HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO • NUMBER 056 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, April 11, 2017

Chair

Ms. Marilyn Gladu

Standing Committee on the Status of Women

Tuesday, April 11, 2017

● (0845)

[*English*]

The Chair (Ms. Marilyn Gladu (Sarnia—Lambton, CPC)): Good morning, colleagues. Welcome.

We have one order of business before we turn to our panel. Ms. Malcolmson has tabled an order of motion, which was sent out to you, so I'll turn it over to Ms. Malcolmson.

Ms. Sheila Malcolmson (Nanaimo—Ladysmith, NDP): Thank you, Chair. Good morning, committee.

I will move the first motion that I gave notice of on Thursday. I move that the committee invite the Minister of Finance, the Honourable Bill Morneau, at the earliest opportunity, to explain the effect of budget 2017 on women and girls and that this meeting be televised.

The Chair: Is there discussion on the motion?

Mr. Fraser, go ahead.

Mr. Sean Fraser (Central Nova, Lib.): The finance minister, I believe, is at the finance committee today to take questions on budget 2017. That's the appropriate form. I think every committee has an interest in hearing the finance minister speak about the budget. I don't think it is appropriate for him to appear at each committee that would like to see him. I'm sure we all would.

For that reason, the best forum is in the finance committee today to take questions. I hope there are questions on gender there or, of course, in question period in the ordinary course.

The Chair: Ms. Malcolmson is next.

Ms. Sheila Malcolmson: Thank you, Chair.

If I could speak to my motion, I'm secure of the four rationales.

First, the budget was touted as an important step for women with the use of gender-based analysis and the gender statement. It is reasonable, therefore, to ask the Minister of Finance to appear before this committee to discuss the ways in which the decisions were made in the budget. This committee has done at least two studies over the last five years specifically on gender budgeting, and there was our study last year on gender-based analysis. We have expertise at this table specifically.

The second point is that Finance Canada conducts a GBA but does not share its findings. Therefore, we need to ask the finance minister directly. That is something that has been said several times in public by the finance minister.

Third, his fall economic statement, released November 1, noted that it would ensure that the government continues to deliver real and meaningful change for all Canadians. It specifies publishing a gender-based analysis of budgetary measures.

Fourth, Standing Order 108(2) specifically says this committee has the broad authority to study the policies, programs, expenditures, budgetary estimates, and legislation of departments and agencies that conduct work related to the status of women.

Inviting the finance minister is no different from having any other departments, such as Statistics Canada, Industry, Natural Resources —all of which have appeared before this committee. I would argue that if this government has a good story to tell about its gender budgeting, we would benefit from hearing from the minister directly.

Thank you.

The Chair: Are there further points on that?

(Motion negatived)

Would you like to bring your second motion?

Ms. Sheila Malcolmson: I would. Thank you.

I move that the committee invite the Minister of Status of Women, the Honourable Maryam Monsef, to appear before the committee at the earliest opportunity to brief the committee members and respond to questions on her progress to date in implementing GBA+, and that, in addition, Treasury Board Secretariat officials be invited to appear at this meeting to update committee members on the secretariat's response to GBA+, and that this meeting be televised.

While I have the floor, I'll say again that the March 31 status report that was sent to this committee came after the minister appeared. Again, because of this committee in the past, and this iteration of this committee having studied GBA in detail, we would benefit from hearing about and being able to ask her about her progress and the extent to which she is pursuing our key recommendations in our report. These were the establishment of a commissioner and the establishment of legislation. Those are our two key recommendations and we would benefit from hearing her rationale.

Thank you.

The Chair: Is there discussion on the motion?

Ms. Damoff, go ahead.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I would just say that the minister was just here, and also we've received an interim report.

I think it would more beneficial, if we want to bring someone, to bring the department officials, because they're the ones who are implementing it. We won't support bringing the minister back two weeks after she was just here.

The Chair: Is there further discussion?

Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC): Can we have a recorded vote, please?

The Chair: Yes, we can have a recorded vote.

(Motion negatived: nays 5; yeas 3)

Ms. Rachael Harder (Lethbridge, CPC): Sorry, Ms. Nassif is not here, so she cannot be recorded as against.

● (0850)

The Chair: Thank you for the correction.

Ms. Pam Damoff: I don't know if I can do it now or if you want a notice of motion that we bring departmental officials to update us on GBA+. Do you want me to put it in writing for the next meeting?

The Chair: Yes, it would be in order to put it in writing and then we'll go from there.

All right. Now we turn our attention to private member's Bill C-337, an act to amend the Judges Act and the Criminal Code (sexual assault).

We're extremely pleased today to have, from the Canadian Judicial Council, Norman Sabourin, who is the executive director and senior general counsel there. We also have, from the National Judicial Institute, Adèle Kent, who is the executive director. And from the Office of the Commissioner for Federal Judicial Affairs, we have Marc Giroux, who is the deputy commissioner.

Welcome to you all.

I'm going to begin with Norman.

Norman, you have five minutes for your comments and then we'll go from there.

Mr. Norman Sabourin (Executive Director and Senior General Counsel, Canadian Judicial Council): Thank you very much.

[*Translation*]

Madam Chair, members of the committee, on behalf of the members of the Canadian Judicial Council (CJC), I sincerely thank you for your invitation.

The Council was created in 1971 to ensure better administration of justice, to exercise clear authority in overseeing judicial conduct and to assume explicit responsibility with respect to the continuing education of judges.

The independence of the judiciary requires judges to be in charge of the professional training of judges. In return, that requires the judiciary to ensure public trust in the competence of the judges.

The CJC has been a leader in professional training, including in bringing awareness to social issues such as sexual violence.

[*English*]

I am confident that in collaboration with the Commissioner for Federal Judicial Affairs, the National Judicial Institute, and others, the CJC has put in place an outstanding system of judicial education, one that is internationally recognized for its quality.

Unfortunately we've done a very poor job of explaining this publicly, of telling the success story, so I'd like to give just a few highlights about what I think is a success story.

In 1989 the CJC, in its annual report, identified a concern with regard to the treatment of sexual assault cases by judges. The report outlined that a new training program was needed on gender issues so that judges could address gender issues with justice and with sensitivity. Other issues surfaced—aboriginal justice, poverty, mental health, racism—and the CJC created at that time a committee on equality in the courts.

