning, Mr. Addario.
- 2 Q You've heard the evidence of the three witnesses and
3 read the agreed statement of facts, Justice Camp?
- 4 A I have.
- 5 Q And you've had an opportunity to reflect on the
6 transcript of the Wagar trial?
- 7 A Yes, I have.
- 8 Q And you've had a chance to look at the Notice of
9 Allegations?
- 10 A Yes.
- 11 Q So do you have anything to say about the comments that
12 are reproduced and summarized in the Notice of
13 Allegations?
- 14 A Yes, I do. As a general matter, I regret almost all of
15 them. Almost all of them were inappropriate and
16 reflect prejudice. Some of them were hurtful. I wish
17 I hadn't said them, Mr. Addario.
- 18 Q Were you intending to belittle Crown counsel when you
19 spoke to her during the trial?
- 20 A By no means. I knew Hyatt Mograbee. We'd had cases
21 together before. I liked her. She did her job
22 enthusiastically, professionally. I thought I had a
23 good relationship with her. I'm very sorry that, on
24 reflection and rereading what I said, that I
25 intimidated her, that I used facetious words in
26 discussions with her.

1 Q Were you intending to belittle the complainant, [REDACTED]

2 [REDACTED]?

3 A By no means. Mr. Addario, during that trial, the
4 complainant, particularly given her circumstances and
5 her background, behaved with dignity and respect. If
6 you look at the record, she was respectful to the
7 bench. She controlled her temper very well. I was
8 conscious that it was a very hard time for her. There
9 was no reason to try and hurt somebody like that.

10 Q You've -- pardon me -- apologized for your conduct of
11 the Wagar trial in writing?

12 A Yes, in November -- first in November of last year.

13 Q And did you want to apologize here?

14 A Oh, yes.

15 Q Go ahead, then.

16 A Mr. Addario, my concept of what I did wrong has grown
17 in the period of December to May this year, largely due
18 to the help and guidance of Lori Haskell and Deborah
19 McCawley.

20 In the beginning, of course, I was defensive; I
21 was trying to justify myself, vindicate myself. My
22 initial apology in early November of last year was
23 motivated by the fact that I also have a great deal of
24 respect for Professor Alice Woolley, who was kind to me
25 when I first came to Canada. So I recognized that when
26 she wrote what she did, it wasn't motivated by malice.

1 I also saw what the Appeal Court of Alberta had said,
2 and I have respect for appeal courts.

3 So my instinct was to apologize. I had done
4 something wrong, and in the beginning, I thought what I
5 had done wrong was to use abusive, inappropriate
6 language, say hurtful things. And at that time, to my
7 shame, that was the extent of my knowledge of what I
8 had done wrong. That was what I apologized for in the
9 beginning, when my Chief Justice at the Federal Court
10 allowed me to append an apology to the statement that
11 he was making on behalf of my court.

12 I made another apology in December, after I got
13 the record, in a letter to Chief Justice MacDonald, but
14 since then -- and I want to deal principally with the
15 two questions that I asked of -- of the complainant
16 because to my mind, those are the most egregious of my
17 faults, the wording of those questions, and what I say
18 about them can serve for the whole.

19 Lori Haskell is, of course, a trained
20 psychologist. She doesn't tell you how to think. She
21 allows you to work it out for yourself. It's a process
22 that takes time. Deborah McCawley, perhaps by chance,
23 employs the same method. Neither of them told me,
24 Robin, you've done this wrong; this is where you're
25 wrong. They gave me things to read. They gave me
26 things to think about. They corrected me when I

1 misunderstood, but they never told me how to think.

2 In the end, I think I worked it out for myself.

3 The first realization came perhaps in January, and that
4 was that those questions are not only offensive by
5 virtue of their words, but they carry with them the
6 implication that the complainant should have done
7 something, that it's her fault; if only she had
8 resisted, none of this would have happened. I didn't
9 realize that that implication came with the words. I
10 should have, but I didn't. I had a different
11 modulation for asking the questions.

12 It was another -- another month of hard work with
13 Lori Haskell before the penny dropped a second time,
14 and I realized that there was yet a third dimension to
15 a further compounding of -- of what I had done wrong.
16 And I worked it out for myself. Dr. Haskell didn't
17 tell me; Deborah McCawley didn't tell me, but they were
18 both delighted when I reported to them that I had
19 worked it out for myself, and that was that the way
20 that I asked the questions, whatever the reason for
21 asking those kind of questions, but the way that I
22 asked them, the words that I used, could only have come
23 from deep-rooted prejudices.

24 I thought that I was intellectually honest, that I
25 was fair-minded, that I was free of prejudice. I
26 flattered myself. I'd read Ewanchuk. I'd read the

1 Criminal Procedure -- the -- the Criminal Code. At an
2 intellectual level, I understood issues surrounding
3 rape myths. It has become clear to me that at a deeper
4 instinctive level, I had not, and that is the -- the
5 reason that I wish to apologize now, Mr. Addario.

6 Q Could I get you to turn up the Notice of Allegations?
7 It's in the front of that binder in front of you. It's
8 right in the front cover.

9 A I have it.

10 Q You have it?

11 A Yes.

12 MR. ADDARIO: Does the committee have it?

13 THE CHAIR: Thank you.

14 Q MR. ADDARIO: I want to ask you your opinion
15 today on the appropriateness of the comments or conduct
16 rather than your reasoning, Justice Camp. Got it?

17 A Yes.

18 Q And I'm not asking you to explain your evaluation of
19 the evidence because the case is still out there, and
20 Mr. Wagar is still presumed innocent, and the
21 complainant's evidence is going to be evaluated afresh,
22 okay?

23 A Yes.

24 Q All right. What do you say about your comments in
25 Allegation 1?

26 A They were wrong. Section 276, after the amendments of

1 1993, when subsections 2 and 3 were injected into
2 Section 276, removed any form of unfairness in those
3 sections.

4 Q What do you say about your comments in 2(a)? It's
5 alleged you engaged in stereotypical and biased
6 thinking and relied on flawed assumptions.

7 A Mr. Addario, that can only have been the product of
8 deep-rooted, unrecognized prejudice toward the rape
9 myth that women who don't take the first opportunity to
10 report are lying.

11 Q The same allegation is made in 2(b). What's your
12 opinion about that?

13 A Mr. Addario, it was inappropriate. The full version of
14 that is perhaps not all that controversial. I still
15 wish that I hadn't said it. When I say "the full
16 version", I mean the whole sentence, which was
17 corrected yesterday.

18 Q By the committee?

19 A Yes.

20 Q And with regard to the rest of the paragraph in
21 Allegation 2, what do you say about the appropriateness
22 of the comments, the rest of Allegation 2?

23 A They were -- (f) is on a slightly different footing.
24 If I can deal with (c), (d), and (e), those were based
25 on unrecognized prejudices for which I am deeply sorry.
26 (f), I don't believe that anything I said, read in

1 context, read properly, suggested that her character
2 would make it more likely that she consented to sex.
3 My comments regarding her morality were limited to the
4 fact that she had committed crimes of dishonesty.

5 Q Allegation 3.

6 A Yes.

7 Q What is your opinion about the appropriateness of those
8 comments?

9 A Mr. Addario, leaving to one side the question of
10 whether -- the issue of whether questions of that type
11 should have been asked, simply the terms in which I
12 asked the questions, they are reflective of, what I
13 eventually came to realize, a deep-rooted, unconscious
14 bias. Intellectually, I thought I understood all this.
15 The only way I can explain the way in which I asked
16 those questions is that I, at some level, held onto the
17 myth that women were supposed to fight off aggression.

18 Q What about Allegation 4; what is your opinion today on
19 the appropriateness of the comment made to Ms. Mograbee
20 there?

21 A Mr. Addario, once again, I wish I hadn't said it. I
22 thought -- and I may still be right; I don't know.
23 I've never spoken to Ms. Mograbee. I thought I had a
24 good relationship with her. It was in the form of
25 banter. It's a South African-ism for "history repeats
26 itself; the wheel turns". I've listened to the audio.

1 It was said with a smile. I don't think that she
2 was -- that she was frightened by it. She may have
3 been. Insofar as she was, I am deeply sorry.

4 Q That's a South African figure of speech: I hope you
5 don't live too long?

6 A Maybe it's used elsewhere. Certainly, it's one that I
7 grew up with, Mr. Addario.

8 Q And what does it mean?

9 A History never -- never comes to an end; the pendulum
10 swings, almost the Canadian-ism, Be careful what you
11 wish for. But a sex -- sexual assault trial was not
12 the place for that kind of remark.

13 Q What about Allegation 5; what's your opinion about the
14 the appropriateness of the comments or the conduct?

15 A 5(a) was highly inappropriate, as was 5(b), (c), and
16 5(d). 5(e) is slightly different. It was a question
17 that I put to Ms. Mograbee, who answered it correctly.
18 I shouldn't have asked the question. Within an instant
19 of asking the question, I found the subsection in the
20 Act which answered my question.

21 Q What about Allegation 6; what's your opinion on the
22 appropriateness of those comments or conduct?

23 A In regard to 5(a) (sic), Mr. Addario, I was asking a
24 serious question flippantly. The Crown had made a
25 submission that they had to be words. I didn't think
26 that was right, and I was looking through the --

1 through the section to find the applicable subsection.
2 I was asking for help, but the words didn't -- in a
3 disparaging and facetious way. I regret that.

4 As for 5(b) -- 6(b), 6(b) and (c) are part of the
5 same thing. It was a ham-handed attempt to give advice
6 to a young man who probably hadn't ever been given
7 advice. I should have realized, not that it was -- I
8 wish I hadn't said it.

9 Q At times during the trial, you call the complainant
10 "the accused". Did you think she was the accused?

11 A No, Mr. Addario.

12 Q Have you mixed up names before?

13 A Mr. Addario, I have two grandsons. I mix up their
14 names. It's not only people. I've annoyed my wife; I
15 call the dishwasher the "washing machine". I suspect
16 I've done it often in court. I know of one case where
17 I called the investigating officer, a Mountie, by the
18 accused's name.

19 Q What was that case?

20 A McTaggart, R. v. McTaggart.

21 Q What kind of case was that?

22 A It was also a sex assault case. It was a preliminary
23 inquiry.

24 Q You called the investigating police officer?

25 A By the accused's name.

26 Q You called the investigating police officer

1 "McTaggart"?

2 A Yes.

3 Q And McTaggart was the defendant?

4 A That's right.

5 Q Was that deliberate?

6 A No, Mr. Addario.

7 Q All right. And could I ask you this: Had you heard
8 any sex assault cases before or after the Wagar matter
9 while you were in the Alberta Provincial Court?

10 A Yes, Mr. Addario. Not many. Quite a number of guilty
11 pleas. But as far as trials and preliminary inquiries,
12 four or five. I'm not sure whether -- how many came
13 after September of 2014, how many before, but yes, I
14 have.

15 Q McTaggart was one of those?

16 A McTaggart was one.

17 Q And so far as you know, have there been any complaints
18 about your conduct in those cases?

19 A Not as far as I'm aware, Mr. Addario.

20 Q And maybe just give the committee an overview. What
21 did you learn from reading the Wagar transcript and
22 reflecting on it?

23 A I was not the good judge that I thought I was. I
24 struck the wrong tone, and during counsel's
25 submissions, I was rude and facetious, and it was
26 uncalled for, particularly in a sensitive case like

1 this. I take some comfort from the fact that I know
2 that the Crown in question is a strong woman and is
3 unlikely to have been frightened by me, but I apologize
4 to her but more so because of my lack of respect to
5 her. I'm sorry.

6 The thing that I feel worst about -- well, let me
7 just finish that. I've realized that my
8 interventionist way of dealing with counsel submissions
9 is sometimes carried too far. I like to understand
10 things. I want to make sure that I understand
11 submissions. I want to test submissions. I have to
12 control that impulse. The thing I feel worst about is
13 the questions that I asked of the accused, the terms in
14 which I asked them. That was unforgiveable.

15 Q Do you mean the accused or the complainant?

16 A Sorry. What did I say, Mr. Addario?

17 Q "The accused".

18 A The complainant, Mr. Addario. Sorry.

19 Q You just made that mistake again.

20 A I realize that.

21 Q During the past nine months, did you learn anything
22 about unconscious bias? We've heard that term this
23 week.

24 A I learned a great deal, largely from Lori Haskell, and
25 I learned that I have it. We discussed it in the
26 context of sexual assault and in some other areas too

1 in passing, assault in general, domestic violence. She
2 talked a little bit about racism, but that was
3 peripheral. She never said to me, You have biases, but
4 eventually she drew out of me the acknowledgment that I
5 did and the realization that I may have biases,
6 prejudices in other areas that I don't know about and
7 that I have to -- as she put it, I have to constantly
8 reflect on words and situations to try and preempt
9 biased thinking and biased words.

10 Q Do you accept that?

11 A Oh, yes. I -- I worked it out for myself. She -- the
12 fact that she made me work it out for myself -- and
13 Justice McCawley too -- makes it impossible for me to
14 forget it. It's -- it's something that I've accepted.
15 It wasn't forced on me. At no point did any of my
16 mentors force me to come to any conclusions or to
17 accept any point of view that they espoused.

18 Q Do you think you're a better judge today than you were
19 on November 9th, 2015, recognizing that it's very hard
20 to self-evaluate?

21 A I hope so, Mr. Addario. I certainly -- I intervene a
22 lot less, and I will be more careful of the language
23 that I use. I will try -- I will be more sensitive to
24 being appropriate, and as far as sex assault is
25 concerned, if ever I am involved in one of those
26 again -- one of those cases again, I now am aware of --

1 of the prejudices that I had. I've learned an enormous
2 amount about the lived experiences of sex assault, sex
3 violence victims, and I now know that when it comes to
4 areas like this where bias and prejudice might exist,
5 even a seemingly innocent area, let's say,
6 environmentalism, that I must speak to experts and
7 evaluate my -- my thoughts on the matter. I suppose
8 the short answer is: Yes, I will be a better judge.

9 Q Thanks very much. That's all I have. Stay there.
10 Presenting counsel may have some questions.

11 A Ms. Hickey, before you start, I haven't actually
12 apologized yet. Somehow or another, the occasion
13 didn't arise in the -- in the evidence. I've
14 apologized to -- to Crown counsel, Hyatt Mograbee, but
15 I have more apologies to make.

16 May I go ahead, Associate Chief Justice Cullen?

17 THE CHAIR: Yes.

18 THE WITNESS: The person I most want to
19 apologize to is the complainant. The Panel has seen
20 her. She's a fragile personality. Her background has
21 not been easy. Her life has not been easy. And I was
22 rude and insulting. I'm sorry.

23 By extension, I have caused unhappiness amongst
24 other people, mainly women but some men who have been
25 sexually abused, and I'm sorry for that. Canadians
26 deserve better of their judges.

1 I must apologize to the judiciary of this country.
2 I have made the difficult role of a judge -- each judge
3 in this country more difficult, and I am sorry for
4 that.

5 And then if the Panel would indulge me, I have one
6 further apology that I would like to do in public. I
7 have let my family down. I have hurt them. They had
8 no fault. I had fault. I'm particularly sorry for the
9 embarrassment caused to my wife and, in the nature of
10 things, to my daughter. Despite all this, my family
11 has continued loving me. That includes my sons and my
12 daughters-in-law. But I'm sorry.

13 Thank you for that indulgence.

14 THE CHAIR: All right. Thank you.

15 Ms. Hickey.

16 Ms. Hickey Cross-examines the Witness

17 Q MS. HICKEY: Good morning, Justice Camp.

18 A Good morning, Ms. Hickey.

19 Q Justice Camp, in the course of this inquiry, we've had
20 occasion to refer to the Ethical Principles for Judges.
21 Is that document handy for you?

22 A It is.

23 Q And this is a document produced by the Canadian
24 Judicial Council, and it's designed to provide guidance
25 to Superior Court judges; is that your understanding?

26 A That is my understanding.

1 Q So while not technically applicable to you while you
2 were in the position of a Provincial Court judge, do
3 you agree that the ethical principles that are
4 enumerated in this document are equally applicable to
5 the role of a judge in Provincial Court?

6 A Yes.

7 Q And in particular, if we just go through some of them,
8 I'll refer perhaps firstly where the document is
9 setting out the purpose. The purpose is: (as read)

10 To provide ethical guidance for federally
11 appointed judges.

12 And then it goes on to say that: (as read)

13 The principles describe the very high
14 standards toward which all judges strive.

15 And you accept that all judges must strive to very high
16 standards?

17 A Oh, yes.

18 Q "Judicial independence" is listed as one of the ethical
19 principles: (as read)

20 An independent judiciary is indispensable to
21 impartial justice under law. Judges should
22 therefore uphold and exemplify judicial
23 independence in both its individual and
24 institutional aspects.

25 Do you agree with that, Justice Camp?

26 A I do.

1 Q And agree it applied in your position on the Provincial
2 Court?

3 A I do, Ms. Hickey.

4 Q Number 3, "Integrity": (as read)

5 Judges should strive to conduct themselves
6 with integrity so as to sustain and enhance
7 public confidence in the judiciary.

8 You agree with that?

9 A Yes.

10 Q You agree with the principle enumerated thereunder
11 that: (as read)

12 Judges should make every effort to ensure
13 that their conduct is above reproach in the
14 view of reasonable, fair-minded, and informed
15 persons.

16 You agree with --

17 A Yes.

18 Q -- that? "Diligence": (as read)

19 Judges should be diligent in the performance
20 of their judicial duties. [And under that]
21 Judges should take reasonable steps to
22 maintain and enhance the knowledge, skills,
23 and personal qualities necessary for judicial
24 office.

25 A Yes.

26 Q You agree that that was applicable to you as a

1 Provincial Court judge as well?

2 A I do.

3 Q And "Equality": (as read)

4 Judges should conduct themselves and
5 proceedings before them so as to assure
6 equality according to law.

7 And underneath that, the principles; two of them
8 indicate: (as read)

9 Judges should carry out their duties with
10 appropriate consideration for all persons
11 without discrimination.

12 A Yes.

13 Q (As read)

14 Judges should strive to be aware of and
15 understand differences arising from gender,
16 race, religious conviction, culture, ethnic
17 background, sexual orientation, or
18 disability.

19 You agree with that?

20 A I do.

21 Q And in the commentary under that: (as read)

22 Judges should not be influenced by attitudes
23 based on stereotype, myth, or prejudice.

24 They should therefore make every effort to
25 recognize, demonstrate sensitivity to, and
26 correct such attitudes.

1 A Yes.

2 Q And that governed you while you were a Provincial Court
3 judge as well?

4 A It does.

5 Q It did?

6 A It did, yes, Ms. Hickey.

7 Q And with respect to impartiality: (as read)

8 Judges must be and should appear to be
9 impartial with respect to their decisions and
10 decision-making. [And under that] Judges
11 should strive to ensure that their conduct,
12 both in and out of court, maintains and
13 enhances confidence in their impartiality and
14 that of the judiciary.

15 You agree with that as well, that it was applicable?

16 A Yes.

17 Q And then finally under that, "Judicial Demeanour": (as
18 read)

19 While acting decisively, maintaining firm
20 control of the process, and ensuring
21 expedition, judges should treat everyone
22 before the Court with appropriate courtesy.

23 A I agree with that.

24 Q Yes. So you agree that all of those principles applied
25 to you in your position on the Provincial Court?

26 A Yes.

1 Q Thank you. Now, Justice Camp, do I understand that in
2 2008, you were appointed to the Law Society of
3 Alberta's Equality, Equity, and Diversity Committee?

4 A Yes, I was.

5 Q How long were you on that committee?

6 A I believe until I was appointed to the bench. It -- we
7 ceased meeting regularly, I think, in about 2011, but I
8 was a member of that body for some years.

9 Q Okay. And did you apply for that position?

10 A Yes, I did.

11 Q And in applying for that position, you had an interest
12 in areas of equality, equity, and diversity?

13 A Yes.

14 Q And you considered that you had an aptitude and an
15 understanding of those areas when you applied to be on
16 that committee?

17 A My -- my interest -- would you like my -- like me to
18 expand?

19 Q Sure.

20 A Okay. My interest was really twofold. The one was
21 that I -- I wanted to help lawyers from other
22 countries, immigrant lawyers. Obviously, I had an
23 interest in that, and it was sometimes very hard for a
24 lawyer, say, from Nigeria to have his or her
25 qualifications assessed and after that to get work.
26 They -- they were a disadvantaged group. I was lucky

1 when I came to Canada; my university was recognized; I
2 spoke English well. But other immigrants, less lucky,
3 less fortunate.

4 My other interest was -- was a really important
5 one. In Alberta -- and I believe it's true for other
6 provinces -- it's very hard to keep women in the
7 profession, particularly practicing in firms, and we
8 were looking at ways of mitigating that loss. And as
9 at that time, I was managing partner of my firm, it was
10 something that was troubling my firm.

11 Q So you believed you had something to offer to this
12 committee. You had some sensitivity towards
13 disadvantaged groups and a recognition that those
14 disadvantages can manifest themselves in different ways
15 in society?

16 A That's what I thought.

17 Q Now, with respect, Justice Camp, to any training or
18 education that you may have had in sexual assault law,
19 you were appointed to the bench -- was it 2012?

20 A Yes.

21 Q And the case that is the subject of this inquiry was in
22 2014?

23 A That's right.

24 Q During that period of time, you've indicated to
25 Mr. Addario, you had four to five cases involving
26 sexual assault; although, you weren't sure of the

1 timing specifically. Aside from your experience in
2 those cases, did you have training or education that
3 was provided to you?

4 A I self-learned, but I had no outside training. There
5 was none available to Provincial Court judges.

6 Q Okay. Did you attend new judges school?

7 A Yes, I did.

8 Q In 2013?

9 A Yes.

10 Q And that's a seven-day program?

11 A I think it was five --

12 Q Five?

13 A -- but it was a lengthy program, yes.

14 Q Okay. And in the course of new judges school, you were
15 given a copy of "Conduct of a Trial" by Allen Edgar?

16 A I recall that, yes.

17 Q Yes. And you recall that sections of that dealt with
18 how to conduct a sexual assault trial?

19 A Yes.

20 Q And some judges have that document available to them
21 while they're sitting on the bench, on the computers,
22 to provide guidance to them; are you aware of that,
23 Justice Camp?

24 A I'm not.

25 Q You did not, I take it --

26 A No, I didn't.

- 1 Q -- have it available to you on the bench?
- 2 A No.
- 3 Q Okay. Did you review it?
- 4 A At the time, yes.
- 5 Q Okay.
- 6 WHALEN C.J.: Ms. Hickey, what was the name
7 of that text again? I missed it.
- 8 MS. HICKEY: "Conduct of a Trial".
- 9 WHALEN C.J.: By Allen who?
- 10 MS. HICKEY: Allen Edgar.
- 11 WHALEN C.J.: Thank you.
- 12 Q MS. HICKEY: In addition to attending new
13 judges school, Judge Camp -- sorry, Justice Camp,
14 judges of the Provincial Court, my understanding, at
15 least, at the time, is that they were given an
16 allotment of funds for continuing professional
17 development in the amount of \$3,750 per year; is that
18 correct?
- 19 A That's true.
- 20 Q And those funds were available to you to facilitate
21 training that you believed you should be pursuing?
- 22 A Yes.
- 23 Q And is that self-initiated? Do you identify areas
24 where you feel you need to learn more on and then apply
25 for different conferences and programs?
- 26 A Ms. Hickey, it really works the other way around.

- 1 Q Okay.
- 2 A One gets notification of courses that are available.
- 3 Q Yes.
- 4 A And one then applies for the ones that you think would
5 help one most, particularly when you start. The most
6 helpful for new judges is New Judges 1 and New Judges
7 2, which uses up a great chunk of the -- by the time
8 you've travelled across Canada, of that allotment.
- 9 Q All right. And did you do New Judges -- was New Judges
10 1 the five-day program you referenced earlier?
- 11 A They were both five-day programs.
- 12 Q So you did the two five-day --
- 13 A I did both --
- 14 Q -- programs?
- 15 A -- and several others.
- 16 Q Okay. And aside from the "Conduct of a Trial" text
17 that I referred to you, in terms of these other
18 conferences that you've attended, did any of them
19 relate to the conduct of a sexual assault trial?
- 20 A I don't believe so, Ms. Hickey. Ms. Hickey, the
21 Provincial Court deals, in large measure, with impaired
22 driving, aboriginal matters, and at that time, Ipeelee
23 had just come down, when I joined, and the first
24 seminar I attended really was on Ipeelee and Gladue.
- 25 Q So how many conferences did you attend, then, Justice
26 Camp, over the course of your time on the Provincial

1 Court?

2 A Two new judges school, one judgment writing, and two a
3 year from -- from my bench, so probably ten.

4 Q Okay. And is part of the curriculum of new judges
5 school to provide some training and education on issues
6 like judicial deportment?

7 A Oh, yes.

8 Q And that training and education also relates to issues
9 in terms of the degree of intervention that a judge
10 should have with counsel during the course of a trial?

11 A Yes.

12 Q And as you've mentioned, it also relates to
13 decision-making and decision-writing?

14 A Yes.

15 Q And outside of the formal courses that you have
16 referenced, Justice Camp, it's open to a judge to
17 pursue their own training to address any areas in
18 particular where they may feel they have gaps in their
19 knowledge; is that correct?

20 A That is absolutely right.

21 Q And, indeed, as we reviewed the ethical principles
22 earlier, diligence refers specifically to that quality
23 in a judge, that a judge should seek out and learn and
24 understand the areas that they're involved in?

25 A Correct.

26 Q So, Justice Camp, the decision in Wagar was rendered, I

1 believe, on September 9th of 2014?

2 A Yes.

3 Q And then an appeal was filed. Is it customary in your
4 court to be provided with a copy of the notice of
5 appeal when it's appealed?

6 A No. One never gets a copy of the notice of appeal.
7 Occasionally, the Crown or the defence, if you meet
8 them in the street, will say, That case has been
9 appealed, particularly if you're on good footing. One
10 sometimes -- and it seems to be pretty arbitrary. One
11 sometimes gets a little slip in one's pigeonhole saying
12 that a case has been appealed but not always, and
13 sometimes one gets a result of the appeal. But more
14 often, one has to -- one hears about it informally, and
15 when next you see counsel, you ask them what happened.
16 So in this case, I did not receive notice, so I had no
17 idea that the matter was being appealed.

18 Q Did you receive a copy of the Court of Appeal decision
19 when it was issued on October 27th of 2014 (sic)?

20 A Not formally. I read about it in the Calgary Herald
21 online.

22 Q So when you read about it in the Calgary Herald online,
23 was that the first time then that you had a sense that
24 you were facing an issue?

25 A Yes.

26 Q So you hadn't yourself identified any concerns with the

1 language that you had used in the Wagar decision?

2 A To my shame, no.

3 Q And that was the case as well between the time that the
4 evidence was completed, you heard the submissions, and
5 you rendered the decision? I believe there was roughly
6 a month there; August 6th was the end of submissions,
7 your decision was on September the 9th?

8 A That's right.

9 Q And you had the transcript available to you prior to
10 rendering your decision?

11 A Yes.

12 Q And you read it, Justice Camp?

13 A Oh, yes.

14 Q And having read it and reviewed it and reviewed the
15 various comments that have been referenced here today,
16 you detected no issue?

17 A No, I sadly did not.

18 Q So when you learned, then, of this article in the
19 newspaper, what did you do?

20 A I spoke to my Chief Justice, and at about the same
21 time, I found out about the Internet articles by
22 various law professors, including Professor Woolley,
23 and I realized, as I've said earlier, that I had said
24 very objectionable things. And I tried to get a copy
25 of the transcript. That took, surprisingly, some five
26 or six weeks, but I apologized at once by way of -- of

1 the Federal Court website.

2 Q So, Justice Camp, why did you understand when you read
3 these articles that there were problems with the
4 language, but you didn't understand it when you
5 reviewed the transcript?

6 A Ms. Hickey, I realized that if Alice Woolley had said I
7 had done something wrong, she wouldn't have been
8 motivated by -- by malice, and reading what she said, I
9 saw that, feebly, what I had done wrong. I -- and you
10 must also please remember that in the beginning, the
11 complaints in the -- in the blogs and -- and by the --
12 the judgment of the -- of the Appeal Court seemed to --
13 to say that I had made a mistake in the law
14 deliberately, and that was the initial focus of my
15 concern. I -- the idea that I would deliberately
16 misapply the law was very troubling to me.

17 Q Was that more troubling than the language and comments
18 that you used with respect to the complainant?

19 A No. I -- I didn't say that. I -- I immediately
20 apologized for the -- for the language that I used, and
21 having read the -- what the Appeal Court said and what
22 Professor Woolley and others said, I recognized that my
23 language had been inappropriate. I didn't have any
24 further recognition at that time.

25 Q I'd like to turn up some of the documents, Justice
26 Camp, in the big binder in front of you, please.

1 THE CHAIR: Ms. Hickey, I'm sorry to
2 interrupt you, but is this an appropriate time to take
3 the morning adjournment?

4 MS. HICKEY: Certainly.

5 THE CHAIR: All right. Thank you. We'll
6 take 15 minutes.

7 (ADJOURNMENT)

8 THE CHAIR: Yes. Thank you, Ms. Hickey.

9 MS. HICKEY: Thank you.

10 Q MS. HICKEY: Justice Camp, just before the
11 break, I think you were speaking about how you came to
12 learn that there were issues, and it was through a
13 newspaper article; I believe you said it was in the
14 Calgary Herald?

15 A Yes.

16 Q Was that a different newspaper article than the one
17 published in the Globe and Mail, or are you speaking
18 about the same article?

19 A I'm sorry. I can't say.

20 Q Okay. If you could look in the exhibit book before
21 you, please, and it's Tab G.

22 A Yes.

23 Q So I'm referring to the article "Myths and Stereotypes:
24 Some Judges Still Don't Get It" by Professors Craig and
25 Woolley.

26 A I saw this article as well.

1 Q Yes.

2 A But what I was referring to was an article in the
3 Calgary Herald. It was much shorter than this, and it
4 referred -- it was a report of the Appeal Court
5 judgment.

6 Q I see.

7 A And when I talked about Alice Woolley's -- what I read
8 on Alice -- Alice Woolley's blog, it -- I think it
9 predated this as well.

10 Q So when you were giving your evidence earlier with
11 respect to your reaction to what you read and when you
12 indicated that your reaction was firstly about the
13 suggestion that you had deliberately not applied the
14 law correctly, that arose from some other articles that
15 you read aside from what was in the Globe and Mail?

16 A Largely from -- from the Appeal Court's decision, yes.

17 Q Okay. Now, at the time, then, that you saw this
18 article and learned of the Appeal Court's decision, you
19 were at this point a justice of the Federal Court of
20 Canada?

21 A Yes.

22 Q And upon learning of the Court of Appeal decision, what
23 did you do?

24 A I spoke to my Chief Justice, who felt that he had to
25 make the reaction. I read Professor Woolley's blog,
26 and I arranged -- I felt the need to apologize, and I

1 arranged to have that published on the Federal Court
2 website.

3 Q So did you approach Chief Justice Crampton then about
4 this when you learned of it?

5 A Yes.

6 Q If you could turn, Justice Camp, to the letter from
7 Chief Justice Crampton, it's Tab I.

8 A Yes.

9 Q On page 2 of that letter, Justice Camp --

10 A Yes.

11 Q This is Chief Justice Crampton, the Chief Justice of
12 the Federal Court, writing this letter. He indicates:
13 (as read)

14 Upon reading the article by Professors Craig
15 and Woolley entitled "Myths and Stereotypes:
16 Some Judges Still Don't Get It" that was
17 published in the Globe and Mail on November
18 9, 2015 --

19 A Yes.

20 Q (As read)

21 -- it was readily apparent to me that certain
22 comments made by Justice Camp in the case
23 raised very serious issues for Justice Camp
24 and, indeed, the judicial system as a whole,
25 including the Federal Court.

26 Accordingly, I immediately contacted

1 Justice Camp. He had also just seen that
2 newspaper article and readily understood the
3 seriousness of the matter and the need to
4 make a public apology.

5 A Yes.

6 Q So I'm trying to learn, then, Justice Camp, just the
7 sequence of when you learned of the issues and when you
8 had discussions with Justice -- Chief Justice Crampton.
9 This would suggest that Chief Justice Crampton
10 approached you after reading the Globe and Mail
11 article.

12 A Yes. I learned of it first at the end of October, and
13 I know that because I was in Victoria. My recollection
14 is that by this time, by the -- by November the 9th, I
15 had already spoken to my Chief Justice about this. If
16 it had been an ordinary appeal, I wouldn't have
17 bothered. Judges get appealed and overturned. It's
18 nothing out of the ordinary.

19 Please remind me where Professor Woolley's article
20 in the Globe and Mail is. Is that at --

21 Q Yes. It's under Tab G.

22 A 'G'. Thank you.

23 Q And it's dated --

24 A It's November the 9th, yes.

25 Q November the 9th, that's right.

26 A I have a different recollection from my Chief Justice.

- 1 Q Okay. You did, though, have a conversation with your
2 Chief Justice --
- 3 A Several.
- 4 Q -- about the article in the Globe and Mail?
- 5 A Yes.
- 6 Q And who initiated the idea of an apology?
- 7 A I like to think that it was my idea because by the time
8 of -- by November the 9th, I had known about this for
9 perhaps ten days, and it was earlier than that that I
10 felt I had to make -- I had to atone in some way.
- 11 Q And is it your evidence, then, that you approached
12 Chief Justice Crampton prior to the November 9th Globe
13 and Mail article?
- 14 A I believe we had discussions before November 9th.
15 That's my recollection. He certainly knew about it
16 before November 9th.
- 17 Q You would agree with me that his letter seems to
18 suggest otherwise?
- 19 A Yes.
- 20 Q So there's just a difference in recollection; is that
21 right?
- 22 A I believe so. And, Ms. Hickey, I could be wrong. I
23 didn't keep a diary. That chronology wasn't important
24 to me at that stage.
- 25 Q Regardless, then, of how the conversation was initiated
26 or who initiated it, at some point, there was a

1 discussion of an apology that you would make?

