

**Memorandum of Understanding
On the Continuing Education of Superior Court Judges**

Between

**The Canadian Judicial Council
On Behalf of All Chief Justices
and Associate Chief Justices of Each Superior Court of Canada
(the CJC)**

and

**The Minister of Justice and Attorney General of Canada
(the Minister of Justice)**

INTRODUCTION AND PURPOSE

[1] The Minister of Justice and the CJC are committed to protecting public confidence in the administration of justice. While the roles and responsibilities of the Minister of Justice and of Canada's judiciary are constitutionally distinct, they are grounded in a common commitment to serving the public, upholding the Constitution, and advancing the rule of law.

[2] The CJC is composed of the Chief Justices and Associate Chief Justices of Canada's federally-appointed, superior courts. As the core of Canada's third branch of government, the superior courts safeguard the Constitution and the rule of law by providing a forum through which Canadians can assert and defend their rights. In order to hear every person who appears before them impartially, the judiciary must be fully independent from the political branches of government and from any form of undue influence. The principle of judicial independence is a fundamental feature of Canada's Constitution.

[3] The Minister of Justice has the superintendence of all matters connected with the administration of justice in Canada that are not within the jurisdiction of the governments of the provinces, and must see that the administration of public affairs is in accordance with law. This includes upholding the Constitution, the rule of law, and respect for the independence of the courts.

[4] Judicial education is critical to public confidence in the administration of justice. It contributes centrally to the professional excellence and ability of Canadian judges, including their understanding of the social contexts from which legal issues arise. It also shapes the way in which judges perform their adjudicative role. As such, in order to preserve the independence of the judiciary and the impartiality of individual judges, the continuing education of judges is the purview of the judiciary.

[5] The Chief Justices of Canada's superior courts, individually and through the CJC, work to ensure that the judges of their courts complete appropriate continuing education to properly serve their communities. Through the CJC, the Chief Justices give effect to national standards of continuing education for superior court judges, ensuring a consistent standard of excellence across the federal judiciary. Canada is recognized as an international leader and model of excellence in judicial education.

[6] The CJC and the Minister of Justice both recognize that the public has a valid interest in the content and quality of judicial education. Honouring the public interest in this context requires safeguarding judicial independence. It also requires balancing considerations related to democratic accountability, transparency, and the separation of government and judicial roles. Any expression of the public interest in judicial education by the government must respect judicial independence, both in the formation and eventual content of policy or legislative initiatives; however, respect for judicial independence does not prevent the government from exploring such initiatives. Should the public interest warrant government initiatives that affect judicial education, these should be undertaken in a spirit of mutual understanding and respect between the government and the judiciary, mindful of their constitutionally separate roles and responsibilities. The purpose of this Memorandum of Understanding (MOU) is to help enable the Minister of Justice and the CJC to fulfill these values in the context of judicial education, by bringing clarity to key elements of their relationship.

[7] This MOU reflects the intentions of the Minister of Justice and the CJC but is not intended to be a legally enforceable contract or to create any rights or obligations that are legally enforceable.

BACKGROUND: SEXUAL ASSAULT LAW AND SOCIAL CONTEXT AWARENESS

[8] In his December 2019 mandate letter, the Right Honourable Justin Trudeau, Prime Minister of Canada, directed the Minister of Justice to:

...uphold the constitution, the rule of law, and the independence of the judiciary and...ensure mandatory training for judges in Canada on: sexual assault law, including myths and stereotypes about victims and effects of trauma on victims' memory; and on unconscious bias and cultural competency.

[9] On September 25, 2020, in accordance with the mandate letter, the Minister of Justice tabled a bill aimed at strengthening the confidence of sexual assault survivors in the Canadian criminal justice system (Bill C-3). The CJC agrees with the Minister of Justice that this is a laudable goal.

[10] Bill C-3 was duly enacted by Parliament and given royal assent on May 6, 2021 as *An Act to amend the Judges Act and the Criminal Code* ("the Act").

[11] During public deliberations on the legislative proposals in Bill C-3, the CJC expressed concern that government initiatives targeting judicial education, even if well-motivated, may unintentionally endanger judicial independence and establish a precedent for improper policy attempts to influence the way in which judges think and perform their roles.

[12] In light of this concern, the Minister of Justice and the CJC agree that a framework to clarify and govern their relationship on matters of judicial education would be worthwhile and in the public interest, and thus this MOU.

ROLES AND RESPONSIBILITIES REGARDING JUDICIAL EDUCATION

Judicial Education Generally

[13] The Minister of Justice and the CJC agree that judicial education is an essential element of judicial independence that helps to ensure the professional excellence of the judiciary. A well-

educated and informed judiciary that adheres to the highest standards of conduct is key to preserving public confidence in the justice system and the rule of law.

[14] The Minister of Justice and the CJC agree that, in keeping with the requirements of judicial independence, the education that judges receive following their appointment to the bench must be controlled by the judiciary itself, free from outside influence or interference. At all times, judicial education must be judge-led and delivered in a manner that ensures the fair and equal delivery of justice to preserve the impartiality and independence of the courts.