The CJC worked with scholars, with the CBA, with government, and with community groups and adopted, in 1994, a policy of comprehensive, in-depth, credible education programs on social context issues. In 1997 chief justices of the council committed to providing the time and opportunity for all judges to take part in social context programs. As these programs developed, the CJC directed the NJI to include social context education in all of its programming, and that's where we stand today.

To ensure that we continue on this path of comprehensive education for judges, the CJC adopted just last week a resolution for mandatory participation in the seminar for all new federally appointed judges. This is in addition to the long-standing policy of the CJC requiring all judges to devote at least 10 days to professional development each year.

I conclude by emphasizing that professional development is for judges an ethical obligation. It's something that we take very seriously at the CJC. Failure to uphold that ethical obligation may well require a review of the judge's conduct.

I think Bill C-337 provides an opportunity to increase transparency in this area. The CJC has some ideas about the proposed legislation. For example, we think that the objectives sought in proposed subsection 2(2) would be met more effectively by requiring candidates for the judiciary to sign an undertaking on their application form to abide by CJC policies on judicial education, something that we will propose to the minister shortly.

I would also respectfully suggest to the members of the committee that if you want any views, advice, or suggestions when you enter the clause-by-clause review, I am at your disposal.

I look forward to your questions.

● (0855)

[*Translation*]

I would be pleased to answer any questions you may have.

The Chair: Thank you very much.

Ms. Kent you are next for five minutes.

[*English*]

Hon. Adèle Kent (Executive Director, National Judicial Institute): *Merci.*

Good morning to you all. Thank you for allowing the National Judicial Institute the opportunity to come here to give you some information about judicial education in Canada, an initiative we're just starting with respect to sexual assault training.

Before I do that, I want to say a couple of things to you that I think we likely all agree on.

First of all, when sexual assault cases come into the courtroom, myths and stereotypes risk impeding the judicial process. These risks, we know, persist despite Parliament's effort at amending the Criminal Code and the guidance we have from the Supreme Court of Canada.

The dialogue that Bill C-337 has begun, along with the work this committee has done through your report on violence against women and girls, is a dialogue that the NJI welcomes. When sexual assault trials go wrong, the consequences, we know as judges, are serious for everybody involved.

For me, judicial education is the preventative key to these mistakes' being made. We know that errors will be made. There is appellate review available, but the real way to avoid the trauma that can result from appeals and retrials and that sort of thing is judicial education.

Bill C-337 proposes measures to improve the justice system when dealing with allegations of sexual assault. The NJI applauds the spirit of the act. We have some concerns about some of the methods, and I'd be happy to answer any questions about that in the question period.

With those two things said, let me get to an explanation of how we train judges. I'm going to speak first about federally appointed judges. There are two ways they get training.

First of all, almost all federally appointed judges attend NJI training in their court-based program. That's local to their various courts. Second, in addition, most of these judges also will attend one of the nationally planned NJI courses that we put on.

We know that the courts themselves also do some training. We also work closely with the Ontario Court of Justice, which, as you know, is the largest provincially appointed criminal trial court in the country. Along with the Canadian Association of Provincial Court Judges and the Ontario Court of Justice, we run a new judges school for provincially appointed judges. In all, last year NJI ran 180 days of judicial education.

NJI has been training judges about the dangers of rape myths and stereotypes and the complexity of sexual assault trials for years. Sexual assault trials first are tackled in new judges school, but that training is available throughout judges' careers, either in stand-alone programs that address sexual assault trials or as part of broader training in criminal or evidentiary programs.

Gender-based violence, equality, and discrimination issues are key parts of our broader social context programming. Social context requires judges to take into account the context of the cases they hear and not be influenced by attitudes based on stereotypes, myths, or prejudice. Because of these and other programs, I'm proud to say that we are a world leader in judicial education.

Judicial education must be led by judges; we work with judges throughout Canada to plan our programs. But it's not just judges. We call on academics to provide judges with their legal and social scientific scholarship and information about the impact of our decisions on society broadly. We also call on members of the community. Input from them ensures that NJI's goal of teaching judges the context of the people we serve is brought to the judges.

For sexual assault training, we have worked over the years with police, victim support workers in domestic and sexual assault violence, psychologists and psychiatrists, members of the indigenous community, and other diverse communities, just to give you some examples.

With all of this, can we do more? Absolutely we can.

First, going forward we want to share more information with Canadians about judicial education.

Second, NJI was pleased with the acknowledgement in the recent budget that money is necessary for the education of judges, to make that education even more robust.

● (0900)

Last week, NJI received additional funding from the Canadian Judicial Council. The plan with that money is to fund some videocasts on sexual assault trials, which will be put on our website, thereby making them available to all Canadian judges. I would be happy to explain more about this project to you again during question period.

With that, thank you very much for the opportunity to appear here today.

The Chair: Excellent.

Thank you very much.

Now we'll go to Marc for five minutes.

[*Translation*]

Mr. Marc Giroux (Deputy Commissioner, Office of the Commissioner for Federal Judicial Affairs): Madam Chair, thank you for this invitation and the opportunity to make a few remarks on Bill C-337.

I am the deputy commissioner for federal judicial affairs and I am now also fulfilling the role of commissioner.

[*English*]

Before commenting on Bill C-337, I would like to speak briefly about the role of the commissioner for federal judicial affairs. Pursuant to the Judges Act, the commissioner acts as the deputy of the Minister of Justice in administering part I of the act, which speaks to the appointment, compensation, and benefits of judges.

The commissioner has other responsibilities, which include, under subsection 74(1)(d), to do other things the minister may require for the proper functioning of the judicial system in Canada. This is where our office is delegated the role of administering the judicial appointments process on behalf of the minister. I would be pleased to explain this in greater detail if there are questions later.

Essentially, our role is to prepare the list of judicial vacancies, oversee the application process, support the 17 judicial advisory committees that assess candidates, and prepare for the minister a list of eligible candidates from which to appoint. Because of the principle of judicial independence, the commissioner and the office are also independent from the Department of Justice.