2 A Yes.

3 Q And we see that under Tab J of the exhibit book?

4 A Yes.

5 Q And just to be fair, before I turn to that, Justice
6 Camp, back in the letter of Chief Justice Crampton,
7 while he does say, "I immediately contacted Justice
8 Camp", and says: (as read)

9 He had also just seen that newspaper article
10 and readily understood the seriousness of the
11 matter and the need to make a public apology.

12 So there's a reference there to that discussion taking
13 place between you and him about the public apology.

14 A Indeed.

15 Q So then you do write the public apology?

16 A Yes.

17 Q And that's what we see under Tab J?

18 A Yes, Ms. Hickey.

19 Q Well, actually, Tab J is the statement on the Federal
20 Court website, isn't it, that includes --

21 A That includes it.

22 Q -- includes the apology, yes, just to correct myself.

23 A Correct.

24 Q And the portion of this document, Tab J, that is the
25 apology is the piece, I take it, that starts in
26 quotation marks in the second-last paragraph?

1 A Yes.

2 Q (As read)

3 I have come to recognize that things that I
4 said and attitudes I displayed during the
5 trial of this matter and in my decision
6 caused deep and significant pain to many
7 people. My sincere apology goes out, in the
8 first place, to the young woman who was the
9 complainant in the matter.

10 And then you go on to: (as read)

11 Also apologize to the women who experience
12 feelings of anger, frustration, and despair
13 at hearing of these events.

14 You state: (as read)

15 I am deeply troubled that things that I said
16 would hurt the innocent. In this regard, I
17 am speaking particularly to those who
18 hesitate to come forward to report abuse of
19 any kind and who are reluctant to give
20 evidence about abuse, sexual or otherwise.
21 To the extent that what I have said
22 discourages any person from reporting abuse
23 or from testifying about it, I am truly
24 sorry. I will do all in my power to learn
25 from this and to never repeat these mistakes.

26 A Yes.

1 Q Were those your words, Justice Camp?

2 A I did a draft. I believe that counsel to the Court
3 tidied it up, but in essence, those were my words, yes.

4 Q So you had some editing assistance?

5 A Cosmetic.

6 Q Now, when you say: (as read)

7 I have come to recognize the things that I
8 said and attitudes I displayed during the
9 trial caused deep and significant pain.

10 So this is November 10th that this is being published
11 on the Federal Court's website. How -- how did you
12 come to recognize at that point that the things you
13 said and the attitudes you displayed caused deep and
14 significant pain?

15 A Ms. Hickey, if an Appeal Court says that it's possible
16 that things that I have said indicate that I don't
17 understand the law, then it's a pretty clear signal
18 that I've said things that are wrong. If a person that
19 I respect like Professor Woolley writes in her blog and
20 in articles that what I've done is damaging and
21 hurtful, it's a pretty clear indication that what I've
22 done is damaging and hurtful, and I accepted that.

23 Q Had you been appealed before, Justice Camp?

24 A Yes.

25 Q And did you feel the need to write an apology then?

26 A No. But it -- it wasn't on significant matters like

1 this.

2 Q Okay. But it presumably was about errors of law that
3 the Court of Appeal were attributing to you?

4 A Law or fact, yes.

5 Q Yes.

6 A Yes.

7 Q So I'm trying to get a better understanding of what
8 happened between the time of the Wagar decision, the
9 time that you first read the blog or the article in the
10 Herald and learned of the Court of Appeal decision, and
11 the timing of writing this apology; what happened to
12 cause you to recognize that the things you said and the
13 attitudes you displayed caused deep and significant
14 pain? Had you done any training within that period of
15 time?

16 A No, I had not. It was, as I say, the articles by
17 Professor Woolley and one of her colleagues who was
18 then studying in England. I forget. Professor
19 Jennifer ...

20 Q Koshan.

21 A Koshan. Thank you. And the remarks by the -- the
22 Appeal Court.

23 Q So you really didn't need any form of training to
24 understand that the things that you had said were
25 wrong?

26 A I didn't need training to realize the first level of

1 wrongness, that they were hurtful and insulting and
2 abusive, no. I -- when it was explained to me by way
3 of what I had read, I realized that.

4 Q Now, after the apology was written, I understand within
5 a few days that a decision was made that you would
6 undergo some mentoring through Justice McCawley; is
7 that correct?

8 A That's right.

9 Q And you were approached through Chief Justice Crampton,
10 who had contacted Justice McCawley's Chief; is that how
11 that came about?

12 A I believe so.

13 Q Okay. And you agreed that you would participate in the
14 mentoring that she would provide?

15 A Yes.

16 Q So that came through Chief Justice Crampton in his
17 discussions with the Chief Justice of Manitoba?

18 A Yes.

19 Q And it was Justice McCawley who suggested that some
20 psychological training would be of benefit to you; that
21 was her evidence here at the -- at the inquiry?

22 A She did suggest it, but if you look at -- I think it
23 was already in my mind. I believe Chief Justice
24 Crampton touches on that in his letter or in the
25 first -- first -- on the website of the Federal Court,
26 when the matter first went up, Chief Justice Crampton

1 said that I would undergo counselling. So I think it
2 happened earlier than that, earlier than -- than the
3 suggestion by -- by Justice McCawley. She may not have
4 known that, that the idea was already in existence.

5 Q So what's --

6 A She probably didn't.

7 Q Sorry to interrupt. So what was on the website under
8 Tab J indicates: (as reads)

9 Justice Camp has volunteered to undertake a
10 program of gender-sensitivity counselling at
11 his own expense and on his own time.

12 A Yes.

13 Q And to what is that referring?

14 A Well, that -- that refers to -- to psychological help.
15 Justice McCawley cost me nothing. She gave me many,
16 many, many hours, well, estimated something like 50
17 hours of her time --

18 Q Yes.

19 A -- for nothing. This refers to professional --
20 professional help.

21 Q Okay. Thank you. And then the third person involved
22 in your training and education was Professor Cossman,
23 and she came about through the suggestion of
24 Mr. Addario; is that right?

25 A That's correct.

26 Q And Chief Justice Crampton decided that you would not

1 sit on any cases while you were pursuing this
2 remediation; is that correct, Justice Camp?

3 A That's right. Well, not while I was pursuing the
4 remediation; until the Canadian Judicial Council had
5 come to a conclusion.

6 Q Okay. There was perhaps some days in between there
7 before a complaint was actually received, I believe?

8 A That's right.

9 Q Yes. And was it sometime during the week of November
10 13th that you received the formal complaint that was
11 filed by the four law professors?

12 A That date sounds right.

13 Q And at the time that you received that complaint, the
14 Judicial Council also provided you with a series of
15 other complaints that had been filed by a variety of
16 individuals; is that correct?

17 A Not at that time. I received several dozen complaints
18 in the weeks that followed --

19 Q Yes.

20 A -- from the Canadian Judicial Council.

21 Q And those were from individuals and some organizations
22 from across the country?

23 A That's right.

24 Q And they appear in our exhibits?

25 A That's right.

26 Q What was your reaction, Justice Camp, as you saw these

1 various complaints coming in from across the country?

2 A I -- my sense that I had made mistakes was compounded.

3 I recognized that I made a number of vulnerable people
4 miserable. I was very unhappy with myself.

5 Q And you understood, Justice Camp, that the letter from
6 the law professors was the initiating letter that was
7 being reviewed by the Canadian Judicial Council?

8 A That is my understanding.

9 Q Yes. And if you could just turn that up, please, it's
10 in Tab E1.

11 A Yes.

12 Q And it's quite a lengthy letter.

13 A Yes, it is.

14 Q And it addresses, as you noted earlier with respect to,
15 I believe, Professor Woolley's blog, there were some
16 allegations in this letter with respect to your
17 application of the law as well as comments in this
18 letter with respect to the language that you used in
19 the Wagar decision?

20 A That's right.

21 Q And of those, Justice Camp, in this letter, what did
22 you think had merit, if any?

23 A When I got this letter, I did not have a copy of the
24 record.

25 Q Of the record, of the trial in Wagar?

26 A Yeah. It took a surprisingly long time to get a copy

1 of the record. I don't think it was until early
2 December that we got the record, maybe late November,
3 and that despite the fact that I had lots of contacts
4 at the Calgary Courthouse. So I couldn't really judge
5 the merit of the -- the merits of the concern about my
6 refusal to apply the law. Knowing myself, knowing that
7 I value the hierarchy of the courts, and that I've -- I
8 regard a judge who refuses to apply the law as
9 equivalent to a general who commits a coup d'etat, I
10 didn't think it was right, but it wasn't until I got
11 the record that I could gauge how accurate that
12 accusation was. So in the beginning, I was on tender
13 hooks about that aspect of things.

14 Q You had indicated earlier that was your first area of
15 concern?

16 A Yeah, it was. It was very troubling to me,
17 particularly since I couldn't gauge whether I was
18 guilty of it or not. But you asked me what had merit.
19 I recognized that there was merit in the -- in the
20 concerns about the language I had used in itself,
21 regardless of the law, hence the apology to Chief
22 Justice MacDonald of early November -- December.

23 Q Let's have a look at that, then, since you just
24 referenced that. That's Exhibit 10, I believe.

25 A E10?

26 Q Sorry. No. It's a separate page. I'm not sure if

1 it's in front of you. If I may just approach with it.

2 Thank you.

3 A Thank you.

4 Q So you recognized there were some problems with the
5 language in Wagar. In the professors' complaint, they
6 have a category of: (as read)

7 Justice Camp's conduct was disrespectful
8 toward the complainant.

9 And it then goes on to refer to numerous statements
10 that suggest it was the complainant who was on trial,
11 referring to her as "unsavory" and so on. Did you
12 accept that your conduct was disrespectful toward the
13 complainant when you received the complaint, Justice
14 Camp?

15 A Yes, I did. When I received the complaint and I saw
16 the excerpts from the transcript, I did accept that.
17 There were some areas that I didn't agree with, with
18 the complaints about, but as a general matter, yes,
19 very much so.

20 Q So could you help me, then, to reconcile on Exhibit 10
21 your letter of December 14t, 2015, on the last page.
22 In the first full paragraph, it says: (as read)

23 The law professors also state I used language
24 intended to denigrate the complainant. I
25 don't believe this is true, and it was never
26 my intention to do so. But I am learning.

1 How does that reconcile, Justice Camp?

2 A Ms. Hickey, I believe that in part, I was referring to
3 the complaint about "unsavory" -- using the term
4 "unsavory witness" and the complaint that I had called
5 the accused (sic) amoral and that the inference drawn
6 was that I was talking about her sexual morality.
7 Neither of those I felt were justifiable comments.
8 There were others that were justifiable.

9 Q Okay. So your letter, then, just doesn't distinguish
10 between which comments you agree did denigrate the
11 complainant and which you agree did not; is that fair?
12 You didn't make that distinction in your letter?

13 A I didn't make that distinction, and -- I didn't make
14 the distinction.

15 Q Just before we leave the professors' complaint, as
16 earlier noted, Justice Camp, it addressed the two
17 components, the kind of comments that you made and the
18 application of the law, and you've indicated you didn't
19 have the transcript at the time that you received this?

20 A That's correct.

21 Q You later did receive the transcript?

22 A Yes.

23 Q And what did you conclude then with respect to your
24 application of the law and the criticisms of the
25 professors with respect to your application of it?

26 A I think that as a general matter, I applied the law

1 correctly.

2 Q And you've heard in this inquiry Justice McCawley say
3 that she had some concern about your application of the
4 law as it was set out in the complainant's -- sorry,
5 the professors' complaint?

6 A Reading the professors' complaint, certainly.

7 Q Yes, but Justice McCawley indicated when she read it,
8 she had concerns as well about your application of the
9 law?

10 A Yes, she did. Reading the professors' complaint, it
11 gives rise to two concerns --

12 Q Right.

13 A -- which is why I was so desperate to get a copy of the
14 transcript.

15 Q Right. And I believe the evidence of Justice McCawley
16 was when she had reviewed the transcript, she had
17 concerns about your application of the law?

18 A I don't recall that.

19 Q You don't recall that?

20 MR. ADDARIO: I don't believe that was
21 Justice McCawley's evidence.

22 MS. HICKEY: I don't want to misstate it,
23 and I won't take that further. That was my
24 recollection.

25 THE CHAIR: Thank you. We do have
26 transcripts so we'll be able to ensure we know what the

1 evidence was.

2 MS. HICKEY: Thank you.

3 Q MS. HICKEY: You do understand, though,
4 Justice Camp, that the Court of Appeal has indicated
5 that they had issues with your application of the law?

6 A They said that on a reading of part of the record and
7 looking at the things that I said, I may have made
8 mistakes in law.

9 Q In the professors' complaint, they do make reference to
10 your reliance on stereotypical thinking and
11 perpetuation of discriminatory stereotypes, and we've
12 heard a lot of evidence, and you've given some evidence
13 today about how you've learned in that area through the
14 assistance that has been provided to you. Just to
15 understand that the timing of -- as you learned these
16 things, at the time the professors' complaint came in,
17 is it fair to say that you had no understanding that
18 you were relying on stereotypical thinking?

19 A No. I -- I thought that I was free of prejudice. In
20 my arrogance, I thought that.

21 Q And, likewise, when you provided your letter to the
22 Canadian Judicial Council in December of 2015, you had
23 no knowledge that -- at that time, sort of a month
24 later as well, that some of the stereotypical thinking
25 had gone into your thinking and reasoning in Wagar; is
26 that fair?

1 A That is so.

2 Q Okay. In your December 2015 letter, Justice Camp --
3 I'm just looking for a reference here. It's on the
4 first page. Oh, I'm sorry. It's the separate document
5 in front of you.

6 A Oh, thanks.

7 Q Exhibit 10.

8 A Yes. On the first page?

9 Q On the first page, the paragraph that starts: (as read)
10 The law professor complainants also say my
11 conduct of the case reflects old-fashioned or
12 rape-myth thinking on my part.

13 A Yes.

14 Q So then it goes on. You say: (as read)

15 I recognize that I owe a duty of sensitivity
16 and neutrality to all witnesses, litigants,
17 and counsel. I'm examining my own beliefs
18 carefully with the assistance of my
19 counsellors. I understand the hurt my
20 questions have caused, and I will try to
21 never again ask questions of a witness in the
22 manner I did in the Wagar case.

23 A Yes.

24 Q So you certainly understood as of December that you
25 owed that duty of sensitivity and neutrality to all
26 witnesses?

1 A Yes.

2 Q And you understood that at the time of the Wagar trial
3 as well?

4 A Yes.

5 Q Do you agree that you didn't apply it during the Wagar
6 trial?

7 A I've come to realize that, yes.

8 Q Now, in addition to the letter from the professors,
9 were you provided, Justice Camp, with the letter from
10 the Attorney General of Alberta, who filed a letter
11 with the Canadian Judicial Council?

12 A I was. I don't have it with me now, but I saw it at
13 the time.

14 Q You'll find it under Tab H of the book in front of you.

15 A Thank you. Please bear with me, Ms. Hickey. I'm
16 fumbling.

17 Q It's a big book. It's hard to find.

18 A I've got it now. Thank you.

19 Q So this is a letter written by Kathleen Ganley, the
20 Minister of Justice and Solicitor General for the
21 Province of Alberta on December 22nd, 2015?

22 A Yes.

23 Q And this indeed is the letter that has given rise to
24 this inquiry?

25 A That's right.

26 Q In the second paragraph of the letter, the Solicitor

1 General stated: (as read)

2 In my respectful opinion, the conduct of
3 Justice Camp throughout the proceedings in R.
4 v. Wagar was so manifestly and profoundly
5 destructive of the concept of the
6 impartiality, integrity, and independence of
7 the judicial role that public confidence has
8 been sufficiently undermined to render
9 Justice Camp incapable of executing his
10 judicial office.

11 How did you react to that suggestion, Justice Camp?

12 A You mean how did I react emotionally?

13 Q Well, let's start with emotionally.

14 MR. ADDARIO: Could I just say that
15 emotionally would be relevant, but his legal view on
16 it, of the ultimate issue, is probably of no value to
17 the committee.

18 MS. HICKEY: Yeah, I accept that. It's
19 more just to test his reaction to the strength of the
20 words used by the Minister.

21 THE CHAIR: All right. Thank you.

22 A Ms. Hickey, if the Attorney General of my home province
23 writes a letter like this, I have to take it very
24 seriously. I could say that it was hurtful, and it
25 was, but that would be to be self-pitying, and
26 self-pity doesn't enter into this. It made me very

1 unhappy. It made me look at myself again.

2 Q MS. HICKEY: You'll see in the letter from
3 the Solicitor General that she outlines a variety of
4 the myths that we've been hearing about throughout this
5 inquiry, Justice Camp?

6 A Yes.

7 Q She outlines the myth that sexual assault victims
8 report at their first opportunity --

9 A Yes.

10 Q -- that a woman cannot be raped against her will, that
11 a woman who is raped will get hysterical during the
12 event and will be visibly upset afterwards, that women
13 are seen as fickle and as seeking revenge on past
14 lovers, and only women of impure morals engage in the
15 kind of activity giving rise to sexual assault matters.
16 Again, this letter was written in later December,
17 December 22nd. You hadn't commenced your training at
18 that point and education sessions, I take it, or did
19 you?

20 A I had. I'd seen both the psychiatrist and the Manitoba
21 justice once by then.

22 Q Oh, okay. And you're referring to Dr. Haskell?

23 A Yes, I am, sorry, and Justice McCawley.

24 Q Justice McCawley. And through the training that you've
25 had, that you have described, and that we've heard
26 about from those witnesses, do you accept now that the

1 five myths that were outlined by the Solicitor General,
2 in fact, were prevalent throughout your thinking and
3 reasoning in the Wagar trial?

4 A Ms. Hickey, I accept that the first four were, yes.

5 Q Okay. And not the fifth, referring to "women of pure
6 morals"?

7 A I -- I took no position of the complainant's morals
8 other than her activities involving dishonesty.

9 Q Okay. So when you did come to understand these
10 stereotypes and myths and how they influenced your
11 thinking, did you accept that they reflected a gender
12 bias that you didn't realize you had?

13 A Yes, Ms. Hickey.

14 Q And we heard the evidence of Dr. Haskell when I asked
15 her the question as to whether she could describe some
16 of your thinking as "sexist", and she agreed that it --
17 that that was a fair characterization.

18 A Yes. I'd like to add a gloss, though.

19 Q Okay.

20 A Section -- Sections 271 to 278 of the Criminal Code
21 dealing with sex assault are gender-neutral, and I
22 think that my thinking isn't sexist but just
23 old-fashioned. I would have applied the same -- the
24 same thinking to a male complainant. So "sexist" is
25 perhaps code for -- for what I was thinking, but it's
26 not sexist so much as old-fashioned, outdated thinking

1 generally.

2 Q But you were here to hear Dr. Haskell and heard her use
3 that term --

4 A Yes.

5 Q -- and applied it to you?

6 A Yes, she did.

7 Q Sir, isn't it a problem, as a sitting judge, to be
8 described as someone with sexist attitudes or to have
9 gender biases?

10 A It is.

11 Q And isn't it a problem for women who may appear before
12 you in court that you've been described as holding
13 sexist attitudes and a gender bias?

14 A Ms. Hickey, I could see that -- the perceived problem.
15 If the Council sees fit to permit me to continue
16 sitting, that should signal to the public that I am no
17 longer such a person. I was subject to prejudiced
18 thinking certainly in this area. By "this area", I'm
19 talking about sex assault. I now know enough to
20 question every question that I ask and every thought
21 that I have.

22 I can't guarantee that I'm not victim to other
23 forms of -- and, sorry, that's the -- that's the
24 passive mode. Let me use the active mode. I can't
25 guarantee that I'm not prejudiced in other areas; I
26 don't think anybody can. What I have learned is to be

1 constantly vigilant against it, what Dr. Haskell
2 called, I think, "constant assessment", and to ask for
3 help when I need it.

4 Q So to be clear, then, Justice Camp, you acknowledge
5 that your thinking, I think the term used in your
6 notice of response is "was infected" by some
7 stereotypical thinking and discredited myths --

8 A Yes.

9 Q -- during your conduct of the Wagar trial. But due to
10 the mentoring, the counselling, and the learning that
11 you have done, that thinking has now been disinfected;
12 is that a fair way to put it?

13 A It is, Ms. Hickey, with one rider. One can never be
14 sure of one's thought processes. As Justice McCawley
15 said, we bring ideas to bear that are wrong, even with
16 the best of intentions. All I can say is that I'm a
17 lot better than I was, and I will always be vigilant.
18 Perfect, I'll never be.

19 Q Justice Camp, I would just like to turn briefly -- and
20 Mr. Addario took you through the allegations, and I
21 think that will shorten, perhaps, some of -- of my
22 questions on those. Do you have the Statement of
23 Allegations handy, sir?

24 A I have it.

25 Q I believe it's a separate document.

26 A I have it, Ms. Hickey.

1 Q Thank you. So with respect to the first allegation,
2 Justice Camp, there's a suggestion in this allegation
3 that you made: (as read)

4 Comments which reflected an antipathy toward
5 legislation designed to protect the integrity
6 of vulnerable witnesses and designed to
7 maintain the fairness and effectiveness of
8 the justice system.

9 Do you acknowledge that now, Justice Camp?

10 A Yes, I do. And that was exacerbated by other comments
11 that I made.

12 Q And, Justice Camp, you would acknowledge that it's
13 important that before a judge expresses concern about
14 the fairness of legislation, you have to give
15 considerable thought to that because it can have quite
16 a significant, detrimental impact to those who are
17 hearing that?

18 A You're absolutely right, Ms. Hickey.

19 Q And it can have a significant impact on the confidence
20 of those individuals in the judicial system?

21 A Yes.

22 Q There's almost a suggestion that by criticizing
23 legislation in that way, that the purpose of the
24 legislation is somehow not worthy?

25 A I can see that, Ms. Hickey.

26 Q Mr. Addario took you through the second allegation, and

1 this is the allegation that you: (as read)

2 Engaged in stereotypical or biased thinking
3 in relation to the complainant and relied on
4 flawed assumptions which are well-recognized
5 and established in law.

6 And I believe you had indicated -- I'm trying to make
7 sense of my notes here.

8 A I -- I contested the last subparagraph, (f).

9 Q (F).

10 A But the rest ...

11 Q The rest you accept, that --

12 A Oh, yes.

13 Q -- the opening language is correct, that you did,
14 indeed, engage in the thinking that's ascribed to you
15 there?

16 A Yes, Ms. Hickey.

17 Q And with respect to (f), you did not agree with that.

18 I believe that you were referring to her honesty in
19 that sense as opposed to denigrating the complainant,
20 suggesting that her character would make it more
21 likely. Is your evidence there, Justice Camp, that you
22 weren't doing that, but that you were questioning her
23 honesty?

24 A I used the -- the phrase that the Alberta Appeal Court
25 uses, "unsavory witness". It refers to witnesses who
26 have records of crimes involving dishonesty. I believe

1 that the quote in full was that the complainant and the
2 accused and one of the witnesses were all unsavory
3 witnesses in the sense that they had records for crimes
4 involving dishonesty, and I had -- making a credibility
5 assessment was therefore difficult.

6 Q And then the third allegation was the one that we've
7 certainly heard much about. This is the allegation
8 where it's suggested that you: (as read)

9 Asked questions of the complainant witness
10 reflecting reliance on discredited
11 stereotypical assumptions about how someone
12 confronted with sexual assault would or would
13 not behave and/or blaming the complainant for
14 the alleged sexual assault.

15 And here we have the questions: (as read)

16 Why didn't she just sink her bottom down in
17 the basin so he couldn't penetrate her?

18 By asking the complainant, why couldn't she
19 just keep her knees together?

20 [And then] by suggesting, if she skews her
21 pelvis slightly, she can avoid him.

22 And you're -- you're accepting that allegation, Justice
23 Camp?

24 A I am.

25 Q And you accept that by asking those questions, that you
26 had reliance on the resistance myth?

1 A Ms. Hickey, at an intellectual level. I had read
2 Ewanchuk. I had read Seaboyer. I had read Section 271
3 to 278, 279 of the Criminal Code. I thought I
4 understood at an intellectual level the issues
5 surrounding mythical thinking.

6 I came to realize, with the help of two women to
7 whom I owe an enormous debt of gratitude, that at a
8 deeper, instinctive level, my thinking was biased and
9 prejudiced. But that's why I expressed it that way. I
10 like to think that -- no, I'll leave it. I'll leave it
11 there, Ms. Hickey.

12 Q I would like to explore with you, though, Justice Camp,
13 why you chose the words you did, not why you asked the
14 questions. In your notice of response, you gave an
15 indication that you were pursuing some legal issues
16 that you wanted to clarify, but why did you choose
17 those words?

18 A Because at a visceral level, my thinking was infected.
19 That's the only explanation that I can -- I can offer
20 to myself, and that's more important than the
21 explanation I offer to -- to this forum. That's the
22 only explanation that I can offer to myself, that I --
23 Ms. Hickey, I'm not an inarticulate man. Why did I use
24 those words if I could have chosen others?

25 Q That's my question to you, sir.

26 A And my answer, Ms. Hickey, the best I can give you,

1 indeed, the only one I can give you, is that after
2 prolonged mentoring, guidance, and self --
3 self-analysis doesn't begin to describe the process
4 that I went through over the months. The way that I
5 phrased the questions was because at some level that I
6 wasn't aware of, I was subject to prejudice and what --
7 the Afrikaans have an expression, Wat die hart van vol
8 is, loop die mond van oor. What the heart is full of
9 comes out of your mouth. And that is the best
10 explanation I can give you.

11 Q But what prejudice would lead you to choose those
12 words?

13 A Oh, the prejudice that all women -- the myth that women
14 all -- all behave the same way, and they should resist.

15 Q Would you accept, though, Justice Camp, that regardless
16 of your knowledge of that myth, that you don't need
17 knowledge of the myth; you don't need sensitivity
18 training to know that the kind of language that you
19 used, as we just described, is hurtful, it's
20 humiliating, it's crass, and it can only revictimize a
21 complainant by using that kind of language?

22 A Ms. Hickey, I concede that at once. That was the basis
23 of my first inadequate apology and, indeed, my second.

24 Q And with respect to the first two questions that I
25 read --

26 A Yes.

1 Q -- you used that language again in your reasons.

2 A Yes.

3 Q So you had time between the completion of the evidence,
4 the hearing of the closing submissions, a review of the
5 transcript, and about a month went by. You had been
6 provided with a variety of cases from the Crown to
7 consider in terms of the law of sexual assault. You
8 had all of that in front of you, and yet you didn't
9 realize that those questions were inappropriate, and
10 you repeated them in your reasons?

11 A To my sorrow, Ms. Hickey, I made that mistake a second
12 time.

13 Q And then those words were words you never really
14 thought about again until the article appeared in the
15 paper; is that correct?

16 A That's right.

17 Q So if I can return, Justice Camp, to the question I
18 asked you earlier when I suggested to you that in view
19 of the descriptions that have come forward in this
20 hearing of you holding some sexist attitudes and gender
21 bias, isn't it a problem, sir, for a judge not to
22 recognize the inappropriateness of that language at the
23 time it's being used?

24 A It is, Ms. Hickey.

25 Q And isn't it a problem going forward for women who will
26 be appearing before you?

1 MR. ADDARIO: I don't know that he can
2 answer that. That's the very question that the
3 committee's going to have to grapple with. It's kind
4 of an argumentative question, in my submission.

5 THE CHAIR: What do you say to that,
6 Ms. Hickey?

7 MS. HICKEY: Well, I think it provides
8 Justice Camp with an opportunity to indicate what he
9 intends to do to counter that kind of perception.

10 THE CHAIR: Is that not a matter for
11 argument for Mr. Addario at the end of the evidence?

12 MS. HICKEY: I would think Justice Camp
13 himself would be in a position to indicate, through the
14 training that he's had, what strategies he has
15 available to him to counter some of the perceptions
16 that may come forward in cases that could be heard
17 before him.

18 THE CHAIR: I think that may be a slightly
19 different question than what -- the one that was
20 objected to.

21 MS. HICKEY: Fair enough.

22 THE CHAIR: And, Mr. Addario, what do you
23 say about the revised question, if I can put it that
24 way?

25 MR. ADDARIO: I think the revised question
26 is just fine. Thank you.

1 THE CHAIR: Thank you.

2 MS. HICKEY: Thank you.

3 A Sorry, Ms. Hickey. I didn't hear it.

4 Q MS. HICKEY: I'll rephrase it, then,
5 Justice Camp. In terms of a go-forward basis, what
6 strategies have you learned that you can put in place
7 to counter the kind of suggestion that I just put to
8 you?

9 A Fair enough, Ms. Hickey. As far as strategies are
10 concerned, constant vigilance, constant reflection, as
11 Lori Haskell said, and as she said, that's pretty much
12 the most any of us can do. Ms. Hickey, I -- this has
13 been a -- I wish this hadn't happened. I think you
14 understand that.

15 Q I do.

16 A But I don't regret the learning experience that -- that
17 I've been offered, and I like to think that I've made
18 the most of the opportunity. I've grown enormously.
19 I've been humbled. It's rarely given to a person of a
20 senior position, certainly a judge, to have to look
21 relentlessly into a mirror of one's self, one's soul.
22 I now do that constantly, and I now have friends --
23 because I think you'll understand that the three women
24 who testified here weren't the only people that -- that
25 counselled me. Some wouldn't mind if I mentioned their
26 names. Others are less -- are more reticent. But I

1 have been counselled by a variety of people, mainly
2 women and mainly feminists, out of no motivation other
3 than the kindness of their hearts,
4 generous-spiritedness, have volunteered to help me.

5 So you asked strategies. I know that I'm
6 imperfect; I've come to realize that full well. I must
7 remain vigilant, and I must look for help when I need
8 it. That's the best answer I can give you, Ms. Hickey.

9 Q Thank you for that.

10 Just to complete the allegations, if I may,
11 Justice Camp. We had gone through the first three.
12 The fourth is the allegation where it's suggested that
13 you made a rude or derogatory personal comment about
14 Crown counsel, and that's the expression "I hope you
15 don't live too long", and you provided your explanation
16 for that. And I gather in providing that explanation,
17 that you do agree with the premise of this allegation,
18 that you did make a rude or derogatory personal comment
19 about Crown counsel in the course of disparaging a
20 legal principle she was addressing?

21 A Yes, Ms. Hickey.

22 Q And in the fifth allegation, where it's alleged that
23 you made comments tending to belittle and trivialize
24 the nature of the allegations, I believe you accepted
25 with respect to (a) and (b) that that is the case?

26 A And (c) and (d).

1 Q And (c) and (d), sorry?

2 A Yes.

3 Q And do you disagree with (e)? I believe your evidence
4 was you shouldn't have asked the question because you
5 later did find the particular section of the Code that
6 was at play?

7 A I shouldn't have asked the question because I should
8 have known the answer. I asked the question, the Crown
9 instantly answered it correctly, and a moment later, I
10 found the relevant section anyway.

11 Q Okay. Fair enough.

12 A Which is why that -- that conversation ended at that
13 point and we moved on to something else.

14 Q Yes. And then the final allegation: (as read)

15 In the course of the trial and in giving his
16 reasons for judgment, the judge made comments
17 tending to belittle women and expressing
18 stereotypical and biased thinking.

19 And then there are the three examples, the words like
20 the "marriage ceremony", the -- what you refer to as
21 your ham-handed way of giving advice to a young man who
22 probably hadn't had advice. You acknowledge, I take
23 it, then, Justice Camp, that the comments that you made
24 did tend to belittle women and expressed stereotypical
25 or biased thinking in relation to sex assault
26 complainants in view of those comments?

1 A Yes.

2 Q And the comment under (b): (as read)

3 The law and the way that people approach
4 sexual activity has changed in the last 30
5 years. I want you to tell your friends, your
6 male friends, that they have to be far more
7 gentle with women, they have to be far more
8 patient, and they have to be very careful.
9 To protect themselves, they have to be very
10 careful.

11 That language seems particularly problematic, Justice
12 Camp, wouldn't you agree, when you commented that the
13 actions of the accused in this case and the way he
14 would conduct himself moving forward needed to be
15 designed to protect himself and his male friends?

16 A Ms. Hickey, it looks worse if the -- what was one
17 statement is divided into two. That led straight on to
18 what is said in (c).

19 Q Yes?

20 A That a young man has --

21 Q (As read)

22 Please tell your friends so that they don't
23 upset women and so that they don't get into
24 trouble. We're far more protective of women
25 than we used to be, and that's the way it
26 should be.

1 A Yes, yes. It was ham-handed. It gives the impression
2 of somebody giving fatherly advice to a young male
3 relative. I shouldn't have said it.

4 Ms. Hickey, perhaps what got lost in the answer is
5 the sentence that sub (c) starts with: (as read)

6 You've got to be very sure that the girl
7 wants you to do it.

8 That is the kernel of the advice that I was giving.

9 Q But you're disassociating that from the objective,
10 which you've articulated in the previous sentence,
11 which was for the accused and his male friends to
12 protect themselves.

13 A Ms. Hickey, I don't think that I want to argue about
14 this, but you will understand I was talking to a young
15 man --

16 Q I do.

17 A -- trying to get him to see it in a way that he would
18 understand, from his point of view. As -- as a matter
19 of general law, it's not entirely accurate. I think
20 for a young man who comes from a disadvantaged
21 background, it might be understandable, and that was
22 the goal, to be understandable to him. I now wish I
23 hadn't said it because clearly it -- it lays me open
24 to -- to the kind of suggestions you are making.

