CANADIAN JUDICIAL COUNCIL

IN THE MATTER OF: **An Inquiry pursuant to section 65 of the *Judges Act* regarding the Honourable Justice Robin Camp**

RESPONSE OF JUSTICE ROBIN CAMP TO THE REPORT AND RECOMMENDATIONS OF THE INQUIRY COMMITTEE TO THE CANADIAN JUDICIAL COUNCIL

(Canadian Judicial Council Inquiries and Investigations By-Laws, 2015, ss. 9)

Frank Addario
Megan Savard
Samara Secter

Addario Law Group LLP
171 John Street, Suite 101
Toronto, Ontario MST 1X3

Tel: 416-979-6446
Fax: 1-866-714-1196

Email: faddario@addario.ca
msavard@addario.ca
ssecter@addario.ca

Counsel to Justice Robin Camp

Table of Contents

1. Introduction

Canadians reasonably expect judges to act with professionalism, compassion and commitment to the ideals of our justice system. They are entitled to independent judges who speak frankly from the bench and seek help from counsel. In this case, Federal Court Justice Camp made mistakes while presiding over a criminal trial. His mistakes were misconduct. The question is how the Canadian Judicial Council should respond.

The Council must decide how to characterize Justice Camp's admitted misconduct and whether recommending removal will serve or frustrate the interests it is mandated to protect.[1] Justice Camp made errors in his judicial role. But he is apologetic and committed to education and improvement. The principles of judicial independence, rehabilitation, public confidence, and proportionality are all engaged here.

Justice Camp submits that a resolution short of removal is the most effective and just outcome. The best way to promote public confidence in the judiciary is to censure his misconduct, endorse his effort to improve and recommend his continued service. He makes three arguments in support of this outcome.

1. Removal is not necessary to preserve public confidence in this case. Justice Camp's misconduct was the product of ignorance, not *animus.* He has worked hard to correct his knowledge deficit.
2. The informed public's confidence is best preserved through censure, education and rehabilitation, not removal.
3. Precedent shows that removal is a remedy of last resort, not a presumptive response.

2. Summary of the facts and issues

Justice Camp faces allegations of misconduct stemming from his comments in the sexual assault trial of *R v. Wagar*. Throughout the trial and in his reasons he made statements about s. 276 of the *Criminal Code,* the complainant's behaviour, Crown counsel, and the gravity of sexual assault. Justice Camp acknowledged that his statements were ill-informed and offensive. He apologized as soon as he learned of the complaints about his comments. He took active steps to remedy his ignorance.

The Council appointed an Inquiry Committee to consider the misconduct and recommend the appropriate sanction. It held a hearing in September 2016. Three nationally-recognized experts testified about Justice Camp's remorse, educational efforts and rehabilitation. Justice Camp apologized, admitted his misconduct and described what he had learned from his counselling.

[1] The Council is not bound by the IC's Report. It can bring its independent judgement to bear to determine the correct outcome: *Report of the Canadian Judicial Council to the Minister of Justice Re Justice Matlow* para. 54-56 [the "*Matlow Decision*"]

Presenting Counsel, appointed to introduce relevant evidence and make submissions, supported Justice Camp's removal. She asked the IC to give little weight to the evidence of rehabilitation and remorse. In urging his removal, she argued that:

- The notoriety of Justice Camp's comments was evidence of their negative effect on public confidence in the administration of justice;[2] and
- The "time frame"[3] of the comments was evidence of their enhanced gravity. She ultimately encouraged the Panel to make an example of Justice Camp, citing the "social context" of his comments as justification for his removal.[4]

The IC largely agreed with Presenting Counsel. In recommending removal, it focused on the gravity of the misconduct and gave little weight to Justice Camp's rehabilitation and education. It did not meaningfully balance the misconduct against the profound effect of recommending removal on judicial independence.[5]

The Council's decision will establish how the judiciary deals with judges who are ethical, but in the rear-guard of normative shifts and therefore blind to the social contexts behind important legal provisions. It must decide whether removal, a sanction previously reserved for the most extreme misconduct, will become a commonly-used tool and, if so, what this will do to the constitutional guarantee of judicial independence.

3. Justice Camp requires an opportunity to make oral submissions through counsel

In deciding this unique case, the Council is bound by the principles of fairness and individual justice like any tribunal governed by the rule of law.

Justice Camp sought an opportunity to make oral submissions to the Council after he received the IC's Report.[6] Executive Director Norman Sabourin rejected his request. He invited Justice Camp to renew his argument for an oral hearing in this Response.[7] Justice Camp accepts the opportunity.

The Council should construe the scope of Justice Camp's right to be heard generously.[8] A high level of procedural protection is required when professional status is at risk. Here, the potential consequences are especially severe because the discipline proceeding is accompanied by publicity and stigma and implicates broader issues of judicial independence. The content and notoriety of the allegations will make it difficult for Justice Camp to resume legal practice if Council recommends removal. He deserves a robust process, commensurate with this reality.

---

[2] Transcript of Submissions of Presenting Counsel, Vol. 6, pg. 435 ll. 25-437 ll.7.
[3] Transcript of Submissions of Presenting Counsel, Vol. 6, pg. 438, ll. 18- 439, ll. 3.
[4] Transcript of Submissions of Presenting Counsel, Vol. 6, pg. 438, ll. 21-23, pg. 449, ll. 25 – 450, ll. 13.
[5] See section 5, below.
[6] Letters from Frank Addario to Norman Sabourin, dated December 11 and 13, 2016.
[7] Letter from Norman Sabourin to Frank Addario dated December 19, 2016 ["Sabourin Letter"].
[8] *Moreau-Bérubé v. New Brunswick,* 2002 SCC 11 at para. 75 ["*Moreau-Bérubé"*]

The Council is the court of first instance and the final decision-maker.[9] Natural justice demands that the judge have a meaningful, personal opportunity to make his case before the body that decides his fate. The risk of unfairness is heightened if Council seeks input from the IC, pursuant to s. 12 of its bylaws, without hearing directly from Justice Camp's counsel.[10]

On behalf of the Council, Mr. Sabourin confirmed that it has the flexibility to hold an oral hearing in exceptional circumstances.[11] It is doubtful that exceptional circumstances are required to trigger the right to oral submissions, given the career-ending potential of the proceedings. In any event, these are exceptional circumstances. The notoriety, the evidentiary and policy issues, and the extent of remorse and rehabilitation make this a highly unusual case. Justice Camp is the first judge to fight for his office and his reputation, after being denied an opportunity to make oral submissions, since the Council amended its bylaws in 2010. Council should not deny him an opportunity to make oral submissions because the bylaws are now silent.

4. Removal is not necessary to preserve public confidence in this case

Justice Camp's misconduct was the product of ignorance, not *animus.* His legal decision-making was reasonable. He apologized and rehabilitated himself. In the circumstances, the ultimate sanction of removal is counterproductive.

a) Justice Camp's conduct does not show *animus*

Justice Camp asks the Council to find that his misconduct was the product of unconscious bias and remediable ignorance. This finding is important because it affects the assessment of the 'gravity' of the misconduct and the appropriateness of removal.

The IC concluded that Justice Camp's conduct was "not just about 'remediable ignorance', 'knowledge deficits', 'unconscious bias', or 'insensitive and inappropriate' comments. Rather, it is a failure to grasp what is at the core of the judicial role: the imperative to act with impartiality and in a way that respects equality according to law."[12] Its conclusion is flawed in three ways.