[*Translation*]

I would now like to speak to the issue at hand, Bill C-337. Let me first say that, personally speaking, it is completely fair and appropriate, in light of certain cases, that questions be asked about the training of judges in sexual assault law. I certainly understand your interest in the issue and I think the objective of the training is entirely valid and important.

Actually, the issue at stake is finding out the best way to achieve the objective. As part of your discussion on this, we are of the opinion that this deserves some considerations and I would like to highlight two practical points.

[*English*]

The bill, as it currently stands, would have those who wish to become judges complete education in the area of sexual assault law before they are appointed. In the administration of the judicial appointments process, our office receives over 500 applications per year generally. This year we have received 700 applications in less than six months. If education is to be provided before applicants become judges—that is, during the assessment process—and to a large number of candidates, our concern is that it will be more difficult to ensure they are properly educated, and that such training will not be exhaustive enough.

The important priorities of, on the one hand, ensuring an efficient assessment process for candidates, and on the other, ensuring that candidates are properly educated in the area of sexual assault law may come into conflict, and one or both of these priorities may suffer as a result. The effects in essence could be twofold: the assessment of candidates may be delayed, and on the other hand, the education candidates receive on sexual assault law may be less than adequate.

If the objective is to determine the best manner in which to educate judges in the area of sexual assault law, which we agree is very important and worthy, doing so at the assessment stage may not be sufficient. It seems it would be best to provide such education once judges are newly appointed. They can then sit down in a class and take a course—perhaps approved by the Canadian Judicial Council as the responsible body under the law, and designed by NJI and its experts—and that course can be longer.

[*Translation*]

There's a second point that I would like to very quickly raise. In the Judges Act, the commissioner is mentioned only in part III. The commissioner is never mentioned in sections 1 to 72 of the act. Part III states that he is the “deputy of the Minister”. If the bill is passed as is, however, anyone who's appointed judge should have completed, to the commissioner's satisfaction, a refresher course on sexual assault law. That could create a potential conflict between the commissioner and the Minister of Justice, if the two have different opinions about how that training should be achieved. While in all other cases under the act, the commissioner acts as the deputy of the minister, with the bill, he would have a new responsibility independently from the minister, and as part of an appointment process that is not set out in the legislation. That potential conflict should be avoided.

● (0905)

[*English*]

These are my remarks, Madam Chair.

Thank you very much. I would welcome any questions.

[*Translation*]

The Chair: Thank you very much, that was great.

[*English*]

All right, we're going to begin our questions with Mr. Fraser for seven minutes.

Mr. Sean Fraser: Thank you very much, Madam Chair, and to our witnesses for being here today.

Mr. Giroux, perhaps I'll start with you.

You highlighted essentially a capacity problem at the end of your testimony, to say that we might backlog the system and jeopardize the quality of the training if we train before appointments are made. I take it then, that it's your view that we would still be able to provide adequate training post appointment. There's no way that we'd put that in jeopardy.

My concern is really around the jurisdiction of the federal government to train a judge, without violating the principle of judicial independence, after they've been appointed.

Could you perhaps offer some comment on that?

Mr. Marc Giroux: Well, I can offer some comments. I think my esteemed colleagues might have some views as well.

I don't know that I want to speak to how the federal government may impose this upon judges. I can speak to the fact that at the current time, with the process that is now in place, the training obviously occurs once judges have been appointed. That is because of the principle of judicial independence.

There is a system in place to allow for such training, and to ensure that it's available to all federally appointed judges and provincially appointed judges, that it is adequate, and that it is well provided.

Mr. Sean Fraser: In the interest of time, before we give an opportunity to the other witnesses, I was very excited when I saw this this topic come up, obviously with Justice Camp being in the news, and Judge Lenehan's decision in my home province of Nova Scotia. It feels like there's something we can do to boost public faith in the justice system in Canada, starting with judicial education.

If we can't do it without putting into jeopardy the process of appointing judges or interfering with your capacity, is there something we can do pre-appointment? It could be to perhaps require that judges disclose the training they have taken during their application? Potentially it could be to put into legislation an independent appointment process that would bring back, permanently, the highly recommended category that you described during the list process.

Mr. Marc Giroux: I think Mr. Sabourin highlighted a suggestion earlier, or he may explain that further later on. To ensure that newly appointed judges receive proper training, in whichever area, there could be an undertaking by candidates in the questionnaire that they fill out to become judges. This could certainly serve to oblige them, if they are appointed, to take up that training.

Mr. Sean Fraser: With regard to my first question about whether the right way to do this is to provide training after the appointment has been made through the CJC and NJI, what are your thoughts respectively?

Hon. Adèle Kent: I worry about training in the pre-appointment process being effective.

When you ask what the federal government can do, I suppose I would turn that back on us and say, what can we do to give you confidence, to give Canadians confidence, that once judges are judges, they are being trained in sexual assault training and all of the other training that is connected with gender-based violence?

I have thought about it a lot over the past year. These matters have come into the public eye because of the trials that we all know about. I think we can be more transparent. That way, we can give more information about what we were doing. Allow Canadians, allow the academics, who we know work so rigorously and think about these issues so much, to know what we're doing and provide whatever insights they can.

From the perspective of the NJI, that would be my answer.

Mr. Sean Fraser: I find this a bit surprising, given the preconceived notions that I had coming into today. You're suggesting that the problem is more one of communications and transparency then an absence of training for judges.

Hon. Adèle Kent: One of the problems is transparency.

As I've said before, I think we can do more as well in terms of the training. We have good training. We have training in sexual assault, how to manage trials, the social context around the people who come into our courtrooms, but I think we can do more.

● (0910)

Mr. Sean Fraser: Mr. Sabourin, on the issue of the appointments process again, personally, patronage appointments rub me the wrong way, at every level. I think a Liberal, a Conservative, an NDP may very well deserve a position, and they should be appointed if they do. However, it shouldn't be their ticket to to that position, depending on which government is in power.

Do you think that making the process of appointing judges more independent would help lead to a higher quality of judge, and requiring that they disclose training that they have in areas of interest would be an appropriate way to improve the quality of judges and the public faith in the system?