25 Q Thank you. With respect to the six allegations, then,
26 Justice Camp, in your notice of response, you

1 acknowledge that they constitute misconduct; is that
2 correct?

3 A Yes.

4 Q Justice Camp, in the -- in the short time between
5 receipt of the -- sorry, I'll backtrack. In the short
6 time following the Globe and Mail article and the
7 earlier reference that you discussed with Chief Justice
8 Crampton --

9 A Of 9th November last year?

10 Q Yes.

11 A Yes.

12 Q You had a week or so or a few days, at least, where you
13 were still sitting; is that correct?

14 A Yes.

15 Q There were two matters that were brought to the
16 attention of the Court -- of the Federal Court shortly
17 after the November 9th newspaper article, which raised
18 questions about your conduct in Wagar and how that
19 conduct would impact proceedings in the Federal Court?

20 A Correct.

21 Q And those matters, Justice Camp, are in the materials,
22 I believe, at Tabs K and L?

23 A I haven't checked, but I'm happy to accept that.

24 Q Sure. And there was an exhibit missing, unfortunately,
25 from Tab K, just a -- a letter that was inadvertently
26 omitted because of a similar date. I'll just find that

1 for you.

2 MS. HICKEY: If I may mark it as an
3 exhibit, please.

4 THE CHAIR: I think that's Exhibit 11.

5 MS. HICKEY: Thank you.

6 EXHIBIT 11 - Letter written by a lawyer on
7 behalf of a party in a Federal Court
8 proceeding

9 Q MS. HICKEY: So, Justice Camp, this is a
10 letter written by a female lawyer who was retained on
11 behalf of a party in a Federal Court proceeding; is
12 that correct?

13 A I haven't seen the letter, but I assume that it is,
14 Ms. Hickey.

15 Q I apologize.

16 A Thank you. Yes, that's right.

17 Q And in this letter, the female lawyer is raising
18 concerns about appearing before you in a matter that is
19 scheduled for November 12th, 2015; is that correct?

20 A Correct.

21 Q And she states at the bottom of the letter: (as read)

22 I have to point out that I would feel that my
23 client may be potentially prejudiced if
24 Justice Camp does, in fact, hear the matter
25 as his competency has unfortunately been put
26 into serious question by very reputable

1 sources. In that, there is a reasonable
2 ground to believe that he holds a bias
3 against women. And clearly I am a female,
4 and I would not want this to potentially
5 prejudice the Court against my client.

6 I must also state, as a female
7 barrister, I am not comfortable appearing
8 before the judge in light of the comments
9 made.

10 And I understand, Justice Camp, that that matter
11 eventually was adjourned, and you did not deal with the
12 matter; is that correct?

13 A I don't think it was adjourned. I think one of my
14 colleagues kindly took it over.

15 Q Okay. Thank you.

16 A But I'm open to correction. I'm not sure about that.

17 Q You could very well be right, but you didn't -- you
18 didn't hear the matter, in any event?

19 A I didn't hear it, nor its associated -- another matter
20 like it.

21 Q And there was a second matter, Justice Camp, where a
22 concern was raised arising from your conduct in Wagar,
23 and that was a situation where counsel for a party
24 sought -- sorry, just bear with me. It relates to an
25 application by legal counsel for applicants who were a
26 family from Afghanistan seeking residence in Canada

1 through a private refugee sponsorship, correct?

2 A I can't remember, but it -- I'm not contesting that.

3 Q Sure. And you had done a judicial review involving
4 that particular application?

5 A Yes.

6 Q And if you would like, I -- I don't want you to do this
7 without refreshing your memory. It's Tab L in the big
8 book in front of you.

9 A Tab L. L1?

10 Q There are a variety of documents under there. I'm
11 just -- I'm summarizing, I believe, a variety of
12 documents that are under Tab L, but perhaps you could
13 just have a quick look to refamiliarize yourself with
14 the matter?

15 A Yes, yes.

16 Q And in the course of the concerns that were brought
17 forward by the party in this proceeding, an affidavit
18 was filed by a daughter of this family who had been
19 denied refugee status?

20 A Yes.

21 Q That's found under L5. And the family is challenging
22 your denial of the judicial review application, and in
23 the course of it, one of the family members says this:
24 (as read)

25 I couldn't help wondering the reasons why he
26 had refused my family's appeal. Was it

1 because we're from Afghanistan? Was it
2 because we had faced forced marriage to a
3 warlord's family? What did he think about
4 the fact that we faced gender-related
5 persecution? And did he refuse to accept the
6 lawyer's suggestion for a certified question
7 because the government lawyer was a woman?
8 Is that why he says in his decision that her
9 consent was halfhearted? I have read the
10 letter from the government lawyer, and her
11 consent is not halfhearted. I think his
12 comments are sexist and disrespectful.

13 And there was a court application heard about that as
14 to whether there were allegations of bias arising from
15 your involvement, and ultimately the Court held there
16 were not?

17 A Another judge held that, yes.

18 Q Yes, indeed. Justice Camp, you would acknowledge that
19 a significant percentage of the workload in the Federal
20 Court involves issues of immigration and refugee
21 claims?

22 A Yes, I would.

23 Q And a number of those claims relate to women who are
24 vulnerable in a variety of ways through persecution by
25 different groups or through other experiences of
26 violence?

1 A Probably more than half, yes.

2 Q And while the particular claim that I've just outlined
3 for you was not accepted by the Federal Court as a bias
4 having existed, you can understand, moving forward,
5 that there would be other applicants like this one who
6 may well perceive bias as a result of your conduct in
7 Wagar?

8 A Yes, Ms. Hickey.

9 Q And it will be up to the Court to resolve those claims,
10 but you would agree that your conduct in Wagar has and
11 will create concern for claimants who are aware of your
12 conduct in Wagar?

13 MR. ADDARIO: Again, I don't know that he
14 can speak about prospective issues. It would be up to
15 the committee and ultimately up to the Council to
16 determine his future, and that will include a
17 declaration as to his fitness.

18 And the case we're just referring to, the Court
19 found no grounds for the allegation of bias being
20 imported into the refugee context. So as of now, there
21 is no basis to make such a claim.

22 THE CHAIR: Ms. Hickey, what do you say to
23 that?

24 MS. HICKEY: Well, I certainly accept my
25 friend's description of the -- of the case, and I have
26 indicated to Justice Camp that was so, that the Court

1 made no finding of bias, but I do think it does have
2 relevance to hear Justice Camp's reaction to his degree
3 of recognition of how his conduct in Wagar may impact
4 matters that come before him in Court.

5 THE CHAIR: So as I understand it, what
6 you're saying is that his degree of recognition goes to
7 what issue?

8 MS. HICKEY: His level of understanding of
9 the depth of the concern and the level of awareness
10 that he would need moving forward.

11 THE CHAIR: It strikes me -- and I haven't
12 discussed it with anyone else on the Panel, of course,
13 but it strikes me that you're getting into an area,
14 really, of argument, that what the impact of -- of the
15 notoriety of what happened in R. v. Wagar is on not
16 only the future, but public confidence in the judicial
17 system if he continues to sit.

18 MS. HICKEY: Fair enough. I'll move on.

19 THE CHAIR: Anyone disagree?

20 Okay. Thank you.

21 MS. HICKEY: I think I'm just about at the
22 end, if you just bear with me one moment.

23 THE CHAIR: That's fine.

24 Q MS. HICKEY: Justice Camp, you're aware
25 that Professor Janine Benedet provided expert-opinion
26 evidence in this matter?

1 A I am.

2 Q And if you could turn to Tab M in the agreed statement
3 before you?

4 A I have it. Thank you.

5 Q And if you could turn to page 41, please, of her
6 report?

7 A Yes.

8 Q And I'll just read to you the last two paragraphs: (as
9 read)

10 Other research has shown a correlation
11 between rape myths and women's willingness to
12 report sexual assault to authorities. This
13 evidence indicates that women are less likely
14 to report their rapes when they do not meet
15 the stereotype of a real rape involving a
16 stranger and additional violence, even though
17 only a minority of sexual assaults fit this
18 pattern. The most likely explanations for
19 this are that women have internalized rape
20 myths and/or because they believe that the
21 criminal justice system will not treat them
22 fairly unless they fit this profile.
23 Reinforcement of rape myths and
24 discriminatory biases can be found in media
25 accounts of sexual assault trials as well
26 as popular discourse on high-profile sexual

1 assault cases. The confidence of women in
2 the judicial system is undermined by
3 indications that justice-system participants
4 accept these kinds of myths and biases and by
5 contrast is enhanced by their rejection.

6 Sir, do you agree that your conduct in Wagar presents
7 the type of behaviour that Professor Benedet has
8 referenced, that the confidence of women in the
9 judicial system is undermined by indications that
10 justice-system participants accept these kinds of myths
11 and biases?

12 A I do.

13 Q Thank you, sir. Those are all my questions.

14 A Thank you, Ms. Hickey.

15 THE CHAIR: Yes, Mr. Addario. Do you have
16 any re-examination, and, if so, how long do you
17 anticipate being, if you could?

18 MR. ADDARIO: Two to four minutes, Chief
19 Justice.

20 THE CHAIR: All right. Thank you.

21 Thank you, Mr. Addario. We're going to take just
22 a very brief break.

23 MR. ADDARIO: Yes.

24 THE CHAIR: But we'll come back in five
25 minutes.

26 MR. ADDARIO: By all means.

1 THE CHAIR: Thank you.

2 MR. ADDARIO: Thank you.

3 (ADJOURNMENT)

4 THE CHAIR: Yes, Mr. Addario.

5 MR. ADDARIO: Thank you, Associate Chief.

6 Mr. Addario Re-examines the Witness

7 Q MR. ADDARIO: Now, Justice Camp, you were
8 asked about why you took an interest in this case once
9 you learned the Alberta Court of Appeal had reversed
10 it. Do you recall that question?

11 A Yes.

12 Q And could I just ask you: Had you ever before been
13 appealed on the basis of a reasonable apprehension of
14 bias or using stereotypes in the course of presiding
15 over a criminal trial?

16 A No, I had not.

17 Q You were asked about -- and did that have anything to
18 do with why you took an interest in the outcome?

19 A Oh, yes, Mr. Addario. This was obviously -- I'm
20 searching for the word -- more important, more
21 sensitive matter than simply getting the law wrong or
22 the facts wrong.

23 Q You were asked about the type of education you had, and
24 Ms. Hickey asked you about conferences you attended
25 while you were on the Provincial Court. Do you recall
26 those questions?

1 A Yes.

2 Q And your answer was that there were -- after new judges
3 school, there were six Alberta Provincial Court judges
4 association conferences after your appointment and
5 before your Federal Court appointment?

6 A Yes.

7 Q And do you remember the dates of those?

8 A They're typically in May and September, I believe. I
9 missed one of them because of illness, and then there
10 was another -- another seminar I went to on judicial
11 writing that was in Manitoba.

12 Q All right. And at any of those six that you did attend
13 put on by the Alberta Provincial Judges Association,
14 was there any training on sex assault trials, the myths
15 or the history of sexual assault legislation in Canada?

16 A No.

17 Q All right. And I have the syllabus here. Do you need
18 to check it to refresh your memory?

19 A No. I've checked it, Mr. Addario.

20 Q All right. And the Allen Edgar book that's been
21 referred to this morning, do you have a copy of that to
22 go into your publication?

23 A I don't.

24 Q And, finally, you were asked about an apparent
25 difference between your acknowledgment that you
26 recognized when you saw the professors' complaint that

1 you had denigrated the complainant, but both this
2 morning, in answer to my questions, and in your letter
3 to Chief Justice MacDonald, you said, I didn't intend
4 to denigrate the complainant.

5 A Yes.

6 Q Do you recall those questions and answers?

7 A Yes.

8 Q And can you just explain; is there an apparent
9 difference between the answers?

10 A Well, I don't think there's even an apparent
11 difference, Mr. Addario, when something can happen
12 without it being intended. I didn't intend to be
13 abusive, but I was.

14 Q Thanks very much, Justice Camp.

15 THE CHAIR: Thank you.

16 The Panel Questions the Witness

17 THE CHAIR: Ms. Jensen, do you have any
18 questions?

19 MS. JENSEN: I do have just one question.

20 Q MS. JENSEN: Justice Camp, we heard from
21 Professor Brenda Cossman that she began meeting with
22 you in May -- the end of May, I believe she said, of
23 this year; is that accurate?

24 A That sounds right.

25 Q And we also heard from the other two individuals,
26 Dr. Haskell and Justice McCawley, that they had been

1 meeting with you since November or December of 2015?

2 A That's right, Ms. Jensen.

3 Q And you were engaged in quite a significant education
4 program, self-awareness program, with Dr. Haskell and
5 Professor -- sorry, Justice McCawley, correct?

6 A That's right.

7 Q So my question to you, sir, is just Professor Cossman
8 noted that you were -- she noted some deficiencies in
9 your understanding of the history of sexual assault law
10 and the development of that, and I guess I'm not
11 understanding what was happening during that period of
12 time, between December of 2015 and May of 2016, with
13 respect to your knowledge acquisition?

14 A Sorry, Ms. Jensen, is the question: Why wasn't I, in
15 that time, looking at the evolution of sex assault?

16 Q M-hm.

17 A That's a fair question. Many of -- and you'll see
18 from -- from the reading lists that you were given,
19 many of the -- the articles and books, Professor
20 Cossman's backups, for instance, who did it by way of a
21 series of trials, rather than an academic exercise --
22 makes it far more interesting that way, more
23 striking -- dealt with the history, the evolution of
24 sexual assault law in Canada. So, yes, I read it.

25 To one side, you must please remember that I
26 wasn't in this country in the '60s, '70s, and '80s,

1 when all this was -- or, indeed, until the very end of
2 the '90s. Where I was living in South Africa and
3 Botswana, we had other -- other issues. So I knew
4 nothing of this when I came to Canada. I thought that
5 by reading -- when I got onto the -- onto the
6 Provincial bench, reading the handbooks on, like,
7 Tremear or Gold, reading the handbooks on the Criminal
8 Code, I would understand everything in the Criminal
9 Code, by reading the 50 leading cases; in the case of
10 sex assault, that would obviously be Ewanchuk,
11 Seaboyer, Park, Esau, that I -- I knew all about it,
12 but I was still deficient in, call it, the atmosphere
13 of what had been going on in this country prior to --
14 particularly prior to the big amendments in 1983.
15 Yeah, I read the articles, but that was quite dry.
16 Professor Cossman made it interesting and explained it
17 to me in a way that it had never really been explained
18 to me. Let me put it this way: The articles were
19 written for an audience that, like the Panel, had been
20 here and had been lawyers in the '60s, '70s -- perhaps
21 not the '60s -- in the '70s, '80s, and '90s. So the
22 articles were written for people where -- and it was
23 assumed that there was a level of knowledge already. I
24 didn't have that level of knowledge. Professor Cossman
25 supplied it. Does that answer the question?

26 Q It does. Thank you.

- 1 A Certainly it was a very long answer.
- 2 Q Thank you.
- 3 THE CHAIR: Chief Justice Whalen.
- 4 WHALEN C.J.: Justin Camp, good morning.
- 5 I'm interested in your views in a couple of the areas
- 6 that were covered in your testimony. First, Justice --
- 7 or Ms. Hickey went through the Canadian Judicial
- 8 Council's code of ethics. Specifically, she referenced
- 9 one that dealt with it being the responsibility of the
- 10 judge to prepare herself or himself on any matter or
- 11 any trial that they were going to preside over. Do you
- 12 agree that applied to all judges, including the judges
- 13 of the Provincial Court?
- 14 A Yes, Chief Justice Whalen.
- 15 Q And you were appointed to the Provincial Court for
- 16 Alberta, either assigned to or appointed directly into
- 17 the criminal division of that Court, in March of 2012?
- 18 A That's correct, Chief Justice.
- 19 Q And then for two years prior to the Wagar trial, you
- 20 acted as a judge of that court, and approximately a
- 21 year -- almost a year exactly after that, you were a
- 22 judge of that court, a criminal -- a court of criminal
- 23 jurisdiction, and you were part of the
- 24 criminal division of that court?
- 25 A That's correct.
- 26 Q Okay. I also understood from the evidence you have

1 that in terms of sexual assault trials, you probably
2 did four or five during the entire three years --

3 A Yes.

4 Q -- that you were on the Provincial bench; uncertain as
5 to how many came before R. v. Wagar trial and how many
6 came after?

7 A And they weren't all trials. Some were preliminary
8 inquiries.

9 Q Okay. Well, then, how many actual sexual assault
10 trials?

11 A I believe I had done one trial before this.

12 Q One trial?

13 A As distinct from -- from the preliminary inquiries.

14 Q Preliminary inquiry or sentencing, okay.

15 A Oh, there were any number of sentencings. I can't give
16 an estimate.

17 Q Can you give me some idea how long that -- that one
18 trial would have lasted? Can you remember the trial?

19 A Two days. It -- it wasn't a lengthy trial, Chief
20 Justice.

21 Q And then in sitting on the bench for a period of two
22 years prior to the R. v. Wagar trial, you would have
23 been involved with preliminary inquiries, sentencings,
24 and other criminal trials?

25 A Yes.

26 Q A considerable number of other criminal trials?

1 A General criminal trials.

2 Q General criminal trials?

3 A Yes. Sadly, mostly impaired driving and drug-related
4 cases.

5 Q Now, just tell me; what do you think is the role of the
6 judge in preparing for those trials? How would a judge
7 prepare for those trials?

8 A With regard to the sex assault trials, because they
9 came up irregularly, each time I'd read Section 271 to
10 279 and the commentary thereon in Gold or Tremear,
11 whichever book happened to be on my desk at the time.
12 I had both. Several times I read Ewanchuk because
13 that's the case most mentioned by other cases.

14 When I started on the bench, I was given a list of
15 the 50 most important cases to be used by Provincial
16 criminal judges, and that included other -- other sex
17 assault cases like Park and Esau, perhaps half a dozen
18 sex assault cases. I can't say I reread those cases
19 each time before -- before I had a sex assault case.
20 So that was my preparation.

21 Q Preparation would be to read the section of the
22 Criminal Code that's in play in the trial?

23 A Well, the whole -- it doesn't help to do -- to do
24 peephole. I would read the -- the whole section
25 dealing with sex assault, some eight sections, and --

26 Q Would you review the annotations to the Criminal

- 1 Code --
- 2 A Yes.
- 3 Q -- relating to the offence --
- 4 A Yes.
- 5 Q -- charged?
- 6 A Yes.
- 7 Q And that's the pattern you followed and then also read
8 some leading cases?
- 9 A No. I -- I must have read Ewanchuk three or four
10 times.
- 11 Q Prior to doing the first sexual assault trial?
- 12 A Prior to doing this one, at least.
- 13 Q Prior to doing the R. v. Wagar?
- 14 A Yes. I can't say whether I -- I might have re-read
15 Seaboyer, but that would have been out of interest
16 because Seaboyer is part of a pattern but no longer
17 good law.
- 18 Q If there was a particular criminal offence that you
19 were faced with and you hadn't done that trial before,
20 hadn't been extensively involved in that area of the
21 law before -- and in looking at your background, you
22 did not come from a criminal background?
- 23 A Not in Canada.
- 24 Q Not in Canada. Some legal-aid work in South Africa,
25 but generally, you were --
- 26 A Well, actually, more than that, Chief Justice. I

1 started doing -- as a barrister, we had a divided bar.
2 Young barristers do legal-aid work, criminal work.
3 When I became more senior, I did some bigger trials,
4 terrorism trials, for example. But I was -- in the
5 end, I was principally construction, engineering
6 arbitration.

7 Q Now, the agreed statement of facts suggests that you
8 practiced mostly contractual, trust, oil and gas, and
9 bankruptcy?

10 A In Canada, yes.

11 Q In Canada. Sorry. That doesn't speak to much
12 experience in criminal law prior to taking the --
13 applying for and then taking the position on the
14 criminal bench?

15 A Not in Canada, no.

16 And, Chief Justice, I applied for the Provincial
17 Court. I happened to be assigned to the criminal
18 division of the Provincial Court of Alberta. That
19 doesn't mean that -- you get assigned, but you do some
20 of everything, but mostly I did criminal, yes.

21 Q So let me go back to the question I was asking.

22 A Yes.

23 Q So what did you see as the appropriate preparation for
24 a criminal trial on that bench in an area where you
25 weren't familiar with or didn't have a wealth of
26 experience in the criminal law in Canada?

1 A Read the sections in the commentary, read the leading
2 cases, and I had -- in addition, every time a case came
3 out, I'd print it off and put it into binders. So I
4 had binders on all sorts of things, including general
5 things like credibility or identification, just as a
6 general matter. But then I would have binders on
7 various statutory offences and search and seizure,
8 which is a big part of our -- so I would read the
9 relevant cases.

10 Q So, again, going back, I guess, combining it with the
11 ethic that was outlined in the Code being properly
12 prepared to take on any trial --

13 A Yes.

14 Q -- or being prepared to take on a trial, a judge has to
15 first properly prepare themselves; you would agree that
16 the onus is on the judge to properly prepare themselves
17 for that trial?

18 A Indeed. I'll say one other thing. The Provincial
19 Bench in Alberta is extremely collegial, and there are
20 many very, very able, experienced judges with a
21 criminal law background, and they're unstinting in
22 their -- in their willingness to give advice. So
23 almost every day, I would go and ask. Certainly in the
24 beginning, I would go and ask one of my colleagues, How
25 do I deal with this? How do I deal with that?

26 Q So that was not unusual, to be able to have the value

1 of the experience of colleagues on the same bench, in
2 the same courtroom, same court offices as you were?

3 A Chief Justice Whalen, far from being unusual, it was
4 invariable, particularly in my case. And my colleagues
5 were unstinting in their assistance because they knew
6 that I came from -- my knowledge base was very low.

7 Q Let me just go through a separate area that I would
8 like to have your comment on. It seems that, as
9 pointed out by some of the other witnesses and
10 yourself, you did a considerable amount of in-depth
11 counselling, gender-sensitivity training, and over a --
12 certainly a lengthy period of time since -- since you
13 recognized that you -- the issues that you were facing,
14 and there was a formal statement of allegations that is
15 an exhibit that we went through, that you've referred
16 to. They were first published, copies sent to you, May
17 4th, 2016. So it would have been well after you were
18 involved, and not that you didn't do sensitivity
19 training and counselling following that date, but well
20 after -- you had already been getting -- getting some
21 advice and help and certainly doing the counselling and
22 training programs.

23 Then later during the summer, there -- I'm not
24 sure the exact date because the document isn't dated,
25 but there was an agreed -- there was a response that
26 you filed to the allegations, referred to as a "notice

1 of response to the allegations". And then very late in
2 August of this year, there was another document filed
3 by you referred to as an "opening submission". You
4 probably recall all of those documents?

5 A Yes.

6 Q The -- in each of these documents, with the exception
7 of the -- each of the documents that you produced, the
8 response to the allegations and the submissions, you
9 described the language and statements that you made in
10 the R. v. Wagar trial as "insensitive", "rude", and
11 "inappropriate". Do you recall that?

12 A Yes, Chief Justice.

13 Q During the course of this hearing, others who have
14 given evidence before the Inquiry for what is contained
15 in the evidence by way of it being in the agreed
16 statement of facts -- and therefore it's contained in
17 the documents -- others have described your language
18 and the statements that you made in the R. v. Wagar
19 trial as "disgraceful", "appalling", "outrageous",
20 "flawed". Readers of your comments were "taken aback"
21 by the use of language. So having heard that kind of
22 evidence, how would you now characterize the language
23 and statements that you used in the R. v. Wagar trial?

24 A Chief Justice, I would be prepared to accept the
25 characterization which was, I believe, the first two
26 words you used, that Justice McCawley employed.

1 Q Disgraceful?

2 A Yeah.

3 Q That was your daughter's -- the letter filed by way of
4 exhibit -- and appalling?

5 A Yes.

6 Q Okay. So you wouldn't consider them outrageous or
7 flawed?

8 A Chief Justice, they were certainly flawed. Outrageous,
9 by definition, they would be outrageous, yes.

10 Q Also, the -- one of the last pieces of evidence you
11 gave dealt with the last allegation contained in the
12 Notice of Allegations, and it's in referring to
13 Allegation 6, paragraphs (b) and (c), particularly.
14 And I'm just curious to hear your comments on -- your
15 comment on that -- on those two paragraphs. And I
16 would like to hear it now, what you -- how you would --
17 how you would state that. With the -- with the
18 exception of changing the language in what was said,
19 that's quoted in paragraphs (b) and (c), you had
20 indicated that -- that in terms of the trial, you would
21 characterize it as fatherly advice to the accused in
22 that trial. So without looking at the language itself
23 or the words that you used, the content whereby you
24 indicated that there's a need to be gentle with women,
25 to have more patience and be careful to protect
26 yourself -- one's self, and you've got to be sure what

1 a girl wants, and please tell your friends that they
2 don't -- they can't upset women so they don't get in
3 trouble. Forgetting the words, because that was the
4 words that were quoted from -- from the trial itself,
5 is that the type of advice you would give your son
6 today, as fatherly advice?

7 A Chief Justice, I think it's important for a father to
8 tell his son to respect women, to not do anything to a
9 woman that the woman doesn't want done, to be entirely
10 certain that he is doing no more than the woman wants.

11 Q Okay. Thank you. Thank you, Justice Camp.

12 THE CHAIR: Ms. Petersen?

13 Q MS. PETERSEN: Thank you. I'm having a
14 little bit of difficulty reconciling a couple of things
15 that you said in your testimony, and I think in
16 fairness to you, I should give you the opportunity to
17 help me rather than leave with a question, and so I
18 just want to tell you what the testimony is to make
19 sure I got it right, in case I misheard you.

20 So I heard you acknowledge that the statements
21 that you had made, which are the subject of the
22 complaint, reflected gender bias, and you also
23 acknowledged that you had an unconscious gender bias
24 infecting your thinking at the time. So I just want to
25 make sure that I've understood correctly; that's your
26 testimony?

1 A That is, Ms. Petersen.

2 Q Okay. But then when Ms. Hickey asked you whether you
3 conceded that your thinking was sexist, if I understood
4 correctly, your response was that it wasn't really
5 sexist; it was just old-fashioned and outdated. And
6 then you went on to make a statement that you would
7 have applied the same thinking if the complainant had
8 been male.

9 A Yes.

10 Q And I guess I'm just having difficulty understanding
11 how, on the one hand, you can concede that your
12 thinking was infected with gender bias, unconscious --

13 A I understand the problem.

14 Q -- but it's not sexist?

15 A Ms. Petersen, as a general matter, because sex assault
16 is generally male or female, we see it in terms of in
17 those terms. But the sections are, in fact,
18 gender-neutral, and there is sometimes rape on males.
19 Not as often, but it happens. And it's a form of
20 prejudice to think that -- and this is why it is so
21 hard to guard against prejudice. One has -- I have to
22 be alert about it all the time. But it's almost
23 prejudiced for me to say my remarks are sexist. My
24 remarks are just wrong. It isn't because it happened
25 to a woman that it's wrong. It's because it happened
26 at all; that's my point. But we talk in -- we use --

1 we short-circuit it by saying that it's sexist, that I
2 was gender biased. The effect of what I did resulted
3 in gender bias in this case because the complainant was
4 a woman. Am I making myself clear?

5 My concern is, all throughout this case, we've
6 been skirting around it, but -- and perhaps people
7 haven't been noticing it, but we haven't been focusing
8 on the fact that this can happen to men as well, young
9 boys as well.

10 Q Okay. But you have undergone a program of education
11 with respect to the evolution of Canadian sexual
12 assault law?

13 A Yes.

14 Q And as I understand it, also education from mentors and
15 the counsellor and Professor Cossman --

16 A Yes.

17 Q -- with respect to the reasons for those reforms --

18 A Yes.

19 Q -- the reasons why the law was reformed, and that the
20 reasons are because of a history of discrimination
21 against women. Was that part of the education program
22 that --

23 A Oh, to be sure, yes.

24 Q And do you accept that the reason why the law was
25 amended over time was because of a history of
26 discrimination against women?

1 A Ms. Petersen, I accept it, and -- but I'll add a rider.
2 The reason it was amended was because women, to their
3 eternal credit, fought for that. It -- it does not
4 follow that there aren't particularly boys that are
5 sexually -- sexually assaulted, and we have to -- we
6 have to face that fact too, and we have to deal with
7 that thinking, and I try and do that. Now, it's true
8 that I made the concession that I was gender biased.
9 But I was just mistaken. I -- when I made those
10 comments. I -- I see the problem as wider than just
11 women. And so do the experts, with respect to all
12 that's helped me.

13 Q The rape myths about which you have received
14 education -- and I understand you've reflected
15 considerably about the rape myths?

16 A Yes.

17 Q Would you agree with me that those rape myths are
18 gendered in the sense that they are largely myths about
19 how female victims of male sexual violence react and
20 respond?

21 A They are generally that way. There -- and some of them
22 are peculiar to women, I think. Some, though, would
23 apply equally to men, particularly vulnerable and young
24 men. We don't often talk about that, but when I talked
25 to Lori Haskell, time and again, she would say, And a
26 young man; this happened to a young man exactly the

1 same way, or particularly traumatized, abused males
2 from -- would react in the same way as a traumatized,
3 abused female.

4 Q So I understand that the thrust of your evidence today
5 and also of the people who have worked with you and
6 mentored you is that your thinking has changed?

7 A I hope so.

8 Q And you did testify that you think at the time, you
9 would have made the same comments if the complainant
10 had been male?

11 A I'm afraid I would have.

12 Q So I have only one other question for you, and it
13 relates to -- I think, to assist you, at the
14 professors' letter, which is at Tab E1, and it's toward
15 the end of the professors' letter on page 10.

16 A This is the letter of November 17th?

17 Q This is the letter of November 9th, I believe.

18 A Yes. Now I have it.

19 Q And on page 10, which actually also has Number 22 at
20 the top of the page. 10 at the bottom right, 22 at the
21 top. There's an excerpt there from the transcript, and
22 the excerpt says: (as read)

23 The accused's version is that four people
24 went into the washroom to smoke marihuana
25 and --

26 A Sorry. I'm struggling to find it.

1 Q Very top of that page --

2 A Oh, yes.

3 Q -- there's a quote.

4 A Now I have it. Thank you.

5 Q And then you refer to the complainant. This is you
6 being quoted in the transcript "her version is
7 diametrically different".

8 A Yeah.

9 Q And you're describing or paraphrasing or summarizing
10 her version, which is: (as read)

11 She went into the washroom to throw up. She
12 had been drinking a lot, including Absinth,
13 and he came in and misbehaved.

14 A Yes.

15 Q And then the professors go on in the next paragraph to
16 say that: (as read)

17 The complainant's allegation in the case was
18 that the accused had forced her to engage in
19 oral sex, forced his penis into her vagina,
20 and engaged in forced vaginal intercourse
21 to the point of ejaculation. To characterize
22 her allegation of what the accused did as
23 "Misbehave" -- or "misbehaviour" is evocative
24 of the type of sexist and outdated "boys will
25 be boys" thinking that resulted in a criminal
26 justice system in which the harm of

1 nonconsensual sex was not taken seriously.
2 So the professors characterized it as "outdated", as
3 you have, but also "sexist". And I guess my question
4 to you is: On this particular example, because I don't
5 think other counsel asked you about this portion of the
6 transcript, do you think that you would have said that
7 if the complainant had been male?

8 A Ms. Petersen, I probably would have. I -- and there's
9 a reason for it. I hate the word "rape". I -- you'll
10 notice I've avoided the term "rape myths". I've talked
11 about Section 276. I know it sounds ironic, given the
12 comments I made, but it's such a dreadful word that I
13 try and avoid it.

14 Q You could say "sexual assault".

15 A I could have. I -- I -- I used a euphemism,
16 "misbehaviour".

17 Q But my question --

18 A And I'd have used -- to answer your question, I would
19 have used it male or female, I think. It's hard to
20 say, but I think so.

21 Q That was my question. Thank you.

22 A Ms. Petersen, I can't guarantee it, but I think so.

23 Q Okay. Thank you.

24 THE CHAIR: Yes, A.C.J. Smith.

25 Q SMITH A.C.J.: Thank you. Justice Camp,
26 Chief Justice Whalen asked you some questions about the

1 preparation and education that you undertook before you
2 commenced each of your trials. I want to ask you some
3 questions and get a better understanding on your
4 education generally when you became a Provincial Court
5 judge. So we know it was March of 2012 that you were
6 appointed to the Provincial Court, and you've told us
7 it was the criminal division; is that right?

8 A That is right.

9 Q And your experience in Canadian criminal law was quite
10 restricted?

11 A It was nonexistent.

12 Q So what did you do when you became -- when you were
13 appointed as a judge, what did you do to educate
14 yourself in the field of Canadian criminal law,
15 including sexual assault law?

16 A I was issued with a copy of Gold of the Criminal Code,
17 and I read it cover to cover, which was perhaps a
18 mistake, because there's a lot in there that's just --
19 I didn't know enough to know what was important and
20 what wasn't, but I read it cover to cover. I got the
21 50 important cases. I got the bench books.

22 Q Just let me stop you. In relation to the 50 important
23 cases --

24 A And they're actually not 50. They're probably 75.

25 Q And was it your Chief Justice that gave you those
26 cases?

- 1 A No. It was one of my colleagues. It was his -- it was
2 his binders.
- 3 Q Okay. And some of those --
- 4 A 30 binders.
- 5 Q Okay. And some of those cases related to sexual
6 assault law?
- 7 A Not many. Half a dozen.
- 8 Q Did you read those half a dozen cases?
- 9 A Yes, I did.
- 10 Q And they were contemporary on the issue of sexual
11 assault law in Canada?
- 12 A Some of them were not contemporary. For instance,
13 Seaboyer. It is there for the narrative, I think.
14 Ewanchuk is still widely quoted, and then there were a
15 number of more -- more contemporary ones, but they
16 hadn't really taken -- the law hasn't advanced really
17 since Seaboyer, as far as I can recount.
- 18 Q So there were cases that were contemporary in the area
19 of sexual assault law?
- 20 A Yes.
- 21 Q And so I'm sorry I interrupted you. What else did you
22 do to educate yourself in the area of sexual assault
23 criminal law?
- 24 A Apart from asking -- asking colleagues advice in
25 cases -- and I don't think I did in this case --
26 nothing.

