Canadian Judicial Council
Conseil canadien de la magistrature

IN THE MATTER OF
Section 65 of the *Judges Act*, R.S., 1985, c. J-1, and of the Inquiry Committee convened by the Canadian Judicial Council to review the conduct of the Honourable Robin Camp of the Federal Court:

DANS L'AFFAIRE DE
l'article 65 de la *Loi sur les juges*, L. R., 1985, ch. J-1, et du comité d'enquête constitué par le Conseil canadien de la magistrature pour examiner la conduite de l'honorable Robin Camp de la Cour fédérale :

Report of the Canadian Judicial Council to the Minister of Justice

Pursuant to its mandate under the *Judges Act*, and after inquiring into the conduct of Justice Camp, the Canadian Judicial Council hereby recommends to the Minister of Justice, pursuant to section 65 of the *Judges Act*, that the Honourable Robin Camp be removed from office.

Rapport du Conseil canadien de la magistrature à la ministre de la Justice

En vertu du mandat que lui confère la *Loi sur les juges*, et après avoir enquêté sur la conduite du juge Camp, le Conseil canadien de la magistrature recommande par la présente au ministre de la Justice, aux termes de l'article 65 de la *Loi sur les juges*, la révocation de l'honorable Robin Camp.

Presented in Ottawa,
8 March 2017

Présenté à Ottawa,
le 8 mars 2017

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IN THE MATTER OF S. 63 OF THE *JUDGES ACT*, R.S., c. J-1

CANADIAN JUDICIAL COUNCIL INQUIRY
INTO THE CONDUCT OF THE HONOURABLE ROBIN CAMP

REPORT TO THE MINISTER OF JUSTICE

8 March 2017

I. INTRODUCTION

[1] From the time they are considered for appointment to the Bench, and every day thereafter, superior court judges in Canada are expected to be knowledgeable jurists. They are also expected to demonstrate a number of personal attributes including knowledge of social issues, an awareness of changes in social values, humility, fairness, empathy, tolerance, consideration and respect for others.[1]

[2] In short, Canadians expect their judges to know the law but also to possess empathy and to recognize and question any past personal attitudes and sympathies that might prevent them from acting fairly.[2] Those qualities sustain public confidence in the judiciary.

[3] For the reasons that follow, we find that Justice Robin Camp failed to meet those high standards and acted in a manner that seriously undermined public confidence in the judiciary. Accordingly, we recommend that Justice Camp be removed from office.

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1 See: Assessment criteria, candidates for Federal Judicial Appointment, *Guidelines for Judicial Advisory Committee*, Commissioner for Federal Judicial Affairs. http://www.fja-cmf.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html

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

II. BACKGROUND

[4] Further to a request from the Attorney General of Alberta, an Inquiry Committee ("Committee") was constituted by the Canadian Judicial Council ("Council"), pursuant to s. 63(3) of the *Judges Act,* R.S.C., 1985, c. J-1 ("the *Act*"), to conduct an investigation into the conduct of the Honourable Robin Camp ("the Judge").

[5] The Committee gave notice to the Judge of the allegations against him. A copy of those allegations is attached to this report as Schedule "A." The inquiry hearing was held in public, over five days between 6 and 12 September 2016.

[6] The allegations all relate to events that took place while the Judge served on the Alberta Provincial Court; however, the request from the Attorney General of Alberta was made after the Judge had become a Justice of the Federal Court, thus giving jurisdiction to the Canadian Judicial Council to determine the Judge's suitability to remain in office as a Justice of the Federal Court.

[7] The Committee issued a 112-page report on 29 November 2016, which was presented to Council, composed of 23 members who deliberated in this matter (the Chairperson having no vote in such deliberations except in the event of a tie).

[8] Council adopts as its own paragraphs 1 to 30 of that report, which outline the factual circumstances giving rise to this matter.

[9] The Committee found that of the 21 specific allegations of misconduct made against the Judge, 17 are fully made out and two are partly made out.