Mr. Norman Sabourin: I'd say the short answer is absolutely yes. The proposal that I mentioned in my opening remarks, which we'll make to the minister shortly, that candidates be required to make an undertaking that they will abide by CJC policies on judicial education and tell us more about their training is very important.

On the second part of your question on the appointment process itself—and I'm completely non-partisan; I've been a public servant for 25 years—I think the changes to the judicial advisory committees, JACs, that have been made recently are very positive. The members of the JACs now include three members of the public. They are half composed of women or a majority of women, and members of the JACs receive training on the importance of being aware of diversity. They watch a video by the chief justice of Canada about the importance of their work. So absolutely, that first step of the process is a critical part. The more independent the appointment, the better the candidates down the road.

Mr. Sean Fraser: To piggyback on that, is there a way that we can legislate that independent process into this bill, for example? Does it require a separate piece of legislation, or is it the will of the government of the day to do it the right way?

Mr. Norman Sabourin: I'll leave the government of the day to answer. There are issues of judicial independence that arise from some of the provisions of the bill. I don't want to beat around the bush. It's clear, and I heard the sponsor of the bill say that, essentially, there may be an attempt to do indirectly what you cannot do directly, so we have to be careful with that. But I think there's a way to meet one of the key objectives of the bill, which is an undertaking for training, as opposed to mandating candidates, which —I share the commissioner's view—would be rather difficult to manage.

Mr. Sean Fraser: We're out of time. Thank you very much.

The Chair: Excellent.

Now we're going to go to my colleague, Ms. Harder, for seven minutes.

Ms. Rachael Harder: Thank you.

Justice Kent, my first question is going to come to you.

It's my understanding that right now there's no uniform protocol in terms of judges' training or that transition from being a lawyer to being a judge. When a judge gets appointed, can you help me understand exactly what that transition period looks like for them?

Hon. Adèle Kent: First of all, there is now the mandatory new judges training, but I think it's much more than that. When a judge gets appointed—and I'll speak about federally appointed judges because we work mostly with them—generally speaking, they are assigned a mentor in their court. When they first arrive at the court, their chief justice will give them some mentor on the court of senior judges. In my court, I know, you often get two because of the different areas of law.

The new judges school is run twice a year, fall and spring, and they attend that. After that, you're quite correct, there is nothing formalized in place for a plan of education for the judges. The recommendation of the Canadian Judicial Council for years has been that judges, in their first five years, have a plan of education. I can tell you that a proposal was made by the NJI at their last council meeting for us to incorporate personal education plans for each judge.

We'll start with the new judges as they're being appointed. Over a period of time, we hope that every judge has a plan, particularly for their first five years, that suits their needs, given the kind of practice they have, the kind of court that they're coming into, and the needs of their court.

Ms. Rachael Harder: Ms. Kent, I'm going to jump on that then. With regard to that, I understand that a plan can be put in place, but who makes sure that plan is followed through? Who keeps track of registration records? Who keeps track of whether or not they even show up for school? I can imagine there are circumstances that come up that prevent them from being able participate. How do we make sure that there's follow-through then? Where is that transparency mechanism? That's really, ultimately, my question.

● (0915)

Hon. Adèle Kent: Which judges go to the training is really up to the chief justices, and so Mr. Sabourin may have something to say. But we hope, as we institute this plan, that we will have a more formal way of assisting the judges, reminding the judges that this is a course we recommend, and so on and so forth, and working with the chief justices to assist them in keeping those plans in place.

You're, again, absolutely correct that sometimes life intervenes. For a judge, that often means a jury trial that has gone on longer than planned or a reserve judgment that must get out because it's an emergency, it's a family law matter, and there needs to be a decision. Subject to those kinds of things, where a judge may not be able to attend a course, we hope that, working with the chief justices, we can have a more formal process to have that education take place.

Ms. Rachael Harder: Ms. Kent, you have to forgive me. It seems rather curious to me that this just became mandatory this week, in light of this bill coming out at this point in time. Up to this point, there haven't been any records kept. There hasn't been any transparency. There hasn't been any accountability with regard to these judges actually receiving the training that they require to preside over the cases that they're given.

Now, a part of the mandate of the Canadian Judicial Council is this: “to promote efficiency, uniformity, and accountability”.

I'm wondering, Mr. Sabourin, if you can comment with regard to accountability. Where is this transparency mechanism?

Mr. Norman Sabourin: Madam Chair, I can tell you that the accountability rests first and foremost with the judges and also with their chief justice.

I'd like to explain, too, what happens when judges are appointed. First of all, I write to them and I remind them of their new ethical obligations, their professional development obligations. I tell them about the new judges' seminar, and I tell them they should attend. They then get a letter from the director of the National Judicial Institute that provides the dates and the registration information, and an offer to work with them to develop a personal education plan.

Finally, and very importantly, that chief justice will clear that judge's calendar to attend the program, will assign a mentor, as Justice Kent mentioned, and will make sure that the judge in question is not going to take a criminal jury trial as a first assignment if he or she has never participated in that as a lawyer.

The accountability rests, as it properly should, with the chief justices and the judges themselves.

Ms. Rachael Harder: So, for the chief justice and the associates, based on my research, there's no transparency mechanism there in terms of how they oversee the judges under their care, or in terms of how they launch training programs or education programs. There's no uniformity or conformity to it. So, if you were a chief justice, you really could do absolutely nothing and that would be totally fine. That's my understanding. Is that correct?

Mr. Norman Sabourin: I can tell you that in my 13 years at the CJC, I'm not aware of a single instance of a newly appointed judge who didn't attend the seminar for newly appointed judges; and if I were to discover that, I think it could very well become an issue of judicial conduct. The accountability mechanisms are there. The transparency exists by virtue of the fact that judges' decisions are public and the appeals are public.

In terms of further transparency, the CJC is very pleased that budget 2017 has identified funding to do some of the things we've wanted to do for a long time, which include being a lot more transparent, as Justice Kent noted, with respect to the number of seminars, the curriculum for judges, and so on.

Ms. Rachael Harder: So Mr. Sabourin—

Mr. Norman Sabourin: I'll just conclude with this. Some people have called some of the provisions of the bill an attempt to have a “name and shame” provision; and I think there could be a real issue with trying to identify which judges take which courses at which time, to then criticize their decisions on that basis. That could be a real issue.