First, the fact that a judge's ignorance touches on a 'core' aspect of the judicial role is not a basis on which to assume the flaw arises from disqualifying *animus*. Criminal court judges commonly fail to understand 'core' aspects of their job, such as the burden of proof, the presumption of innocence and the need to apply equal scrutiny to Crown and

[9] *Matlow Decision* at paras. 54-56.
[10] In his December 19, 2016 letter, Mr. Sabourin explained that s. 12 provides a mechanism for Council to explore questions arising from an IC report or a judge's response. He said, "should the matter be referred back [to the IC], the judge would have the opportunity to make representations *to the Committee* in respect of the issues raised by Council" [emphasis added]. If the Council has questions, the IC cannot fairly consider 'both sides of the argument.' Fairness demands that Justice Camp have the chance to address the Council's questions and its overall decision in oral argument.
[11] Sabourin Letter, p. 2.
[12] Report and Recommendation of the Inquiry Committee to the Canadian Judicial Council Regarding Robin Camp, para. 287 ["IC Reasons"]

defence evidence.[13] These 'core failings' could be characterized as antipathy and disdain for the s. 11(d) presumption of innocence and by parity of reasoning, those judges could be removed from the bench on the basis of *animus*. Yet most are not subject to discipline, let alone removal. Their errors are dealt with on appeal.

The IC could not reasonably reach the conclusion that ignorance about sexual assault myths (which by definition are widely held) reflects a fundamental character flaw and *animus* toward the law, given that ignorance about *other* essential aspects of judging merely require appellate correction or education to maintain public confidence.

Second, the IC did not think the distinction between conscious and unconscious bias was useful to its decision.[14] It said, "it is clear that Justice Camp held a bias, whether conscious or unconscious, in the form of an antipathy towards the present laws governing sexual assault trials,"[15] that "the comments, whether or not they were a product of unconscious bias, undeniably promote discredited sexist stereotypes,"[16] and that Justice Camp's bias "whether conscious or not led him to express disdain for the law in its current state."[17]

Justice Camp submits there is a difference. Unconscious bias is inherently more remediable. Once revealed to the bias-holder, it can be fixed if the subject is motivated to change. Conscious bias is irremediable because the consciously-biased person is aware of her underlying belief and does not care enough to discard it. She makes unambiguous statements, intending to denigrate the person or group that is the subject of her bias. The wilfulness (or not) of the sexism behind Justice Camp's offensive remarks is a relevant factor that speaks directly to his moral blameworthiness.

One example of a consciously-biased judge is Justice Bienvenue. During the murder trial of a woman accused of killing her husband, the judge made statements conveying a sexist stereotype that idealized and demeaned women compared to men, and said, "even the Nazis did not eliminate millions of Jews in a painful and bloody manner. They died in the gas chambers, without suffering."[18] After the misconduct was brought to his attention, the judge apologized, but only *for causing offence*. Unlike Justice Camp, he did not disavow the comments or admit he was wrong. He stood by his beliefs in subsequent media interviews and at his Inquiry Committee hearing.

---

[13] See for example: *R v. Hilton*, 2016 ABCA 397; *R v. Gostick* (1999), 137 C.C.C. (3d) 53 (Ont. C.A.); *R v. Gupta,* 2007 CanLii 45711 (Ont. S.C.); *R v PJ*, 2007 CanLii 36070 (Ont. S.C); *F.(S.) v. R.*, 2007 PESCAD 17; *R. v. F.(J.)*, 2003 CanLII 52166 (Ont. C.A.); *R. v. Owen*, 2001 CanLII 3367 (Ont. C.A.)

[14] The concept of "unconscious bias" has been studied for years and written about by academics and popular writers alike. In her evidence, Justice McCawley described unconscious bias as a belief that we are "open minded and socially aware" but that in reality, we still hold traditional and inappropriate thinking — "vestiges of those things that we grew up with that might not serve us well now" (Transcript Vol 3, pg. 95, ll. 24- pg. 96, ll.22).

[15] IC Reasons, para. 104

[16] IC Reasons, para. 276

[17] IC Reasons, para. 108

[18] Report and Recommendation of the Inquiry Committee to the Canadian Judicial Council Regarding Justice Bienvenue, pg. 25

In this case, the IC's choice to disregard the distinction between conscious and unconscious bias led it to draw an inapt analogy between Justice Camp and Justice Moreau-Bérubé. The IC found that Justice Camp's "impugned remarks, like those of Judge Moreau-Bérubé, could not have been made without thought" because he made them over the course of a trial and in his reasons.[19] Justice Camp admits his comments were intentional, not accidental. The difference between Justice Camp and Judge Moreau-Bérubé is that of *motivation*. Justice Camp's comments were motivated by his lack of understanding, not a desire to denigrate the group that was the subject of his bias. There was no allegation and Presenting Counsel did not attempt to prove that he was a preferential bigot. Had the IC wanted to draw this conclusion, it needed evidence from the witnesses or an admission from Justice Camp. There was *no* such evidence. The reasonable inference is that Justice Camp's expressions of bias were unconscious.

Third, the inference the IC drew about Justice Camp's attitude toward equality and impartiality was tainted by procedural unfairness. Justice Camp's testimony was curtailed by the principle of judicial reasoning immunity, which creates an absolute prohibition on questions that ask judges 'why they made the decision they did.'[20] It is an absolute immunity that exists to benefit the public, not individual judges. Justice Camp 'asserted' it, in that he drew it to the IC's attention and argued for its application, but it was not his to waive. He could only have testified about his reasoning if the IC ruled (pursuant to *Marshall* and *McKeigan v. Hickman*) that it did not apply.[21] As a result, he did not testify about aspects of the *Wagar* evidence that troubled him or his reasons for making certain comments. This was appropriate, as Mr. Wagar's charges were still before the court.

The IC could either accept that the immunity necessarily foreshortened the evidence about Justice Camp's motivation, or it could rule that the immunity did not apply.[22] The IC was prepared to assume it applied.[23] As a result there was no evidence about his motives or case-specific thinking, one way or the other, apart from what was in the *Wagar* trial transcript. Instead of accepting this, the IC inferred the worst about Justice Camp about an issue not alleged in the Notice of Allegations or specified in particulars.

The IC's conclusion that Justice Camp had disrespect or antipathy for the values the law was trying to achieve is unreasonable on this record.[24] Expressing frustration or even antipathy toward a law is not the same as having incorrigible disdain for the constitutional precepts the law reflects. This is particularly true when the judge does not understand the social context behind the law. The Council should make an independent assessment of Justice Camp's 'underlying motivation.' In line with fairness, the Council

[19] IC Reasons, para. 333
[20] Inquiry re Hart, Jones and Macdonald (August 1990), pp. 22-23 ["*Marshall Decision*"].
[21] Transcript of the Inquiry Committee, Vol. 4, pg 254-255. *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796.
[22] The limited case law suggests judicial reasoning immunity may not apply where the judge's underlying motivation is central to the inquiry and where there are sufficient procedural safeguards to preserve judicial independence: *MacKeigan v. Hickman,* para. 72 per McLachlin J. (as she then was); *Marshall Decision,* pp. 22-23; *Allen v. Manitoba (Judicial Council),* [1993] M.J. No. 29 (C.A.).
[23] Transcript of the Inquiry Committee, Vol. 4, pg 254-255
[24] IC Reasons, para. 289

should acknowledge the alternative plausible explanations offered by counsel,[25] and the evidence of Justice Camp's good character, educational commitment and the apologies he made after being confronted with evidence of his bias.

b) Justice Camp made reasonable legal decisions

Justice Camp asks the Council to find that he made reasonable legal decisions, particularly regarding the application of s. 276 of the *Criminal Code*. This finding, if made, would be an important factor for the Council to consider in deciding how bad the misconduct was and whether it amounted to true 'antipathy' for Canadian values.

As Professor Cossman pointed out, Justice Camp's application of the provision was legally reasonable.[26] He declined to apply s. 276 three times where it did not apply and *did* apply it in one borderline instance to the Crown's benefit.