[15] Recognizing that the CJC works on behalf of the Chief Justices of Canada's superior courts to ensure consistent national standards of judicial education, the Minister of Justice acknowledges that the CJC:

(a) is the appropriate national institution to determine the content of introductory and ongoing judicial education for superior court judges following their appointment to the bench;

(b) is the appropriate national institution to administer this judicial education through judge-led agencies and/or other judge-approved organizations.

For its part, the CJC acknowledges that in order to maintain public confidence in the justice system, it must, in relation to judicial education, listen to the concerns and interests of the public, and make publicly available information about judicial education in order to foster public understanding and confidence. The CJC Policy on Judicial Education can be accessed at this link: <https://cjc-ccm.ca/sites/default/files/documents/2019/CJC%20Professional%20Development%20Policies%20and%20Guidelines%202018-09-26.pdf>

[16] The Minister of Justice acknowledges that it is in the public interest and consistent with the principle of judicial independence that the CJC be properly consulted on government initiatives that may impact judicial education, in a manner that is sensitive to the constitutionally separate roles of the judiciary and the government.

[17] Recognizing the Minister of Justice's role as the member of government responsible for superintendence of Canada's justice system, the CJC and Minister of Justice acknowledge that it is for the Minister to:

- (a) work within government to allocate resources to support the continuing education of superior court judges;
- (b) work with provincial and territorial counterparts on facilitating access to appropriate judicial education for all judges, including judges of provincial and territorial courts;
- (c) help ensure public understanding of judicial education; and
- (d) listen to Canadians regarding their views and concerns on judicial education.

Sexual Assault Law and Social Context Awareness Specifically

[18] The CJC and the Minister of Justice agree that effective judicial education demands a three dimensional approach encompassing substantive content, skills development, and social context awareness.

[19] The CJC and the Minister of Justice acknowledge that the important steps signified in the *Act* represent an ongoing commitment to include awareness of the social context as part of the judiciary's professional development. The CJC acknowledges that this professional development requires awareness and knowledge of the realities of individuals who appear in court, including an understanding of circumstances related to, among other things, gender, race, ethnicity, religion, culture, sexual orientation, differing mental or physical abilities, age, socio-economic background, children and family violence.

[20] The Minister of Justice acknowledges that the CJC now requires federally-appointed judges to complete two educational seminars relating to sexual assault law and social context. Firstly, federally-appointed judges must attend, within the first year of their appointment, the *Seminar for New Federally-Appointed Judges*. Components of that seminar contain education on

sexual assault trials and related social context topics. Secondly, they must attend, in their second to fifth year of appointment, the seminar *Judging in Your First Five Years*.

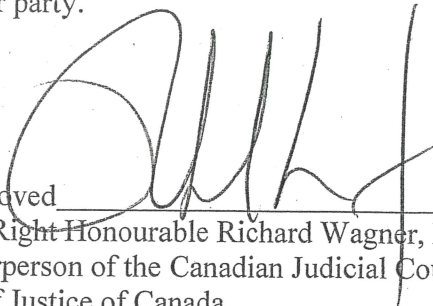
[21] The CJC commits to continuing to offer and to upgrade in accordance with the law the two aforementioned programs, and commits to continuing to have them be mandatory. Indeed, the CJC has required federally-appointed judges to take this educational programming within five years of their appointment since 2018 (see attached Appendix A: *CJC's Professional Development Policies and Guidelines*). The CJC also commits to ensuring that judges have access to "The Sexual Assault Trial Toolkit", an on-line resource that launched, chapter by chapter, in November of 2020, and that contains up-to-date training in the law, skills and social context of sexual assault trials.

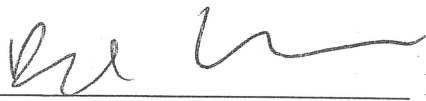
[22] The CJC also calls attention to the fact that all federally-appointed judges participate in local court-based sexual assault law programs, in addition to national educational programs (see the attached Appendix B: *History of NJI Training on Sexual Assault and Related Topics from January 2014 to December 2020*).

[23] The CJC and the Minister of Justice are each accountable to the public. Information sharing, respect and cooperation are key to upholding the public trust. The CJC reiterates its commitment to increased transparency on judicial education. Canada is viewed as having one of the best judicial education systems in the world, in large part because of the National Judicial Institute (NJI), an acknowledged world leader in the design and delivery of judicial education. The NJI is an independent, judge-led organization that provides dynamic and relevant educational programs and resources to Canada's 2,500-strong judiciary. The comprehensive curriculum offered to judges encompasses substantive law, practical training, and ongoing social context awareness regarding society's evolving expectations. The CJC website provides information about all of the judicial education programs delivered each year. The website can be accessed at the following link: <http://judicialeducation.cjc-ccm.ca>

REVIEW

[24] This MOU takes effect on the date of its signature by the parties. It may be amended at any time with the agreement in writing of all parties and is subject to review at the request of either party.

Approved  Date: Apr 28, 2022
The Right Honourable Richard Wagner, P.C.
Chairperson of the Canadian Judicial Council
Chief Justice of Canada

Approved  Date: Apr 28, 2022
The Honourable David Lametti
Minister of Justice and Attorney General of Canada