- 1 Q Did you order any textbooks on criminal law in Canada?
- 2 A I had a number of textbooks but none on sex assault.
- 3 Q But on criminal law, generally?
- 4 A Well, Tremear, Gold, the blue and green Bible on -- on
5 impaired driving, and what's on evidence, those kind of
6 books. I had a dozen textbooks.
- 7 Q Did you gather together any articles when you first
8 became a judge to educate yourself on Canadian criminal
9 law?
- 10 A Yes, I did. Once again, colleagues had collections,
11 senior colleagues, and I copied those and made them my
12 own.
- 13 Q And you touched on this a little bit earlier, but would
14 you agree with me that the more senior members of your
15 bench, Provincial Court bench, are available and
16 willing to provide you with materials that they have
17 relating to criminal law, provide you with their
18 guidance on criminal law cases, that type of thing?
- 19 A Very much so.
- 20 Q And so, for example, if you were dealing with your very
21 first sexual assault case, you had a number of people
22 that you could go to and get information from them on
23 the types of issues you should be aware of and how to
24 conduct a sexual assault trial?
- 25 A I -- I could have done that, yes.
- 26 Q It was available to you?

- 1 A Yes, it was.
- 2 Q Now, when you were appointed a Provincial Court judge,
3 were you assigned to sit in Calgary?
- 4 A I was based in Calgary. We did circuit court but
5 largely in Calgary.
- 6 Q Your office would have been in Calgary?
- 7 A Yes.
- 8 Q And how many other Provincial Court judges would have
9 been sitting in Calgary with you?
- 10 A 20.
- 11 Q All right. And those were the people that you could
12 have gone to to get additional assistance?
- 13 A Yes. Some of those were family and youth, and some
14 were civil, but there were certainly -- the
15 preponderance were criminal.
- 16 Q And did you tend to go to the more senior members of
17 the criminal division to get advice and guidance from
18 them?
- 19 A Well, they were all senior to me, and almost all of
20 them had had a lot of criminal experience. They had
21 been either senior Crown or senior defence. So I'm
22 sure you'll understand, Associate Chief Justice; you
23 identify the ones who can help the most, the fastest.
- 24 Q Yes. And you found that there were judges who were
25 helpful to you, available, and willing to assist you?
- 26 A They were all willing. Some were better at helping

1 than others.

2 Q Sometimes -- did you have a formal mentor, Justice
3 Camp, or did you have an informal mentor?

4 A I had an informal mentor, several of them.

5 Q Several of them. And you were comfortable going -- you
6 want to be able to relate to your mentor and go to
7 somebody who understands your kinds of concerns and
8 that you can communicate well with.

9 A And who can grasp a problem quickly and give a sensible
10 answer succinctly.

11 Q And you had a couple of those mentors, did you?

12 A Yes, I did.

13 Q From the time you first got on the Provincial Court
14 bench?

15 A Yes.

16 Q Okay. Now, Ms. Hickey asked you -- asked you a few
17 questions about new judges school. So I understand
18 from your evidence that provincial court judges do have
19 what's called new judges school available to them?

20 A Yes.

21 Q And am I correct in my understanding that they are two
22 one-week courses, but they're done separately?

23 A You are.

24 Q Okay. And you actually did go to both new judges
25 schools, did you?

26 A I did.

1 Q Now, I don't know the answer to this because I'm not a
2 Provincial Court judge, but are you suggesting that at
3 new judges school, there's no education on sexual
4 assault trials?

5 A Short of what was pointed out by Ms. Hickey, you are
6 correct.

7 Q Did you actually go back and look at the schedules for
8 new judges schools that you attended to see if there
9 was any education on sexual assault?

10 A Yes, I did.

11 Q And there was nothing there?

12 A No.

13 Q Okay. Now, who usually teaches at new judges school,
14 Justice Camp? What types of individuals teach judges?

15 A Some professors, some federally appointed judges, made
16 available, I think, by the NJI.

17 Q And "NJI" is National Judicial Institute; is that
18 correct?

19 A Yes. Federal Court. The Federal Court trainers.

20 Q But just to be clear, the NJI is involved in Provincial
21 Court new judges school; is that right?

22 A I don't know the degree of involvement. I think that
23 they volunteer the services of some of their members,
24 and I don't know much about that. I do know that there
25 were a couple of federal judges that came to talk.

26 Q Are there a number of judges that teach new judges how

1 to be judges at new judges school? In other words --

2 A Yes.

3 Q So there are judges there that are available, and if
4 you have questions or areas of concern or gaps in your
5 education, were you able to ask the teaching judges
6 those questions?

7 A I could have done that.

8 Q Are you given any materials at new judges school?

9 A Yes.

10 Q And are you encouraged to take those materials home and
11 to read them?

12 A Yes, you are.

13 Q And do those materials involve criminal law in Canada?

14 A Yes.

15 Q And did you read those materials after you left new
16 judges school?

17 A I read them at that time and from time to time
18 thereafter when relevant problems came up.

19 Q They can be a useful resource, can't they?

20 A Very much.

21 Q You go back to your materials that you got at new
22 judges school when you have an issue, and you reeducate
23 yourself or educate yourself on the topic at hand; is
24 that right?

25 A Yes.

26 Q Now, we talked a little bit earlier about the, what

1 I'll call, court-based programs. Do you know what I
2 mean when I say "court-based programs"?

3 A No, I don't.

4 Q Okay. Your provincial court itself, the Alberta
5 Provincial Court, I think you explained to Mr. Addario
6 that twice a year, they put on, what I'll call,
7 in-house or court-based education programs.

8 A I understand.

9 Q And that's right, is it, that you do have court-based
10 programs in the Alberta Provincial Court?

11 A Yes.

12 Q And part of the reasons for those programs is to
13 educate you and keep you up to date on topics in the
14 area of the law that the Provincial Court is dealing
15 with?

16 A That's right.

17 Q So you would deal with, for example, issues like
18 criminal law in Canada?

19 A And -- clearly, but the sub -- subsections to that.

20 Q Such as Breathalyzer law, that type of thing?

21 A Yes, quite right.

22 Q Okay. And Ms. Hickey asked you about the allowance
23 that you get as a Provincial Court judge. Am I correct
24 in my understanding that one of the purposes for that
25 allowance is to allow you to go out and educate
26 yourself?

- 1 A That is the purpose, yes.
- 2 Q Okay. You're encouraged to go out and get education
3 with that allowance; is that right?
- 4 A Yes, you are.
- 5 Q Okay. And I think in answer to a question by
6 Ms. Hickey, you explained to her that you're given a
7 syllabus or a list of courses that are available, and
8 you can select what courses you want to take and use
9 that allowance for; is that right?
- 10 A Yes, that's correct.
- 11 Q If you look at your docket and -- or let's not even
12 talk about your docket. If you get appointed to the
13 court and you feel you're deficient in a certain area
14 of the law, you can identify a course, whether through
15 the National Judicial Institute or other judicial
16 education institutes, and send yourself to that course
17 with your allowance; is that right?
- 18 A That's right.
- 19 Q And you can also use that allowance to order textbooks,
20 if there's any -- if you wanted to, for example,
21 educate yourself on sexual assault law, you could use
22 that allowance to order a textbook to educate yourself
23 on that area?
- 24 A Yes, you're right.
- 25 Q Does anybody analyze what kind of textbooks you're
26 ordering? In other words, if you wanted to order a

1 textbook on unconscious bias or sexism or anything of
2 that nature, myths, that type of thing, could you use
3 that money if you wanted to, to buy a textbook in that
4 area, or do they restrict the textbooks you can buy?

5 A I -- I've never known a restriction applied. I'm sure
6 that I could have ordered something like that.

7 Q Okay. Are you aware, Justice Camp -- or not are you
8 aware, but were you aware, when you were a Provincial
9 Court judge, that there are online judicial education
10 courses that are offered by the National Judicial
11 Institute?

12 A I was aware of that, yes.

13 Q And that Provincial Court judges are permitted to
14 participate in those courses?

15 A Online, yes.

16 Q Yes.

17 A It's rare -- it does happen, but it's rare that a
18 Provincial Court judge can attend an NJI course.

19 Q But I'm talking about online courses.

20 A Yes.

21 Q Are you familiar with the National Judicial Institute?

22 A I am now.

23 Q Okay. You had some knowledge, I take it. You said you
24 went to new judges school, and you know that they were
25 involved. Were you aware of the National Judicial
26 Institute when you got appointed to the Provincial

1 Court?

2 A Look, it's not of the -- of the Provincial Court. So I
3 knew that "NJI" stood for National Judicial Institute,
4 and I had gone to the website and looked -- looked at
5 what was available.

6 Q And you're -- are you aware of the National Judicial
7 Institute's library for judges?

8 A I wasn't then, but I am now.

9 Q When did you become aware of that?

10 A Justice McCawley told me about it, I think, when I met
11 her in December last year.

12 Q Do you know whether that was raised at new judges
13 school, whether the National Judicial Institute advised
14 the new judges at Provincial Court judges school about
15 the NJI library?

16 A I don't think it was. I might have forgotten.

17 Q Okay. But you were aware of the NJI online courses
18 that Provincial Court judges could participate in?

19 A I was aware there were such courses, yes.

20 Q Yes, and on a variety of different topics of the law
21 that -- so if you felt you needed to be educated in a
22 certain area, you could take the online course?

23 A Yes.

24 Q Do Provincial Court judges in Alberta have access to a
25 judicial library?

26 A Oh, yes. The -- we share the library with Queen's

1 Bench judges.

2 Q Okay. So if -- again, if you felt that there was a gap
3 in your education, you've come from a background that
4 you didn't have a lot of criminal law; you could go to
5 the judicial library and borrow some of the textbooks
6 in the areas of law that you felt you weren't
7 sufficiently educated on; is that right?

8 A I could have done that. May I add to that?

9 Q Certainly.

10 A I think it's become apparent that I didn't know what I
11 didn't know.

12 Q Well, I seem to be getting two different ideas. One is
13 your biases and prejudices you did not understand, but
14 I also took from the evidence -- and maybe I
15 misunderstood -- that you weren't familiar with the law
16 of sexual assault?

17 A I thought I was. I was -- I was familiar with the
18 black-letter law.

19 Q Okay.

20 A By a long order of magnitude, the biggest caseload in
21 the Provincial Court, certainly in Alberta, is impaired
22 driving, and I did a lot of work on that, followed by
23 assaults, thefts, and search and seizure, the kind of
24 points that are taken at the beginning of particular
25 drug -- a drug trial. I did a lot of work on that.
26 Sex assault is not a big part of our work. So I

- 1 thought --
- 2 Q And I thought --
- 3 A Sorry. I -- I'm sorry.
- 4 Q I thought you were finished. Please continue.
- 5 A All I was going to say is because I read the
- 6 black-letter law and Ewanchuk, I thought I knew it. I
- 7 didn't know that I didn't know it. So I didn't go out
- 8 of my way to look for other stuff. I didn't realize my
- 9 biases were unknown to me.
- 10 Q But did you feel comfortable -- I'm not talking about
- 11 your biases. I'm talking about your basic knowledge of
- 12 sexual assault law and how to conduct a sexual assault
- 13 trial. Did you feel comfortable with that?
- 14 A I -- rightly or wrongly, I felt comfortable.
- 15 Q Are you familiar with an organization known as the
- 16 Canadian Association of Provincial Court Judges?
- 17 A Yes, I am.
- 18 Q And is one of their roles to educate Provincial Court
- 19 judges?
- 20 A Yes, it is.
- 21 Q They organize conferences for Provincial Court judges?
- 22 A They do.
- 23 Q Were you given a computer, Justice Camp, when you
- 24 joined the Provincial Court?
- 25 A I was.
- 26 Q And did you sign up for what's called Judicom? Do you

1 know what Judicom is?

2 A I do, and it's more used in the Federal Court. It
3 wasn't much used in the Provincial Court. I did not.

4 Q You did not sign up for it?

5 A No.

6 Q Okay. Those are my questions. Thank you very much for
7 answering them.

8 A Thank you, Associate Chief Justice.

9 THE CHAIR: Are there any questions
10 arising from those by the committee?

11 MR. ADDARIO: I don't have any questions. I
12 just wondered, since I have the syllabus for each of
13 those courses, Associate Chief Justice Smith, if it
14 would be useful for you to see them. I've made
15 multiple copies. Ms. Hickey has them. It's really not
16 a contested matter, the content of them, but it might
17 be useful to you in your consideration.

18 SMITH A.C.J.: Absolutely, Mr. Addario.
19 Thank you.

20 MR. ADDARIO: Exhibit 12?

21 THE CHAIR: Yes.

22 MR. ADDARIO: Thank you.

23 THE CHAIR: One of them, compendiously, as
24 Exhibit 12.

25 EXHIBIT 12 - Syllabus for six conferences
26 Justice Camp attended

1 SMITH A.C.J.: Mr. Addario, just for
2 clarification, are these the new judges school
3 syllabuses or the other conferences that Justice Camp
4 took or both?

5 MR. ADDARIO: Those are the six for the --
6 for the six he attended. The new judges syllabus, we
7 have not yet been able to put our fingers on a hard
8 copy, but if we can before Monday, we will.

9 THE CHAIR: I think that would be helpful,
10 if we could get those.

11 MR. ADDARIO: I'm doing what I can.

12 THE CHAIR: Thank you.

13 All right. If there are no questions arising
14 then, Justice Camp is excused.

15 (WITNESS STANDS DOWN)

16 THE CHAIR: Yes, Mr. Addario.

17 MR. ADDARIO: Associate Chief, what time
18 would you like to start on Monday?

19 THE CHAIR: Well, we could start at -- how
20 long do you think -- counsel think they will be in
21 terms of their submissions? We can start early if --
22 if counsel wish, or we can start at 10. We can cut the
23 cloth to fit the suit.

24 MR. ADDARIO: Speaking for myself, I don't
25 believe I would be more than one hour and 30 minutes.

26 THE CHAIR: All right. Thank you.

1 Ms. Hickey?

2 MS. HICKEY: I might be slightly longer
3 than that, but I would think within a two-hour
4 timeframe.

5 THE CHAIR: All right. So why don't we
6 start at 10:00 on Monday, then.

7 MR. ADDARIO: And what's the order of
8 submission that you envisage, if you envisage?

9 THE CHAIR: I don't think we've given it a
10 great deal of thought, but I think that Ms. Hickey
11 would lead off, followed by -- by you, Mr. Addario,
12 with Ms. Hickey having a right of reply.

13 MR. ADDARIO: Okay. Great. Thanks.

14 THE CHAIR: All right. 10:00 Monday.
15 Thank you.

16

17 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, SEPTEMBER 12,
18 2016

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Sarah Howden, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 10th day of September 2016.

10

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14 _____
Sarah Howden, CSR(A)

15 Official Court Reporter

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EXHIBITS ENTERED IN THE HEARING

SEPTEMBER 9, 2016

PAGE NUMBER:

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EXHIBIT 11 - Letter written by a lawyer on behalf of a party in a Federal Court proceeding	328
EXHIBIT 12 - Syllabus for six conferences Justice Camp attended	370

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING

VOLUME 6

Calgary, Alberta
September 12, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta

3

4 September 12, 2016

5

6 Associate Chief Justice Chair

7 Austin F. Cullen

8 Associate Chief Justice Committee Member

9 Deborah K. Smith

10 Chief Justice Raymond P. Whalen Committee Member

11 Ms. Karen Jensen Committee Member

12 Ms. Cynthia Petersen Committee Member

13

14 Ms. Marjorie Hickey, QC Presenting Counsel

15 Michael Murphy

16

17 Owen Rees For Inquiry Committee

18

19 Frank Addario For Justice Camp

20 Megan Savard

21 Andrew Burgess

22

23 S. Murphy, CSR(A) Official Court Reporter

24 K. Attrell Registrar

25

26

1 (PROCEEDINGS COMMENCED AT 11:19 AM)

2 THE REGISTRAR: This inquiry hearing is now
3 resumed. Please be seated.

4 THE CHAIR: Yes. Thank you, counsel and
5 members of the public who are present, we regret the
6 delay in starting. One of our members was unexpectedly
7 delayed. We will, however, make use of the rest of the
8 day so to ensure we finish, and I expect we'll sit
9 through until 1:30 resume at 2, and then sit until the
10 matter is concluded. There may be a need for a break
11 along the way, but we will take that when and if it's
12 necessary. Thank you.

13 Ms. Hickey.

14 MS. HICKEY: Good morning, Mr. Chair and
15 committee members. Just before I begin my closing
16 submissions, there's one matter -- getting some
17 feedback here. I'll move it out a bit to see if that
18 works any better. That seems a little better.

19 THE CHAIR: Yes.
20 Submissions by Ms. Hickey

21 MS. HICKEY: On Friday, the committee will
22 recall that we had some discussion about programming
23 available to Justice Camp. Over the weekend, both
24 Mr. Addario and myself have been making some efforts to
25 find material with respect to the new judges school.
26 So the syllabus for the two components of the new

1 judges school attended by Justice Camp have been
2 located. And I understand they're going to be admitted
3 as an exhibit here this morning.

4 In addition, we've located the Allen Edgar text,
5 which, if it's permissible with the committee, we will
6 send you electronically later today. In addition,
7 there's information that one of the components of the
8 new judges school that was taught in Bromont, Quebec
9 relates to a particular scenario that was the form of
10 discussion for the participants and the context for the
11 scenario discussion was a sexual assault trial, but the
12 discussion was focused more broadly on the issues of
13 credibility.

14 Finally, as part of the new judges school program,
15 we understand there was a particular video that was
16 shown, again, in the context of a credibility
17 discussion. We haven't been able to locate the
18 particular video. When we do, if it has some
19 relevance, I think we have agreement that it can be
20 forwarded to the Panel.

21 THE CHAIR: Thank you.

22 MR. ADDARIO: Regarding the two NJI
23 syllabus -- syllabi, I gave the Registrar a single
24 copy. I gave Mr. Rees five of each, so he can
25 distribute those to you. They're on the chair beside
26 him.

1 THE CHAIR: All right. Thank you. I
2 believe we're at Exhibit 12, are we, Madame Registrar?

3 MR. ADDARIO: 12 is in.

4 THE CHAIR: 12 is in?

5 MR. ADDARIO: 12 was the Alberta provincial
6 court syllabi.

7 EXHIBIT 13 - New Judges Training Program
8 booklet and Newly Appointed Provincial and
9 Territorial Judges Skills Seminar book
10 Submissions by Mr. Burgess

11 MR. BURGESS: I just want to give a couple
12 of brief comments about what Ms. Hickey just said. I'm
13 Andrew Burgess; I'm one of the lawyers for Justice
14 Camp.

15 We agree with respect to the materials that
16 Ms. Hickey is putting in, but just subject to the
17 caveat that the scenario, the underlying scenario as a
18 sexual assault trial, that none of the issues that we
19 discussed involved myths or stereotypes or anything
20 particular to a sexual assault trial, and it just dealt
21 with the general case law and credibility and
22 reliability, and so our position is that it could have
23 been any underlying factual scenario.

24 With respect to the video, we don't know if the
25 video was like that or whether it was something
26 particular to sexual assault. We haven't seen the

1 video. It's not discussed in the syllabi.

2 With respect to the two textbooks, both of them
3 are in excess of 200 pages, and we agree there are one
4 or two pages that discuss sexual assault law briefly,
5 kind of what you'd see in a Tremear's or Gould's. Our
6 position is that none of this undermines the evidence
7 of Justice McCawley that there was no -- there was no
8 educational program specifically focused on sexual
9 assault law or certainly on sexual assault myths and
10 stereotypes available to Justice Camp during his tenure
11 on the Provincial Court. Thank you.

12 THE CHAIR: Thank you, Mr. Burgess.

13 Yes, Ms. Hickey.

14 Final Submission by Ms. Hickey

15 MS. HICKEY: Thank you, Mr. Chair.

16 So determined sexist, incorrigible misogynist, or
17 reformed judge who knew not the errors of his ways and
18 beliefs who has sincerely apologized for his wrongs and
19 is now retrained and better equipped to serve his
20 judicial function.

21 Associate Chief Justice Cullen, Chief Justice
22 Whalen, Associate Chief Justice Smith, Ms. Jensen, and
23 Ms. Petersen, if those were the only choices that you
24 had to make, your task would be more straightforward
25 than it is. However, the Judges Act and the case law
26 arising in this arena suggest that the decision you are

1 required to make is far more complex than those
2 choices.

3 As referenced in my opening submissions, this case
4 is not about whether Justice Camp's shortcomings have
5 been remedied such that he doesn't need to be removed
6 from office. This case is about whether public
7 confidence in the judiciary will be maintained through
8 Justice Camp remaining in his position or being removed
9 from office.

10 Now the forward to the document that we've
11 discussed at various times in the inquiry this week,
12 the Ethical Principles for Judges, starts with a very
13 simple statement: (as read)

14 The ability of Canada's legal system to
15 function effectively and to deliver the kind
16 of justice that Canadians need and deserve
17 depends in large part on the ethical
18 standards of our judges.

19 That statement is then elaborated on throughout the
20 ethical principles, and particularly in Ethical
21 Principle 2 respecting judicial independence, where it
22 is stated: (as read)

23 The rule of law and the independence of the
24 judiciary depend primarily upon public
25 confidence. Lapses and questionable conduct
26 by judges tend to erode that confidence.

1 Comments like this that really can be found throughout
2 the Ethical Principles for Judges document are telling
3 judges in clear and unambiguous language that the face
4 of justice for any litigant, any accused, any witness,
5 any complainant, the face of justice for any
6 participant in the Courts is the face of the presiding
7 judge. Without confidence in that presiding judge,
8 there can be no confidence in the judicial system.

9 So while the formal test for removal from the
10 bench that is under consideration by this committee is
11 stated in the case law in quite lengthy and fairly
12 elaborate language, which we will be reviewing, its
13 essence can be stripped down to whether the public can
14 have confidence in the justice system where Justice
15 Camp continues to preside.

16 The case law is clear that the threshold for
17 removal of any judge from the bench is high and the
18 action has been seldom exercised. As stated in the
19 Deziel case at paragraph 15, it is unquestionably a
20 high standard. So to assist the committee in assessing
21 whether that high threshold has been met in this case,
22 over the next short while I hope to do the following:
23 Just to discuss the full test, then to review the
24 allegations from the Notice of Allegations to determine
25 whether the facts asserted in those allegations have
26 been proven, review the allegations in the context of

1 the evidence that has been advanced both orally during
2 this inquiry and in the agreed statement of facts, and
3 that's all done for purposes of determining whether the
4 requirements of Section 65(2) of the Judges Act have
5 been met. Once that's done, to the extent that 65(2)
6 has been met, I'll then take the committee through the
7 test laid out in the Marshall and Ruffo decisions as
8 that test is applied in the context of the facts of
9 this case.

10 And in doing all of that, in addition to reviewing
11 the evidence that I've just mentioned, I will review
12 some of the relevant case law and the submissions from
13 the interveners in this inquiry. And, finally, in
14 concluding whether the test set out in Marshall and
15 Ruffo has been met, I'll conclude with an assessment of
16 various aggravating and mitigating factors that I think
17 would be of assistance for the committee to bear in
18 mind as you are making your determination with respect
19 to this inquiry, and I'll make submissions as to
20 whether these various factors when considered together
21 and balanced against each other support or do not
22 support a recommendation for removal from office.

23 So with respect to the full test, we've referenced
24 it in our opening submissions. I don't think there's
25 any question about what the test is. I've included it
26 simply for ease of reference under Tab 2 of the small

1 binders that -- I'm not sure if they have been handed
2 out yet or not.

3 THE CHAIR: No. I don't think we've
4 received those yet.

5 MS. HICKEY: Just for the benefit of the
6 Panel, there's a very broad outline under Tab 1, not a
7 substantive outline, but more just placeholder so you
8 will have a sense of where I am in my submissions and
9 then a few documents are attached under the other tabs.
10 And, again, simply for ease of reference, I've included
11 under Tab 2 the test that has been articulated before
12 an Inquiry Committee can determine their recommendation
13 with respect to the removal of a judge from the bench.

14 The Matlow decision distills the case quite
15 nicely. That's found at Tab 8 in the book of
16 authorities, and it indicates, firstly, that your
17 inquiry is to determine whether Justice Camp's conduct
18 falls within any one of Clauses (b) through (d) of
19 Section 65(2) of the Judges Act. If it does, then is
20 it so manifestly and profoundly destructive of the
21 concept of the impartiality, integrity, and
22 independence of the judicial role that public
23 confidence would be sufficiently undermined to render
24 the judge incapable of executing the judicial office.
25 And that's what we often call the Marshall test.

26 As noted further in Matlow, an important aspect of

1 the test, not specifically articulated, is its
2 prospective nature. Implicit in the test for removal
3 is the concept that public confidence in the judge
4 would be sufficiently undermined to render him or her
5 incapable of executing judicial office in the future in
6 light of his or her conduct to date. And, finally, the
7 impact of the impugned conduct and public confidence
8 must be assessed from the objective standpoint of what
9 an informed person, viewing the matter realistically
10 and practically and having thought the matter through,
11 would conclude. And that aspect of the test is usually
12 referred to simply as the Ruffo test. So as I proceed
13 today, I'll be speaking of the Marshall/Ruffo test to
14 include those elements that are set out under Tab 2.

15 Just before leaving the test, I think it's
16 important to note in the Marshall case in the
17 commentary that precedes the statement of the test that
18 I've just read, and it's found at pages 26 and 27 of
19 the Marshall decision, which is in Tab 7 of the book of
20 authorities submitted during opening submissions, and
21 you don't necessarily have to turn it up. I'll read it
22 to you. But I think it's an important part of the test
23 that should be borne in mind as the committee is
24 embarking on its considerations of the evidence in this
25 case.

26 This is what the Court said in Marshall:

1 (as read)

2 Everyone holds views, but to hold them may or
3 may not lead to their biased application.

4 There is, in short, a crucial difference
5 between an empty mind and open one. True
6 impartiality is not so much not holding views
7 and having opinions, but the capacity to
8 prevent them from interfering with the
9 willingness to entertain and act on different
10 points of view. Whether or not a judge is
11 biased, in our view, become less instructive
12 an exercise than whether or not the judge's
13 decision or conduct reflected an incapacity
14 to hear and decide a case with an open mind.

15 [And at page 27] The standard, in our view,
16 must be an objective one, based in part at
17 least on conduct which could reasonably be
18 expected to shock the conscience and shake
19 the confidence of the public as opposed to
20 conduct which is and often must be unpopular
21 with part of that public.

22 And with those comments, the Court then proceeded to
23 articulate the test that I've earlier outlined.

24 So with that test in mind, and turning to the
25 first prong of the Marshall/Ruffo test, the committee,
26 I suggest, needs to make determinations with respect to

1 whether each of the allegations has been proven. And
2 then after we go through that exercise, we'll come back
3 and look at applying the Marshall/Ruffo test in a
4 broader context of those allegations that I suggest
5 have been proven.

6 The committee, of course, has the Notice of
7 Allegations. In Allegation Number 1, and I'm not going
8 to read it in its entirety, but this is the allegation
9 that Justice Camp made comments which reflected an
10 antipathy to the legislation designed to protect the
11 integrity of vulnerable witnesses and designed to
12 maintain the fairness and effectiveness of the justice
13 system. These comments, of course, are referring to
14 Section 276 of the Criminal Code, that's often called
15 the "Rape Shield Law", and there were comments where
16 Justice Camp questioned the operation of the law
17 operating for better or for worse, commented in terms
18 of it hamstringing the defence, has to be interpreted
19 narrowly, it's in very, very cursive legislation which
20 prevents otherwise permissible questions because of
21 contemporary thinking, and, finally, his comment that
22 no one would argue the rape shield laws always worked
23 fairly.

24 Now, in his evidence at this inquiry, Justice Camp
25 stated that the Section 276 amendments after 1993
26 removed any form of unfairness in those sections. So

1 he appears to be countering the last of the examples in
2 the allegation that were listed. That was the extent,
3 though, of his evidence on direct.

4 In cross, Justice Camp acknowledged that by
5 criticizing legislation in the way he did, he was
6 suggesting that the purpose of the legislation was
7 somehow not worthy, and that's at page 315, line 25.
8 He acknowledge that it is important that before judges
9 express concern about the fairness of legislation that
10 they must give considerable thought because it can have
11 quite a significant and detrimental impact to those who
12 are hearing those comments. And he further agreed that
13 it could have a significant impact on the confidence of
14 those individuals in the judicial system. Those
15 comments are all at page 315.

16 He acknowledged Allegation 1 in full. He
17 acknowledged that his use of language reflected an
18 antipathy towards the rape shield law, and I refer you
19 again to page 315 and the question and answers
20 particularly at line 10. So these responses
21 collectively show that Justice Camp admits Allegation 1
22 in its entirety.

23 There has to be a concern when a judge makes
24 comments reflecting an antipathy towards legislation
25 which is designed to protect the integrity of
26 vulnerable witnesses and designed to maintain fairness

1 and effectiveness of the justice system. Justice Camp
2 has quite properly conceded that such comments
3 constitute misconduct.

4 And I would suggest that in light of Justice
5 Camp's admissions that such expressions of concern
6 about the fairness of legislation that can have a
7 significant impact on the confidence of the public in
8 the judicial system also suggest that the language
9 that's outlined in Allegation 1 meet not only the test
10 for misconduct, but the test that by using that
11 language, by reflecting the antipathy that he did
12 towards the legislation, that Justice Camp failed in
13 the due execution of the office of the judge.

14 In the Ethical Principles for Judges document, it
15 is noted that the diligence and the performance of
16 adjudicative duties includes striving for impartial and
17 even-handed application of the law. That's found at
18 page 20. Beyond the Ethical Principles for Judges, I
19 would submit that it's simply fundamental to the role
20 of the judge that a judge upholds the law and shows
21 respect for the law.

22 As set out in the Therrien case, which is found at
23 Tab 11 of the book of authorities: (as read)

24 From the point of view of the individual who
25 appears before them, judges are first and
26 foremost the ones who state the law. They

1 grant the person rights or impose obligations
2 on him or her.

3 That's at paragraph 108 of Therrien. And further at
4 109, Justice Gonthier said: (as read)

5 Thus to the public, judges not only swear by
6 taking their oath to serve the ideals of
7 justice and truth on which the rule of law in
8 Canada and the foundations of our democracy
9 are built, but they are asked to embody them.

10 So even if Justice Camp was correctly applying Section
11 276, which I suggest is not at issue in this
12 proceeding, his comments reflecting antipathy toward it
13 were completely unnecessary, gratuitous, and
14 disrespectful toward legislation that was designed to
15 protect vulnerable witnesses. The due execution of the
16 office of the judge requires much more than that, and
17 accordingly I would suggest that Allegation 1
18 establishes both misconduct and failure in the due
19 execution of an office of the judge under Section
20 65(2) (b) and (c).

21 Turning to Allegation 2. At page 316 of the
22 transcript, lines 1 to 16, Justice Camp admits he
23 engaged in stereotypical or biased thinking in relation
24 to the complainant. He admits to have relied on flawed
25 assumptions, which are well recognized and established
26 in law as rooted in myths. And at page 268 of his

1 direct evidence, he acknowledges that the comments
2 under Allegations 2(a), (c), (d), and (e) were all
3 based on deep-rooted unrecognized prejudices for which
4 he indicated he was deeply sorry.

5 With respect to Allegation 2(b), as revised by the
6 committee to put it in its full context, that comment
7 now reads: (as read)

8 Is it unreal for me to accept that a young
9 woman -- sorry, that a young man and a young
10 woman want to have sex particularly if they
11 are drunk.

12 Now that question, read in its entirety and asked --
13 was asked in the context of the discussion whether
14 there was an air of reality to the accused's evidence.
15 Read as a whole, it appears that Justice Camp is asking
16 rhetorically whether it is so hard to imagine that two
17 young people, a man and a woman, want to have sex with
18 each other, particularly if they are drunk. The
19 comment doesn't single out women in particular as being
20 sexually available when drunk, and, accordingly, in and
21 of itself, it would be presenting counsel's position
22 that this comment does not engage stereotypical or
23 biased thinking.

24 Of note, however, further on in the transcript at
25 page 326 at lines 8 to 12, comments are made that are
26 described under Allegation 5(e), where Justice Camp

1 suggests to the Crown she knew she was drunk and asks
2 is it not an onus on her to be more careful. That
3 comment does single out the complainant as
4 precipitating the sexual assault in some way through
5 her drinking and can be said to be relying on
6 stereotypical thinking. I'll revisit the comment
7 further under Allegation 5, where it's included in the
8 Notice of Allegations, but I would suggest that the
9 language set out in Allegation 2(b) on its own is not
10 strictly made out.

11 With respect to Allegation 2(f), the specific
12 references from the transcript relate to comments made
13 by Justice Camp respecting both the complainant and the
14 accused. He refers to them as unsavory witnesses and
15 amoral people. Again, he does not single out the
16 complainant in this extract, and he goes on shortly
17 after this witness to refer to her sense of honesty as
18 reflected in their shoplifting and some of their other
19 activities.

20 The extract in the Notice of Allegations refers
21 collectively to attributes of all of the witnesses.
22 So, once again, Justice Camp makes references to the
23 complainant and respondent as living on the street, not
24 holding down jobs, having criminal records. He doesn't
25 single out the complainant. He indicates he's looking
26 at those issues in terms of dealing with the

1 credibility of the evidence of the witnesses.