[10] The Committee found that throughout the *Wagar* trial[3] ("the trial"), the Judge made comments or asked questions evidencing an antipathy toward laws designed to protect vulnerable witnesses, promote equality, and bring integrity to sexual assault trials. It also found that the Judge relied on discredited myths and stereotypes about women and victim-blaming during the trial and in his Reasons for Judgment.

[11] The Committee concluded that the Judge committed misconduct and placed himself in a position incompatible with the due execution of the office of a judge within the meaning of paragraphs 65(2)(*b*) and (*d*) of the *Act*.

[12] The Committee acknowledged the significant education undertaken by the Judge after a complaint was initiated by Council and a number of other complaints

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[3] *R.* v. *Wagar* Docket: 130288731P1 (ABPC)

were received by Council (before the request from the Attorney General of Alberta) but concluded, in the particular circumstances of the inquiry, that education could not adequately repair the damage caused to public confidence by the Judge's conduct of the trial. It wrote, at para. 9:

> …where judicial misconduct is rooted in a profound failure to act with impartiality and to respect equality before the law, in a context laden with significant and widespread concern about the presence of bias and prejudice, the harm to public confidence is amplified. In these circumstances, the impact of an after-the-fact commitment to education and reform as an adequate remedial measure is significantly diminished.

[13] The Committee concluded that the Judge's conduct in the trial was so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence is sufficiently undermined to render the Judge incapable of executing the judicial office. It expressed the unanimous view that a recommendation by the Council for the Judge's removal is warranted.

[14] The mandate of Council at this stage of the proceedings is to consider the Committee report and record of inquiry, as well as the Judge's written submissions, and to formulate a recommendation about whether or not the Judge should be removed from office.

COUNCIL DELIBERATIONS

[15] Council has considered the Committee report, as well as the record in this matter and the Judge's written submissions.

[16] Council agrees with the Committee that the Judge committed serious misconduct and placed himself, by his conduct, in a position incompatible with the due execution of the office of a judge within the meaning of ss. 65(2)(*b*) and (*d*) of the *Act*.

[17] That conduct included asking the complainant, a vulnerable 19 year old woman, "why didn't [she] just sink [her] bottom down into the basin so he couldn't penetrate [her]" and "why couldn't [she] just keep [her] knees together," that "sex and pain sometimes go together […] – that's not necessarily a bad thing" and suggesting to Crown Counsel "if she [the complainant] skews her pelvis slightly she can avoid him."

[18] While there is disagreement from the Judge about the effect and consequences of his conduct, he has readily acknowledged misconduct: "Justice Camp agrees that his comments in *Wagar* were insensitive, rude, and, in places, displayed an ignorance of the ways in which victims of trauma and/or sexual violence process and respond to events."[4] The misconduct was again acknowledged by Counsel in closing submissions to the Committee.

[19] Given the Judge's acknowledgement, the key issue before us is not whether there was misconduct, but whether the gravity of the misconduct warrants removal from office.

[20] In his written submissions, the Judge argues that his removal is not warranted for four main reasons.

Unconscious bias or ignorance

[21] First, while he admits his misconduct, the Judge renews his argument that his misconduct was the product of unconscious bias or ignorance, and not animus (which might be defined as hostility or ill feeling). He says this is relevant because unconscious bias and ignorance are inherently more remediable. Had the Committee properly characterized his misconduct, he argues, it would or should have concluded that the sanction of removal was not warranted. He argues that removing him would mean that

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[4] Written "Opening Submissions" of Justice Camp to the Inquiry Committee, 5 September 2016.

sincere apologies and extensive education are incapable of restoring public confidence in a judge who displayed unconscious bias.

[22] In this last sense, the Judge is correct. Apologies and education may not be sufficient in certain instances. We accept the Committee's characterization of the Judge's misconduct.

[23] The Judge's questions to the alleged victim in this case were not simply attempts at clarification. He spoke in a manner that was at times condescending, humiliating and disrespectful.