The Alberta Court of Appeal did not rule on Justice Camp's s. 276 analysis

The Court of Appeal found no specific errors in Justice Camp's conduct of the trial. Its ruling that "the trial judge's comments…gave rise to doubts about the trial judge's understanding of the law"[27] permits the Council to draw its own conclusions. This is especially true, given that the Court heard the Crown appeal *ex parte* and did not appoint *amicus* to argue Wagar's position, despite its 'discomfort' with proceeding in this fashion. The Crown raised grounds of appeal that were legally unavailable[28] and, as Professor Cossman's evidence shows, legally contentious regarding s. 276.[29]

The IC wrongly concluded the Court of Appeal's decision was correct *and* legally binding.[30] In fact, the judgment is just one piece of circumstantial evidence. As evidence, it is entitled to almost no weight because Justice Camp was not a party to the appeal. Consistent with fairness, it is not admissible as 'evidence' of the unreasonableness of Justice Camp's legal analysis.[31]

Justice Camp's legal reasoning is relevant to the Council's inquiry

Justice Camp submits the quality of his decision-making is highly relevant and urges the Council to reject the IC's contrary finding.[32] Whether he misunderstood or disagreed with the effect of s. 276 (or any legal principle in the *Wagar* case), Professor Cossman's

---

[25] The IC appeared to misunderstand that Justice Camp was offering 'plausible alternatives' through counsel's submissions, and instead treated these parts of his submissions as contradictory to or "discordant" with his evidence: see, for instance, IC Reasons, paras. 47-49, 118, 145-151 and 158.
[26] Transcript of the Inquiry Committee, Vol. 3, pg. 181, ll. 18- pg. 182, ll. 4
[27] *R. v. Wagar,* 2015 ABCA 327 at para. 4.
[28] The Crown argued, and the Court of Appeal accepted, that Justice Camp misapprehended the evidence, an error which, if it existed, is not a cognizable ground of appeal for the Crown: *Criminal Code,* s. 676(1).
[29] Comparing *R v. Wagar*, 2015 ABCA 327 at para. 4 to Transcript of the Inquiry Committee, Vol. 3, pg. 181, ll. 18- pg. 182, ll. 4
[30] IC Reasons at paras. 79-80.
[31] *Joseph Groia v. Law Society of Upper Canada*, 2015 ONSC 686, beginning at para. 122 and *British Columbia (Attorney General) v. Malik,* 2011 SCC 18, at para. 7
[32] IC Reasons, paras. 82-84.

evidence shows he respected the law enough to apply it reasonably. This mitigates the gravity of the misconduct and should inform an assessment of his 'curability' and impartiality.

c) Justice Camp is remorseful, educated and rehabilitated

The Council should accept that Justice Camp's rehabilitative efforts were sincere and effective. It can decline to rely on the IC's doubts on this point in favour of the unchallenged opinions of Justice Deborah McCawley, Dr. Lori Haskell and Professor Brenda Cossman, all of whom spent considerable time with Justice Camp.[33]

The IC found that Justice Camp "made some comments that raise concern about his understanding of the issues implicated by his conduct, and the extent to which he fully absorbed what he said he had learned."[34] Its concerns are unwarranted for three reasons.

Viva voce evidence is not the best way to assess psychological growth

It is difficult to get a full picture of Justice Camp's rehabilitative success from his testimony alone. Oral evidence in a formal hearing is always awkward and artificial, all the more so where the topic is sensitive (exploration of psychological and personal growth) and tempered by concerns about maintaining judicial dignity and immunity.

In assessing Justice Camp's testimony, the Council should not give it the worst possible interpretation. The IC accepted that it is not appropriate "to parse the Judge's words and infer biased thinking where an alternative plausible explanation for the impugned remarks has been proffered"[35] but then did just that. It found that "Justice Camp's characterization of himself as 'old-fashioned and outdated', as opposed to 'sexist' and 'gender-biased' reflected an ongoing resistance to the idea that his comments reflected rape myths and contributed to *women's* inequality."[36] It accepted Presenting Counsel's submission that Justice Camp's use of the term "old-fashioned" meant he had "resiled" from the teachings of Dr. Haskell and Justice McCawley.[37] It stated:

> It is difficult to understand how Justice Camp could conclude – particularly after his intensive sessions with Justice McCawley, Dr. Haskell and Professor Cossman – that his acknowledgement of misconduct did not involve sexism and gender bias, and that it did not implicate profound issues of equality. His evidence leaves the Committee doubtful

[33] The Council can interfere with factual findings and inferences made by an Inquiry Committee if it has a "good reason" to do so: *Matlow Decision* at para. 53
[34] IC Reasons at para. 314
[35] IC Reasons at para. 204
[36] IC Reasons, at para. 318
[37] IC Reasons, at para. 321. Presenting Counsel also made the submission that Justice Camp's reference to the complainant's 'fragility' was the "most troubling" aspect of his testimony, indicative of stereotypical thinking [Transcript of the Inquiry Committee, Vol. 6, pg. 445, ll. 8- pg. 446, ll. 13]. Judges and law societies all use the term "fragile" to describe vulnerable witnesses or litigants. There was no negative inference to be drawn here. See, for instance, Law Society of Upper Canada, *The Provision of Legal Services in Cases Involving Sexual Abuse an Educational Guide for Lawyer's and Paralegals*, January 2012, at pg. 15. Also see as examples: *R v. Saddleback*, 2013 ABCA 250 (at paras. 10, 23), *R v. Santhosh*, 2014 ONSC 1802 (at para. 16), *R v. Paxton,* 2012 ABQB 96 (at paras. 68, 462, and 478).

about whether he is fully engaged in the necessary ongoing process of constant self-reflection about which Dr. Haskell testified and which the public has a right to expect of members of the judiciary.[38]

The Council should not rely only on Justice Camp's choice of words at the IC hearing to assess rehabilitation. This puts too high a premium on an infelicitous word choice, a standard that is seen as unfair when otherwise reviewing a judge's choice of words.[39]

There was uncontradicted evidence that Justice Camp was teachable and engaged

Justice McCawley, Professor Cossman and Dr. Haskell described Justice Camp's teachability and willingness to learn as follows:

- Justice Camp was highly motivated to learn the materials, and wanted to discuss the [social context] readings with Justice McCawley;[40]
- Justice Camp did independent research and reading;[41]
- Justice McCawley assessed Justice Camp as "very teachable", "very amenable to learning and "very sincere and committed";[42]
- Justice Camp recognized the inappropriateness of his questions and comments during the *Wagar* trial and his understanding deepened over time;[43]
- Justice Camp developed "future strategies" regarding alternative language with Justice McCawley;[44]
- Justice Camp was "teachable" and "absolutely open" to learning the history of sexual assault law from Professor Cossman;[45]
- Justice Camp's motivation to examine gender assumptions and biases was "very high";[46]
- Justice Camp was "teachable" and "very motivated" to learn about the neurobiology of fear and trauma and the responses victims have to sexual violence;[47] and

---

[38] IC Reasons. This statement is particularly unfair as Justice Camp *did* admit to being "subject to prejudiced thinking" (Transcript, Vol. 5, pg. 313, ll. 17-19) and agreed that his comments reflected a "gender bias that [he] didn't realize [he] had" (Transcript Vol. 5, pg. 312, ll. 9-13) He admitted that "at a deeper, instinctive level" his "thinking was biased and prejudiced" (Transcript Vol. 5, pg. 318, ll. 6-11). He acknowledged that the comments he made tended to belittle women and reveal biased and stereotypical thinking" (Transcript Vol. 5, pg. 324 ll.22- pg. 325 ll. 1). Counsel offered a plausible alternative explanation for certain aspects of Justice Camp's testimony at Transcript Vol. 7, pg. 473.