2 So based on this and his attribution of the
3 comments to both the complainant and the accused, it's
4 presenting counsel's position that these particular
5 extracts do not go beyond assessing the credibility of
6 the complainant to denigrating her and suggesting her
7 character would make it more likely that she consented
8 to sexual relations.

9 Unfortunately there are other entries in the
10 transcripts that would perhaps draw this conclusion
11 where he refers, for example, at page 179 to the kind
12 of person the complainant is. And certainly by
13 referring to the complainant throughout as the accused,
14 even after being corrected by the Crown, these
15 comments, however, are not specifically included under
16 Allegation 2 and, accordingly, are not being advanced
17 as examples of the stereotypical thinking set out in
18 that allegation.

19 So I would conclude on Allegation 2 that, with the
20 exception of 2(b) and (f), Allegation 2 has been
21 proven. Justice Camp acknowledges that the conduct as
22 described in Allegation 2 but for (b) and (f) amount to
23 misconduct. The issue of whether the conduct in
24 Allegation 2 also constitutes failure in the due
25 execution of the judicial office, I'll address
26 collectively with my comments under Allegation 3, as

1 both of those allegations reference issues relating to
2 Justice Camp's reliance on the discredited and
3 stereotypical assumptions.

4 Of note perhaps before leaving Allegation 2, there
5 are some differences in the Notice of Response and the
6 testimony that was given by Justice Camp. The Notice
7 of Response denies Allegation 2(c) and specifically
8 denies biased reasoning. And while there may be a
9 nuanced difference between biased thinking and biased
10 reasoning, the outright denial of biased reasoning in
11 the Notice of Response and the admission of biased
12 thinking in this hearing remain somewhat difficult to
13 reconcile.

14 In Allegation 3, this is the allegation that has
15 received considerable media attention. It's the
16 allegation where Justice Camp asked questions of the
17 complainant reflecting reliance on discredited,
18 stereotypical assumptions about how someone confronted
19 with sexual assault would or would not behave and/or
20 blaming the complainant for the alleged assault. So in
21 some ways, this is a bit of an extension of Allegation
22 Number 2, although the specific examples are different.
23 And two of which of course are the questions: Why
24 didn't she just sink her bottom down into the basement
25 -- sorry, basin so he couldn't penetrate her and why
26 couldn't she just keep her knees together. The third

1 allegation is of the same ilk where Justice Camp
2 suggests that if the complainant skewed her pelvis
3 slightly, she could avoid him.

4 Now, in his direct evidence, Justice Camp stated
5 at page 269 of the transcript at lines 9 to 17, leaving
6 to one side the question of whether the issue of
7 whether the questions of that type should have been
8 asked, he said that: (as read)

9 ... simply the terms in which I asked the
10 questions, they are reflective of what I
11 eventually came to realize, a deep-rooted,
12 unconscious bias.

13 The only way I can explain the way in which I
14 asked those questions is that I, at some
15 level, held onto the myth that women were
16 supposed to fight off aggression.

17 Justice Camp explicitly accepts the allegation as it's
18 framed in the Notice of Allegations on page 317 of the
19 transcript, and he explicitly accepts that he was
20 relying on the resistance myth. He acknowledges
21 misconduct.

22 So with respect to whether this conduct, and I
23 would lump in the conduct under Allegation 2 that I
24 suggest has been proven as well, with respect to
25 whether that conduct amounts to a failure in the due
26 execution of the office of a judge, I think it's of

1 note that at page 318 of the transcript, Justice Camp
2 acknowledges that at the time of the Wagar trial, he
3 had read the Ewanchuk decision, he had read Seaboyer,
4 he had read Sections 271 to 279 of the Criminal Code.
5 And he then said: (as read)

6 I thought I understood on an intellectual
7 issue -- sorry, on an intellectual level the
8 issues surrounding mythical thinking.

9 Now, Ewanchuk and Seaboyer are found in the book of
10 authorities. You need not to read and need not read
11 too far into them to look at the extensive discussions
12 that take place in those cases respecting various
13 issues at play in the Wagar trial in terms of consent
14 and in terms of commentary on discredited myths and
15 stereotypical assumptions.

16 The evidence of Justice McCawley is relevant here
17 as well. At page 126 she gives evidence that Justice
18 Camp understood the myths and stereotypical
19 assumptions. She says he understood them at the time;
20 he got them. But he was -- he obviously had failed in
21 his management of this trial to stay away from them and
22 he got himself in trouble with that.

23 And at page 127, she says: (as read)

24 He thought he had applied things
25 appropriately, the law and his understanding.

26 And then when I asked -- at page 127: (as read)

1 So he thought he had appropriately applied
2 his understanding of these myths and the law.
3 Did you suggest to him that perhaps he had
4 not?

5 [And the answer was] Yes.

6 Now, in response to questions from Associate Chief
7 Justice Smith, Justice Camp noted that he had read the
8 Criminal Code prior to Wagar, he had reviewed some 50
9 plus important cases and bench books, he indicated that
10 about half a dozen of the cases he received related to
11 sexual assault law, and he had read them. He
12 specifically referenced, once again, Ewanchuk and
13 Seaboyer. He noted he had several informal mentors who
14 he was comfortable going with, to speak about concerns.
15 He spoke about the library resources that were
16 available to him, and he explicitly stated that he
17 thought he was familiar with the black letter law of
18 sexual assault. That's at page 368.

19 He indicated at 369 that he had read the black
20 letter law, he had read Ewanchuk, he thought he knew
21 it. He said: (as read)

22 I didn't know that I didn't know it, so I
23 didn't go out of my way to look for the other
24 stuff. I didn't realize my biases were
25 unknown to me.

26 He then stated that he felt comfortable that with his

1 basic knowledge of sexual assault law -- he felt
2 comfortable with his basic knowledge of sexual assault
3 law and how to conduct a sexual assault trial.

4 We see now through the syllabus of the new judges
5 school that has been presented that some materials were
6 made available to Justice Camp, albeit nothing
7 explicitly or directly focused on the trial of a sexual
8 assault case. But, collectively, when the committee
9 looks at the various resources that were available to
10 Justice Camp, when it looks at what Justice Camp
11 himself says he did in terms of understanding the law
12 of sexual assault, this is not a case of ignorance of
13 the law. Justice Camp knew the law. He read it, he
14 read the Criminal Code provisions, he read the key
15 cases, he thought he understood it. And despite that,
16 he made the comments that he did, which he now admits
17 invoke the very type of stereotypical thinking and
18 discredited myths that underlie sexual assault law.

19 Now while the evidence is very clear that Justice
20 Camp is saying that he didn't understand he had
21 deep-rooted prejudices and biases, the fact that those
22 deep-rooted prejudices and biases shone through in the
23 pervasive and glaring manner in which they did through
24 the comments in Allegation 2 and through asking the
25 three questions in Allegation 3, despite his knowledge
26 of the law, that collectively must amount to a failure

1 in the due execution of the office of a judge.

2 Justice Camp acknowledges he was bound by the duty
3 of diligence outlined in the Ethical Principles for
4 Judges. In Commentary 5 of that chapter, it's noted:
5 (as read)

6 As long ago as the Magna Carta, it was
7 recognized that judges should have a good
8 knowledge of the law. This knowledge extends
9 not only to substantial and procedural law,
10 but to the real life impact of the law.

11 So when all of this is borne in mind collectively as
12 between Allegation 2, to the extent I suggest it's
13 proven, and Allegation 3, the conclusion should be
14 reached that Justice Camp indeed engaged in misconduct,
15 and in light of his failure to apply the law that he
16 had read and understood, in light of his failure to
17 apply the law and to instead make the comments that he
18 did in such an egregious and profound way, he must be
19 found to have failed the due execution of the office of
20 the judge.

21 Allegation 4 is little different from the others.
22 It references a rude or derogatory personal comment to
23 Crown counsel. In his direct evidence, Justice Camp
24 indicated, this was an expression used in South Africa
25 as a figure of speech, and he translated it to mean
26 that the pendulum swings, history never comes to an

1 end, be careful what you wish for.

2 In cross-examination at page 323, Justice Camp
3 acknowledged that he had made a rude and derogatory
4 comment about Crown counsel in the course of
5 disparaging a legal principle she was addressing.

6 This comment and the explanation of the comment
7 given by Justice Camp is troubling, as it appears to
8 suggest that Justice Camp is hoping that Crown counsel
9 doesn't live long enough to see the ground shift under
10 her feet in terms of what is contemporary thinking
11 respecting sexual assault law. It could be taken
12 almost as a cry for "the good ole days when boys will
13 be boys" before the laws were reformed.

14 Justice Camp admits his comments to Crown counsel
15 under Allegation 4 constitute misconduct.

16 In Allegation 5, this allegation relates to
17 comments made by Justice Camp of a belittling nature or
18 comments that are said to trivialize the nature of the
19 allegations made by the complainant. Justice Camp
20 accepts that he did this with respect to Allegations
21 5(a), (b), (c), and (d). With respect to (e), he
22 indicates that at page 324 that he should not have
23 asked the question because he should have known the
24 answer. He indicated the Crown answered it correctly,
25 and a moment later he found the relevant section
26 anyway.

1 But merely by asking the question in the manner
2 that he did, the comment could be said to trivialize
3 the nature of the allegations made by the complainant,
4 suggesting the allegations are not as serious due to
5 the fact that she was drunk.

6 Justice Camp admits Allegation 5 amounts to
7 misconduct, and when the particular phrases that are
8 set out in Allegation 5 are examined, it is the
9 position of presenting counsel that the phrase:
10 (as read)

11 Some sex and pain sometimes go together;
12 that's not necessarily a bad thing.
13 That has to be a particularly belittling, insensitive,
14 egregious comment. Particularly so given the evidence
15 of the complainant that her back was pushing against a
16 metal faucet and that the accused was hurting her. She
17 had bruising on the lower part of her back,
18 corroborated by medical evidence.

19 The commentaries under the equality principle
20 emphasize the relationship between equality and
21 impartiality. Commentary 2: (as read)

22 A judge who engages in stereotyping does so
23 at the expense of the judge's impartiality,
24 actual or perceived.

25 Commentary 3: (as read)

26 Judges should not be influenced by attitudes

1 based on stereotype, myth, or prejudice

2 And Commentary 4 adds that: (as read)

3 Judges should avoid comments, expressions,
4 gestures, or behaviour which reasonably may
5 be interpreted as showing insensitivity to
6 the matter under review.

7 Sorry, I'm missing my last part of the quote there, but
8 it was Commentary 4.

9 Given the principles expressed in those
10 commentaries in light of the language that's used in
11 this allegation, it's presenting counsel's submission
12 that not only do the comments, as admitted, constitute
13 misconduct, but they also rise to the level to suggest
14 Judge Camp failed in the due execution of the judicial
15 office by making those comments.

16 I'm sorry. Ms. Petersen?

17 MS. PETERSEN: It's okay. I'm just wondering
18 what you make of Professor Cossman's testimony with
19 respect to the comments in Allegation 5(a). I don't
20 have the transcript before me, but my recollection is
21 that she testified to the effect that in her view that
22 comment was simply an expression of the view that the
23 presence of pain during sexual activity is not
24 necessarily indicative of a lack of a consent.

25 MS. HICKEY: It would be my view that when
26 the entire context of that comment is read, I would

1 have some difficulty accepting that interpretation.
2 Because the context refers, as I've just mentioned -- I
3 think it's on the previous page where the Crown counsel
4 specifically, and in some detail, takes the Court
5 through the positioning of the complainant on the
6 bathroom counter, making specific reference to the
7 location of her back against the metal faucet. So it's
8 that context, I think, that cannot be ignored to lead
9 to the conclusion that I've just suggested.

10 MS. PETERSEN: Thank you.

11 MS. HICKEY: The final allegation, which is
12 Allegation 6, the last allegation relates to comments
13 tending to belittle women generally and expressing
14 stereotypical or bias thinking in relation to a sexual
15 assault complainant. And the comments under this
16 allegation include Justice Camp's question to the Crown
17 as to whether there are any particular words that must
18 be used like the marriage ceremony to obtain consent.
19 Now in his direct evidence, Justice Camp indicates that
20 he was asking a serious question flippantly, in a
21 disparaging and facetious way, and he regrets it.
22 That's at 270 and 271.

23 The final two statements under this allegation
24 which Justice Camp has described as his ham-handed
25 advice to a young man who probably hadn't had advice, I
26 would submit rises to the level of both misconduct and

1 conduct incompatible with the due execution of the
2 office of the judge. To suggest to the accused he must
3 tell his friends, his male friend that they have to be
4 far more gentle with women and patient and careful to
5 protect themselves and to be very sure that the girl
6 wants you to do it smacks of paternalism and sexism.
7 The types of "boys will be boys" mentality that is
8 completely out of place in the conduct of a sexual
9 assault trial. So I would submit that those comments
10 in Allegation 6 rise not only to the level of
11 misconduct, but to a failure to duly execute the office
12 of a judge.

13 Flippant, disparaging, facetious comments,
14 patronizing sexist comments are simply not compatible
15 with the due execution of a judge's office.

16 Collectively, then, it's the submission of
17 presenting counsel that aside from Allegations 2(c) and
18 (f), that the allegations have been proven largely
19 through an admission and that they collectively
20 constitute misconduct. And some individually, but
21 taken collectively, amount to failure in the due
22 execution of the office of the judge. The comments
23 that Justice Camp voiced throughout the Wagar trial
24 reflect the discredited myths and stereotypes about
25 women and sexual violence which the law has strived to
26 move so far away from.

1 In what can only be described as a dismissive
2 manner, Justice Camp repeatedly referred to the legal
3 rules requiring that these stereotypes not be relied
4 upon as contemporary thinking. He was, I would
5 suggest, in a review of the evidence, at times
6 sarcastic and disrespectful to Crown counsel when she
7 attempted to explain how the rules worked and why they
8 were important. These were rules, these were laws with
9 which he was familiar through his reading. These were
10 not obscure sections of the Criminal Code that seldom
11 arise in a Provincial Court setting.

12 So when you consider the pervasiveness of the
13 comments throughout the trial, their nature, their
14 manner of expression, I would conclude in the totality
15 that misconduct is established and that Justice Camp
16 failed in the due execution of the office of a judge.

17 The more difficult questions, though, remain.
18 Having satisfied the first part of the test, the
19 committee must now consider from an objective standard
20 whether such conduct so manifestly and profoundly is
21 destructive of the concepts of impartiality, integrity,
22 and independence of the judicial role that public
23 confidence would be sufficiently undermined to render
24 the judge incapable of executing the judicial office.

25 Now here the commentaries to the ethical
26 principles are instructive with respect to the

1 intersection of these concepts of impartiality,
2 integrity, and independence of the judicial role.
3 Those are the concepts that are focused on in the test.

4 The submissions from the intervener groups and the
5 complaints from the law professors, I think, nicely
6 summarize this entire section. I will make a few
7 references to some of these sections.

8 So I'm reading from the submissions from the
9 intervener coalition. This is the group of a number of
10 organizations, the Avalon Sexual Assault Centre, Ending
11 Violence Association British Columbia, Institute For
12 the Advancement of Aboriginal Woman, Metropolitan
13 Action Committee on Violence Against Women and
14 Children, West Coast LEAF and LEAF itself.

15 I'll refer, in particular, starting at paragraph
16 41 of that submission, where it is said: (as read)

17 Judicial independence emphasizes that an
18 independent judiciary is indispensable to
19 impartial justice under law. Judges should
20 uphold and exemplify judicial independence.

21 In particular, that concept recognizes that
22 high standards of judicial conduct are the
23 source of public confidence upon which
24 judicial independence depends. Judicial
25 independence and the rule of law depend on
26 public confidence in the judicial system and,

1 in turn, public confidence in the judicial
2 system depends upon adherence to the rule of
3 law. The ethical principles underscore that
4 judicial independence and the rule of law
5 depend on public confidence in the judicial
6 system.

7 As the Ethical Principles recognize, judicial
8 independence includes fidelity to law. That
9 does not mean a judge cannot err in the
10 interpretation or application of the law or
11 question the continued soundness or validity
12 of legal rules or doctrines. Fidelity to law
13 does, however, require respect for the law.
14 A judge must interpret and apply the relevant
15 legal principles conscientiously based on an
16 objective and informed understanding of them.
17 Judicial disrespect for law occurs when a
18 judge demonstrates antipathy toward the law.

19 At paragraph 51, the interveners refer to impartiality
20 and indicate that: (as read)

21 That concept stresses that judges must be and
22 should appear to be impartial. Impartiality
23 includes a judge's demeanour in treating
24 everyone before the Court not only with
25 courtesy and respect, but also without the
26 suggestion of prejudgment. Judicial

1 impartiality is closely related to judicial
2 independence, but is a separate and distinct
3 requirement and relates to the need to not
4 only act in an unbiased manner but also
5 appear to be unbiased. Judicial impartiality
6 and equality are intertwined.

7 And then there's a quote from the Ethical Principles:
8 (as read)

9 Equality, according to law, is not only
10 fundamental to justice but is strongly linked
11 to judicial impartiality. A judge who, for
12 example, reaches a correct result but engages
13 in stereotyping does so at the expense of the
14 judge's impartiality, actual or perceived.

15 The professors' complaint at page 2 emphasizes the
16 centrality of the equality to the judicial function.
17 They reference, again, the commentaries under the
18 equality principle that emphasize the relationship
19 between equality and impartiality much as the
20 interveners do.

21 They review Commentary 3 which state that judges
22 should not be influenced by attitudes based on
23 stereotype, myth, or prejudice, and Commentary 4, which
24 I previously read to you.

25 The professors note that Principle 6, which
26 requires judges to be impartial in referring to a

1 commentary under that quotes RDS and the Queen and:
2 (as read)

3 True impartiality does not require that the
4 judge have no sympathy or opinions. It
5 requires that the judge nevertheless be free
6 to entertain and act upon different points of
7 view with an open mind. The judge's
8 fundamental obligation is to strive to be and
9 appear to be as impartial as possible.

10 So those concepts of independence, impartiality,
11 equality, very much intertwined as set out in the
12 commentaries in the Ethical Principles document and
13 very much not only individually but collectively form
14 the foundation for the public's confidence in the legal
15 system.

16 Now in this case, Justice McCawley, Dr. Haskell
17 both testified that Justice Camp expressed views in
18 Wagar that could be perceived as gender biased. That's
19 Justice McCawley at 129; Dr. Haskell at pages 213 and
20 14, where she noted that Justice Camp held sexist
21 assumptions and demonstrated gender assumptions and
22 biases.

23 They also testified that other players in the
24 judicial systems hold such biases, and they too require
25 assistance in learning to address them and can do so
26 successfully. They testified that Justice Camp, in

1 their view, was teachable. These are helpful findings
2 for Justice Camp, and these are important findings for
3 this committee to bear in mind when determining -- when
4 the high threshold to meet the test for removal from
5 the bench has been met.

6 There are some other factors at play here that
7 need to be borne in mind by this committee in advancing
8 the position that while Justice Camp's comments in
9 Wagar may constitute misconduct or failure into the due
10 execution of his office, that they perhaps don't rise
11 to the high threshold requirement required by Marshall
12 and Ruffo. So I will review some of that with you now.

13 Unlike the resistant and obstinate reaction
14 displayed by Justices Bienvenue and Cosgrove after
15 their impugned comments, Justice Camp, to his credit,
16 at an early point upon learning of the concerns, took
17 action to apologize. Now, there are some discrepancies
18 in the evidence as to exactly when this occurred.

19 Justice Camp indicated it was upon reading a blog after
20 the Court of Appeal decision. Chief Justice Crampton
21 in his letter found in the agreed statement of facts
22 indicates it was after publication of the Globe and
23 Mail article on November 9. Regardless, it was soon
24 after learning of the concerns.

25 An immediate apology is recognized as a mitigating
26 factor in applying the Marshall/Ruffo test. Further,

1 as noted in Chief Justice Crampton's letter, Justice
2 Camp initiated his own apology to his judicial
3 colleagues at the Federal Court soon after matters were
4 brought to his attention, and he did that at his own
5 initiative.

6 It must also be noted that the conduct which you
7 are considering before you in the application of the
8 Marshall/Ruffo arose in one case. This is not a case
9 where there's a multiplicity of proceedings where
10 similar conduct has been demonstrated.

11 The evidence suggests that Justice Camp had some
12 involvement in other sexual assault matters with some
13 number of trials, pleas, and sentences, and there's no
14 evidence to suggest that the type of comments that were
15 made in Wagar pervaded these other judicial
16 proceedings.

17 It should also be noted that Justice Camp has
18 submitted evidence of good character. In the Matlow
19 decision, the Canadian Judicial Council commented on
20 the relevance of such character letters and indicated:
21 (as read)

22 While they're not relevant to whether the
23 conduct complained of occurred, they may be
24 relevant to why the acts occurred, the
25 context of the acts, and whether the acts
26 were committed without malice and without bad

1 faith.

2 And in Matlow, the CGC also concluded that character is
3 also highly relevant to the issue of what
4 recommendation should flow from a finding of judicial
5 misconduct.

6 So the character letters are before you under Tab
7 R of the agreed statement of facts. There's roughly
8 ten, I think, from former colleagues at Justice Camp's
9 former law firm, including one from a former president
10 of the Law Society of Alberta. There's a letter from a
11 spouse of a former colleague, letters from -- I think
12 around seven letters from former judicial assistants,
13 court clerks, and articling clerks, letters from
14 lawyers, and others. A letter from his daughter and a
15 letter from an organization Home Front.

16 These letters collectively speak to Justice Camp's
17 sense of respect for others, including women, his sense
18 of the importance of taking responsibility for his
19 actions, his willingness to learn, his kindness, his
20 integrity, his honesty, his fair-mindedness. From
21 those who wrote the letters, it appears he was
22 well-liked by his colleagues, law firm, and courthouse
23 staff, and indeed the great majority of the letters
24 come from former colleagues and staff.

25 One letter comes from the executive director of
26 Home Front, an organization that assists victims

1 through the court process after charges have been laid
2 in a domestic violence situation. Justice Camp was the
3 designated court liaison judge for that organization.
4 The author of this letter heard of no inappropriate
5 statements or vocalizations of ideas that, in her
6 opinion, crossed any line.

7 Now as noted in some submissions I earlier
8 advanced to the committee, I took some issue with three
9 of the letters coming before the committee as I
10 questioned their relevance and appropriateness. The
11 letter under Tab R10 includes a review of the trial
12 transcript in Wagar and offers comments and
13 interpretations of the dialogue between Justice Camp
14 and Crown counsel. R11 also offers comments on Justice
15 Camp's remarks on Wagar and offers some explanations
16 for them. And R20 explicitly provides an assessment of
17 the comments in Wagar.

18 And while these letters are before the Panel, it's
19 my submission that it would not be appropriate to
20 consider the authors' assessments of Justice Camp's
21 conduct in Wagar as that of course is solely the
22 function of this committee, and to that extent, those
23 letters should be given no weight.

24 One letter, R7, is from a psychiatrist who sat in
25 a sexual assault case in Justice Camp's court in a
26 different proceeding in 2013 over four days, and it

1 provides that psychiatrist's assessment of how Justice
2 Camp treated the complainant. He found Justice Camp's
3 approach to the complainant to be highly accommodating
4 and respectful.

5 So collectively, aside from the commentary on the
6 Wagar trial itself, these letters assist in painting
7 Justice Camp as an individual who shows respect for
8 women and kindness and openness to others.

9 Another mitigating factor the committee should
10 take into account is the Justice Camp's degree of
11 cooperation in this proceeding. He has made admissions
12 at this inquiry which has reduced its length and its
13 complexity.

14 A further mitigating factor to be considered is
15 the level of experience of Justice Camp at the time he
16 heard the Wagar trial. Appointed to the bench in 2012,
17 this matter was heard in 2014. And while there's
18 evidence from the psychiatrist letter about at least
19 one other multi-days sexual assault trial, Justice Camp
20 indicated he probably conducted four to five over his
21 years in the Provincial Court bench. So not a lot of
22 experience.

23 With respect to training, Justice Camp has given
24 evidence of the availability of written material,
25 mentor's informal methods of seeking collegial advice,
26 access to libraries, attendance at some conferences,

1 attendance -- referred of the attendance at New Judges
2 School, but he has indicated he received no direct
3 training in sexual assault matters prior to Wagar.
4 That too should be borne in mind.

5 And finally as a mitigating factor, there's the
6 issue of remediation and the rehabilitation and
7 learning. Justice Camp's willingness to undergo
8 remediation through his work with Justice McCawley,
9 Dr. Haskell, Professor Cossman is deserving of
10 recognition. This isn't a case of someone who turned a
11 blind eye to the difficulty and indicated he had no
12 issues and need not improve; he actively participated
13 in the remedial training, to his credit.

14 So the committee needs to bear all of those
15 mitigating factors in mind when you are applying the
16 Marshall/Ruffo test.

17 So too must the committee bear other factors in
18 mind. To some degree, each of the mitigating factors
19 that I've outlined has an offset. With respect to the
20 apologies provided by Justice Camp, there was one
21 written initially for the Federal Court; it was
22 immediate. A second non-public letter in December does
23 not acknowledge the use of any denigrating language
24 towards the complainant, apart from the two questions
25 involving knees together and moving the bottom into the
26 basin.

1 It's difficult to see in light of the admissions
2 made by Justice Camp in this proceeding how so many of
3 the other comments expressed in Wagar could not be
4 considered denigrating and for Justice Camp not to have
5 admitted that in the course of submitting his December
6 2015 letter. There's an element of some lack of
7 insight demonstrated by this.

8 The case of Judge Moreau-Berube considered the
9 impact of an apology in circumstances where the judge
10 had severely criticized and disparaged members of the
11 Acadian community in a single case during a sentencing
12 hearing. The Inquiry Committee found her comments to
13 be incorrect, gratuitous, insensitive, insulting,
14 derogatory, degrading, aggressive, inappropriate; many
15 of the adjectives that are used by writers to the
16 Canadian Judicial Council in this very proceeding.

17 The Inquiry Committee in that case did not
18 recommend removal, noting that she had offered a
19 sincere public apology. Despite that, when the matter
20 went to the governing Judicial Council, removal was
21 recommended following the Marshall/Ruffo test. The
22 Council held in paragraph 12 of the Supreme Court of
23 Canada review of the Council's decision: (as read)

24 Taking into account all of the circumstances
25 surrounding this matter and applying the
26 foregoing test of the principles of judicial

1 impartiality and independence established by
2 the Supreme Court of Canada, we believe that
3 in the event Judge Moreau-Berube were to
4 preside over a trial, a reasonable and
5 well-informed person would conclude that the
6 misconduct of the judge has undermined public
7 confidence in her and would have a reasonable
8 apprehension that she would not perform her
9 duties with the impartiality that the public
10 is entitled to expect from a judge.

11 So regardless of the existence of a sincere and
12 immediate public apology, it wasn't enough.

13 Moving to one of the other mitigating factors I
14 outlined that the impugned conduct occurred in one
15 trial only and was not pervasive over the course of
16 multiple trials, it does need to be noted that this was
17 a case that lasted several days, and it did involve a
18 break between the closings submissions and the
19 rendering of the decision. Transcripts were available
20 to Justice Camp where he could review the comments that
21 he made. And despite the availability of those
22 transcripts, he failed to recognize perhaps the most
23 egregious of his comments, the ones in Allegation 3,
24 and he then repeated them again in his decision.

25 In both Cosgrove and Moreau-Berube, removal from
26 the bench was warranted in the context of comments in

1 one case only. And in Moreau-Berube, as noted in that
2 case, the comments were only made in the context of a
3 sentencing hearing not through the trial itself.

4 Now with respect to the character letters, to the
5 extent that they offer some mitigating evidence to this
6 committee which must be borne in mind, they're helpful
7 in establishing that Justice Camp is a man of good
8 character from the perspective of the authors. But
9 unlike some of the other cases where the value of
10 character evidence is reviewed, in this case, there are
11 no letters from judicial colleagues, from the
12 Provincial Court or from the Federal Court. And while
13 this may be due to an extent to Justice Camp's limited
14 time on the bench, it is noteworthy that Chief Justice
15 Crampton in his letter to the Canadian Judicial Council
16 speaks factually to what Justice Camp did but offers no
17 comment otherwise on his character or suitability for
18 the bench. Indeed Chief Justice Crampton notes that:
19 (as read)

20 The question remains whether what Justice
21 Camp has done in terms of remediation and
22 education in combination with his prompt
23 apology will be sufficient to restore public
24 confidence in and respect for him and, more
25 broadly, for the judicial system as a whole.
26 It's also of some note when you review the character

1 letters that some speak arguably to the type of conduct
2 that is at issue here, at least to a degree.

3 Letter R6 is from a female former colleague who
4 notes that her current regard for Justice Camp was not
5 always as strong as it presently is. She notes that
6 when he first joined the firm, she believed that
7 Justice Camp held viewed points -- sorry, viewpoints
8 particularly toward women that were traditional and
9 outdated. The author then goes on to state that her
10 perspective sincerely held at that time was coloured by
11 a bias towards Justice Camp when she didn't take the
12 time to speak to him to address their perceived
13 differences, and she notes that he apologized to her
14 for their past differences.

15 Letter R14 is from a criminal defence lawyer. It
16 speaks to many positive attributes in Justice Camp, but
17 then also notes as an added item: (as read)

18 Justice Camp, from my legal interactions,
19 does have a tendency to adjudicate in an
20 unconventional manner. I refer to it as
21 stream of consciousness reasoning. He tends
22 to editorialize during the course of
23 litigation, almost akin to thinking out loud.
24 It was never a concern to me as long as the
25 final analysis was correct; however, I don't
26 think Justice Camp paused to consider how his

1 comments might come across to parties or to
2 persons reading a transcript.

3 So the character letters, while offering mitigating
4 assistance to Justice Camp in many respects, also must
5 be read in the context of some of the comments that
6 I've just outlined.

7 With respect to the mitigating factor of Justice
8 Camp cooperating and making admissions of assistance to
9 this committee, that does need to be taken into account
10 as a mitigating factor, but as noted previously, some
11 of the admissions differed from those expressed in the
12 Notice of Response. So there's a bit of an appall, if
13 you will, that could be cast on some of the admissions
14 in light of those differences.

15 Indeed as will be further mentioned in a moment,
16 Justice Camp somewhat resiled even from the evidence of
17 Dr. Haskell and Justice McCawley's descriptions of his
18 sexist attitudes and gender biases during the latter
19 part of his cross-examination, preferring instead to
20 refer to his beliefs as simply old-fashioned.

21 I reference the mitigating factor of inexperience
22 and lack of training, and in the agreed statement of
23 facts, Justice Camp indicated he received no training
24 or judicial education on sexual assault law. And the
25 evidence that has now been heard by the committee
26 supports that no specific training or judicial

1 education on sexual assault law may have been provided
2 apart from the resource material and the material that
3 was just referenced at the start of the proceeding
4 today, but it did become clear during the testimony
5 that there were a number of resources available to
6 Justice Camp, be it in written form, through
7 colleagues, through access for funding for educational
8 programs.

9 There's a suggestion almost of a diminution by
10 Justice Camp of the level of resources and support
11 available to him in terms of acquiring knowledge in the
12 area of sexual assault law that does not appear to be
13 quite borne out when you consider the questions asked
14 by Associate Chief Justice Smith and the answers that
15 were given by Justice Camp.

16 Just as the character letters can be considered as
17 a mitigating factor, so too, in a CJC proceeding, can
18 an Inquiry Committee take into account complaints and
19 comments that have been received from members of the
20 public. In Matlow, after acknowledging that character
21 letters could be received, the committee posited that
22 if there were a deluge of letters from the local
23 committee to the effect that the judge was unfit to
24 hold office, would that be relevant as part of the
25 deliberation, and concluded, We think it may properly
26 be.

1 So attached in the binder before you as Tab --
2 let's see, 4 is a summary of the complaint letters that
3 were sent to either the CJC or to the CJC through other
4 parties. Three of the complaints were filed by law
5 professors; we've heard a lot initially about one, the
6 so-called professors' complaint. Tab E55 is a
7 complaint that's filed by 28 law professors at the
8 University of Ottawa. They write that: (as read)

9 Justice Camp's actions undermine public
10 confidence in the fair administration of
11 justice. Justice Camp's actions clearly
12 demonstrate that he lacks the necessary
13 capacity for independence, integrity, and
14 impartiality, and ability to respect the
15 quality and dignity of all persons appearing
16 before him that are required of any person
17 holding judicial office in Canada.

18 Tab E69 is a complaint filed by 21 law professors,
19 including Professor David Tanovich, who we heard about
20 is the author of a well-respected article.

21 E69 is a complaint by the 21 law professors, a
22 clinic lawyer, and the assistant dean at the University
23 of Windsor, and they write: (as read)

24 In our opinion, this case squarely raises the
25 question whether any action short of removal
26 can restore public confidence in a judge who

1 so brazenly and persistently was contemptuous
2 of the law, of the judicial role, and of a
3 vulnerable complainant in a sexual assault
4 trial. In our view, no other action can
5 restore public confidence as Justice Camp's
6 conduct reveals that he does not have
7 capacity to give effect to the core
8 principles of judging: Independence,
9 integrity, impartiality, and respect for
10 equality.

11 Two complaints are filed on behalf of law students. We
12 have the Calgary Women Study in Law Association and a
13 complaint filed by the University of Windsor's
14 Bystander Initiative. Two complaints were filed by
15 organizations, the Regina Sexual Assault Centre and the
16 National Steering Committee of the National Association
17 of Women and the Law, both groups call for Justice
18 Camp's removal.