[24] The Judge's misconduct was manifestly serious and reflected a sustained pattern of beliefs of a particularly deplorable kind, regardless of whether he was conscious of it or not. As the Committee wrote at para. 293, one consequence of the Judge's misconduct in the trial is that it:

> …adds to the public perception that the justice system is fuelled by systemic bias and it therefore courts the risk that in other sexual assault cases, unpopular decisions will be unfairly viewed as animated by that bias, rather than by the application of legal principles and sound reasoning and analysis.

[25] Sincere apologies and extensive education may be capable of restoring public confidence in a judge whose misconduct consists of comments made and questions asked during a trial. However, all relevant circumstances must be taken into account. A single, highly prejudicial or offensive, comment might be sufficiently grave to seriously undermine public confidence in a judge and the judiciary. An important consideration is whether a judge's conduct after the fact is sufficient to restore public confidence.

[26] In this matter, having regard to the totality of the Judge's conduct and all of its consequences, his apologies and efforts at remediation do not adequately repair the damage caused to public confidence.

Reasonableness of legal decisions

[27] Second, the Judge asks Council to find that he made reasonable legal decisions at trial regarding the application of s. 276 of the *Criminal Code*. That section, commonly referred to as the "rape shield" provision, offers protection against the questioning of complainants regarding past sexual activity in trials for sexual offences.

[28] The Judge submits that he applied the provision reasonably and that this should mitigate the gravity of his misconduct.

[29] The Judge's acquittal of the accused was overturned by the Alberta Court of Appeal, which found several errors of law. On 31 January 2017, the accused was found not guilty after a new trial before the Alberta Provincial Court (*Wagar 2017*). As a result of this decision, Council accepted to receive further written representations from the Judge with respect to Mr Wagar's second acquittal.

[30] In his submissions, the Judge argues essentially that because his questions were legally relevant to the issues before him, they were therefore permissible. The remarks, he argues, were "based on unconscious bias and insensitive wording as opposed to hostility toward the law or the values inspiring it." In conclusion, the Judge argues that "*Wagar (2017)* shows that the IC's inferences are not necessarily correct. It proves that Justice Camp was right on the law and right on the facts, despite his admitted ignorance."

[31] We find that the Committee's inferences are entirely reasonable and supported by the facts. We agree with the Committee that it is not appropriate for Council to interpret or second-guess the decision of the Court of Appeal. We find that the legal outcome of both the first trial and the new trial is of limited relevance to the issues before Council.

[32] The respective roles of courts of appeal and Council are quite different: courts remedy legal errors while Council addresses issues of conduct. A judge may render an impeccable legal decision and still engage in misconduct. We reject the suggestion that there is an inconsistency in the Committee's reasoning in that the Committee "did not think Justice Camp's questions were legitimate. It thought his questions reflected disdain for the values underlying sexual assault law." (Judge's submissions of 23 February 2017).

[33] As the Committee noted, the allegations in this case are primarily focused on the Judge's expressed antipathy for the values which the law protects and promotes, regardless of whether he applied the law correctly.

[34] The Judge spoke of "contemporary thinking" during the trial, showing that he possessed more awareness of the issues than he later professed. He showed obvious disdain for some of the characteristics of the regime enacted by Parliament in respect of sexual assault issues.

[35] We are mindful that any criticism Council levels against a judge must not have a chilling effect on the ability of judges, generally, to pursue relevant inquiries on the

facts or law and to call attention to deficiencies in the law in appropriate cases. Indeed, judges have a duty to be critical of existing legislation in specific circumstances, for example where a judge forms a view that a specific provision contravenes our Constitution or otherwise operates in a deficient manner. We do not in any way intend to deter judges from asking the hard questions and taking the difficult positions that are sometimes necessary to discharge their judicial responsibilities.

[36] However, some of the Judge's comments in this case were not in the nature of legitimate legal inquiries or comment. In this regard, we agree with the Committee that several of the Judge's comments "had little or nothing to do with the issues facing the Judge in the Trial"[5] and were not of the type that could justifiably stray beyond matters directly connected to legitimate legal reasoning and result. *Wagar 2017* changes nothing in this respect.