Ms. Rachael Harder: With regard to the element of transparency, would you be willing to be transparent about how many people are taking training and what types of courses are being offered?

Mr. Norman Sabourin: I think that's one of the objectives we want to achieve, but we, the CJC, believe there could be an issue of independence if you try to then link that with the results of the decisions of judges. So, yes...a curriculum for judges, number of courses, number of judges.... I'm very pleased to say that for this current fiscal year, the CJC has approved attendance for about 907 federally appointed judges to educational programs, and when we know there are 1,100 judges across the country, that's a pretty high participation rate. We'd like to make that kind of information publicly available.

● (0920)

The Chair: That's your time.

Now we'll go to Ms. Malcolmson for seven minutes.

Ms. Sheila Malcolmson: Thank you, Madam Chair.

Thank you also to the witnesses.

The bigger picture to this story is that Canadian society is working very hard to remove the taboo about blowing the whistle on sexual assault. We've had headline after headline for decades, but especially in the last six months, around the way police are handling complaints.

Obviously, it's intimidating for victims to come forward. Now to have these headlines the last couple of months on the rare, but absolutely terrible, conduct of a couple of judges.... I think we're all worried that this is going to have an inhibiting effect on women coming forward and asking for help. The few cases that actually get to court if they're handled in this way is a terrible headline, and we just can't afford to have this as a country.

It's great that we're having this conversation right now. I'm reassured at some level to hear about the work that you're doing behind the scenes that, as you say, we don't see. At the same time, if it was going well, then we wouldn't have had those headlines, so I have two groups of questions.

One, how does your work get at the judges who are already appointed, who are already in the system? They're going to continue to have an impact on victims and on court cases. That's one piece. I'd love to know what you can do at an ongoing training level, not just at the point that appointments are made. I invite any of you to weigh in on that.

I'll circle back now to my first question, which is for Ms. Kent.

With regard to the content of the training, you talked about the transparency. On the New Democrat side, we've been hearing from women's organizations that they want to see what that training is, and they'd like to have the ability to influence it. They've been working for decades in this field, and they'd like to collaborate a bit on the content.

Can you let me know how we can see what the course material is so that everybody in all elements of the women's protection movement and social justice movement can be reassured that we know what content the judges are seeing? Is that something you're able to provide for this committee?

Hon. Adèle Kent: First, let me start by saying that, as I said in my remarks, we have worked with a variety of community members, including some women's groups, throughout our training on social context, so it has been there.

We've also worked with many academics who work specifically in this field. We're confident that the training we're providing the judges in this area is good training.

In terms of providing material, I guess I'd say that I wish we were having this conversation about six months from now. It's become apparent to me as I've taken this job that we need to look at the amount of material that we make available to the public so they can have the confidence that the judges, throughout their careers, are getting the training they need.

I have constituted a committee of judges to look at the material we produce and to determine what we can make more publicly available so people can take a look at it and come to their own conclusions. We'd be happy to hear from people about where they see deficiencies. This is something we're currently looking at doing.

In terms of past material, much of that material was created and published before my time and under conditions of author confidentiality, so I have to be careful about that. Certainly, going forward, it's an initiative that we have to undertake.

Ms. Sheila Malcolmson: For this study, is there anything that you're able to undertake to provide so that we can get on the record a picture of the course content material?

Hon. Adèle Kent: Well, right now, you have the curriculum overview that we provided to you today. That gives you the nature of the courses that we have. It doesn't give you a list of all the courses that we're doing in 2017 or 2018, that sort of thing.

As we sort out, I guess I'd have to determine where we can give information and where we still need to be careful. I do want to say to the committee that some of the training that we do with them in social contact is hard training for them. They're being asked to look at the kinds of attitudes that they may have come to the bench, so we have to create some safe space so that it is effective training.

I just want to say now that I want to be careful about how we do that so that we undertake to be more transparent, but we maintain the effectiveness of the training that we have.

● (0925)

Ms. Sheila Malcolmson: This document is a list of course offerings, as I see it. Can I leave it that if there is anything that actually gives us the blow-by-blow...? If you're able to provide it to the committee, it would be of value to us.

Hon. Adèle Kent: Sure.

Ms. Sheila Malcolmson: I understand that if it's six months from now, we'll have to have a different study, but it really would be helpful now.

Let me go back to my second question. Is anybody talking about how to get at judges who are already in the system, so that we are able to make sure they are issuing judgments and treating victims with respect, so that we don't get more of these terrible headlines such as we've had in Alberta and Halifax?

Hon. Adèle Kent: We have been offering courses in sexual assault training, stand-alone, within broader courses; cases in giving oral judgments; in good communications with all the people who come into the courtroom. These aren't programs just for new judges; these are for judges at any stage of their career. The training is available.

We work with chief justices, because they know what needs there are in their jurisdiction. For example, in one jurisdiction last year, because they had a number of new judges appointed and wanted to ensure that those judges had specific training in sexual assault trials, one of their two-and-a-half-day seminars was on sexual assault trials. That training is available throughout the judge's career, and we would work with the Canadian Judicial Council if a chief sees a particular need to have those judges educated.

[*Translation*]

The Chair: Thank you.

We will continue with Mr. Serré for seven minutes.

Mr. Marc Serré (Nickel Belt, Lib.): Thank you, Madam Chair. I will be sharing my time with Ms. Ludwig.

My thanks to the witnesses for the information they shared with us. That's very good. Thank you as well for saying more about the appointment process, which was changed.

Here is my first question, Mr. Sabourin. You indicated that there are a lot of positive aspects. Do you have another recommendation to improve the process, or are you satisfied with the existing process and confident that it will greatly improve the situation for future judges?

Mr. Norman Sabourin: The CJC has provided advice and recommendations to the Minister about the appointment process. We are very pleased that, overall, the council's suggestions and recommendations have been adopted. I think the process has been improved. However, there is room for further improvement. Among other things, we would like to propose to the minister changes to the application, including—as I mentioned—a commitment to take the council's professional development courses. There are other issues with the application form that we might want to raise, and we will soon be suggesting that the minister do so.

Mr. Marc Serré: Thank you very much.