19 Finally, we note that the CJC received some 62
20 complaints from various individuals across the country
21 in the days and weeks after the professors' complaint
22 was filed. They use words like "disgraceful",
23 "irresponsible", "appalling", "extremely offensive",
24 "outrageous", "sexist", "totally unprofessional",
25 "egregious", "bigoted", "hurtful", "inexcusable" when
26 discussing Justice Camp's conduct.

1 Four of the complaints were filed by women who
2 identified themselves as survivors of sexual assault.

3 In E11, the author says: (as read)

4 Justice Robin Camp's thinking and comments
5 about and to that woman in Alberta in court
6 makes me want to crawl in a hole and hide. I
7 so hoped our judges and justices had respect
8 for women and all victims.

9 The author of E17 says: (as read)

10 How is it that the Canadian judicial system
11 is not listed by the UN or WHO as a country
12 where women are still classified
13 inconsequential and left unprotected, when
14 women are still forced to either suffer rape
15 and assault in silence or be subjected to
16 more severe abuse by our justice system.

17 E42: (as read)

18 I'm aware that you are reviewing the case of
19 sexual assault that this Justice presided
20 over in 2014. I'm also aware that it is very
21 rare that your Council recommends removal of
22 a justice. I respect judicial independence,
23 and your job is not one I could do; however,
24 in this case, this man has violated the
25 public trust. We are all human and to be
26 completely impartial is impossible, but that

1 is the standard that we, the Canadian public,
2 expect our judges to at least attempt to
3 attain. I experienced sexual assault many
4 years ago as a teenager, and I can tell you
5 that people like this are the reason so many
6 victims don't report the crime. This is a
7 travesty, and I'm sure you can agree that we,
8 as a society, should do everything we can to
9 address that. What you can do right now is
10 remove this man from office.

11 So I encourage the committee to go through the totality
12 of the complaints that were filed immediately after the
13 professors' complaint was filed. Some, for example
14 E25, indicate: (as read)

15 It's ludicrous to concede that gender
16 sensitivity forces an apology so reasonable
17 and efficient to allow him to continue.

18 E36 notes: (as read)

19 He is tainted, will probably be subjected to
20 appeal after appeal for any case in which
21 he's involved.

22 So in their totality, all of those complaints need to
23 be read as an aggravating factor that to some extent at
24 least either offsets or at least diminishes to a degree
25 some of the evidence that's established in the
26 character letters.

1 Ms. Petersen?

2 MS. PETERSEN: So Justice Camp, in his
3 written submissions, both prior to the hearing and we
4 now have a copy of closing written submissions,
5 emphasizes the importance when looking at public
6 confidence and when applying an objective test of a
7 reasonable person that it needs to be an informed
8 reasonable person and an informed public.

9 So these complaint letters in particular, it's
10 unclear to me the extent to which any of the authors
11 were informed by the evidence that we have, including
12 the full transcript and, of course, the benefit of the
13 witnesses who have testified, and so when they make
14 sort of dismissive remarks about gender sensitivity
15 won't help, we don't know the extent to which they even
16 understand what gender sensitivity means, and certainly
17 they don't have the evidence of the particular -- I
18 would perhaps intensive or extensive training that --
19 or both, that Justice Camp has undergone.

20 I'm wondering if you could just address that. How
21 much weight do you give to letters written by members
22 of the public when we don't know how informed they are?

23 MS. HICKEY: Sure. I think to some degree
24 the answer is similar to the impact of character
25 letters. They can be given, as Matlow said, some
26 weight. Matlow refers both to the admission and

1 character letters and letters of this ilk, letters of
2 complaint that come from members of the public, they
3 are to be taken into account by an Inquiry Committee.

4 You can see from the breadth of the description of
5 the authors that I have just described that they range
6 from individual people, some sexual survivors, some
7 not, to groups of law professors. You're absolutely
8 correct that they would all have different
9 understandings, different perceptions, different
10 knowledge of even the type of area of law that is being
11 dealt with here. You can perhaps give some weight to
12 the fact that groups of law professors and faculties of
13 law have written. The letter from the four law
14 professors was written after a thorough review of the
15 trial transcript in Wagar.

16 So there are some varying weights that can be
17 given to each of the letters. But, collectively, they
18 stand as a statement of the breadth of concern that is
19 reflected in Canadian society and the extent of concern
20 about the type of comments that at least were reported
21 in the media. So they're of some weight. They're
22 not -- this is not a vote from members of society in
23 terms of what the future of Justice Camp is. That's
24 the role of this Panel. But the breadth of responses
25 from Canadians, I think, is a factor that does need to
26 be borne in mind when the committee is making its

1 decision.

2 MR. WHALEN C.J.: Ms. Hickey, I'm going to ask
3 you just also to address your view on the fact that the
4 letters of complaint and commentary from the public
5 that were filed focus on some knowledge, or at least
6 reporting of one specific trial or incident that
7 occurred, as compared to the -- and I'm thinking in
8 terms of your suggestion that it should offset the
9 character references and character letters that were
10 filed by individuals who state that Justice Camp was a
11 man of good character over a considerable period of
12 time through their acquaintance or actual working
13 relationships.

14 So you have a breadth and depth of contact with
15 the individual. And they provide letters of good
16 character and other complimentary attributes that they
17 list versus the offsetting that you're suggesting by
18 way of letters of complaint --

19 MS. HICKEY: Right.

20 MR. WHALEN C.J.: -- which focuses on just some
21 knowledge mainly from reports or those professors who
22 read the transcript of one single incident.

23 MS. HICKEY: Indeed.

24 MR. WHALEN C.J.: What's your thought on that?

25 MS. HICKEY: Well, I think you make a very
26 valid point, and perhaps "offset" is not a correct

1 word. The character letters remain as they are and are
2 to be given the weight that Matlow says they are to be
3 given, and you quite properly point out that they speak
4 about Justice Camp over a lengthy period of time and
5 describe characteristics outside of the scope of the
6 Wagar trial.

7 Perhaps rather than saying it's an offset, it
8 would have been preferable for me to simply say the
9 existence of the number and nature of the complaint
10 letters from members of the public is an aggravating
11 factor that needs to be borne in mind by this committee
12 when you're weighing the totality of all of the
13 different factors that can be considered in mitigation
14 and some that can be considered in aggravation, and I
15 think that would be a preferable way of putting it
16 rather than to reference it as an offset.

17 MR. WHALEN J.C.: Thank you.

18 MS. PETERSEN: If I might, Ms. Hickey, just
19 one followup question. You've referred a couple of
20 times to the number of complaints, the volume of
21 complaints, and I guess I'm wondering the extent to
22 which that could be, perhaps, a reflection of the
23 modern age in which communications by email are so much
24 simpler, social media can spread information so much
25 more quickly, that somebody expressing discontent or
26 whatever their views are to the judicial council, for

1 example, can just be done with a very quick email in a
2 way that in the past it might have required more effort
3 and people might have held certain views and not taken
4 the time to express them. So I'm just wondering the
5 extent to which that's a relevant factor, do you think?

6 MS. HICKEY: Well, I think it is relevant,
7 but perhaps in the broader sense, and we'll come back
8 to this at the end, we've heard a lot during this
9 inquiry about social context. The social context in
10 which we're living today is the immediate availability
11 of information, the immediate options for members of
12 the public to voice their comments, to voice their
13 concerns. And I think the fact that the number of
14 individuals who filed the complaints that they did,
15 regardless of the ease with which emails can be
16 submitted -- you'll see in some of them, they're fairly
17 lengthy letters; some are not; some are one-liners.
18 But that social context, I don't see as providing any
19 less impact of the letters that were submitted to the
20 Canadian Judicial Council. They're all individuals who
21 took the time to make their points known, and the fact
22 that it's a little easier to do it now than it might
23 have been 10 years ago or 20 years ago is part of the
24 reality that has to be borne in mind by this committee
25 in that the information about Justice Camp was so
26 widespread and distributed that it created that forum

1 in which the level of response could be advanced.

2 Some of the comments that are reflected in the
3 complaints take on added value when they're read in the
4 context of the evidence that's provided by Janine
5 Benedet. Professor Benedet provided an expert report
6 to this Panel. I'm just going to refer to a couple of
7 paragraphs.

8 MS. PETERSEN: Can you just remind me what
9 tab it's at?

10 MS. HICKEY: That is at Tab M as in Mike.
11 I'm going to refer to page 41: (as read)

12 Where sexual assaults are considered founded,
13 charges are laid in less than half the cases.
14 Where charges are laid, approximately half
15 result in prosecution, and half of those lead
16 to a conviction. On the best data available,
17 ten percent of sexual assaults reported to
18 police result in a conviction, representing
19 less than one percent of all sexual assaults
20 that are committed in Canada in that year.
21 Other research has shown a correlation
22 between rape myths and women's willingness to
23 report the sexual assault to authorities.
24 This evidence indicates that women are less
25 likely to report their rapes when they do not
26 meet the stereotype of a real rape involving

1 a stranger and additional violence, even
2 though only a minority of sexual assaults fit
3 this pattern. The most likely explanations
4 for this are that women have internalized
5 rape myths and/or because they believe that
6 the criminal justice system will not treat
7 them fairly unless they fit this profile.

8 Reinforcement of rape myths and
9 discriminatory biases can be found in media
10 accounts of sexual assault trials, as well as
11 popular discourse on high profile sexual
12 assault cases. The confidence of women in
13 the judicial system is undermined by
14 indications that justice system participants
15 accept these kinds of myths and biases and by
16 contrast is enhanced by their rejection.

17 So Professor Benedet is making the point there, perhaps
18 somewhat responsive to, Ms. Petersen, your question,
19 that to the extent that there is popular discourse on
20 high profile sexual assault cases, it can stand to
21 reinforce rape myths and discriminatory biases, and the
22 confidence of women in the judicial system is
23 undermined by indications that the justice system
24 participants accept those kinds of myths and biases.

25 Now before finishing up with a few other factors
26 to be borne in mind, I'd like to address the Ruffo

1 component of the test. Who is this public, who are
2 these reasonable persons who comprise it when you are
3 applying your objective standard that you must do? And
4 I would suggest here that the submission of the
5 intervener coalition is helpful at pages 15 to 16, and
6 I'll just read briefly from the submission: (as read)

7 Equality law has taught us that abstract
8 legal concepts such as the reasonable person
9 conceal hidden norms of gender, race, and
10 social characteristics. Applying a public
11 confidence or reasonable person test without
12 consciously adverting to the socioeconomic
13 and sociocultural norms that they tend to
14 represent is especially problematic in the
15 context of a judicial inquiry because it may
16 lead an Inquiry Committee to overlook some of
17 the various stereotypes against which the
18 Ethical Principles caution.

19 The intervener coalition submits that: (as read)
20 An effective way to expose hidden stereotypes
21 in the context of a judicial inquiry is to
22 expressly acknowledge that the public, whose
23 confidence in the judiciary must be promoted,
24 and the reasonable person, whose perception
25 of judicial impartiality must govern,
26 includes members of the constituency most

1 directly affected by the impugned judicial
2 conduct. That is not to say that the
3 committee must put itself in the shoes of the
4 sexual assault complainant with the
5 characteristics of the complaint in the
6 trial, rather the public in whose confidence
7 the legitimacy of the judiciary rests
8 includes sexual assault complainants with
9 diverse socioeconomic and sociocultural
10 characteristics.

11 Whereas here there is a well-documented lack of public
12 confidence in an area of law and the justice system
13 responsible for administering it, the intervener
14 coalition submits that it is particularly important
15 that the committee carry out its mandate, cognizant of
16 the need to restore and promote the confidence of this
17 marginalized sector of the public in this area of law.

18 And they conclude: (as read)

19 The informed and reasonable observer must
20 include the perspective of survivors of
21 sexual assault and marginalized women
22 generally as they are entitled to a judiciary
23 that rejects sexual myths and stereotypes and
24 understands and respects equality.

25 So that perspective, I think, has to inform this
26 committee when you are applying the test in Marshall,

1 and I think it's good advice to heed in terms of
2 bearing in mind the marginalized members of society
3 whose interest must all -- also be included when
4 applying the reasonable standard test.

5 Now, also in considering this reasonable person,
6 the degree of public interest in and the widespread
7 criticism of Justice Camp's comments in the media must
8 be borne in mind, and this relates to a degree to the
9 complaints that were also filed with the CJC. And I
10 put a short summary of the media reports under Tab 5 of
11 this little book that we provided you with today. And,
12 of course, much more detail with respect to the media
13 reports is contained in Tab F of the agreed statement
14 of facts.

15 But just in brief, after the professors' complaint
16 was made, no one in the media -- of course, there were
17 a number of media outlets who provided coverage of this
18 issue: National news outlets, local newspapers across
19 the country, Seventeen and Chatelaine, two prominent
20 magazines for women and young girls, along with
21 Macleans, Canada's national weekly magazine, online
22 news outlets. It's been published by international
23 news outlets, at least two US organizations, a number
24 of UK news media outlets. And I won't take the time to
25 read to you, but I would encourage you to look at the
26 extracts that I've included under Tab 5 to give a sense

1 of the commentary that's included in the variety of
2 media reports that appeared in this -- in this area.

3 And in short, after reviewing both the synopsis
4 under Tab 5 and the totality of the media reports under
5 Tab F of the agreed statement of facts, the conclusion
6 is that the criticism from the media was both
7 widespread and significant.

8 MS. PETERSEN: Ms. Hickey.

9 MS. HICKEY: Yes.

10 MS. PETERSEN: I'm sorry. I'm going to take
11 you back in your submissions, and I apologize for doing
12 that.

13 MS. HICKEY: No problem.

14 MS. PETERSEN: It's just that the question
15 was percolating as you were speaking.

16 Just to the previous, before you moved on to the
17 media coverage, you made reference to who are the
18 constituents of the public and to the intervener
19 submissions in particular.

20 MS. HICKEY: Yes.

21 MS. PETERSEN: And I don't have a question or
22 any issue with the submission that you seemed to have
23 adopted that the public must include those individuals
24 who are most affected in this matter, but you did go on
25 to quote another submission from the interveners about
26 this committee needing to carry out its mandate

1 cognitive of the need to restore public confidence in
2 the criminal justice system as it deals with sexual
3 assault matters. And I just wonder whether there might
4 be a suggestion there that, you know, Justice Camp
5 is -- should be made an example of to address the sins
6 of others in the criminal justice system because the
7 system, in all of its elements, has failed sexual
8 assault survivors historically; that somehow this
9 committee is supposed to exercise its mandate in a way
10 that would, you know, make an example of Justice Camp,
11 and that doesn't seem right to me. So I'm wondering if
12 you could just, perhaps, address that and is that what
13 you were suggesting?

14 MS. HICKEY: No. I don't mean to suggest
15 that this inquiry is a place to make an example of
16 Justice Camp. The test for this committee is as I have
17 described it, and it's all about confidence in the
18 judiciary. You can't, however, divorce that from the
19 social context in which this inquiry is taking place.
20 It's taking place in an environment of heightened
21 awareness of matters involving sexual assault. Justice
22 Camp is caught in that time frame; he's caught in this
23 social context. But he still has to be addressed in
24 accordance with the objective standard test that's set
25 out in Marshall and Ruffo. So it's not a case of
26 making an example, but it is a case of taking each case

1 that comes before an Inquiry Committee of the CJC in
2 the social context of its time and applying the test
3 accordingly.

4 The final factor that I would, if we had a chart,
5 put on the aggravating side of the scale or at least
6 that term, in itself, can be aggravating, it's a factor
7 that I suggest needs to be borne in mind by this
8 Inquiry Committee. It's the issue of remediation and
9 what Justice Camp has done to remedy the admitted
10 deficiencies that he had. And while accessing
11 remediation is clearly a positive feature of what
12 Justice Camp has done in this case, the extent to which
13 it has been effective and can be effective is truly the
14 test of its mitigating value.

15 Here I need to make reference to some of Justice
16 Camp's own evidence. And while perhaps some latitude
17 must be given to Justice Camp for the natural kind of
18 nervousness that this inquiry would invoke, several of
19 his comments in his evidence were concerning when
20 considered in the context of the professed remediation.

21 So at page 274 of the transcript, for example,
22 Justice Camp was describing his learning from
23 Dr. Haskell with respect to unconscious bias, and he
24 says, starting at the bottom of page 273: (as read)

25 We discussed it in the context of sexual
26 assault and in some other areas in passing,

1 assault in general, domestic violence. She
2 talked a little bit about racism, but that
3 was peripheral. She never said, You have
4 biases, but eventually she drew it out of me,
5 the acknowledgment that I did and the
6 realization that I may have biases and
7 prejudices in other areas that I don't know
8 about and that I have to, as she put it, I
9 have to constantly reflect on words and
10 situations to try and preempt biased thinking
11 and biased words.

12 At 313, when asked whether it was a problem for women
13 who may appear before him in court that he had been
14 described as holding sexist attitudes and a gender
15 bias, he responded: (as read)

16 If the Council see fit to permit me to
17 continue, that should signal to the public I
18 am no longer such a person. I was subject to
19 prejudice thinking certainly in this area,
20 and by "this area", I'm talking about sexual
21 assault. I now know enough to question every
22 question that I ask and every thought that I
23 have. I can't guarantee that I'm not a
24 victim to other forms of -- sorry, that's the
25 passive mode. Let me use the active mode. I
26 can't guarantee that I'm not prejudiced in

1 other areas; I don't think anybody can. What
2 I have learned is to be constantly vigilant
3 against it, what Dr. Haskell called, I think,
4 "constant assessment" and to ask for help
5 when I need it.

6 So despite those various references to the constant
7 vigilance, despite the kind of constant assessment that
8 Justice Camp indicates he has learned throughout his
9 remedial process, and despite Justice Camp saying that
10 he now knows enough to question every question that he
11 asks and every thought that he has, some of the things
12 that he did during his evidence call that learning into
13 question.

14 We, of course, had the obvious example of, once
15 again, calling the complainant the accused, and that
16 may well be attributed to a slip and the nervousness of
17 the situation. But one would think in the state of
18 constant vigilance and constant assessment that such a
19 slip would not have occurred.

20 When apologizing to Crown counsel in the course of
21 this inquiry, he twice made reference to being sorry
22 that on reflection and rereading that he intimidated
23 her. That's at page 263 and at page 273, where he
24 repeated the apology again and said: (as read)

25 I take some comfort from the fact that I know
26 that the Crown in question is a strong woman

1 and is unlikely to have been frightened by
2 me.

3 There was no allegation that the Crown was frightened
4 by Justice Camp. But his choice of language in
5 characterizing her and her probable reaction is one of
6 fright. Bringing forward, perhaps again, some
7 stereotypical and sexist inferences.

8 When asked about the comments that he made
9 reflected in Allegation 6(b), this is the ham-handed
10 advice comments, when I suggested to Justice Camp that
11 the language seemed particularly problematic, he
12 responded that it looks worse if what was one statement
13 is divided into two. And he was commenting that the
14 allegation in 6(c) followed on immediately from what is
15 identified in the previous statement, and he then
16 offered that as an explanation that it can be
17 interpreted as a rationale for the entirety of the
18 comments that he made, and there can be no rationale
19 for those comments. And the type of explanation that
20 Justice Camp made in the context of those questions,
21 even while trying to remain vigilant about what he was
22 saying, I would suggest that he had some struggles in
23 doing so.

24 During cross-examination, when I referenced
25 Dr. Haskell's description of his thinking as sexist,
26 Justice Camp indicated he would like to add a gloss to

1 that characterization, and when you reviewed the
2 transcript, the gloss was actually a denial where he
3 said: (as read)

4 I think that my thinking isn't sexist but
5 just old-fashioned. I would have applied the
6 same -- the same thinking to a male
7 complainant.

8 So that denial of the description advanced by his own
9 counsellor is concerning and causes some questioning of
10 the extent of the understanding of the gender biases he
11 was found by his counsellors to have.

12 To add to the problem under questioning by
13 Ms. Petersen about his change in language from sex is
14 still old-fashioned, Justice Camp went on at some
15 length at page 351 to highlight the gender neutrality
16 of the provisions of the Criminal Code addressing
17 sexual assault. He said: (as read)

18 But it's almost prejudice for me to say my
19 remarks are sexist. My remarks are just
20 wrong. It isn't because it happened to a
21 woman that it's wrong; it's because it
22 happened at all, is my point.

23 Ms. Petersen goes on at page 352 to remind Justice Camp
24 that he had undergone a program of education with
25 respect to the evolution of Canadian sexual assault
26 law, where he reviewed the reasons for the reforms and

1 noted that the reasons are because of the history of
2 discrimination against women. And when asked whether
3 he could accept that that was the rationale, he
4 indicated he accepted it, but he needed to add a rider.
5 At page 353, he indicated: (as read)

6 It's true that I made the concession that I
7 was gender biased, but I was just mistaken.

8 When I made those comments, I see the problem
9 as wider than just women and so do the
10 experts with respect to all that helped me.

11 Then when Ms. Petersen reminded him that the rape myths
12 that he had been learning about are gendered in the
13 sense that they are largely myths about how female
14 victims of male sexual violence react and respond,
15 Justice Camp responded that: (as read)

16 They are generally that way. Some of them
17 are peculiar to women, I think. Some,
18 though, would apply equally to men,
19 particularly vulnerable and young men.

20 So it's somewhat concerning that in view of the
21 extensive mentoring from the Justice McCawley, the 13
22 clinical hours of counselling from Dr. Haskell, and the
23 sessions with Professor Cossman for which he was tested
24 on his knowledge of sexual assault law and its
25 evolution, that Justice Camp, in his own testimony,
26 somewhat resiles from the descriptions of him as sexist

1 and gender biased and does not seem to accept or
2 understand the gendered nature of the evolution of
3 sexual assault law. While his mentor, counsellor, and
4 law professor found him to be teachable, there is
5 reason from these remarks to question the extent to
6 which he has been taught or the extent to which he has
7 learned from these remarks.

8 Finally, and perhaps most troubling, putting aside
9 the reference to the complainant as the accused, at
10 page 275, Justice Camp apologizes again to the
11 complainant. But in doing so, despite the vigilance,
12 despite his assessing every word, he comments on her
13 being a fragile personality. A fragile personality.
14 Once again, the language of Justice Camp is concerning,
15 having gone through the counselling and remediation
16 that he did. I suggest that it's troubling and
17 concerning when Justice Camp indicates he has to
18 constantly reflect on words and situations to try and
19 preempt by his thinking and by his words, and he says
20 he has learned to do that, but he refers to the
21 complainant as a fragile personality. This same
22 fragile personality had the courage to participate in
23 the sexual assault trial with no corroborating evidence
24 to assist her. This same fragile personality had the
25 courage to walk into this inquiry room, filled with
26 members of the media and presided over by a

1 distinguished Panel in the presence of Justice Camp
2 himself, and she had the courage to tell the story of
3 how Justice Camp made her feel. Once again, the choice
4 of language by Justice Camp appears to be suggestive,
5 perhaps, of stereotypical thinking or perhaps speaking
6 without thinking, as he was trained to do.

7 So when considering all of these various factors,
8 it is the view of presenting counsel that perhaps the
9 most aggravating factor of all here has been Justice
10 Camp's own words in this inquiry. They question the
11 extent of his learning, they question the extent of his
12 understanding, and ultimately they must question his
13 fitness to serve on the bench.

14 In light of the hour, I'm not going to take you
15 through in detail, but I would ask that you do look at
16 the submissions from the Front-Line Interveners who
17 also provide you some guidance with a variety of other
18 factors that they suggest you should bear in mind when
19 you're weighing some of the positive factors and some
20 of the other factors that come into play into the total
21 mix of applying the Marshall/Ruffo test, and at pages
22 12 to 14, in particular, of their submissions they set
23 out a series of questions that they suggest are
24 helpful, and I endorse that as a helpful suggestion in
25 terms of guiding your consideration.

26 So in the end is the variety of conduct that was

1 displayed by Justice Camp during the Wagar trial when
2 considered objectively, is it so manifestly and
3 profoundly destructive of the concepts of impartiality,
4 integrity, and independence of the judicial role that
5 public confidence would be undermined if Justice Camp
6 remained on the bench? It's a prospective test, as we
7 know, so moving forward, how will public confidence be
8 impacted? Where that public includes the perspectives
9 of survivors of sexual assaults and marginalized women
10 generally, where that public includes people that
11 reject stereotypical myths, or where that public just
12 includes people who understand and respect equality.
13 That reasonably informed public, who, throughout the
14 various complaints and character letters reference
15 Justice Camp's conduct in a variety of adjectives that
16 I won't repeat. Where that is the public that we are
17 considering here, it is the conclusion of presenting
18 counsel that there is sufficient evidence that could
19 reasonably expect to shock the conscience and shake the
20 confidence of the public when the totality of the
21 various factors I have outlined are considered.

22 We have heard much about the importance of social
23 context in this inquiry and that social context must
24 not be lost as part of this committee's deliberations.
25 That social context puts us in the era of
26 underreporting sexual assault, that social context puts

1 us in the era where, as Professor Benedet outlined,
2 reinforcement of rape myths can be found in reporting
3 of sexual assault trials, that social context puts this
4 conduct in the era where the confidence of the women in
5 the judicial system is undermined as Professor Benedet
6 found by indications that justice system participants
7 accept these kinds of myths and biases, that social
8 context puts us in the era where resounding rejection
9 of this type of thinking and its expression in the
10 courtroom can reinforce public confidence in a justice
11 system, that social context is given articulate
12 expression in the recent decision from the Alberta
13 Court of Queen's Bench that's quoted on page 6 of the
14 Front-Line Interveners' brief. This is the case of
15 R. v. JR that just came out this year. This is what
16 the Court said: (as read)

17 Judges are expected to have an understanding
18 of the social factors and societal goals
19 which underpin the legislative reforms that
20 the Courts are tasked with applying. In the
21 case of sexual assault law, over a period of
22 three decades, Parliament specifically
23 intended to modernize sexual assault law to
24 recognize the social problem of sexual
25 assault of women and children, expressing
26 grave concern, and of the need to respect the

1 Charter rights of complainants as well as
2 accused in the criminal justice process.
3 Parliament's intention to root out
4 discriminatory beliefs about sexual assault
5 survivors from the criminal justice system
6 was made explicit in both the preambles to
7 Bill C49 and C46. Over 20 years after the
8 enactment of these amendments to the Criminal
9 Code, it is a basic requirement that judges
10 fully accept and appreciate the social facts
11 of women's inequality that drove the
12 amendments to sexual assault law and to apply
13 those laws consistent with their purpose. To
14 expect anything less of judges has profound
15 impacts for an affirmative standard of
16 consent, and, in the end, women's safety and
17 equality. If our society expects all persons
18 to respect women's sexual autonomy and
19 integrity and an affirmative standard of
20 consent, our judges above all must be
21 expected to understand, communicate, and
22 apply the law of sexual assault in a manner
23 attentive to the social context which
24 underpins it without bias or discrimination.

25 While Justice Camp has many personal qualities and
26 attributes which are admirable and commendable, the

1 sexist assumptions and gender biases that have been
2 outlined in the evidence and that were given such an
3 untrammelled voice in Wagar, sufficiently shock the
4 conscience of a society living with and recovering from
5 the aftermath of Dalhousie Dental School, the aftermath
6 of Stanford swimmers, the aftermaths of all the Bill
7 Cosbys, and Jian Ghomeshis and any other number of high
8 profile incidents, all of which underscore in today's
9 social context more than ever that the public shouldn't
10 have to take the risk of a biased judge who may again
11 give voice to his known and unknown prejudices. The
12 confidence of the public requires strong and decisive
13 action.

14 And to Ms. Petersen's point, while Justice Camp
15 may be the Justice who is the person before this
16 inquiry, in the end, it's really not about Justice
17 Camp. It's really about the integrity of a system that
18 is fundamental to the rule of law and to our democracy.

19 So, as a result, presenting counsel would conclude
20 by suggesting that there is sufficient evidence here to
21 meet the test set out in Marshall and Ruffo for removal
22 from the bench. And I'll conclude there, subject to
23 any questions from the Panel.

24 MS. SMITH A.C.J.: Ms. Hickey, Mr. Addario, in
25 his materials both in his prehearing brief and his
26 posthearing brief, has referred to a number of other

1 cases where very inappropriate and egregious comments
2 have been made by judges on the bench and the
3 conclusions to each of those cases. In many
4 situations, it was no inquiry, no Review Panel, maybe a
5 letter of condemnation to the judge, but otherwise the
6 judge was permitted to sit. What is your position in
7 relation to those authorities?

8 MS. HICKEY: Well, part of the difficulty I
9 have with the table, of course, is that they are
10 extracts, they are synopses. We don't have the full
11 details of the context in which any of the comments
12 were made. Indeed 18 out of the 24 cases that he
13 references are summaries, and they were dealt with in
14 more of a summary fashion than that which exists before
15 this Inquiry Committee. So a number of them, for
16 example, were simply reviewed by a Chair or by a Review
17 Panel, but they weren't considered sufficient to be
18 advanced to the level of an inquiry. So the level of
19 investigation, the level of probing, the level of
20 evidence before the decision-makers in those cases is
21 far different from that which exists in the present
22 case.

23 Nine out of the 24 cases that are cited concern
24 complaints that are filed under provincial acts, such
25 as the Ontario Courts of Justice Act. And we would
26 submit that many of those cases have some limited

1 precedential values, given the various difference in
2 the procedures, the remedies, and even in the test for
3 removal that's applied in some of those cases. So in
4 some instances, there are some apples-and-oranges
5 scenarios here because there are more options open to
6 the judicial councils at play and different tests for
7 removal at issue.

8 Many of the cases that are cited don't deal with
9 complaints that are similar to the present case. Nine
10 do deal with judges who made remarks that could perhaps
11 be described as sexist. And of those nine, four of the
12 judges in question made their offensive or
13 discriminatory remarks in the context of a sexual
14 assault trial. Two of those complaints were dismissed
15 outright, and one of the four complaints was a decision
16 of the Ontario Judicial Council; again, a different
17 entity with a different test.

18 With respect to some of the particular cases, and
19 I'm referring here to some of the Ontario Judicial
20 Council cases -- just bear with me while I get my notes
21 straight. The comments were quite different from the
22 pervasive nature of the complaints and the offensive
23 nature of the complaints that are at play in the Wagar
24 case. So one of the cases, for example, and I don't
25 have the specific reference in front of me, but the
26 concern was about the judge's comments being

1 discriminatory with respect to a sexual assault
2 complainant who had Hepatitis C and was HIV positive.
3 The judge had refused to hear the complainant's
4 evidence unless he wore a mask. It's a very different
5 kind of complaint than the kind of complaint that is
6 before you here, where throughout the context of the
7 entire trial lasting over a series of days, the number
8 and the nature of the remarks that were made were put
9 forward.

10 Of all the cases, perhaps the one that requires
11 specific comment is the case of Dewar. So like Justice
12 Camp, Justice Dewar made some comments in a specific
13 decision that were found to be both inappropriate and
14 reflective of certain biases and stereotypes. Like
15 Justice Camp, Justice Dewar issued an apology and met
16 with the recognized expert on gender equality. The
17 recommendation for Justice Dewar did not go forward to
18 a Review Panel or Inquiry Committee, but was determined
19 at an initial level as deserving some censure, but not
20 a referral forward for consideration of removal.

21 Distinguishing Dewar though, it was not an Inquiry
22 Committee decision. So, again, the extent of the
23 evidence that was before the decision-maker there
24 differs from the type of evidence that is before this
25 Panel. Notably in Dewar the trial involved the trial
26 of the Queen v. Rhodes. The accused in that case was

1 found guilty. So Justice Dewar accepted the evidence
2 of the complainant, albeit making some discriminatory
3 comments, but ultimately convicted the accused. In
4 Dewar, there were three offending passages that were
5 noted, where Justice Camp's reliance upon rape myths
6 and gender biased stereotypes was noted. In Wagar
7 there are many more comments that could be described as
8 offensive that pervaded the proceeding. In this
9 proceeding, there's an allegation that Justice Camp
10 reflected antipathy toward a law intended to protect
11 vulnerable people, that allegation was not discussed in
12 those terms in the Dewar decision.

13 As I've outlined, I think there's at least some
14 question in the current case as to the effect of the
15 remediation that has been undertaken, and there was no
16 evidence to that effect in Dewar. So those would be
17 some of the distinguishing features I would note with
18 respect to some of the comments that had been outlined
19 by my friend, and I do have to say I just received
20 Mr. Addario's notes for his closing this morning, and I
21 did not get a chance to review them in light of our
22 trying to establish what the syllabuses for these
23 courses were and that sort of thing. So I have not had
24 an opportunity to review them as yet, and to the extent
25 there may be some comments in there, I will perhaps
26 address them in reply.

1 THE CHAIR: Thank you, Ms. Hickey.

2 MS. HICKEY: Thank you, Associate Chief

3 Justice Cullen.

4 THE CHAIR: Mr. Addario, I'm inclined to
5 think we should take the break now and resume with you.

6 Take half an hour.

7 MR. ADDARIO: 30 minutes then?

8 THE CHAIR: Yes.

9 MR. ADDARIO: All right. We'll be ready.

10

11 PROCEEDINGS ADJOURNED UNTIL 2:00 PM, SEPTEMBER 12, 2016

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1 CERTIFICATE OF TRANSCRIPT:

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3 I, Sandie Murphy, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 13th day of September 2016.