Evidence of remediation

[37] Third, the Judge says Council should reject the Committee's doubt that he was fully remediated through the education he had undertaken about the history of sexual assault law and reforms of his beliefs in the area of sexual assault and victims of violence after the complaint was made. He argues that Council should accept that he is remorseful, educated and rehabilitated and that removal is therefore not warranted.

[38] The Committee's residual doubt about the Judge's understanding of the issues implicated by his conduct and the extent to which he fully absorbed what he said he had learned could be said to have some support in the record, including his reluctance to characterize himself as "sexist."

[39] Like the Committee, we recognize that the Judge engaged in serious remedial efforts after Council initiated a complaint against him, many months after the trial. He readily apologized for his actions and sought educational opportunities to address what he saw as shortcomings.

[40] We also accept that experts in gender equality expressed the view that Justice Camp better understands the reasons behind the evolution of the law of sexual assault in Canada and the hurtful effect of his comments. However, this misses the most serious point.

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[5] Committee report, para. 276

[41] As the Committee noted, "the Judge conceded that the questions he asked the complainant were hurtful, humiliating and crass."[6] He noted that "you don't need sensitivity training" to understand the effect of such questions.

[42] Whether or not the Judge is sincerely remorseful or personally rehabilitated is not determinative of the matter. Even if we were to agree that the Judge is fully rehabilitated, we agree with the Committee that, in all the circumstances, the Judge's efforts at remediation must yield to a result that more resolutely pursues the goal of restoring public confidence in the integrity of the justice system.

[43] As Justice Gonthier noted in the *Therrien* matter, albeit in a different context:[7]

> ... I am not unaware that this case represented, in a sense, an invitation to society to be ever more generous. The pardon that the appellant was granted is an act of generosity, of brotherhood, but also an act of justice on the part of society. It is undoubtedly desirable that such gestures be praised and encouraged. However, we cannot ignore the unique role embodied by the judge in that society, and the extraordinary vulnerability of the individuals who appear before that judge seeking to have their rights determined, or when their lives or liberty are at stake. Above all, a person who appears before a judge is entitled to have justice done in his or her case, and that justice be seen to be done by the general public. That kind of generosity is not something that a person can be compelled to offer. In the specific circumstances of the case at bar, the values of forgiveness and selfless generosity must therefore yield to the values of justice and the all-important integrity of the justice system. *Emphasis added.*

[44] That said, we recognize, the submission of Justice Camp's counsel in his supplementary submission that "public outrage is not a reliable barometer of the legal concept of public confidence." In assessing the impact of a judge's conduct on public confidence, we must act "as watchdogs against mob justice" (per Wagner J in *R.* v. *St.-Cloud*, 2015 SCC 27 at paragraph 83, in another context). As Wagner J also observed, it is not easy for judges "to strike an appropriate balance between the unrealistic expectations they might have for the public on the one hand, and the need to refuse to yield to public reactions driven solely by emotion on the other" (paragraph 81).

[45] In gauging public confidence, the focus should be on a reasonable member of the public, i.e. "a thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values" (paragraph 80).

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6 Committee Report, para. 166.

7 *Therrien (Re)* 2001 SCC 35, para. 151.

[46] In this case, we must be guided by the observation of Gonthier J in *Re Therrien* that "the personal qualities, conduct and *image that a judge projects* affect those of the judicial system as a whole and, therefore, the confidence that the public places in it" (paragraph 110; italics added) and that "to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, *but they are asked to embody them*" (paragraph 109; italics added).

[47] In our view, the statements made by Justice Camp during the trial and in his decision, the values implicit in those statements and the way in which he conducted himself are so antithetical to the contemporary values of our judicial system with respect to the manner in which complainants in sexual assault case should be treated that, in our view, confidence in the system cannot be maintained unless the system disassociates itself from the image which the Judge, by his statements and approach, represents in the mind of a reasonable member of the public. In this case, that can only be accomplished by his removal from the system which, if he were not removed, he would continue to represent.