[39] As noted by Bastarache J in *R. v Stirling*, 2008 SCC 10 at para. 13, "it is inappropriate for an appellate court to read a single passage out of context, and the reasons as a whole must be evaluated in order to determine whether an error has occurred." Bastarache J cited with approval the following comments from *R. v Davis*, [1999] 3 SCR 759, 179 DLR (4th) 385: "It is not sufficient to 'cherry pick' certain infelicitous phrases or sentences without enquiring as to whether the literal meaning was effectively neutralized by other passages. This is especially true in the case of a judge sitting alone where other comments made by him or her may make it perfectly clear that he or she did not misapprehend the import of the legal principles involved."

[40] IC Reasons, para. 302

[41] *Ibid*.

[42] *Ibid*.

[43] *Ibid*, para. 303

[44] *Ibid*, para 304

[45] *Ibid*., para. 306

[46] *Ibid*., para. 312

- Justice Camp "really wanted to have an in depth understanding of his mistakes".[48]

The Council should assess the success of Justice Camp's rehabilitation holistically and with deference to the experts who assessed Justice Camp in environments conducive to getting at the truth on this sensitive topic.

The apologies and character evidence support the conclusion that Justice Camp's rehabilitation was successful

The Council should consider the positive evidence of Justice Camp's self-awareness and instinct for self-improvement in assessing the effectiveness of his rehabilitation.

A unique feature of this case is Justice Camp's instant, repeated and sincere apologies. He was quick to acknowledge that he failed in his judicial duty. He apologized as soon as he was confronted with the law professors' complaint. As he came to understand the depth of his error, he apologized again and more fully. His apologies developed in exactly the way one would expect from an ethical jurist confronted with an unknown personal failing, who gradually comes to understand the nature of the problem.

The Council should also give weight to the character evidence about Justice Camp, which paints a picture of someone with a sense of justice and fair play, an inclusive, curious personality, respect for diversity and a genuine desire to do the right thing:

- The Agreed Statement of Fact and one character letter detail Justice Camp's active commitment, as a barrister in South Africa, to the anti-apartheid struggle.[49]

- Cassandra Malfair, a Crown Attorney whose practice focuses on prosecuting sexual assault cases, knew Justice Camp before and after the *Wagar* trial. She wrote a letter attesting to his character, despite knowing first-hand the effect this might have on complainants whose claims she was prosecuting. She described him as a person who "nurtures and encourages the less powerful" and offered her experienced view that with the benefit of education, Justice Camp would "readily empathize" with victims.[50]

- Several of Justice Camp's former colleagues gave opinions about his character as a practicing lawyer. They describe him as intelligent, honest, fair, respectful and accommodating of diverse backgrounds and perspectives. He fit in well at a diverse firm, founded by four partners, one of whom was a woman and two of whom were gay men.[51] Many letter-writers maintain friendships with Justice Camp. They offered their insights into the dedication and humility with which he approached the complaint and Inquiry process.

---

[47] *Ibid*., para 311-312
[48] *Ibid*.
[49] Agreed Statement of Facts, Exhibit 1 at p. 1; Character letter of Sabri Shawa, Exhibit 2R2 at p. 2.
[50] Character letter of Cassandra Malfair, Exhibit 2R20.
[51] Character letters of Shawa, Jensen, Petriuk, Aspinell, Hawkes, Ho, Davis, Exhibit 2R.

- Dr. Mitchell Spivak, a psychiatrist, sat in on a sexual assault case presided over by Justice Camp in the Alberta Provincial Court. He offered the opinion that Justice Camp dealt with a difficult case and a challenging complainant in a manner that was "accommodating" and "respectful."[52]

- Counsel who appeared before Justice Camp when he was a Provincial Court judge describe him as respectful and eager to learn if sometimes overwhelmed by the intricacies of Canadian criminal law.[53] One lawyer described how Justice Camp asked her for a tour of the Calgary Remand Centre after he realized he "did not have any background on what actually happened to inmates" there.[54]

- Many of Justice Camp's former students and staff from the Provincial Court wrote letters attesting to his treatment of his co-workers and their observations of him in court.[55] They describe his courtroom demeanour as frank but courteous and respectful, fair and honest. In chambers, he was sometimes informal but never condescending or disrespectful. He displayed interest in their careers and welcomed their suggestions and input on how to become a better judge.

The character evidence is entitled to considerable weight in determining the degree of misconduct – in this case, the interpretation of Justice Camp's comments. As a majority of the Council wrote in its recommendation to the Minister in *Matlow*:[56]

> Character is certainly relevant to the assessment of a judge's attributes…While these letters are not relevant to whether the conduct complained of occurred, they may be relevant to why the acts occurred, the context of the acts, and whether the acts were *committed without malice or bad faith*.

The Council's task is to decide whether Justice Camp holds a bigoted outlook or committed a remediable lapse of judgment and sensitivity. The character letters are positive evidence of the latter, instructive of his true character.

5. The informed public's confidence is best preserved through censure, education and rehabilitation, not removal

Under the *Judges Act,* the appropriateness of removal is tested objectively and assessed from the "standpoint of what an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude."[57] The informed person favours positive institutional change over the quick fix of removal. She is not influenced by poorly-informed or short-term public outrage. She is sensitive to the fact that recommending the removal of a rehabilitated judge sends the wrong message – that rehabilitation and education are unimportant.

---

[52] Character letter of Dr. M. Spivak, Exhibit 2R7.
[53] Character letter of Bill Wagner, Exhibit 2R10; see also character letters of O'Shaughnessy, Dunn, Lutz, Exhibit 2R.
[54] Character letter of M. O'Shaughnessy, Exhibit 2R12 at p. 2.
[55] Character letters of Balanquit-Bernardo, Scott, Kluz, Krawchuk, Boyd and Alary, Exhibit 2R.
[56] *Matlow Decision*, para. 150. [emphasis added]
[57] *Matlow Decision,* para. 172

Justice Camp submits that the informed person will almost always prefer the continued service of a rehabilitated judge who admits his misconduct and works hard to remedy its cause after the complaint and before he resumes sitting. To prefer removal in these circumstances would be counterproductive.

a) The informed public prefers positive institutional change to the quick fix of removal

Presenting Counsel argued that this case is "not really about Justice Camp. Rather, it is about the integrity of a system which is fundamental to the rule of law and to democracy."[58] If this is true, the Council must consider the larger context.

While the Canadian judicial system is one of the world's fairest, the evidence and authorities show that Canadian judges are not completely free from the type of thinking for which Justice Camp faces sanction.[59] Indeed, the IC accepted the Intervener Coalition's submission that systemic discrimination against sexual assault complainants persists in the criminal justice system.[60] The Council must confront public concern about the issue. It cannot assume in the face of the available information that the public sees Justice Camp as the beginning and end of the problem. Removing one judge who displays bias in relation to a frequently misunderstood group will not satisfy the public that the problem is 'fixed.'

The following context is relevant to the Council's assessment of Justice Camp's misconduct:

In Alberta alone, at least four other judges in the last few years have been overturned on appeal for their reliance on sexual assault myths and stereotypes:

- In *Adepoju*, the Alberta Court of Appeal overturned a sexual assault acquittal. The trial judge described the complainant's evidence as follows: "She testified that she gave in because of his persistence and to get it over with." He found that the Crown had failed to prove the absence of consent.[61] The Crown successfully submitted that the trial judge "calling the unwanted advances "persistence" perpetuated a rejected myth that "no" means "try harder"".