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Sandie Murphy



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Sandie Murphy, CSR(A)

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Official Court Reporter

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SEPTEMBER 12, 2016

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Booklet and Newly Appointed Provincial
and Territorial Judges Skills Seminar book

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IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63(1)
OF THE JUDGES ACT
REGARDING THE HONOURABLE JUSTICE ROBIN CAMP

INQUIRY HEARING

VOLUME 7

Calgary, Alberta
September 12, 2016

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1 Proceedings taken at the Westin Calgary Hotel, Calgary,
2 Alberta

3

4 _____
5 September 12, 2016

6

7 Associate Chief Justice Chair

8 Austin F. Cullen

9 Associate Chief Justice Committee Member

10 Deborah K. Smith

11 Chief Justice Raymond P. Whalen Committee Member

12 Ms. Karen Jensen Committee Member

13 Ms. Cynthia Petersen Committee Member

14

15 Ms. Marjorie Hickey, QC Presenting Counsel

16 Michael Murphy

17

18 Owen Rees For Inquiry Committee

19

20 Frank Addario For Justice Camp

21 Megan Savard

22 Andrew Burgess

23

24 S. Howden, CSR(A) Official Court Reporter

25 K. Attrell Registrar

26 _____

27

1 (PROCEEDINGS COMMENCED AT 1:48 PM)

2 THE CHAIR: I see that we're missing Madam
3 Registrar. Mr. Rees, do you know if ...

4 MR. ADDARIO: I would promise not to raise a
5 jurisdictional issue if Mr. Rees acts as the registrar
6 for the next five minutes.

7 THE CHAIR: Thank you, Mr. Addario. Let's
8 carry on on that premise.

9 MR. ADDARIO: We're going to make seven
10 points about why Justice Camp -- why you should not
11 recommend Justice Camp's removal from the bench. I'll
12 address the last five of them, and Ms. Savard is going
13 to address the first two, which build on our written
14 submissions, and she'll address the misconduct. Those
15 are her two issues, and then I'll address the
16 recommended outcome, and so it makes most sense to go
17 in that order, and I neglected to ask this morning if
18 you want me to arrange to have the written submissions
19 made a part of the record that I filed electronically.
20 Does it matter? I provided them to Mr. Rees. I never
21 provided them to the registrar.

22 SMITH A.C.J.: We have them, Mr. Addario.

23 MR. ADDARIO: You have them?

24 SMITH A.C.J.: Yes.

25 MR. ADDARIO: I'm happy they're a part of
26 the record. Okay. Thank you.

1 Final Submissions by Ms. Savard and Mr. Addario

2 THE CHAIR: Yes, Ms. Savard.

3 MS. SAVARD: Thank you, Associate Chief
4 Justice.

5 As Mr. Addario said, I am going to be addressing
6 the nature and gravity of the misconduct in this case
7 and where it falls along the spectrum of judicial
8 behaviour. I've been calling it "misconduct", and I
9 will be calling it "misconduct" as a short form, and
10 frankly, it doesn't make much difference whether you
11 make a finding under 65(b) or (c). The cases that have
12 tried to distinguish between misconduct and a failure
13 to duly execute the judicial office usually end up
14 finding that both are made out, and one is not more
15 serious than the other. So we're admitting that both
16 (b) and (c) are made out without necessarily attaching
17 it to any one comment. And the misconduct is
18 inappropriate comments and a failure to acknowledge and
19 manage mythological thinking.

20 The reason -- the other reason I don't intend to
21 take you through each comment or allegation one by one
22 is because it's a bit of an exercise in artificiality.
23 The comments were all made, and I can't ask the
24 committee to look at just one without considering them
25 in the context of the case. The case itself is where
26 the misconduct happened, and it's important to look at

1 it as a whole.

2 Similarly, you can't divorce the misconduct from
3 what's happened since, specifically, the process of
4 acknowledging responsibility and rehabilitation, so
5 I'll be addressing that in my submission to you as
6 well. You can't divorce the comments from the evidence
7 of good character that you have before you in evidence.

8 I want to start by talking about remorse and
9 rehabilitation. I'd argue that Justice Camp is unique
10 in the steps he's taken. No other subject of a
11 Canadian Judicial Council inquiry has acknowledged
12 responsibility as quickly or gone to the lengths that
13 he has to educate himself.

14 From the outset, Justice Camp admitted that his
15 comments were rude and hurtful, and you heard from him
16 on Friday that he eventually realized it was an
17 incomplete apology, but it is significant that he
18 immediately acknowledged the seriousness. There was no
19 attempt to justify. He immediately accepted the
20 criticism of Professor Woolley and others that
21 something was seriously wrong here. That understanding
22 developed, resulted in two more apologies in late 2015,
23 a significant effort on his part to interrogate his
24 beliefs with numerous counsellors, and then culminated
25 in the apology that you heard from him on Friday.

26 And I want to address presenting counsel's

1 submission that there's some negative inference to draw
2 from the two incomplete apologies in late 2015. In my
3 submission, it's a nonissue. The apologies have to be
4 looked at as a whole, a continuing process, and
5 frankly, if you accept the evidence of all of the
6 witnesses that Justice Camp called and his own
7 testimony, it is consistent with the kind of
8 transformative process that you might expect from
9 someone who is interrogating deep-rooted beliefs or
10 assumptions that they might have had. That process is
11 expected to take time.

12 And the most important feature of the apologies
13 collectively is that the apology on Friday was
14 adequate. It fully acknowledged all of the reasons why
15 the comments in the Wagar case were problematic. It
16 did nothing to minimize responsibility. The apology
17 process and the expression of remorse is what separates
18 Justice Camp from judges who have been removed by the
19 Canadian Judicial Council, and I'm speaking of
20 Bienvenue and Cosgrove. Justice Bienvenue made no
21 apology. His apology was in the nature of the, Oh, I'm
22 sorry if I offended anyone, category. The Inquiry
23 Committee in that case found as a fact that he still
24 believed what he said during the sentencing that gave
25 rise to the inquiry. So there was no change of heart
26 and no real apology.

1 In the Cosgrove inquiry, the apology was late in
2 coming. It was made almost five years after the
3 problematic conduct was first brought to the judge's
4 attention, and the content, which the Inquiry Committee
5 carefully analyzed, was also found to be inadequate.
6 It was seen as a -- as a qualified apology, apologizing
7 for errors in judgment, and in some parts, blaming the
8 Crown implicitly for -- for leading him astray. It's
9 not the same kind of apology we have here.

10 The Council in Cosgrove and in Matlow repeatedly
11 said that you do scrutinize the content of the apology,
12 but you can't separate out in this case the different
13 apologies that Justice Camp made; they have to be
14 considered as part of a process.

15 And the other things that the Council acknowledged
16 in Matlow and in Cosgrove is that words on their own
17 don't mean all -- all that much. Words accompanied by
18 consistent, remedial action mean a lot. And this is
19 what sets Justice Camp apart from Justice
20 Moreau-Berube. Presenting counsel drew the analogy,
21 and it's understandable. Both are cases where
22 extremely inappropriate comments were made on the
23 record that raised concern about possible bias or
24 prejudice, and in both cases, there was an immediate
25 acknowledgment of responsibility. And no one suggested
26 that Justice Moreau's apology was insincere. The

1 difference is that that was all that anyone got from
2 Justice Moreau-Berube. There was an apology and then
3 nothing. And the basis for her removal, at the end of
4 the day, was that the public could not be confident
5 appearing before her that she would treat them fairly,
6 given the nature of her comments.

7 And that is why the process of counselling Justice
8 Camp has gone through and what I submit is the
9 effectiveness of the counselling he's gone through is
10 so important. Justice Moreau-Berube stands for the
11 proposition that -- that these type of comments that
12 raise issues of prejudice and possible bias can't just
13 be erased by an apology. You can't cancel them out by
14 saying, Oh, I didn't mean that after all. There has to
15 be something more. There is -- in both cases, there's
16 obviously a concern that there was something else going
17 on underlying those comments, and in Justice
18 Moreau-Berube, that was not addressed. Whatever
19 underlying prejudices or biases might have been present
20 were not addressed or acknowledged. That's what's
21 different between Justice Moreau-Berube and Justice
22 Camp.

23 In assessing Justice Camp's apology on Friday, in
24 particular, you'll have to consider his credibility.
25 And presenting counsel made a number of submissions
26 about what she said were weaknesses in his evidence. I

1 do want to address those. I don't believe she was
2 suggesting he was uncredible, but I do believe she was
3 suggesting he was unreliable, maybe didn't know himself
4 as well as he thought he did, and I say he's both
5 credible and reliable.

6 His evidence was what you would expect from
7 someone bearing the weight of public excoriation. He
8 was nervous but honest. There was no attempt to gild
9 the lily or oversell himself. And on a substantive
10 level, his evidence about the training and education he
11 received and the change in his beliefs was consistent
12 with those of his three counsellors. He was consistent
13 on his new level of insight and his new level -- he has
14 always been consistent on his level of remorse, and I
15 think it is important to mention that he can't be held
16 to the standard of a psychiatrist, a legal scholar, or
17 an academic when he's describing that education and
18 learning process in terms of the words he uses.

19 And I just want to take up a couple of the
20 examples that were brought to you. First is the
21 exchange that Justice Camp had near the end of his
22 evidence with Ms. Petersen about sexism. In my
23 submission, there was no resiling from his admission
24 that his conduct reflected sexist assumptions. It was
25 not a denial of the basic feature of his admission that
26 his conduct was just wrong. It was just wrong, and it

1 was motivated by prejudice.

2 He went on -- in this exchange, Justice Camp said
3 he wanted to add to that admission by saying that in
4 some instances, it's not sexist; it's actually wider
5 than that. In some cases, it may be a man who is
6 victimized by sexual assault mythology. And it's -- I
7 see why presenting counsel brought it up, because
8 antennas naturally go up when a person says, in this
9 context, Well, men can be stereotyped too. It's
10 potentially problematic because in many cases, what
11 follows is an expression of belief that, you know,
12 sexual assault isn't really gendered or denial that
13 women and girls are the primary targets or particularly
14 vulnerable for any number of historical reasons. But
15 Justice Camp didn't go on to say that, and there's no
16 basis to draw that connection in this case.

17 If the Committee is going to draw an inference
18 about that exchange or the characterization of his
19 comments as wrong as opposed to sexist, I would say
20 it's equally consistent with a person who has just gone
21 through intensive therapy emerging from that program
22 and being overly sensitive to the possibility of
23 drawing any assumptions at all.

24 So his -- in chief, his very first response was
25 that his comments were sexist. In an exchange, when he
26 delved more deeply into it, he questioned his own

1 initial evidence and moved to what I would submit is an
2 entirely new level of questioning of societal
3 assumptions, one that's not really relevant to this
4 inquiry, certainly, but it's not a jump that
5 necessarily degrades or takes away from his
6 understanding of rape myths and why they exist and who
7 they have hurt most in the past.

8 WHALEN C.J. There's very annoying feedback
9 from your microphone. You're going to have to maybe
10 stand back a little bit.

11 MS. SAVARD: Sure. Is this better, Chief
12 Justice?

13 WHALEN C.J.: I don't know yet, but when you
14 get going, I'll tell you.

15 MS. SAVARD: It's very annoying.

16 WHALEN C.J.: I can hear it. I was hoping
17 it was just me.

18 WHALEN C.J.: Thank you.

19 MS. SAVARD: And I want to build on the
20 submission I made by pointing out what it was he
21 actually ended up agreeing to in that conversation in
22 the end of his evidence. He agreed with Ms. Petersen's
23 observation that the history of sexual assault law was
24 marked by gender discrimination. He agreed that some
25 myths apply only to women. He agreed that sexual
26 assault was usually a gendered crime. And he was

1 correct that it would be, in fact, just wrong to draw
2 assumptions about anyone's failure to take the first
3 opportunity to report or to resist a sexual attack.

4 And all of this took place in the context of the
5 witness box, which -- it's an awkward place to engage
6 in a detailed reflection of one's psychological growth.
7 And, again, for all Justice Camp's education, he's not
8 an academic. To assist in --

9 THE CHAIR: Ms. Savard, sorry. You
10 acknowledge he -- the thrust of his evidence, at the
11 end of the day, was he was mistaken when he
12 characterized himself as being gender biased; isn't
13 that what he said?

14 MS. SAVARD: Yes. That was one thing he
15 said.

16 THE CHAIR: And as I understand it, he
17 relied on the gender-neutral language in the current
18 proscriptions against sexual assault.

19 MS. SAVARD: He pointed that out as a
20 reason to avoid overgeneralizing about sexism versus
21 rape mythology, is my submission.

22 THE CHAIR: Right. But you would
23 certainly agree that what we're dealing with here are
24 rape myths and stereotyping that has arisen in the
25 context of prosecutions for rape, all of which are
26 very -- which is a very gender-specific crime.

1 MS. SAVARD: Yes, I know that.

2 THE CHAIR: So using the current language
3 in Sections 271 through 279 doesn't really address the
4 context in which these myths develop. They are a
5 gender myth.

6 MS. SAVARD: Of course, Associate Chief
7 Justice. I agree with that, and Justice Camp agreed
8 with that in his colloquy with Ms. Petersen, and I can
9 actually turn up the passage where he acknowledged
10 that.

11 The conversation starts on page 351. And it's 353
12 that I'm taking you to. The question is at line 17:
13 (as read)

14 Would you agree with me that those rape myths
15 are gendered in the sense that they are
16 largely myths about how female victims of
17 male sexual violence react and respond?

18 And the answer was: (as read)

19 They are generally that way. There -- and
20 some of them are peculiar to women, I think.
21 Some, though, would apply equally to men,
22 particularly vulnerable and young men

23 And Justice Camp wasn't asked to expand on which myths
24 he was talking about, but I would submit that that
25 phrase is an example of the substance of his
26 understanding and education being correct, and what

1 surrounds it, the conversation that surrounds it, is
2 his own exploration of whether or not rape myths can be
3 defined as sexist or an improper exercise of power over
4 the vulnerable or something else entirely. Like I
5 said, it's not relevant to this inquiry, which is about
6 whether he had sexist assumptions, but at the end of
7 the day, my submission is that he acknowledges he had
8 sexist assumptions and that this passage is more an
9 issue of semantics than of a real failure of education.

10 MS. JENSEN: Could we just stay with
11 those -- the transcripts, then, and the passage,
12 because I'm confused, then, about the reference to --
13 Justice Camp's statement here is that: (as read)

14 My concern is, all throughout this case,
15 we've been skirting around it, but -- and
16 perhaps people haven't been noticing it, but
17 we haven't been focusing on the fact that
18 this can happen to men as well, young boys as
19 well.

20 And I'm just not sure. I was puzzled by that and
21 particularly puzzled by that in the sense of it seemed
22 to fit into this notion that we aren't really talking
23 about sexism here. We're talking about violence. And
24 that to me isn't really the focus of the inquiry, and
25 we aren't skirting around anything. So can you help me
26 to understand that a little better?

1 MS. SAVARD: Yes. Well, first of all, I
2 agree. It's not relevant to the subject of the
3 inquiry. And maybe it's best to put it this way:
4 There are two possible inferences you can draw from
5 this entire colloquy about sexism versus being just
6 wrong. Number 1 is that Justice Camp's education was a
7 failure, that he doesn't, in fact, acknowledge that he
8 had sexist assumptions. Number 2 is that he does
9 acknowledge that, which is something he has said in his
10 evidence, and it's something that he did go back to
11 later in that back-and-forth, but that he went off on a
12 tangent that was irrelevant and that amounted to him
13 engaging in the very process that Dr. Haskell suggested
14 he should, which is questioning his own language, his
15 own assumptions, and generalizations.

16 And to the extent the Committee finds it necessary
17 to draw an inference, I submit both are equally
18 available, and the thing that would help you reach a
19 conclusion is the fact that you had three witnesses
20 testify, three witnesses who spent many hours with
21 Justice Camp in an environment that is much more
22 conducive to exploring someone's actual psychological
23 and legal understanding, and they all consistently
24 testified that he got it. He got why it was
25 problematic to make comments about misbehaviour, about
26 keeping legs together, and about resistance in a rape

1 case. So that is a factor you're entitled to consider
2 in deciding which of those two competing
3 interpretations -- I hope that answers your question.

4 MS. JENSEN: Yes, thank you.

5 MS. SAVARD: Another example of what I
6 would say is an issue of language as opposed to
7 substance is what presenting counsel referred you to
8 near the end of her submissions, the fragile
9 personality of the complainant, and I submit this is
10 indeed an issue of semantics. There is no difference
11 between the word "fragile" and what the media,
12 presenting counsel, and the interveners have called the
13 "vulnerability" of the complainant. Presenting counsel
14 actually called the complainant to give evidence about
15 her vulnerability. I'm referring now to Exhibits 3 and
16 4. The complainant was in a very vulnerable position
17 at the time of the trial and here at the hearing. At
18 the time of the trial, she was homeless -- sorry, she
19 had been homeless. She had -- or she testified she
20 wasn't anymore. She had been addicted. She testified
21 that after the trial, she became suicidal, that she was
22 suicidal today -- well, last week at the hearing,
23 depressed, and anxious. That is vulnerability, and a
24 synonym for that vulnerability would be "fragility".
25 It's not the word that you might find in a factum, but
26 at the end of the day, what you heard on Friday was

1 Justice Camp pinpointing and acknowledging the features
2 of the complainant that made it especially problematic
3 for him to make the kind of comments that he did.

4 I imagine that another issue that might be of
5 concern to the Committee is the fact that it was 2014
6 and that Justice Camp would make the decision to say
7 some of these comments out loud, and the question on
8 the table is: How could Justice Camp say this when
9 these stereotypes are so well understood now, when
10 these myths are so well understood? And there are two
11 answers to that depending on whether you are addressing
12 the thinking, the underlying thinking, or the decision
13 to speak out loud. Regarding the thinking, there is no
14 doubt -- you heard it from every witness -- that
15 Justice Camp's thinking was infected by stereotypes and
16 myths.

17 There is also no dispute that those stereotypes
18 and myths are still with us. Justice Camp is not the
19 last vestige of mythological thinking in our society.
20 And I'm taking that from the intervener coalitions
21 factum at paragraphs 16, 33, and 34, where they talk
22 about how prevalent these myths are in the justice
23 system and among judges.

24 MS. PETERSEN: Perhaps you just addressed it
25 with your last comment. You may have anticipated my
26 question, because the fact that the myths may still

1 exist in segments of society or even in aspects of the
2 criminal justice system, the police, for example,
3 doesn't really speak to the standard to which we hold
4 judges. You did make -- at the very end of your
5 comment there, you made reference to other judges, but
6 if you could just integrate into your submissions, to
7 help me, the standard to which we hold judges, which is
8 above the standard of the general public.

9 MS. SAVARD: It is. The standard is
10 higher, and that is why the comments that Justice Camp
11 made as a judge on the bench resulted in this inquiry.
12 If he were not a judge, but a person on the street or
13 even in the course of a profession, making comments
14 like that, it wouldn't cause the degree of concern that
15 it has here. Judges are expected to rise above myths
16 and stereotypes that are pervasive, and the misconduct,
17 as I mentioned at the outset of my submissions, is the
18 failure to acknowledge that. It was non-judicial
19 conduct.

20 What helps you place it on the spectrum, however,
21 is the fact that it is widespread. And this is not
22 just something that we have from the interveners,
23 either. It's also in Professor Benedet's report at
24 page 21, and Justice -- excuse me, Dr. Haskell
25 addressed it in her evidence, which is at page 240 and
26 241 of the transcript.

1 MS. PETERSEN: I just want to be sure that I
2 understand your submission. Are you saying that it is
3 pervasive, that we have evidence on the record that it
4 is pervasive in the judiciary?

5 MS. SAVARD: Yes, actually, and perhaps if
6 I can call up one of the intervener factums, the
7 coalition factum, which we only have electronically, I
8 can direct you to the study that they cite.

9 We may also have it in our written submissions.

10 SMITH A.C.J.: Counsel, we're talking about
11 evidence, not submissions. Is there evidence before
12 this inquiry that such type of thinking is prevalent in
13 the judiciary?

14 MS. SAVARD: Yes. The evidence you heard
15 from Justice McCawley spoke to that.

16 SMITH A.C.J.: Can you refer me to the
17 specific section that you're relying on?

18 MS. SAVARD: I can. It is -- and perhaps I
19 may get Mr. Burgess to help me while I describe it.
20 This is the part where she was talking about the 2016
21 sexual assault conference that just took place for the
22 first time this year, put on by the National Judicial
23 Institute and -- excuse me.

24 SMITH A.C.J.: You're saying that that
25 conference just took place for the first time this
26 year, or it's -- since 2014, it's the first time it's

1 been held?

2 MS. SAVARD: My understanding is that this
3 is the first sexual-assault-focused conference that the
4 National Judicial Institute has put on; I believe that
5 was Justice McCawley's evidence.

6 One of the scenarios that Justice McCawley
7 mentioned in discussing how this was a practical
8 application type of conference was one where lines of
9 questioning were put to judges, and they were asked to
10 comment on the appropriateness or inappropriateness of
11 the questions, and their responses were -- they
12 diverged. Different judges thought different things
13 about whether the line of questioning was appropriate
14 or not.

15 SMITH A.C.J.: And is that what you're
16 relying on to suggest that there are biases generally
17 within the judiciary on -- on these issues?

18 MS. SAVARD: That would be the live
19 evidence you heard. I submit that the secondary
20 sources cited by the interveners are also reliable.
21 They are academic articles that talk about
22 social-context evidence, and they are helpful as cases
23 that describe the role of the judiciary. So it is
24 something you can also take into account.

25 SMITH A.C.J.: Can you refer us to the
26 particular section that you're making note of?

1 MS. SAVARD: Not yet. But I promise I will
2 if -- I will return to it once we find the page.

3 MS. PETERSEN: Sorry to belabour the point,
4 but I'm just having a look at page 21 of Professor
5 Benedet's report because you referred us to it.

6 MS. SAVARD: Yes.

7 MS. PETERSEN: And I just -- I don't know if
8 I'm looking at the right passage, but she makes
9 reference to empirical evidence demonstrating that
10 these rape myths continue to find acceptance among
11 significant numbers of people, including criminal
12 justice system participants, which -- it's not a
13 reference specifically to the judiciary. Is there
14 something I'm missing where there's a referral to the
15 judiciary in particular?

16 MS. SAVARD: No. I should have been
17 clearer. My reference to the Benedet report was when I
18 was talking about the prevalence of myths generally.
19 And it's the intervener coalition that cites a study
20 that talks about its prevalence in the judiciary.

21 SMITH A.C.J.: So, Counsel, I'm sorry to
22 belabour it also, but I asked you where Justice
23 McCawley indicated it was prevalent within the
24 judiciary, and you referred to her evidence where she
25 said different judges at an education course had
26 different views on what was appropriate and what

1 wasn't. So are you still maintaining that she said
2 these types of biases are prevalent within the
3 judiciary, or are you tempering your comments by -- by
4 the fact that she was simply talking about different
5 judges having different views about what was
6 appropriate?

7 MS. SAVARD: I think the answer is that I
8 am partially tempering my comments. I certainly think
9 her evidence supports my submission that these are
10 difficult concepts to grapple with and that the concept
11 of what is and is not appropriate in the line of
12 cross-examination is going to be informed by one's
13 belief about what is legally relevant and what isn't.
14 I don't think you can divorce the two.

15 Justice McCawley's comment on that point was at
16 page 107 of the transcript.

17 SMITH A.C.J.: Can you tell us specifically
18 what she said?

19 MS. SAVARD: Her evidence starting at line
20 3: (as read)

21 There were a number of exercises and
22 workshops where judges were called upon to
23 consider the kinds of things that come up in
24 a trial and how to deal with them. And one
25 example was where, for example, counsel might
26 ask questions that could be considered to be

1 based on stereotypical thinking that I think
2 we would consider appropriate, others where
3 the thinking might be appropriate or not;
4 there is different views, and the importance
5 of this was helping Justice Camp and others
6 to understand how quickly these things can
7 come up in a trial and how important it is to
8 know how to respond. And it's not easy, even
9 for an experienced judge.

10 WHALEN C.J.: That doesn't suggest that the
11 type of thinking is prevalent in the judiciary. So
12 that quote there doesn't suggest that it was her view
13 it was prevalent in the judiciary.

14 MS. SAVARD: And I think the submission I
15 just made to Associate Chief Justice Smith that it's --
16 it informs the Panel's -- evidence of how difficult
17 these concepts of stereotypical irrelevance versus
18 legal relevance are to apply and how different judges
19 have very different responses. I think the inference
20 that can be drawn from that is that different judges
21 have different ideas about what is or is not legally
22 relevant.

23 WHALEN C.J.: That's that pretty big jump
24 from that statement that Justice McCawley has made.

25 MS. SAVARD: Certainly. And at the end of
26 the day, my submission is also based on the fact that

1 you can rely on secondary sources for this.

2 WHALEN C.J.: We have to rely on the
3 evidence as presented at the inquiry. I think that the
4 statement you've made is that you've put forward the
5 submission that it's prevalent; it's not just Justice
6 Camp, and the question that was put to you by Associate
7 Chief Justice Smith was: Can you point us to the
8 evidence by which you're making that submission?

9 MS. SAVARD: And I think at the end of the
10 day, my submission is that Justice Camp was drawn from
11 society, just like any judge, and if you accept the
12 evidence that myths and stereotypes are prevalent in
13 society, then the Committee has to accept the
14 possibility that myths or stereotypes are present, not
15 prevalent, in the judiciary. We accept our judge to be
16 diverse to reflect our population, and the downside of
17 that is that they are human beings just like we are,
18 and they carry with them, as the judgment in R. v. DS
19 says, certain lived experiences and understandings that
20 aren't necessarily going to be tempered by the judicial
21 role.

22 MS. JENSEN: How do you reconcile that,
23 then, with the case law that Ms. Hickey took us to at
24 the end of her submissions -- I think it's R v. JR --
25 in which -- in which the report stated that they -- all
26 litigants have a basic right to come to the court

1 expecting that there will be a basic understanding of
2 the myths and the stereotypes and that those will not
3 be used against the individuals that appear before
4 them.

5 MS. SAVARD: I agree. And that is why what
6 Justice Camp did amounted to misconduct, a failure of
7 the judicial role under 65(3). I -- the point that
8 I -- and maybe this is a better way of putting it. The
9 point I intend to make is that the misconduct stems
10 from ignorance, not animus. It might be tempting to
11 say that in 2014, a person, a judge, would not say
12 these things about a woman, a complainant, in a sexual
13 assault trial unless there was dedicated misogyny or
14 dedicated sexism in play, and my submission is that the
15 myths and stereotypes are prevalent enough in society
16 that ignorance is a very real possibility, and the
17 evidence you have is that Justice Camp's comments came
18 from ignorance, not from animus.

19 MS. JENSEN: But I think that's what the
20 case law is getting at, whether it's through ignorance
21 or it's through animus, and I -- I don't think that
22 anyone would suggest that we're talking about animus
23 here, but we've reached the point in time, 2014, when
24 it's expected that those -- that people in judicial
25 positions will have disabused themselves of those
26 notions by the time they reach the bench.

1 MS. SAVARD: Yes, I agree with that. And
2 that -- that -- I invite you to make a finding of
3 misconduct on that basis, but I still submit that where
4 that misconduct lies on the spectrum is very different
5 depending on whether you find it to be motivated by
6 entrenched bigotry on the one hand or remediable
7 ignorance on the other hand.

8 And I know Mr. Addario's going to address the
9 prospective nature of the test, and my submission would
10 simply be that -- and, actually, I can take you to a
11 passage from Cosgrove that talks about when bias or
12 prejudice becomes disqualifying. This is at paragraph
13 133 of Cosgrove. They're talking about how normally
14 judicial bias is an error of law, not a matter of
15 misconduct. Obviously, in that case, it crossed the
16 line, and what the Inquiry Committee says at paragraph
17 133 is: (as read)

18 Actual bias may be a ground for recommending
19 removal from office because it would show a
20 defect of moral character or a lack of
21 integrity and honesty in decision-making.

22 And so my submission to you is that, notwithstanding
23 that there is bias and prejudice in this case, we are
24 not dealing with a defect of moral character.

25 There's a -- there's a separate issue, which is --
26 also stems from the Court's observation in R. v. DS

1 that judges are expected to act judicially,
2 notwithstanding past lived and learned experiences and
3 assumptions they might have in their minds, and that
4 is: Why would he say it out loud? And we have treated
5 this, I think appropriately so, as the lesser of the
6 two forms of misconduct. Being an interventionist
7 judge has not, as far as I know, ever been a basis for
8 removal, and you do have evidence before you that this
9 was an unusually interventionist judge; that came from
10 Justice McCawley, and you heard it described in the
11 character letter of Mr. Dunn (phonetic) at Tab R14,
12 which presenting counsel took you to.

13 And our submission is that Justice Camp's
14 education and efforts over the past nine months were
15 directed at both of those failings. They're both
16 judicial failings. And so he has not only taken steps
17 to interrogate his beliefs and his assumptions, but
18 he's also taken steps with Justice McCawley to learn
19 about the role of judicial temperance and the
20 importance of not intervening, of not letting your
21 internal monologue be external.

22 SMITH A.C.J.: Counsel, how do you reconcile
23 that submission with your statement that I believe you
24 made a couple of minutes ago when we discussed Justice
25 Camp's evidence on Friday about whether or not his
26 statements were sexist? I think you used the term, He

1 went off on a tangent that was irrelevant. Isn't that
2 exactly what you're saying he's learned not to do?

3 MS. SAVARD: Yes. And I would -- I would
4 make two responses to that. First of all is the point
5 I made earlier about how the judge in the witness box
6 is very different from both the judge in his personal
7 life or in his therapist's office or on the bench.

8 And secondly is the point that Dr. Haskell made
9 and that Justice Camp made about this being an ongoing
10 process. What Justice Camp said is that he can't --
11 that he's certainly not perfect but that he has tools
12 now that will enable him to do the job of a judge well
13 going forward. And so I would say that is an example
14 of a judge not being perfect, but taken in the context
15 of all the evidence you heard, a judge who has improved
16 and learned.

17 And, again, I would urge you to rely on the
18 evidence of Justice McCawley that the issue of
19 temperance was addressed and that he understood the
20 importance and accepted that. Her evidence was not
21 contradicted on that point, and she did spend many
22 hours with him.

23 I have addressed, I think, in response to your
24 questions, the issue of the nature of the misconduct
25 and where it falls on the spectrum, and I would add to
26 that only the context provided by the other evidence in

1 this case that support a finding that Justice Camp is
2 generally a good judge, that he has many judicial
3 qualities. There are no prior complaints. The
4 character letters show he has a respect for diversity
5 and equality and an interest in respecting the
6 different perspectives of others, and there's no
7 evidence that he's a committed bigot or misogynist.

8 I would respond briefly to the point made by
9 presenting counsel that certain character letters are
10 entitled to less weight. We are certainly not putting
11 them before the Committee to help you interpret the
12 comments in Wagar, but you are allowed, according to
13 Matlow, to take character evidence into account in
14 deciding motive, the why of how the act occurred, and
15 whether or not the acts were committed with malice or
16 bad faith, and that is what the character letters are
17 relevant to, including the ones that presenting counsel
18 objects to.

19 And I would submit that adding to the weight of
20 the character letters in this particular case is the
21 fact that these are not bald statements from supporters
22 that Justice Camp is a good judge were at large. They
23 provide details about his personal features. They
24 provide examples. Sometimes he's exhibited a quality.
25 Each of the letter writers was informed about the
26 nature of the allegations and said so in their letters.

1 Some of them explicitly noted the seriousness of
2 allegations and the corresponding seriousness of their
3 duty to provide an objective account, and some of those
4 letters came from people who are in a position in the
5 justice system where they might have to deal firsthand
6 with some of the effects of his comments, and they
7 chose to write letters anyway. And I'm referring
8 specifically to the letter of Cassandra Malfair and
9 Bill Wagner. And both of them are prosecutors, and
10 Cassandra Malfair has a focus on prosecuting sexual
11 offences. She didn't have to write a letter supporting
12 Justice Camp, and the fact that she chose to do so,
13 knowing both who he is as a person and presumably aware
14 of the outcome that his comments might have on
15 confidence in her job, chose to do so anyway. And she
16 described him as a person who nurtures and encourages
17 the less powerful as well as an opinion on the
18 complexity of the social context that underlies sexual
19 assault prosecutions.

20 I want to situate Justice Camp's misconduct now in
21 the -- among the other cases that have been provided to
22 you by -- by us and by presenting counsel. It would be
23 a mistake to accept presenting counsel's submission
24 that unreported decisions relating to complaints that
25 didn't get referred to an Inquiry Committee are less
26 helpful. It puts Justice Camp in the somewhat awkward

1 position of only being able to compare his conduct to
2 other judges whose conduct was deemed serious enough to
3 go to an Inquiry Committee. It wouldn't be appropriate
4 to degrade the value of anonymous complaints that don't
5 go forward. And the reason I say that is because
6 there's significant value in -- well, there's
7 significant weight to be had in the fact that a choice
8 was made not to direct these to an Inquiry Committee.
9 It says something about where on the spectrum, in
10 general, intemperate or potentially biased comments in
11 a single case is situated. Some of these cases do not
12 even get referred to an Inquiry Committee because a
13 judge is presumed to learn from the experience, from
14 the fact that a complaint has been made, and in some
15 cases, from a letter or a public reprimand. An Inquiry
16 Committee is the equivalent of turning over a rock to
17 see if there's more bad stuff underneath it.

18 And so, for example, if Justice Barakett, who made
19 inappropriate and demeaning comments about the
20 indigenous community, is presumed to be able to learn
21 from the experience and there's no need seen for this
22 to go to an Inquiry Committee, then it's -- that is a
23 significant fact to take into account.

24 SMITH A.C.J.: What was the year of that
25 case, Counsel?

26 MS. SAVARD: 2002.

1 SMITH A.C.J.: Would you agree with me that
2 the tolerance for that type -- those types of comments
3 and conduct has changed in the last 12 years? And by
4 the last 12 years, I'm taking it to 2014 because that's
5 the year of the Wagar trial.

6 MS. SAVARD: I think it's difficult to give
7 an answer to that. Justice Barakett's comments were
8 about the indigenous population. And I certainly
9 take presenting counsel's point that the level of
10 tolerance for comments relating to sexual assault
11 complainants has certainly changed in the last several
12 years. I think perhaps the best answer to that is to
13 go over some of what Justice Barakett's comments were
14 and in support of my comment that this is always
15 something that should have been taken seriously.