Proportionality of sanction

[48] Fourth, the Judge argues that, assessed in the context of the outcomes of other judicial conduct cases, a recommendation for his removal would be disproportionate and unfit.

[49] We disagree. As noted earlier, there are instances where a single, highly prejudicial or offensive, comment might be sufficiently grave to seriously undermine public confidence in a judge to the extent that removal is the only acceptable outcome.[8] In such instances, remediation is of little assistance in coming to a final conclusion, which must be based on objective criteria that include trust, confidence and respect. As the Supreme Court noted in *Moreau-Bérubé* :

> In discharging its function, the [Provincial Judicial] Council must be acutely sensitive to the requirements of judicial independence, and it must ensure never to chill the expression of unpopular, honestly held views in the context of court proceedings. It must also be equally sensitive to the reasonable expectations of an informed dispassionate public that holders of judicial office will remain at all times worthy of trust, confidence and respect.

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[8] *Moreau-Bérubé* v. *New Brunswick (Judicial Council)* 2002 SCC 11 , para. 72.

[50] In this instance, the Judge's misconduct was evidenced over a continued period during the trial. Some of the Judge's most egregious comments were repeated in his reasons for decision, issued much later. The reasonable person's confidence in the Judge's ability to discharge the duties of office is seriously undermined.

[51] Considering all the circumstances of this case, we reject the notion that removal is a disproportionate sanction.

CONCLUSION

[52] Council has carefully considered the Committee's report and all of the Judge's submissions in this matter.

[53] We find that the Judge's conduct, viewed in its totality and in light of all of its consequences, was so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence is sufficiently undermined to render the Judge incapable of executing the judicial office.

[54] Accordingly, Council recommends that Justice Camp be removed from office.

CORAM:
L’honorable R. Pidgeon (Chair / président)
Honourable Heather Smith
Honourable J. Kennedy
Honourable David Smith
Honourable D. Green
Honourable R. Veale
L’honorable E. Drapeau
Honourable D. Jenkins
Honourable E. Rossiter
Honourable G. Joyal
Honourable R. Bauman
Honourable J. Rooke
Honourable L. O’Neil
L’honorable N. Duval Hesler
Honourable M. Popescul
L’honorable R. Chartier
Honourable A. Hoy
Honourable R. Richards
L’honorable J. Fournier
Honourable G. Strathy
Honourable M. Rivoalen
L’honorable E. Petras
Honourable N. Sharkey

The following members expressed their dissent with respect to this Report: the Hon. David Smith; the Hon. Jenkins; the Hon. E. Rossiter; the Hon. L. O’Neil.

Schedule "A"

STATEMENT OF ALLEGATIONS

1. In the course of the Trial, the Judge made comments which reflected an antipathy towards legislation designed to protect the integrity of vulnerable witnesses, and designed to maintain the fairness and effectiveness of the justice system, as follows:

    a. Section 276 operates "for better or worse" and it "does hamstring the defence" (page 58 lines 29 to 39). It has to be interpreted "narrowly" (page 60 lines 30 to 32).
    b. Section 276 is "very, very incursive legislation" which prevents otherwise permissible questions "because of contemporary thinking" (page 63 lines 5 to 7).
    c. No one would argue "the rape shield laws always worked fairly" (page 217 lines 2 to 4).

2. In the course of the Trial and in giving his reasons for judgment, the Judge engaged in stereotypical or biased thinking in relation to a sexual assault complainant and relied on flawed assumptions which are well-recognized and established in law as rooted in myths:

    a. By questioning whether the complainant "abused the first opportunity to report" even though it was "no longer contemporarily relevant" (page 314 lines 22 to 29).
    b. By stating, "Young wom[e]n want to have sex, particularly if they're drunk" (page 322 lines 22 to 24).
    c. By commenting during the Crown's final submissions that the recent complaint doctrine was "followed by every civilized legal system in the world for thousands of years" and "had its reasons" although "[a]t the moment it's not the law" (page 394 lines 35-41).
    d. By judging the complainant's veracity and whether she consented to sexual activity by her not fighting off her alleged aggressor and/or blaming the complainant for the alleged sexual assault (page 375 lines 27-35; pages 395-97; and page 451 lines 2 to 4) and by her lack of visible reaction to the alleged assault (page 451 lines 8 to 11).
    e. By hypothesizing a scenario in which the complainant was seeking revenge against the accused which was not based on the evidence before the judge (page 375 lines 32 to 33; and page 414 lines 11 to 18).
    f. By adversely commenting on the character of the complainant in a way that went beyond assessing her credibility to denigrating the complainant and to suggesting that her character would make it more likely that she consented to sexual relations (page 353 lines 30 to 31; page 431 lines 29 to 30).

3. In the course of the Trial, the Judge asked questions of the complainant witness reflecting reliance on discredited, stereotypical assumptions about how someone confronted with sexual assault would or would not behave and/or blaming the complainant for the alleged sexual assault:

    a. By asking the complainant, "why didn't [she] just sink [her] bottom down into the basin so he couldn't penetrate [her]" (page 119 lines 10 to 11).
    b. By asking the complainant, "why couldn't [she] just keep [her] knees together" (page 119 lines 14 to 15).
    c. By suggesting, "if she skews her pelvis slightly she can avoid him" (page 394 line 13).

4. In the course of the Trial, the Judge made a rude or derogatory personal comment about Crown counsel in the course of disparaging a legal principle she was advancing in her submissions:

    a. By stating to the Crown, "I hope you don't live too long, Ms. Mograbee" when she submitted during an exchange with the judge about the abrogation of the recent complaint rule that "that antiquated way of thinking has been set by the wayside for a reason…" (page 395 lines 2 to 6).

5. In the course of the Trial and in giving his reasons for judgment, the Judge made comments tending to belittle and trivialize the nature of the allegations made by the complainant:

    a. By stating, "Some sex and pain sometimes go together […] that's not necessarily a bad thing" (page 407 lines 28 to 29).
    b. By stating, "sex is very often a challenge" (page 411, lines 34).
    c. By stating, "I don't believe there's any talk of an attack really" (page 306 lines 9 to 10).
    d. By stating, "There is no real talk of real force" (page 437 lines 6 to 7).
    e. By stating, "She knew she was drunk […]. Is not an onus on her to be more careful" (page 326 lines 8 to 12).

6. In the course of the Trial and in giving his reasons for judgment, the Judge made comments tending to belittle women, and expressing stereotypical or biased thinking in relation to a sexual assault complainant:

    a. By asking the Crown whether there are "any particular words you must use like the marriage ceremony" to obtain consent to engage in sexual relations (page 384, lines 27 and 28)
    b. By stating to the accused, "The law and the way that people approach sexual

activity has changed in the last 30 years. I want you to tell your friends, your male friends, that they have to be far more gentle with women. They have to be far more patient. And they have to be very careful. To protect themselves, they have to be very careful" (page 427 lines 21 to 24).

c. By stating to the accused, "You've got to be very sure that the girl wants you to do it. Please tell your friends so that they don't upset women and so that they don't get into trouble. We're far more protective of women - young women and older women - than we used to be and that's the way it should be" (page 427 lines 28 to 33).

THE COMMITTEE'S CONCLUSIONS REGARDING THE ALLEGATIONS

The Committee found that:

- Allegations 1(a), (b), (c), 2(a), (c), (d), 3(a), (b), (c), 4(a), 5(a), (b), (c) and (d), and 6(a), (b) and (c) are all made out.

- Allegations 2(e) and (f) are made out in part.

- Allegations 2(b) and 5(e) are not made out.

The Committee noted that while it made individual findings in relation to the particularized Allegations against the Judge, in many cases, the nature and character of the Judge's impugned comments and questions were determined by reference to his other impugned questions and comments. That is to say, what he said in one context gives meaning to what he said in another context.