[58] IC Reasons, para. 260.
[59] In saying this, Justice Camp is mindful of the fact that it is virtually impossible (and unwise) to amass empirical evidence on myth-based thinking in the judiciary and justice system, or on 'what the public wants' as a solution. Inferring the wishes and preferences of the informed public is always a matter of drawing reasonable inferences based on available information.
[60] Despite this, the IC rejected Justice Camp's counsel's submission that his form of unconscious bias was "common among participants in the criminal justice system" – a submission made on the strength of Dr. Haskell's evidence (Transcript Vol. 3, pg. 204-205) and Presenting Counsel's Expert's social science finding that judges in all jurisdictions continue to express myths and stereotypes and misapply the law. (See Benedet, Janine. "Sexual Assault Cases at the Alberta Court of Appeal: The Roots of *Ewanchuk* and the Unfinished Revolution" (2014) 52 *Alberta Law Review* 127-144 at pg 142): IC Reasons, para. 322.
[61] 2014 ABCA 100, para. 2

- In *CMG,* Justice Martin (as she then was) ordered a new trial in part because the "prospect loom[ed] large that the trial judge [was] employing impermissible myths and stereotypes" in reaching his decision.[62] The trial judge made comments that the complainant "did not scream or run" and that the complainant's aunt "did not notice a change in [the complainant's] behavior". Justice Martin (as she then was) found that these comments suggest there is a particular way in which "real victims of sexual violence would behave." She found that the trial judge's comments in the case at bar illustrate "how quickly such myths and stereotypes can be engaged."[63]

- In *G(AD)*, the Court of Appeal ordered a new trial for a man acquitted of sexual offences against his daughter and stepdaughters. It criticized the trial judge for questioning "why these young ladies didn't raise this issue at all with anyone…"[64]

- In *R(J)*, Justice Topolniski overturned the defendant's acquittal and entered a conviction for sexual assault against a 15-year-old complainant. She found that "the trial judge erred by assessing the evidence with resort to prohibited stereotypical reasoning and misapplying the law of consent."[65] The trial judge observed that the complainant did not "disclose dismay after hearing the Respondent's disrespectful comments", did not "avoid walking the same path as the accused", did not "call for help to a nearby janitor or passersby" did not "appear upset", did not "communicate any serious objection clearly to the accused", and "texted her friend later that day using the 'smiley face with tears' emoji and acronym for laughing my ass off."[66]

In Ontario, the Court of Appeal recently overturned a sexual assault acquittal in part because the judge used "irrelevant stereotypes" to make adverse findings against the complainant. In particular, the judge found that the complainant "certainly did not give [him] the impression that she was in any way an abused woman or that she was insecure.[67]

The IC misunderstood Justice Camp's submission regarding the prevalence of this kind of misconduct.[68] It is not that the gravity of Justice Camp's misconduct is lessened by other judges' similar misconduct. The point is that public confidence will not improve with the removal of just 'one bad apple' where there is reason to believe there are others.[69]

The informed public understands that it is counterproductive to remove judges who publicly acknowledge and learn from their mistakes. Positive institutional change is

---

[62] 2016 ABQB 368, para 67
[63] 2016 ABQB 368, paras. 66-67
[64] 2015 ABCA 149
[65] 2016 ABQB 414, para. 2
[66] *Ibid*., para. 25
[67] *R v. CDH*, 2015 ONCA 102, para. 17
[68] IC Reasons, para 324
[69] There are differences between the cases listed above and Justice Camp's case. Counsel will explain in oral argument why none of these differences impact the strength of argument in this section or Justice Camp's overall position.

achieved by realistic measures. The message Justice Camp's removal would deliver is that judges should not be vocal about their knowledge deficits.[70]

b) Public outrage is not determinative of public confidence or the necessity of removal

The Supreme Court recently explained the danger of relying on public clamour and media opinion-leading in the context of another constitutional guarantee – s. 11(e) of the *Charter* (the right to reasonable bail). Justice Wagner explained that judges must be cautious about relying on public and media outrage. He noted its unreliability as an indicator of what justice requires, in part due to the chain reaction potential of social media-propelled opinions and the risk of mob justice based on ill-informed reports.[71]

This observation is apt in the Camp matter, where the significant pre-hearing publicity was based on the opinions of those who wrote complaints and the Alberta Court of Appeal's *ex parte* ruling and Crown factum. The possibility of Justice Camp having been correct about the law was never publicly discussed. A particularly misogynist misquote from the Crown factum was circulated in the press, eventually finding its way into the Notice of Allegations, before being withdrawn on the first day of the Inquiry.[72] There was virtually no public discussion about Justice Camp's rehabilitation.

In assessing the degree to which public outrage can inform its assessment of 'public confidence' under the *Judges Act,* the Council may wish to consider that judges are often asked to make hard and unpopular decisions. If public outrage was determinative of public confidence, independence and impartiality would be illusory. To accept this point is not to endorse Justice Camp's admitted misconduct but to defend the wider principle that the Council should be reluctant to respond to organized attacks on the judiciary and mindful of the chilling effect of being seen to do so.[73]

c) Recommending removal for a rehabilitated judge sends a message that rehabilitation and education are unimportant.

The informed person is sensitive to the perspective of equality-seeking Canadians. She also believes in rehabilitation and education. It is a logical leap to assume that equality-

---

[70] The IC Reasons reinforce the lesson that judges should keep their mouths shut. For instance, in relation to Justice Camp's alleged criticisms of s. 276, the IC found his comments "stemmed from a limited understanding" and a lack of "thoughtful analysis": see IC Reasons, para. 88. Its message, that only 'adequately informed' judges are entitled to criticize the law, will deter judges who fear they are not 'experts' in the field from voicing their opinion.

[71] *R v. St. Cloud*, 2015 SCC 27, para. 82

[72] Prior to the hearing, the Notice of Allegations attributed Justice Camp as stating: "Young wom[e]n want to have sex, particularly if they're drunk." The IC concluded that this summary was inaccurate and altered Justice Camp's meaning (IC Reasons, para. 92). Despite the correction, several media outlets continued to reproduce the misquote. See, for example: https://www.washingtonpost.com/news/worldviews/wp/2016/09/12/judge-apologizes-for-asking-accuser-in-rape-case-why-she-couldnt-keep-her-knees-together/?utm_term=.9cd8fb79e377

[73] On November 9, 2015, Professors Craig and Woolley penned the op-ed "Myths and Stereotypes: Some Judges Still Don't Get It" (See Exhibit G). On the same day, Craig and Woolley (with other professors) wrote a letter of complaint to the Council (See Exhibit E1). The other complaints against Justice Camp included petitions organized by legal academics (See Exhibits E55 and E69).

seeking groups will only be satisfied by the most severe sanction. The informed public, aware of the steps that Justice Camp undertook after the *Wagar* trial, can have its confidence preserved by witnessing a judge undergoing re-education with sincerity.

Education maintains public confidence generally – it works, and all judges need it

Justice Camp submits that his demonstrated need for social context education, on its own, is not an aggravating factor or an indicator of judicial unfitness. All judges need education.

It is now widely recognized that continuing judicial education is essential and effective. One reason the judiciary provides continuing education is because it recognizes that no judge starts off from a perch of flawlessness and that judges can be taught things they do not know. Commentators on Canadian and international judicial education extol the value of education in addressing deficits in judicial knowledge. These include social context issues, such as those relating to gender. They also recognize the necessity that such education be ongoing.