16 And this, for the record, is at page 33 of our
17 written submission. One of the comments made by the
18 judge in that case about the indigenous community was:
19 (as read)

20 Perhaps unwittingly and out of a totally
21 misplaced expression of motherly love, they
22 were brainwashed away from the real world
23 into a child-like myth of powwows and rituals
24 quite different from other children on the
25 reserve who had regular contact with the
26 outside world.

1 The judge also tried to calculate the amount of Indian
2 blood in the children. This was a custody case. And
3 he made comments suggesting a stereotype of Aboriginal
4 peoples relating to alcohol and drug abuse. I submit
5 that kind of comment is as appropriate -- inappropriate
6 in 2002 as it is today.

7 And the point is ultimately not to suggest that
8 Justice Camp's conduct shouldn't have resulted in an
9 inquiry. It's that you can't assume from unreported
10 cases that you only would have learned more bad stuff
11 if only they had gone to an inquiry. You are entitled
12 to take the decision of the Canadian Judicial Council
13 not to refer this for an inquiry at face value in this
14 case because the judge had already learned from his
15 comments.

16 I believe those are the only submissions I have to
17 make about the case law unless there's further
18 questions from the Panel.

19 THE CHAIR: Thank you, Ms. Savard.

20 MR. ADDARIO: I'm going to make, I think,
21 four points, but just in relation to a question that
22 was asked by three Panel Members about the choice of
23 language in describing the existence of myths being
24 pervasive in the criminal justice system, including all
25 criminal justice actors, including judges, and whether
26 or not there's any evidence in front of you, maybe the

1 better question is not so much whether or not we could
2 prove or the evidence shows that existing judges hold
3 biases. I doubt we'll ever get that evidence; I doubt
4 we'll get that kind of survey done; I doubt we'll get
5 it published. But the real question is: What's the
6 public perception? And you do have evidence of that.
7 You have it from Dr. Haskell at 246, and it arose out
8 of questions from Ms. Petersen in relation to what her
9 clients thought and -- and the violence against women
10 community thought when they heard a report of Justice
11 Camp's comments and the whole question of, Did it
12 confirm anything about revictimizing people? And then
13 I got up to re-examine her and asked her: (as read)

14 Q Just in relation to the last series of
15 questions asked by Ms. Petersen, you
16 mentioned that some people were not surprised
17 a justice system actor would make insensitive
18 or inappropriate comments? Yes?

19 [And she said] It wasn't so much a surprise.
20 I mean, a lot of my clients are very well
21 aware of the problems in the criminal justice
22 system. Most of my clients are not going to
23 go forward. They don't trust the system. So
24 they weren't surprised that they felt anger
25 about it.

26 I'll just pause there and say, it wouldn't just be law

1 enforcement, lawyers, Crown counsel, probation
2 officers, but also include judges. Of necessity, the
3 referee is included in the perception held by her
4 clients. So I asked her: (as read)

5 Could you maybe just elaborate on why they're
6 not surprised

7 [She says] They're not surprised because I
8 think it's pervasive in terms of -- look at
9 David Tanovich's paper in terms of legal
10 cases where horrendous things are said,
11 questions are asked intrusively over and over
12 again. And I think that most people who are
13 in that vulnerable position of being
14 assaulted are really wanting to be cautious
15 of whether they're ever going to go to try
16 and get help.

17 And so that does include the courtroom supervised by
18 judges. I'm not trying to create a new argument about
19 judges having some extra-special responsibility or role
20 in it, but I am saying it is a system-wide problem, and
21 you do have some evidence about that from Dr. Haskell.

22 WHALEN C.J.: Mr. Addario, the difficulty I
23 have with the statements that are made is that in -- in
24 opposition to the suggestion that it's somehow
25 prevalent or part of the psyche in the judiciary are
26 the dozens -- hundreds, in fact -- dozens of cases,

1 certainly, out of the Court of Appeals and the Supreme
2 Court of Canada and hundreds of decisions out of trial
3 courts where the judges write and discredit these myths
4 and take great pains to put, by way of precedents, the
5 position that they're not acceptable in our society.
6 So we have those types of published, repetitive
7 positions being taken by the judiciary in all
8 provinces, at all levels of court, up to the Supreme
9 Court of Canada. Well, they form part of the -- the
10 justice system, together with all the other players
11 that you've named, that you've mentioned. So it's a
12 significant generalization in the face of that kind of
13 writing that is out there, these published decisions,
14 to suggest that it's either -- that it's prevalent. It
15 should be the exception.

16 MR. ADDARIO: It should be the exception. I
17 couldn't agree more.

18 WHALEN C.J.: And the evidence we have just
19 from published decisions and the recognition by the
20 Courts' position that judges take day in, day out,
21 these myths have to be abandoned. That's what I see
22 published.

23 MR. ADDARIO: That's right. But you
24 continue to see published -- I'm not disagreeing with
25 anything you said, but you continue to see published
26 criticism that, for whatever reason, beyond the scope

1 of this inquiry, people continue to feel
2 dissatisfaction with the treatment in the criminal
3 justice system to the reception of complaints, from the
4 initial overture to law enforcement to the very end of
5 the case, right through to the sentencing and probation
6 end. And so that -- I'm saying that that
7 dissatisfaction includes everyone in the system.
8 That's the evidence before you. I wasn't trying to
9 make a bigger point than that, Chief Justice.

10 MS. JENSEN: But could you take it, then,
11 one step further and say, therefore, does that mean,
12 then, that -- is that what you were referring to in
13 your written submissions, that therefore, Justice Camp
14 should not be made the scapegoat or the fall guy, if
15 you will, for a system that is generally failing? Is
16 that the logical extension of what you're saying?

17 MR. ADDARIO: I do have a submission about
18 that. Would you like me to make that now? Would that
19 be helpful?

20 MS. JENSEN: Well, I'm just trying to
21 understand if that's where you're going with this
22 notion that it's pervasive, that there's a problem in
23 the criminal justice system; it's not just Justice
24 Camp, and therefore -- and therefore what?

25 MR. ADDARIO: Well, I'd say, an obvious
26 issue in this hearing is what his comments say about

1 the justice system, and is it unique to him? And he is
2 the -- he has become a noun, of course. And there is
3 a -- obviously, a -- the best way I can describe it,
4 having reading all of the media that's been described
5 and the interveners' submission, as a thirst for a
6 resolution to the long-term dissatisfaction that
7 equality-seeking groups and equality-seeking
8 individuals, which I count myself one, have with the
9 legal response to discrimination and gender violence.
10 And the public attention paid to that Ghomeshi case
11 that was referred to today and the Cosby case are just
12 two examples of the phenomenon.

13 And, for example, one of the interveners in this
14 case, in this very case, LEAF, their director made an
15 interview this week. We put it in the supplementary
16 book of authorities. And she said, Too bad if he's
17 reformed; he has to pay the price for the failures of
18 the justice system. And this -- you'll find it in my
19 supplementary book of authorities at Tab 4. Justice
20 Camp, his approach to this -- to the case is a symptom
21 of a larger problem within the justice system that
22 needs to be addressed, and the inquiry is an
23 opportunity to do so, she said. It might be
24 unfortunate for this man to be the one who has to take
25 the responsibility for it, but someone needs to because
26 the system is not working for sexual assault survivors,

1 and that's a really big problem.

2 So when you're being asked to address the
3 prospective aspect of the test relating to the
4 reputation of the justice system, you will have to take
5 a stand on this issue. And Ms. Petersen asked
6 Ms. Hickey today, Should we make an example of him; is
7 that what you're asking us to do? And she said, No,
8 but then made a submission that essentially said, Yes,
9 because she said, You cannot divorce it from the
10 timeframe, which includes Bill Cosby, Jian Ghomeshi,
11 the Stanford swimmer. That judge, by the way, is an
12 elected judge, and he's been -- there's a campaign, an
13 elected campaign, not the Canadian way. And I would --
14 my submission about that, if the Committee is speaking
15 directly to the public, is this: It would be
16 disappointing if we went from an inequality and
17 discrimination culture to an unforgiving, punitive
18 culture with no stop at the way station in between. I
19 know what you're going to say. You're going to say, We
20 had 20 or 30 years of educating people in the legal
21 system about -- about sexist myths and about response
22 to violence, but I would counter that by saying that we
23 spent more than a century underplaying or ignoring
24 inequality and gender-based violence, sexual violence
25 in particular, and it's unrealistic to expect education
26 to take root in less than a generation.

1 I appreciate the impatience. I share it. It's
2 the only way we get things done. I understand that
3 sexism and misogyny are not polite things. They've
4 never been polite things. So it's asking a lot to
5 expect those who continue to make mistakes to be
6 treated with charity and civility, but in my
7 submission, the Judges Act requires you to do some form
8 of that. So that's my point on that, Ms. Jensen. I
9 will come back to why the Judges Act requires you to do
10 that.

11 But for the moment, I just -- if I could borrow
12 leave from Professor Backhouse, and I've quoted from
13 her at page 8 of my written submissions, where she's
14 dealing with a case at the Law Society of Upper Canada,
15 a highly regulated profession also involving sacred
16 trusts, and this lawyer did some terrible things with
17 Crown disclosure in a criminal case, a case called
18 Amber, and he immediately 'fessed up to it and took
19 every remedial measure possible. So the question is:
20 How severely should we sanction him? And she says, in
21 the passage I've set out at 8: (as read)

22 It would be difficult to find an example of a
23 lawyer guilty of misconduct who more fully
24 made amends, re-educated himself, stepped up
25 to compensate his client, apologize, and take
26 responsibility for his misconduct. The

1 lawyer left no stone unturned in his effort
2 to repair the damage his misconduct caused.
3 On this point of which way to go, the punitive
4 direction or the rehabilitative, reparative direction:
5 (as read)

6 Responsibility and reparation are also
7 important, general messages that need to
8 circulate within the profession. Where
9 exceptional circumstances warrant, such as
10 here, the disciplinary process should
11 prioritize responsibility and reparation in
12 assessing the appropriate penalty. This
13 constitutes a positive and effective method
14 of teaching members of the profession that
15 what one does subsequent to acts of
16 professional misconduct is vitally important.
17 The message it sends is that lawyers who
18 commit acts of professional misconduct do not
19 fall into a black hole but can industriously
20 work to redeem themselves in multiple ways.
21 So I rely on that, and I'll make a final point here on
22 this issue, that although the severe sanction
23 alternative has an appealing aspect, we have -- and do
24 need to spend more time, thought, and attention on how
25 people, including judges, can be rehabilitated and what
26 does accountability require, even though it may be less

1 pleasing in the short term, and that's why I'm
2 advancing an argument that the long-term solution to
3 the administration of justice includes restoring an
4 educated, reformed judge to his position. That's my
5 first point.

6 My second point is --

7 MS. PETERSEN: Sorry, Mr. Addario.

8 MR. ADDARIO: Yes.

9 MS. PETERSEN: Before you move on to your
10 second point, don't you think that there's a difference
11 between the Law Society professional discipline process
12 and the work of this committee? In particular, the
13 discipline process -- really, the factors taken into
14 account there are specific deterrence, general
15 deterrence, and perhaps some punitive repercussions for
16 misconduct. Here we're talking about the public
17 confidence in the judiciary, and so it's not just --
18 Ms. Hickey's submissions is that it's not just about
19 Justice Camp; it's about faith in the judiciary as a
20 whole and that, you know, because of that, I'm not sure
21 that the -- Ms. Backhouse's finding is necessarily
22 applicable.

23 MR. ADDARIO: There is a difference.

24 Lawyers are trusted, not trusted as much as judges;
25 I'll grant you that, but the Law Society Act does
26 require the Tribunal take into account the public

1 interest at all times. That's the best I can do.

2 Second, education. The evidence shows Justice
3 Camp got the education set out in Exhibit 12, which are
4 the Alberta Provincial Court syllabi for the years he
5 was on the Provincial Court. That's his training in
6 there in 2012 to 2014. There is nothing in there about
7 running a sex assault trial in the history of the
8 provisions.

9 Of course, he was not appointed to be a sex
10 assault judge. I need to stress that. He was
11 appointed to be a criminal court judge, and by all
12 accounts, he was a good one. He had to master the law
13 in dozens of new areas of Canadian law and apparently
14 did so. We've added today the syllabus of the NJI new
15 judges' training programs which he attended in 2012 and
16 2013, and you'll see that there was no meaningful
17 training or discussion of sexual assault during his
18 formative years as a judge. And there was no
19 indication that this was a red-zone learning topic for
20 judges. It wasn't treated that way. No one in the
21 judicial world -- judicial education world highlighted
22 this topic as one that should stand out. And, in fact,
23 if you look at the syllabi, the most pressing specific
24 problems for judges appear to be evaluating credibility
25 of all witnesses, learning about search and seizure,
26 and impaired driving.

1 Now, under our system, the responsibility for
2 education rests on the judge. Having said that, the
3 judicial education sector gave no indication of the
4 knowledge gap requiring his self-tutelage. That's the
5 only point I want to make there.

6 SMITH A.C.J.: Mr. Addario, though, Justice
7 Camp is obviously a very intelligent man.

8 MR. ADDARIO: He is.

9 SMITH A.C.J.: He -- he applied -- I assume
10 he applied to the bench.

11 MR. ADDARIO: He did.

12 SMITH A.C.J.: In an area of which he was
13 unfamiliar, and he acknowledges that his obligation was
14 to educate himself. I have difficulty with this
15 concept of nobody educated him, when he would be the
16 one who's aware of the gap; he would see that he has a
17 case coming up dealing with a topic that he's not
18 familiar with, and he has the ability, through a number
19 of mechanisms that are available to him, to educate
20 himself. I -- I'm having difficulty with that
21 argument.

22 MR. ADDARIO: I will try to help you. There
23 was no deliberate avoidance on his part of an obvious
24 topic for self-help. That's what the evidence shows.
25 Both witnesses told you, Justice McCawley and
26 Dr. Haskell, that he was unaware of what he didn't

1 know. And so when I say that there was no indication
2 of the red zone, by that I mean that certain people of
3 a certain age may grow up with certain beliefs that
4 need to -- of which they need to be shorn. And he
5 wasn't directed to that.

6 It should not be confused with laying off the
7 blame on anyone else. If the submission sounded in any
8 way like that, it is not that. The submission is that
9 he did not deliberately avoid learning about it.
10 Moreover, there was no indication in any of the
11 materials that a common pitfall for people is to fall
12 into the myth-thinking trap identified in the
13 dissenting judgment in Seaboyer, which almost no one
14 reads any longer, because it's been replaced by a
15 codification.

16 SMITH A.C.J.: Except he had read Seaboyer.

17 MR. ADDARIO: He had read Seaboyer.

18 SMITH A.C.J.: He said he had. He had read
19 Ewanchuk.

20 MR. ADDARIO: He had. And he thought -- and
21 you were told convincingly by both Justice McCawley and
22 Dr. Haskell that he had thought he managed them
23 intellectually, but he hadn't when it came to
24 decision-making.

25 MS. JENSEN: But Mr. Addario, one thing I'm
26 struggling with in the Seaboyer decision that you're

1 referring to, Justice L'Heureux-Dube specifically
2 references the kind of comment that Justice Camp made
3 in the context of exposing one of the -- the rape
4 myths, and she quotes a statement by Judge David Wild,
5 in the Cambridge Crown Court, where he says: (as read)

6 Women who say "no" do not always mean no. It
7 is not just a question of saying "no". It is
8 a question of how she says it and how she
9 shows and makes it clear. If she doesn't
10 want it, she has only to keep her legs shut,
11 and she would not get it without force, and
12 there would be marks of force being used.

13 So Justice Camp indicated that he did read the case law
14 between the time of making those comments initially
15 during the trial and then rendering his judgment. So
16 if he read the case law and saw a particular comment
17 that he used in the trial, it wouldn't be much, it
18 seems to me, to recognize that, Oh, there it is again,
19 referenced as a myth in Seaboyer, and that may be a
20 problem.

21 MR. ADDARIO: Okay. Well, as mentioned,
22 it's the dissenting judgment in Seaboyer.

23 MS. JENSEN: It is, but I think that
24 Justice Camp referred to it as explaining the
25 narrative, the story about the mythology, explaining
26 the myths.

1 MR. ADDARIO: I'm not sure he said he read
2 it during the trial, but leave that -- leave that
3 aside. He was familiar with Ewanchuk and Seaboyer.
4 And he clearly understood it -- he totally understood
5 it at an intellectual level, but he clearly didn't
6 apply it; we know that. So I don't know how much
7 further we can go with inference-drawing there. No one
8 is -- my understanding is that no one is suggesting
9 animus.

10 So the best-available evidence that you have is
11 from both Justice McCawley and Dr. Haskell, which is
12 that he'd intellectualized it; he understood it as an
13 abstraction, but he hadn't internalized it. And when a
14 live case appeared in front of him, he wasn't able to
15 apply it. The alternative is that he's a misogynist,
16 and he did it deliberately. The evidence doesn't show
17 that. No one's attempted to prove that.

18 Presenting counsel said today there was a
19 diminution by Justice Camp of what was available, and
20 you should draw a negative inference. That's not fair
21 to the evidence. He agreed with every proposition
22 Associate Chief Justice Smith put to him the other day
23 about what was available. All he said was, I didn't
24 know what I didn't know.

25 MS. PETERSEN: He also said, if I remember
26 correctly, that when he read those leading cases,

1 Ewanchuk and Seaboyer, he found them dry, and it wasn't
2 until he met Professor Cossman that she made it
3 interesting for him. I'm just wondering what we should
4 make of that evidence.

5 MR. ADDARIO: I would say that that tells
6 you something about the learning process, and I think
7 the people at NJI who teach CPD could tell you that
8 legally trained minds sitting in their office flipping
9 pages of the leading cases don't learn as well as they
10 do at seminars with a mixed variety of learning through
11 models, videos, exercises, seminars, and lectures. He
12 intellectualized it. He didn't internalize it. That's
13 the evidence.

14 That takes me to my third point, which is
15 diligence. And I say that the hearing is plainly not
16 about whether he could have done more to educate
17 himself. He could have. No judge has ever been called
18 before the Council for being undereducated or
19 underinformed. Judges routinely err in law. And when
20 they do, it's a matter for the Court of Appeal, not a
21 personal failure. Judges are not expected to know all
22 of the law. Justice Camp's approach to the
23 black-letter law was reasonable. I need to state that
24 at least one more time. His approach to the
25 black-letter law was reasonable. That's what the case
26 is before you. His legal decision-making, to the

1 extent you can divorce it from those comments, was
2 reasonable. That's what Professor Cossman said. It
3 hasn't been contradicted. That's what we set out in
4 our response to the specific allegations.

5 What was missing -- here's my concession -- was
6 his knowledge of the underlying context of the law,
7 which is one step removed from the law. And so when
8 you're thinking about, Well, how serious is the
9 misconduct, and is it disqualifiable, could I just give
10 you this analogy. Judges are not expected to know the
11 economic theories underpinning the Competition Act.
12 They're not expected to know the history of immigration
13 policy that underpins the Immigration Refugee Act.
14 They don't need to know all of the history of
15 Aboriginal treaty negotiations to interpret Section 35
16 of the Charter. It may be that the social context of
17 sexual assault is more important than the above
18 examples, but I would say, at least, if it is, then --
19 and here is where I would say that the -- that the
20 judicial education sector does have some responsibility
21 to say that it should be taught to new judges. And the
22 evidence before you shows that while social-context
23 education in sexual assault is important, it is not
24 part of any mandatory training program.

25 And I'd make one other point on diligence. I
26 accept everything about the ethical principle that was

1 put to Justice Camp the other day. It was his
2 responsibility. The duty to inform yourself of the law
3 and social context is aspirational, and it's never
4 before been used to discipline a judge who falls below
5 a subjective and imprecise goal.

6 My fourth point is one already been raised by
7 Ms. Petersen in the colloquy with presenting counsel,
8 and it's that public opinion has to be informed. So
9 when you're ascertaining who is the reasonably informed
10 member of the public and thinking about that Ruffo
11 test, the evidence of public opinion, the complaint
12 letters, and the media articles is not useful for
13 assessing that. The articles and some of the letters
14 do show a level of public outrage and interest as a
15 factor that undermines public confidence regardless of
16 rehabilitation, but they don't address the
17 reasonable-person test. The public reaction also
18 includes the public that you would be leading as a
19 panel of investigators. So if a -- as a panel of
20 expert investigators you ascertain where public
21 confidence ought to be, having considered the evidence,
22 that is a factor. A reasonable member of the public --
23 Canadian public, respectfully, is a person informed
24 about the sociable, Justice Camp's remorse and
25 rehabilitative efforts, and the other evidence you
26 heard this past week. None of the -- if I could call

1 it -- anger evidence you heard in the complaint letters
2 and the media articles are informed about those things.

3 Which takes me to maybe a fifth point, and it's
4 about Justice Camp's notoriety and whether or not you
5 can ever get past that because I understood part of the
6 submission made to you was that he's a national noun, a
7 symbol. He's the word for an insensitive, out-of-date,
8 interventionist judge. Left there, that would, as
9 Ms. Hickey said, be a problem for public confidence.
10 I'll grant you that.

11 But there is an additional element. There are
12 now -- in fact, the evidence shows there are now two
13 Camps. The first is the Justice Camp who made the
14 comments heard and then reported, sometimes accurately,
15 sometimes out of context, around the country, and that
16 first Justice Camp was taken out of court for a year,
17 roundly denounced, characterized as a misogynist, by
18 the way, inaccurately, on the evidence you heard. He
19 apologized and, in a word, reformed himself.

20 The second is the future Justice Camp, who could
21 sit upon the bench, and far from serving as an example
22 of what's wrong with the administration of justice, he
23 is, in fact, an example of what can be achieved with
24 continuing judicial education.

25 I have to repeat here that Dr. Haskell and Justice
26 McCawley both gave uncontradicted evidence that he's

1 not the only well-intentioned person in the justice
2 system who's not quite caught up with modern thinking,
3 science, and values. Moreover, both thought he had the
4 tools -- the critical evaluation tools to grapple with
5 the type of issues that would confront him in the
6 future.

7 And that takes me to my final and related point.
8 In examination, some questions that Chief Justice
9 Whalen asked the other day, were some adjectives. I
10 believe he agreed with outrageous, disgraceful,
11 terrible, he may have offered stupid, but if he didn't,
12 Professor Cossman did. A reasonable question would be:
13 How -- how does a judge who's admitted to having his
14 comments described that way go back to sit on the
15 bench? And I think it's a fair question in the context
16 of the evidence, but I would say there are other
17 adjectives in the evidence in this case that could also
18 fairly be used to describe Justice Camp, and they
19 should form part of your recommendation.

20 The evidence shows he's a humble person. He's
21 contrite. He's nonracist. There's overwhelming
22 evidence that he's nonracist. He's fair. He's
23 accommodating. He's motivated to learn and get better.
24 He's remorseful. It would not be fair, unless one were
25 seeking an incomplete picture of Justice Camp, to stop
26 at "disgraceful". Beyond disgraceful, he's the complex

1 human being who worries about whether someone will get
2 an articling job because she wears a hijab, Exhibit 2,
3 Tab R5; beyond "outrageous" is someone who asked to be
4 taken to the jail so he could see what happens to
5 people he sentences and remands, Exhibit 2, Tab R12;
6 beyond "stupid" and "arrogant" is someone who treats
7 his court staff, justifiably, as if they know more than
8 him about criminal court procedures when he arrives on
9 the bench, Exhibit 2, Tab R23.

10 And so my submission is that your recommendation
11 should not, of course, cherry-pick adjectives, because
12 it would paint an incomplete picture of Justice Camp.
13 The correct picture of him does not take a snapshot of
14 from the Wagar trial and superimpose that on the wider
15 community that is interested in what you might say
16 about him but paints a complete picture to conclude
17 there is no dispute that his comments interfered with
18 what we would assume to be the excellent reputation of
19 the Canadian bench.

20 The reasonable member of the public was rightly
21 upset by his comments. They were upsetting. There's
22 no dispute about the question you have to decide.
23 Would the reasonable member of the public prefer
24 removal and dissociation, or would they prefer that an
25 educated, motivated judge apply his new critical
26 framework to future cases? Obviously, I say the

1 latter. I am confident the Canadian public is
2 forward-looking, results-oriented and fair-minded.

3 In fact, much about our justice system, and
4 including what we want in the judicial tempered, is
5 premised on rehabilitation, learning, and
6 reintegration, not on banishment or revenge. The
7 former are our core animating values.

8 I would go further and say that reasonable and
9 informed members of the public don't want him punished
10 for the sake of solving a systemic problem. They want
11 the justice system to work as well as possible, and
12 they want judges to understand social context, and so
13 sending a humbled, empathetic, educated judge who
14 understands social context back to the bench would
15 achieve that very much.

16 MS. PETERSEN: I do have a question. Toward
17 the end of your submissions, you were quoting from --
18 making reference to some of the character reference
19 letters and some of the characteristics of Justice
20 Camp's character that are reflected in those letters,
21 and at the core of the allegations in this case,
22 certainly one of the central issues is gender bias and
23 whether his impartiality was compromised by gender
24 bias, and he's acknowledged his thinking was infected
25 with gender bias. And some of those characters letters
26 are written by women who he has worked with in various

1 capacities. I think Ms. Savard mentioned a prosecutor
2 who wrote a letter and others who wrote letters who
3 spoke to the respect that he showed for them as women
4 in a sometimes male-dominated profession or in a
5 profession where they might otherwise be exposed to
6 sexism. And I'm wondering if you can just address a
7 concern that I have that those two things may not be
8 inconsistent because of other intersecting factors.

9 The complainant in this case was homeless,
10 indigenious, unemployed, impoverished. And there are
11 some statements made that are recorded in the
12 transcript during the course of the trial, not simply
13 in respect of the complainant but in respect of other
14 witnesses as well, with respect to them being
15 unemployed and homeless and also having criminal
16 records, but not just having criminal records, that
17 suggest that women of a particular social class might
18 be viewed by him differently than women who are
19 professional and educated that he interacts with in the
20 workplace. And, you know, that's still a gender bias,
21 but it's a gender bias that intersects with other
22 biases. So it makes me question how much -- again, how
23 much value are those character references, and do they
24 really speak to the bias that is reflected in the
25 comments during the course of the trial, given the
26 specific circumstances of the complainant in the trial?

1 MR. ADDARIO: Well, okay, there's one of
2 those descriptors I do want to take off the table
3 because there was zero evidence in the case -- there's
4 evidence before you but zero evidence in the case that
5 she was indigenous. It wasn't known to him.

6 MS. PETERSEN: Okay. I believe there's a
7 reference to whether she's living on the reserve or
8 not, but you're right; it doesn't speak specifically to
9 whether she's indigenous.

10 MR. ADDARIO: But I'll -- I'll take the rest
11 of them, and those would all be -- they're all good
12 points, and they're -- can someone escape their class
13 to judge others who have other lived experiences? And
14 I don't think we directly addressed this in evidence
15 because it wasn't in the Notice of Allegations, but I
16 do think that the evidence does show that when he
17 worked with Dr. Haskell, he worked a great deal of -- I
18 have to use the overused word of "empathy". He learned
19 a great deal of trying to imagine how other people have
20 lived experiences that are different than those of a
21 fairly successful 64-year-old white male and how not to
22 judge them based on irrelevant personal
23 characteristics. I don't have the page, but I do think
24 that she -- that would be -- that would be the core
25 work that she would do, that would be limited to people
26 suffering from a specific kind of trauma.

1 MS. PETERSEN: I recall her evidence also
2 talking about -- I think she called it -- class and
3 social location, having worked on that. But I -- my
4 question was more specific to the character reference
5 letters. What value do they really have on that issue?

6 MR. ADDARIO: On that issue, they probably
7 don't take you there. Her evidence is probably more
8 useful to me. But on the -- on the issue of -- of
9 whether or not the Wagar case is the tip of the iceberg
10 for a problem personality, the character letters, I
11 think, give you a lot of comfort that it's not. In
12 fact, it's an aberration for a person who has led a
13 very spirited and an honourable life.

14 THE CHAIR: Thank you, Mr. Addario.

15 MR. ADDARIO: Thank you very much for your
16 patience.

17 THE CHAIR: Ms. Hickey, do you have some
18 reply submissions?

19 MS. HICKEY: Very brief.

20 THE CHAIR: All right.

21 MR. ADDARIO: Associate Chief Justice Smith
22 asked for the paragraph in the interveners' factum
23 saying that stereotypes exist among judges. It's in
24 the coalition factum, paragraph 34, on the footnotes to
25 that.

26 SMITH A.C.J.: Thank you.

1 MR. ADDARIO: Thank you.

2 Reply to Final Submissions by Ms. Hickey

3 MS. HICKEY: Thank you, Associate Chief
4 Justice Cullen and Panel Members. Just a very few
5 comments in reply.

6 Reference was made to the case of Judge
7 Moreau-Berube, and I just wanted to make a couple of
8 points on that one. That was a case, of course, that
9 led to the removal of the judge. It was at the end of
10 a trial; the judge expressed frustration, speaking
11 about members of her own community, the Acadian
12 community. She was speaking without notes. The
13 evidence was clear in that case that there was no
14 intention of impugning the honesty of fellow citizens.
15 That's the evidence that she gave. The Inquiry
16 Committee found that bias had not been established.
17 That's a distinguishing point from what my friends were
18 earlier saying in terms of -- I'm losing my train of
19 thought here on the Justice Moreau-Berube case, but
20 there's no establishment of a bias in the Moreau-Berube
21 case; whereas, here there is the establishment of bias.
22 That's the one point I was trying to make, not very
23 well.

24 My friends indicated that there is no animus in
25 this case, and that's correct. We're not alleging --
26 no one is alleging animus. But no animus is required

1 as a prerequisite to apply the Marshall test. When you
2 look at the three cases, the two at the CJC level and
3 then the Moreau-Berube case, in none of those three
4 cases was there an element of bad faith that was
5 alleged on the part of the -- those three individuals.

6 The final point, perhaps, to end on, and I do take
7 it back to the comment about, The complainant has a
8 fragile personality, and Ms. Savard provided her
9 interpretation that it referred to vulnerability at
10 trial and even perhaps at this inquiry.

11 But, again -- and it may seem like semantics, but
12 so much about this case has been: What has Justice
13 Camp learned in terms of the words that he uses and the
14 messages that he conveys? And he speaks about his
15 vigilance and his learning, and yet when you come back
16 to that one extract, when he says: (as read)

17 The person I most want to apologize to is the
18 complainant. [He then says] the Panel has
19 seen her. She's a fragile personality.

20 That can't be interpreted in terms of the
21 vulnerabilities that she was exhibiting during the
22 trial. And he goes on and says: (as read)

23 By extension, I have caused unhappiness
24 amongst other people.

25 "Unhappiness". Again, the word choice. In terms of
26 something as significant as the damage that was done to

1 this complainant in the evidence that was provided by
2 the complainant at this proceeding.

3 So do Canadians deserve and should they have and
4 will they have public confidence in a Justice Camp who
5 has been remediated and educated? In order to do that,
6 they would need a Justice Camp who has given evidence
7 here, who has proven that he has truly learned. That's
8 the real issue in terms of looking at his evidence and
9 considering everything that is before you. And,
10 unfortunately, it seems that the evidence falls short.

11 And perhaps just to conclude with what Justice
12 Camp himself said, after making a reference to the
13 complainant being a "fragile personality" and causing:

14 Unhappiness amongst other people, mainly
15 women but some men who have been sexually
16 abused.

17 He ended with "Canadians deserve better of their
18 judges". And don't Canadians here deserve judges who,
19 when they read the law and say they understand it, can
20 know how to apply it? That should be an underlying
21 assumption that's a prerequisite for the public to have
22 confidence in the Canadian judicial system.

23 I'll leave my comments there, subject to any
24 questions that the Panel Members may have.

25 THE CHAIR: Thank you, Ms. Hickey.

26 MS. HICKEY: And if not, Associate Chief

1 Justice Cullen, if you'll indulge me, I would like to
2 acknowledge the cooperation of my friends throughout
3 this proceeding. They've been extremely cooperative,
4 and I think it has assisted in leading this process to
5 be as relatively smooth as one could hope for a process
6 of this nature. So I did want to publicly acknowledge
7 the assistance and cooperation of my friends.

8 THE CHAIR: Thank you. I think that then
9 brings this hearing to a close. And I think the
10 Committee too would like to express its indebtedness to
11 both presenting counsel, Ms. Hickey and her colleague,
12 and to Mr. Addario and his colleagues for the effective
13 and efficient way in which they presented their
14 respective cases. It doesn't make our task easier at
15 the end of the day, but it certainly provides us with
16 all the information we need to become informed at the
17 level necessary to make what we hope will be a
18 reasonable recommendation at the end of all of this.

19 We are obviously aware that it's in everyone's
20 interest to draw this process to a close as soon as we
21 possibly can, and we will endeavour to do that. We
22 will, of course, be submitting a report to the Canadian
23 Judicial Council. Copies of that report will, of
24 course, go to counsel and will be posted on the
25 Canadian Judicial Council website in the fullness of
26 time, once we have concluded.

1 I'd also like to acknowledge the great assistance
2 of Owen Rees, who has acted as advisor to the
3 Committee. His assistance has been invaluable, and I'm
4 sure we'll continue to rely on him as we move forward.

5 I'd also like to thank very much Madam Registrar
6 and Madam Reporters for their patience in assisting us
7 with this inquiry.

8 Thank you all, and we'll adjourn now.

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10 PROCEEDINGS CONCLUDED

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Sarah Howden, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 13th day of September 2016.

10

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Sarah Howden



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Sarah Howden, CSR(A)

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Official Court Reporter

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