You have also noted measures in budget 2017 that are positive and will be very useful. In addition, you mentioned the non-partisan work the committee has done to enrich and continue the conversation.

Mr. Giroux, with the resources in your office, would you be able to implement the proposed changes in the future?

Mr. Marc Giroux: Following the changes or amendments that would be made by the bill, the short answer is no. We administer 17 advisory committees across the country. We have staff members attending every meeting of those committees. There are about 50 of them a year. So we have staff members constantly supporting those committees.

Adding another training component would therefore require additional resources.

Mr. Marc Serré: Thank you very much.

My question is for Ms. Kent.

You said that judges must be responsible for their training, that it's an independent and important process, and that measures have been taken.

Mr. Sabourin, I think, and Mr. Giroux, you have expressed some concerns about Bill C-377. Ms. Kent, you have also expressed some concerns.

People don't think this bill is necessary. The party of the mover of the bill, a former minister, was in power for 10 years. Here is what I would like to know about the changes under Bill C-377. Is this bill necessary even though there are measures already in place, such as the ones you mentioned in terms of the appointments, budget 2017 and training?

I just want your comments about the bill itself, because people say that it's not absolutely necessary.

● (0930)

Hon. Adèle Kent: I'll answer in English, if you don't mind.

Mr. Marc Serré: Yes, great.

[*English*]

Hon. Adèle Kent: I have a couple of concerns about the bill. I've already mentioned that I worry about the effectiveness of training lawyers who might become judges later on, if you really want to make a difference. It is important.... The real effectiveness of judicial training is that they are judges. They know they're in the seat. They're sitting there. They're practising because—this is a hypothetical situation in one of our courses—they know that next week they're going to have to do it. I worry about the effectiveness, if that is what the bill is aiming for.

The second concern I have is with respect to written reasons. Now, I appreciate that Ms. Ambrose has acknowledged that there are audio recordings and that may solve the issue of written reasons, but I do worry, knowing the heavy workload of judges now and the additional workload that doing written reasons has for every judge, and, most importantly, the fact that it would delay the litigants' knowing the outcome of their cases. We do whatever we can to ensure that decisions are rendered quickly.

If the section dealing with written reasons allows for audio recordings to be available, that makes a lot more sense. At the end of the day, I think it would ensure that the litigants find out the results of their cases earlier.

In terms of whether it's necessary, I'm not sure that, as a judge, I should go there, but those are some concerns that I have.

Mr. Marc Serré: The last two minutes will go to Ms. Ludwig, please. Thank you.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you very much.

I found your presentations very interesting and informative. Thank you for all the work you're doing in terms of the training of judges, and for sharing that with us.

In looking at the current form of Bill C-337, in your experiences, what would be the unintended consequences of this current piece of legislation? You've identified some of them. If it were passed, what might be some of the unintended consequences that we want to avoid?

Mr. Norman Sabourin: Madam Chair, I think that one of the consequences of great concern is one I alluded to earlier, which is to attempt to do indirectly what I think cannot be done directly—try to identify which judge decided which case and in what manner, and whether he or she was trained in “sexual assault law”. At the CJC, we see, first of all, taking a very comprehensive approach to judicial education. Second, we have to respect the fact that, in Canada, erroneous decisions are dealt with through the appeals process, and judges who engage in inappropriate conduct are dealt with through the discipline process. That's part of the justice system we have in Canada.

Ms. Karen Ludwig: Okay, thank you.

Justice Kent, go ahead.

Hon. Adèle Kent: I'll take a bit of a different tack. Our training is organized and planned by judges and they do it as volunteers, so they're working on their lunch hours, their evenings, their holidays, and their non-sitting weeks to plan the education we have. That's why it is so relevant to the judges who take the education. I want the judges to do the planning, because they enjoy it and they're enthusiastic. We know the judges come to our education because they're enthusiastic about it.

For the very reasons that Mr. Sabourin mentioned, I'm worried that this kind of thing would change the culture of the collegial education that we have now.

The Chair: Very good. That's your time.

We now go to Mrs. Vecchio for five minutes.

Mrs. Karen Vecchio: Thank you very much.

I'll start with Ms. Kent, if you don't mind.

I'll start with a quote from last week on CBC News: “Kent argues all new judges at every level would benefit from more comprehensive education.” You were quoted as saying, “When I became a judge 23 years ago, I had no idea how to grant a divorce to someone because I had never done family law.”

When we're looking at this sort of thing and talking about the courses, we're talking a lot about how in-depth the courses are going to be. How often are you going to train them? Are you training them on everything specifically? I recognize there is a mentor, but in smaller courts you may not have all of those things. Can you just go a little further on that, if you don't mind?

● (0935)

Hon. Adèle Kent: Yes. Maybe this would be a good time for me to talk about the initiative that we're planning as a result of the new funding we got. My plan is that we do a series of videocasts for judges, which would be on our website for them to watch. There are probably about 14 videocasts, dealing with all of the various subjects: issues of consent in sexual assault trials, production of third party records, rape myths and stereotypes, the whole gamut. They would be created by academics who are experts in the field, as well as senior members of the judiciary. Every judge who is appointed would watch those, from start to finish. Then, as you do your work as a judge, you would be able to go back to them if there was a specific issue.

It doesn't stop there. We have to look at the education that judges get face to face, particularly in areas of social context and communication, because those areas are so important in this training.

Mrs. Karen Vecchio: We're looking at the participation rates, and I think this is a big thing too. You may have 180 days available for courses and things, but what is the actual participation rate of those people already sitting on the bench who will not be participating in the new judges school?

I know that even as members of Parliament we take an interest in things of that sort, but you're talking about time, the fact that they're volunteers, and all of those things. We recognize that society has changed a great deal, so are there any plans to make this mandatory? If not, why?

How great is this participation rate? Can you break it down to the different sectors, whether it's the criminal law for drugs or sexual offences?

Hon. Adèle Kent: Here, today, I can't break it down.

I'm going to turn it over to Mr. Sabourin for a minute with respect to getting the judges to go to the education, but in terms of breaking it down as to how much training there is in drug offences, homicide, and gender-based violence, I can't give you that today.