It is axiomatic that judges do not know everything about the law on appointment. Judicial education is necessary for judges to address their knowledge gaps in areas of law they have never practiced and about which they know little to nothing.[74] As noted by Chief Justice Russell of the Missouri Supreme Court,

> When lawyers don black robes to become judges, they do not magically acquire all the knowledge, experience, and skills necessary to become excellent judges. They may come to the bench with a particular expertise in the law, but certainly not an expertise in *all* areas of the law. They have had certain lifetime experiences and obvious limitation in decision-making. It is because of this reality judicial education is imperative.[75]

'Social context' education is intended to encourage judges to confront their biases.[76] As Justice McCawley testified, this can be a "frightening experience and a difficult one"[77] but "all judges need social context training."[78] Many judges and judicial educators have written on the primacy of social context education in addressing judicial biases.[79]

The premise of social context education is that judges can and should be educated about pervasive sexual assault myths. These are difficult concepts for any person (judge or not) without the lived experience of victimization to intuit. The Council and the NJI now offer courses and materials on this subject.[80] If judges could not be educated on social context

[74]M.R. Russell C.J., Toward a New Paradigm of Judicial Education, 2015 J. Disp. Resol. 79 2015; see also G.A. Kennedy J., Training for Judges?, 10 U.N.S.W.L.J. 47 1987, at p. 48-50.
[75] Russell C.J. at p. 79 (emphasis added and emphasis in original).
[76] Kennedy at p. 57-58.
[77] Evidence of Justice McCawley, Transcript of the Inquiry Committee, Vol. 2, pg. 94, ll. 9-22.
[78] Evidence of Justice McCawley, Transcript of the Inquiry Committee, Vol. 2,, pg. 100-101.
[79] See K. Mahoney Q.C., Judicial Bias: The Ongoing Challenge, 2015 J. Disp. Resol. 43 2015, at pp. 48, 66-69; see also L. Armytage, Educating Judges—Where to From Here?, 2015 J. Disp. Resol. 167 2015; Kennedy at pp. 57-58.
[80] Evidence of Justice McCawley, Transcript of the Inquiry Committee, Vol. 2,at pg. 103, ll. 7-22; Evidence of Dr. Lori Haskell, Transcript of the Inquiry Committee, Vol. 3, at pg. 194, ll. 16-18; T.B.

and sexual assault myths and realities, there would be no point in providing this type of continuing education.

Finally, it is generally accepted that judicial education must be ongoing in order to have substantial and lasting effects.[81] This is because "[j]udges inhabit a continually changing environment where legal principles meet life in all its vicissitudes."[82]

Education as a sanction can restore public confidence in discipline settings

The public's preference for education and rehabilitation over removal is consistent with the forward trend in judicial regulation. The Council has publicly acknowledged the value of lesser sanctions for judges and encouraged Parliament to formalize them in the *Judges Act*. These would include the authority to order the judge to apologize or take specified measures, including counselling, coaching, treatment or training.[83] It said:

> The Council is of the view that remedial measures and sanctions, as appropriate, will enhance public confidence in the judiciary and its ability to oversee the conduct of judges.
>
> Indeed, a judge who engages in misconduct and is sanctioned for that misconduct cannot be said to lose his authority or the public confidence to act. This is because the very act of imposing a sanction is a result of a decision, by the judge's peers (and lay persons) that no further action needs to be taken and that the judge can continue to hold office. This public vote of confidence is a critical part of the remedial process and is infinitely preferable to removal of a judge where the gravity of the misconduct does not so warrant. Such action restores confidence not only in the judge but in the judiciary as a whole.[84]

The IC accepted that Justice Camp made sincere, repeated apologies and engaged in intensive counselling and education with an honest desire to cure his non-judicial thinking. While it expressed doubt about the success of his treatment (a doubt Justice Camp submits was improperly arrived at[85]), it did not reject the evidence of his teachers who described him as motivated and thoroughly educated.

Prior Council decisions reinforce the principle that education can restore public confidence even where a judge makes highly offensive comments.[86] The same principle

---

Dawson, Judicial Education: Pedagogy for a Change, 2015 J. Disp. Resol. 175 2015, at p. 179; J. Billingsley et al., Timor-Leste Legal Training Assessment: Social Context in the Formal Justice System, UNDP Timor-Leste Justice Systems Programme, (undated), at p. 30.

[81] Dawson at p. 176; Billingsley at pp. 30-31. Evidence of Justice McCawley, Transcript of the Inquiry Committee, Vol. 2,at pg. 100.

[82] Dawson at p. 176.

[83] Council Proposals for Reform to the Judicial Discipline Process– paras. 3.8.5 Indeed, Council has handed out sanctions short of removal in cases of serious misconduct. In the *Matlow* decision, the majority of the CJC directed Justice Matlow to apologize, attend seminars and obtain permission from the Advisory Committee on Judicial Ethics before embarking into public debate. *Matlow Decision,* at para. 186.

[84] Council Proposals for Reform to the Judicial Discipline Process– paras. 3.6.3 and 3.6.4.

[85] See section 4 (c) of our submission above.

[86] The *Barakett* case is a good example. In 2002, the Council wrote a public letter to Justice Barakett, who had made multiple offensive and derogatory comments about Aboriginal culture in a custody case. The Panel had expressed concern that the judge's conduct "did not involve merely an isolated outburst but a series of inappropriate comments." It thought his comments "may reflect an underlying bias against

governs in other disciplinary contexts. In *Law Society of Upper Canada v. Anber,*[87] Professor Constance Backhouse emphasized the importance of encouraging professionals to learn from their mistakes. She said:

> It would be difficult to find an example of a lawyer, guilty of misconduct, who had more fully made amends, re-educated himself, stepped up to compensate his client, apologized, and taken public responsibility for his misconduct. This Lawyer has left no stone unturned in his efforts to repair the damage his misconduct caused.
>
> […]
>
> Responsibility and reparation are also important general messages that need to circulate within the profession. Where exceptional circumstances warrant, such as here, the disciplinary process should prioritize responsibility and reparation in assessing the appropriate penalty. This constitutes a positive and effective method of teaching members of the profession that what one does subsequent to acts of professional misconduct is vitally important. The message it sends is that lawyers who commit acts of professional misconduct do not fall into a black hole, but can work industriously to redeem themselves in multiple ways.[88]

Justice Camp submits this reasoning is helpful on the issue of whether removal is warranted. Recommending removal in these circumstances would declare that sincere apologies and extensive education are incapable of restoring public confidence in a judge who displayed unconscious bias. This message is inconsistent with the reforms the Council wants to see effected and the premium it places on continuing education.

6. Precedent shows that removal is a remedy of last resort, not a presumptive response.

Adjudicative bodies follow and apply precedents to promote legal certainty. As Chief Justice McLachlin has stated, precedent "is the foundational principle upon which the common law relies."[89] The Council has also noted the importance of uniformity in sanctions, as that is the only way of ensuring "fair and equal treatment."[90]

The Council should rely on precedent, not public outrage or political climate, to place Justice Camp's conduct on the spectrum of judicial misconduct. Seen in the context of outcomes in similar cases, it is clear that a recommendation for removal would be disproportionate and unfit.

Aboriginal culture which may preclude [him] from treating all litigants with the equality required by the *Charter* in future." But it concluded an Inquiry Committee was not needed because the conduct was a result of ignorance, not malice, and capable of being remedied through education.

[87] 2014 ONLSTH 143.

[88] *Ibid,* at para 51-53 [emphasis added]. Although we hold judges to higher standard than lawyers, this high standard does not negate the importance of rehabilitation, remorse and redemption.

[89] *Bedford v. Canada (Attorney General)*, 2013 SCC 72 at para. 38

[90] *Matlow Decision*, at para. 56

a) In most cases, misconduct alone does not justify a recommendation for removal.

It is relatively easy for a judge to commit misconduct. Judges are expected to be "almost superhuman in wisdom, in propriety, in decorum, and in humanity."[91] Even the slightest deviation from this "place apart" in our society may result in a finding of misconduct. In contrast, the test for removal is much more onerous. As the Council explained in the *Marshall* Inquiry, removal is only warranted for misconduct that is "so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office."[92] The high standard for removal means that some misconduct – even serious misconduct – will go formally unpunished. The underlying assumption is that informal sanctions can and do promote public confidence in the justice system.

The IC conflated the test for misconduct (failure to maintain 'a place apart') with the test for removal. It incorrectly reasoned that Justice Camp's misconduct fell into the 'extreme' category and that the competing factors were thus of little consequence. It disposed of concerns about judicial independence by finding that his comments were not the kind that needed to be protected. It did not consider the potential chilling effect of recommending removal for ignorant comments deemed offensive after the fact.[93] Significantly, it found "it would be fundamentally adverse to the preservation of public confidence" for Justice Camp to remain in office in the portion of its Reasons devoted to assessing the gravity of the misconduct and prior to turning to the competing factors that might warrant continued service.[94]

The clearest example of the IC's approach is at the end of its Reasons:

> In the present case, where the Judge has taken full advantage of his opportunities to express remorse and atone for his misconduct and to make positive strides to overcome what he has characterized as his "unconscious bias", it may appear unforgiving not to accept his position that education and an apology can be seen as a moral equivalent for removal.
>
> Against that, however, lies the fact that judges occupy a unique and privileged role in society and deal consistently with "the extraordinary vulnerability of the individuals who appear before [them] seeking to have their rights determined, or when their lives or liberty are at stake" [citation omitted].[95]

The impression created by these Reasons is that it is nearly impossible to preserve public confidence in the face of misconduct through positive personal growth. It effectively negates the value of rehabilitation and remorse. This does not accord with past precedent.

---

[91] *Re Thierren*, 2001 SCC 35, at para. 111. This standard of judicial conduct applies to appointed judges regardless of the bench on which they sit.
[92] *Marshall Decision,* Majority Report, p. 27
[93] IC Reasons, para. 276. In this case the potential chilling effect would be the deterrence of judges struggling with confusing but sensitive issues from asking legitimate questions and seeking guidance.
[94] IC Reasons, para. 288
[95] IC Reasons, para. 340-341.

b) The principle of proportionality supports a sanction short of removal

Judicial councils typically respond to judges like Justice Camp with sanctions short of removal. As the chart below shows, councils give considerable weight to rehabilitation and remorse. Although there is no public evidence that the judges on the list below took the extensive remedial steps Justice Camp took, not one of them was removed from office.

Case	Facts and History of Case	Outcome
Canadian Judicial Council; Robert Dewar J.; Letter issued November 9, 2011	Judge Dewar made inappropriate comments in a sexual assault case including that "sex was in the air that night;" the accused was "a clumsy Don Juan;" and that the victim was dressed in a way that showed she "wanted to party."	The judge apologized and obtained sensitivity counselling. The Canadian Judicial Council ultimately concluded that this was an isolated incident in the judge's career and that as a result no further action was required by the Council.
Quebec Conseil; Unnamed Judge; 2000/2001 Annual Report	The judge allegedly made comments condoning domestic violence. He was presiding over a case where a woman assaulted an officer and the judge said "…on Saturday morning, I had three arraignments and they were all for three men accused of beating women, so to have one who slaps her boyfriend, it feels a bit good, it's comforting" (translation). He said, "Very often, it's always men who beat women." The judge apologized, but the Conseil found his comments were symptomatic of a sexist attitude.	The Conseil expressed disapproval of the judge's conduct. It concluded an investigation was unnecessary because: (1) the judge admitted his comments were inappropriate; (2) the judge did not intend to condone violence; and (3) the complainant accepted the judge's apology and felt he was still capable of performing his duties.
Ontario Judicial Council; 2009/2010 Annual Report; 14-028/08; 14-029/08	The judge made statements about domestic violence that gave rise to a perception of a lack of appreciation of the nature of domestic violence and the impact of the court process in situations of domestic conflict. He made comments suggesting that the historical purpose of the criminal justice system in domestic assault cases was to protect weak/disadvantaged women who were incapable of escaping their situations, not modern women who are not weak and are capable of leaving. He went on to tell the accused and the complainant that if they stayed together they should not return to the criminal courts to address any problems that might arise.	The Review Panel referred the case to Chief Justice for discussion. The judge independently took steps to educate himself on domestic violence and apologized. The Panel found no further steps were required.
Ontario Judicial Council; 2008/2009 Annual Report; 13-024/07	The complainant alleged the judge made inappropriate comments to an accused during a sentencing hearing that amounted to counselling the accused to commit suicide. The facts of the case indicated that the accused might have been suicidal.	The Review Panel referred the matter to the Chief Justice for a meeting with the judge to discuss the issue. The judge acknowledged the error. The Panel concluded no further action was required.
Ontario Judicial Council;	The judge commented that he would not continue the trial with a complainant in a sexual assault case who	The Review Panel referred the matter to the Chief Justice for a

2008/2009 Annual Report; 13-031/08; 13-033/08; 13-038/08;	had Hepatitis C and was HIV positive unless the complainant wore a mask and/or the matter was moved to another courtroom. The judge rejected medical evidence from the Crown without submissions from the parties and indicated the court would have to be reconfigured so he could sit further from the witness. He dismissed the Crown's application for a mistrial. Several organizations filed complaints.	meeting with the judge to discuss the issue. The judge independently educated himself on HIV/AIDS, acknowledged his error and apologized. The Panel concluded that no further steps were required.
Ontario Judicial Council; 03-043/98; 1998-1999 Annual Report	The judge terminated a trial when the complainant/victim indicated while testifying that she was a lesbian. The Review Panel concluded the judge exceeded his jurisdiction and interfered in court proceedings, giving rise to a real apprehension of bias, and the judge should have stopped and declared a mistrial, having apprehended the bias.	The Review Panel referred the matter to the Chief Justice. The annual report summary does not indicate what steps the Chief Justice took.
Canadian Judicial Council; 2013 Online Summaries; 20130001	A group representing certain First Nations communities filed a complaint against the Chief Justice for his interruptions of defence counsel and the harsh manner with which he dealt with gallery members who the Chief Justice believed were interrupting the proceeding. Some gallery members responded especially poorly to the Chief Justice's manner because it reminded them of their experiences in the Residential School system. The Chief Justice expressed regret that his actions caused certain gallery members to relive painful experiences, but denied that his comments were motivated by stereotypes.	The Council decided to take no further action. Although the Chief Justice's response to the members of the gallery were too forceful and his tone exceeded what was necessary, the Chief Justice had fully considered the complaint and apologized, the comments were not intended to be harmful and this was an isolated incident.
Canadian Judicial Council; 2011 Online Summaries; 20110004	Several complainants expressed concerns over a judge's ruling in a sexual assault case. The accused was convicted of the offence, but the judge ruled that the law, which prohibits using excessive intoxication as a defence, was unconstitutional. The complainants argued the decision undermined women's rights.	The Council dismissed the complaint, on the basis that the complaint did not relate to the judge's conduct, but rather, his decision. The complaint summary states that "Parliament has a responsibility to make, amend and pass laws in Canada, and the judiciary interprets those laws. … At the core is the principle of judicial independence, where judges hold the ability to hear and decide cases freely and without fear."
Canadian Judicial Council; 2008 Online Summaries; Complaint 4	The complainant alleged that the judge, who presided over a sexual assault trial, made comments that were demeaning and vicious, and re-victimized the family in question. The complainant alleged that the judge said the complainant at trial did not "act like a victim" or like a sexually assaulted child.	The Council dismissed the complaint. It found that the complainant mischaracterized the judge's comments. The matters raised by the complainant were not matters concluded by the judge to be proven facts. They were *illustrations* of matters that caused him to have doubts about certain evidence before him.