Generally speaking, after new judges school, we see that we have good participation from newer judges for up to five years in what we call the core courses, which are criminal law, family law, charter, and evidence. We see that after that, there continues to be good participation for the full-time judges in some of our more specific courses.

Mrs. Karen Vecchio: What is good participation? Can you define that?

Hon. Adèle Kent: I'm just looking at my director of education programming. I'm not sure that I can give you a number today—

Mrs. Karen Vecchio: Okay. If we could get a number to follow that up, that would be awesome.

Hon. Adèle Kent: —or some more indication. We'll see what we can do.

Mr. Norman Sabourin: If I might, Madam Chair, the council approaches this, really, from a policy perspective as opposed to as a mathematical issue.

Ethical principles for judges provide that judges must take reasonable steps to maintain and enhance the knowledge, skills, and personal qualities necessary for judicial office. Because of that ethical obligation, in part, the council adopted a policy many years ago that highly recommends—it's not mandatory—that judges devote 10 days each year to professional development.

Mrs. Karen Vecchio: What's 10 days? Is that eight hours or is that three hours?

Mr. Norman Sabourin: It's 10 days of training for a normal full day.

Mrs. Karen Vecchio: Okay, so nine to five, eight hours.

Mr. Norman Sabourin: As I mentioned, the CJC just adopted a policy for mandatory attendance by newly appointed judges, and we are discussing what else may need to be mandatory. I don't know how easy it would be to get the numbers, but I think most judges take very seriously that ethical obligation. They do participate in programs, and as Justice Kent mentioned, more senior judges will take more specialized courses so that they can manage complex commercial and criminal matters, and assist the court in getting its more difficult work done.

The Chair: Very good.

We now have our final five minutes with Ms. Ludwig.

Ms. Karen Ludwig: Thank you, again.

I just wanted to focus again with you, Mr. Sabourin, on the "name and shame," and on how that might impact judicial independence. Could you expand on that?

● (0940)

Mr. Norman Sabourin: "Name and shame" is something I've read in the media.

I think that the issue before us—we can't beat around the bush—is that the judiciary must be in charge of judicial education. The reasons for that are, I think, quite clear and have been commented upon by scholars many times.

You can't have the executive branch dictating what exactly judges should do to maintain their professional skills, what areas of the law or other social context education they should or should not take. That would be very problematic from a judicial independence perspective.

I mentioned some concerns with the reporting requirements that would be proposed. They really seem to me to go to a method of trying to identify which judge decided which case having taken what education program.

I think that those issues must be dealt with in the normal manner through the appeal route and, if it's an issue of inappropriate comments or conduct, through the judicial discipline process.

I'm not sure that identifying that, let's say, the Court of Queen's Bench of Saskatchewan has seven judges, that they had 12 acquittals for sexual assault last year, and that three judges did not take a course last year means that there's a problem at that court. I don't think that you can draw those conclusions based on that kind of information.

I have to add something. This data, had we tried to collect it, is data that's in the possession of the courts. The administration of the courts is a provincial responsibility. Mandating the CJC to try to gather the data doesn't mean that the CJC can turn to courts and say, "We hereby require you to produce this data." There is a practical issue there as well, which could be problematic in terms of federal jurisdiction over this.

Ms. Karen Ludwig: Thank you very much for that.

Certainly in the media we've heard about some horrendous cases, and the outcomes from them have been devastating for survivors. In your experience, is the appointment process something that we should be more focused on than the mandatory training, considering that you're doing much of the training in the institutions within your own jurisdictions?

Mr. Marc Giroux: I can comment on some of this. The new process that the government put in place recently does a lot to remedy some of the gaps. The government called upon people to apply if they wished to become committee members on the judicial advisory committees. There's much more diversity now on these committees. The questionnaires are also longer and call for more information to be provided to committee members. It's a more transparent approach that has done a lot to increase diversity in the selection of eligible candidates. That will go some way in addressing some of these issues, but not all.

Ms. Karen Ludwig: Certainly we can't control for individual biases. We all bring those forward. We can try to work with some legislation, whether it's the training that you're working with, but some element of that is going to be there.

On the staffing side, I have no experience with the judicial system whatsoever, so maybe, Justice Kent, you can respond to this. As a judge, how involved is your staff on the research side? Are staff members of judges involved with any kind of mandatory training on sexual assault?

Hon. Adèle Kent: At the NJI, we have a number of lawyers on staff. They're responsible for working with the judges to plan the programming, and they do a great deal of research. When we look at a course, they will consult with academics, do their own independent research, and then bring to the judges some of the information, ideas, and new work that's out there to help design the program.

In terms of education for judges' research assistants, and so on, I can only speak to my court. They are all provincial employees, so the training would be dealt with through the province.

● (0945)

The Chair: That's the end of our time today.

Thank you, witnesses, for your experience and input. If there are answers or information that you think would be helpful to us, I invite you to direct that information to the clerk.

We're going to suspend briefly so we can let our witnesses leave and have our new witnesses sit.

● (0945)

(Pause)

● (0945)

The Chair: I call the meeting to order again. We're ready with our second panel.

We're very fortunate today to have with us Carissima Mathen, who is an associate professor in the faculty of law at the University of Ottawa; Elaine Craig, who is an associate professor in the school of law at Dalhousie University; by video conference, Jennifer Koshan, who is a professor at the University of Calgary; and Ursula Hendel, who is the president of the Association of Justice Counsel. Welcome, witnesses.

We're going to start with your five-minute opening comments and begin with Carissima.

Professor Carissima Mathen (Associate Professor, Faculty of Law, University of Ottawa, As an Individual): Thank you very much. It's an honour to be here.

As a professor, I teach both constitutional and criminal law. Before joining the academy I worked for the Women's Legal Education and Action Fund, litigating cases affecting women's equality. I was privileged to have participated in decisions that shaped our current framework for sexual assault, which I regard as one of the most progressive in the world.

I support the spirit animating this bill. There is a clear need for the criminal justice system to provide greater assurance to women that judges and lawyers are sensitive to issues of gender-based violence and have the requisite expertise to adjudicate such cases fairly.