		The summary states, "When the credibility of the parties is an issue, judges may have to ask difficult questions."
Taylor v. Canada (Attorney General), 2003 FCA 55 CA Decision (*R. v. Laws* (1998), 128 C.C.C. (3d) 516 (Ont. C.A.))	In a 1993 trial for smuggling persons, Justice Whealy excluded individuals wearing religious headdresses from the courtroom. The lawyer for Laws filed a Canadian Judicial Council complaint in 1994. The Council initially dismissed the complaint, deferring to the Court of Appeal as the appropriate forum to address the judge's conduct. The Executive Director, responding on behalf of the CJC Chair (Chief Justice McEachern), stated, "it is very unlikely that a single ruling in a single case would be considered conduct deserving a recommendation for removal." The Court of Appeal found the judge had no evidentiary basis to distinguish between required and chosen practices in a particular religious faith. It also found the trial judge erred in suggesting that only certain communities are protected under the *Charter*. His rulings "may well have inadvertently created the impression of an insensitivity as to the rights of minority groups" and created an atmosphere that undermined the appearance of a fair trial. It did not determine whether this amounted to reversible error because it ordered a new trial on different grounds. Following the Court of Appeal's decision, Laws' lawyer applied to the Canadian Judicial Council for reconsideration. McEachern C.J. responded that the exclusion of Mr. Taylor was inappropriate and created the impression the judge was insensitive to minority groups. He said his actions merited an expression of disapproval. He declined to refer the matter for formal investigation.	The Federal Court of Appeal dismissed Taylor's application for judicial review of McEachern CJ's decision, finding it was not patently unreasonable. It held, in part: "[64] … the manifest impartiality of the judiciary is one of the pillars on which public confidence in the administration of justice rests. ... Protecting the manifest impartiality of judges also requires the assiduous protection of their independence. [65] At the heart of judicial independence is the freedom of judges to administer justice to the best of their ability, without fear or favour, and in accordance with the evidence and with what they believe is required or permitted by law. Hence, the appeal process is normally the appropriate way of correcting errors committed by judges in the performance of their judicial duties. …" The Court also concluded that McEachern C.J. did not breach his duty of fairness to the complainant by the manner in which he handled the complaint.
Canadian Judicial Council; 2002 Online Summaries; Complaint 15 And Public letter from the Canadian Judicial Council to Justice Barakett	Five Aboriginal groups lodged ten complaints against Justice Barakett of the Quebec Superior Court, alleging he made derogatory comments about Aboriginal culture in a custody case. In addition to other comments, the judge stated, "Perhaps unwittingly and out of a totally misplaced expression of motherly love, they were brainwashed away from the real world into a child like myth of pow-wows and rituals quite different from other children on the reserve who had regular contact with the outside world." The judge also tried to calculate the amount of "Indian blood" in the children in an attempt to ascertain whether the children were actually Aboriginal. Further, he made statements suggesting "a stereotype of Aboriginal peoples related to alcohol and drug abuse".	The Panel concluded an Inquiry Committee was not needed because the judge's conduct was not serious enough to warrant removal. It closed the file with a letter expressing disapproval of some of his conduct. It released that letter to the public because of the publicity around the case. It stated, in part: "In this case, there is no evidence of malice or improper motive on your part. Your unfortunate comments appear to stem from ignorance of Aboriginal culture

	The Panel concluded his comments were insensitive and insulting to Aboriginal culture. His observations implied an inherent inferiority in the Aboriginal community. It expressed serious concern that the judge's conduct "did not involve merely an isolated outburst but a series of inappropriate comments". It was further concerned that his comments "may reflect an underlying bias against Aboriginal culture which may preclude [him] from treating all litigants with the equality required by the Charter in future." Barakett J wrote a public letter of apology, which the Panel believed to be sincere. He indicated he would pursue seminars to improve his understanding of Aboriginal culture. His Associate Chief Justice expressed confidence the judge could continue serving the public as a judge. The Panel noted the comments did not affect the outcome of the case.	rather than contempt for it. In other words, the public could be expected to have confidence that you have learned from this experience and will approach issues related to Aboriginal culture with greater understanding and respect in future."
Canadian Judicial Council; 1999 Online Summaries; Complaint 24	A party in a family law hearing complained that the judge cut off her arguments and made sexist comments to the complainant's ex-spouse that he give her daughter a gift "because lip-stick is expensive". The Panel found the judge had acted inappropriately in discussing child support directly with the ex-spouse, giving the impression he had already decided the case, and by making comments that were offensive and inappropriate.	The Panel sent the judge a letter disapproving of the conduct.
Canadian Judicial Council; 1997 Online Summaries; Complaint 16	The Chinese Canadian National Council lodged a complaint about questions that Chief Justice Lamer asked during arguments in the case of *R. v. R.D.S.*, [1997] 3 S.C.R. 484. The Chief responded to the CCNC before the Council received the complaint apologizing for any offence he caused. The Conduct Committee concluded the remarks did not amount to misconduct and that it was apparent from context that the questions were hypothetical in nature. The Chief's purpose was to test propositions being put to the Court and explore the dangers of a trial judge taking into account race or racial stereotypes when assessing the credibility of witnesses. [According to *Playing Second Fiddle to Yo Yo Ma*, by Avvy Y.Y. Go, "Lamer CJC was quoted as asking if judges have to take judicial notice of racism, whether that means they have to take judicial notice of the fact that Chinese have a propensity to gamble, and that gypsies are pickpockets. The day CCNC's complaint was made public, Justice Lamer 'apologized' to CCNC with a letter in which he 'corrected' himself by saying that it was in the 60's when he practised law in Montreal that he noticed that Chinese had the propensity to gamble."]	The Council issued a media release but took no further action. It stated, "Under our legal tradition, often of necessity, hypothetical questions are posed by judges during the course of argument of a case. The purpose of doing so is to illuminate for the Court the full implications of the matters at issue from both a factual and a legal perspective . . . For this reason, exchanges between counsel and judges during the course of legal arguments are often wide-ranging, probing and exploratory in nature. It is in the interests of the administration of justice that the ability of counsel to engage in such unrestricted advocacy, and the ability of judges to engage in frank and wide-ranging discussion with counsel, continue." (Emphasis added.)

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

The IC declined to follow this precedent, reasoning that "conduct which may have been tolerated or met with admonishment in an earlier time, may require stronger sanction today."[96] However, recommending removal purely on this basis ignores the power of lesser sanctions and sacrifices Justice Camp to remedy a social problem he did not create and a systemic reputation for which he is not responsible. It is inconsistent with individual justice.

If the Council wants to endorse the IC's message that 'times have changed,' it should do so in a fair way that recognizes the different paces at which people adopt normative shifts. Judges work in a society with evolving values. As Dr. Haskell observed, social context education does not "ever get to an end point."[97] What was once acceptable is no longer so (e.g., smoking in public places) and *vice versa* (e.g., same sex marriages). Normative shift is a complex cultural phenomenon, comprised of a vanguard of early adopters, a majority that goes with the flow, and a rearguard of stragglers. Condemning Justice Camp's misconduct and endorsing his educational success is the best way to put other 'stragglers' on notice that mythological thinking can no longer be justified by ignorance.

7. Conclusion

> Justice Camp is intelligent, honest and fair-minded. In all the years I have known him, he has always conducted himself with integrity, dignity and compassion. Justice Camp is neither a misogynist nor a bigot.
>
> […]

[96] IC Reasons, para. 330.
[97] IC Reasons, para 313

> Facing this Inquiry has forced Justice Camp to undertake significant self-refection. He will be a better judge because of that.
>
> *Character letter of Justice Camp's friend and former colleague Sabri Shawa*

If a man with Justice Camp's character cannot recalibrate his worldview through education, it is difficult to imagine who could.[98] Concentrating exclusively on his misconduct and ignoring his rehabilitation, remorse and sincere efforts to learn discounts the possibility for anyone of meaningful evolution on issues of gender bias and sexual stereotypes.

Education has a better track record of promoting social change than harsh punishment. Here, the Judge is a good candidate for continued service, because of his antecedents and efforts since the misconduct. Justice Camp has remedied the knowledge deficit that led to his misconduct through education. He has demonstrated remorse. He did not make wilfully sexist comments. He has been educated. He would be an asset to the bench. A sanction short of removal would promote education and rehabilitation in line with the Council's stated values and simultaneously denounce Justice Camp's conduct.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of January, 2017.

Frank Addario
Megan Savard
Samara Secter

ADDARIO LAW GROUP LLP
171 John Street, Suite 101
Toronto, ON M5T 1X3

Tel: 416-649-5055
Fax: 1-866-714-1196
Email: faddario@addario.ca
msavard@addaro.ca
ssecter@addario.ca

Counsel for Justice Robin Camp

[98] Counsel will develop this point further in oral argument.