I'm going to focus my introductory remarks on the written reasons provision. I have only five minutes and several points, so I'll be brief on each of them. I'd just like to acknowledge from the outset that in thinking through these issues I benefited from discussion with Professor Michael Plaxtonof the University of Saskatchewan.

My first point is that judges should provide reasons for their decisions, and indeed in 2002, in a case called Sheppard, the Supreme Court of Canada recognized a duty of trial judges to provide reasons in all criminal cases, albeit not solely in written form. This duty is owed principally but not exclusively to the parties —the crown and the defendant—by virtue of the fact that each has rights of appeal that might be undermined if they cannot make sense of the verdict.

My second point is that some people have argued that written reasons are superior to oral ones, but it's important to note that both written and oral reasons are judged according to the same legal standard. What, then, is the written reasons provision intended to achieve?

Another way to think about it is, who is the duty of written reasons owed to? Is it the parties, the complainant, the public at large, parliamentarians, researchers, advocates? This question is important because different constituencies will want and need different things from reasons. Whatever interest is emphasized, that emphasis will have an impact on how this provision is interpreted.

My third point is that it is a frustrating element of criminal law that even in written reasons there may be limits to what one can reasonably expect trial judges to explain. In sexual assault cases this is most obvious in terms of how judges explain their assessments of credibility.

Obviously, judges must never resort to sexist myths and stereotypes; doing so is a legal error. Supplying written reasons may make it easier for the public to know when this has occurred. Even if a decision does not stray into that danger zone, however, reading a credibility assessment can be very unsatisfying. Such decisions often are based at least in part on demeanour.

The House of Lords put it this way, “Evidence may read well in print but be rightly discounted by the trial judge; or, on the other hand, he may rightly attach importance to evidence that reads badly in print.”

It can be very challenging to articulate why one witness is credible and another is not. As a result, appellate courts treat credibility findings with great deference. Simply requiring all reasons to be written out, then, without more, is unlikely to change the test that higher courts use to evaluate them and consequently may have little effect on what they actually say.

My fourth point is that the provision doesn't specify what happens if written reasons are not forthcoming or are not produced in a satisfactory way. Is it intended that a failure to provide adequate written reasons creates an additional ground of appeal? Could a defendant appeal against a conviction even if the judge has formulated reasons that are otherwise legally sound? What about the crown?

My fifth point is that I want to reiterate what Justice Kent said in the previous panel, that delays in criminal justice have become a matter of acute concern, so it's important to evaluate the benefit of this measure against the possible cost in delay, especially in provincial courts, which hear the majority of criminal cases.

Finally, if the aim is to improve public accessibility, it's not enough that reasons be written. They must also be published on accessible platforms. Currently there is no guarantee that written reasons will be published, and many are not. Courts and public databases may require additional resources in order to ensure this necessary step for true accessibility.

● (0950)

Thank you again for the opportunity to appear. I look forward to your questions on this or other aspects of the bill.

The Chair: Excellent. Thank you.

Now we'll go to Elaine Craig for five minutes.

Professor Elaine Craig (Associate Professor, Faculty of Law, Dalhousie University, As an Individual): Thank you for the opportunity to speak with the committee today.

I teach in areas of constitutional law, evidence law, and legal issues concerning gender and sexuality. My main area of research is indeed sexual assault law. I'd like to focus my comments today on the third part of the bill as well, on the requirement for written reasons in sexual assault cases. My comments are based on my research in this area. I'm going to suggest to you three important justice interests that I think would be served by requiring written reasons in sexual assault cases.

The first, which Carissima touched upon to some extent, is transparency and accountability. I think it's inarguable that written decisions provide a degree of transparency and public accountability that's not available with oral decisions. There are several recent examples of cases that involve conduct or reasoning by trial judges that are problematic, but that only came to light because a reporter happened to be in the room and decided to report on the case, or the crown appealed.

There have been three very high-profile cases of this nature in recent memory. I'm referring here to Wagar; Rhodes, which involved Justice Dewar of Manitoba; and most recently, Al-Rawi, which was the recent Halifax taxi driver case. But there are others.

So, absent the crown's decision to appeal or a journalist's decision to report, sexual assault cases involving oral decisions provide almost no opportunity for scrutiny by researchers, legislators, or the public. For the most part, we don't even know they're occurring.

In its 2008 decision, in a case called Regina v. R.E.M., the Supreme Court of Canada identified public accountability as one of the three reasons that judges are and should be expected to issue reasons, albeit they weren't necessarily referring to written reasons, in criminal trials. So R.E.M. followed Sheppard, which Professor Mathen mentioned.

The degree of public accountability is greatly diminished, if not eliminated, when researchers, legislators, and the public have no way of accessing these reasons. You might say, yes, but that's true of any legal proceeding. My response to that, were resources unlimited would be, yes, indeed it would be desirable to require written reasons in all cases. Resources, of course, are not unlimited. So, why single out sexual assault trials?

I suggest to you that there are different considerations that play in the context of sexual assault cases. One is that, arguably, we are at a crisis point in terms of the public's confidence in the criminal justice system's ability to respond appropriately to allegations of sexual assault. Given this circumstance, in the sexual assault context in particular, we should ensure that judicial reasoning is as accessible as possible. Requiring written reasons would be the most effective way of making the process accessible and transparent.

There are other factors that make sexual violence and gendered violence more broadly, I think, different, including the role that stereotype sometimes plays in judicial reasoning involving sexual assault cases, as well as the nature of the potential harm both to the complainant and the accused at issue in these types of reasonings. That's my first point.

Second, requiring written decisions also has the potential to ensure more thorough, careful. and well-reasoned judgments in what is undoubtedly a very sensitive and difficult area of law. So, I'll use the example referenced in the Canadian Bar Association's brief to this committee, which again is Al-Rawi, the recent Halifax taxi driver case.

I've just finished studying the trial record in Al-Rawi. While Judge Lenehan's statement that “clearly a drunk can consent” was not legally incorrect, it was carelessly included in an oral judgment. The CBA, quoting Professor Sheehy in their brief, described this part of his judgment as “a slip of the tongue”. I think it's reasonable to suggest that in a written decision, he would have been more careful.

● (0955)

Third, requiring written decisions may also reduce what are in some cases shocking legal errors. Legal errors and overturned verdicts are costly and burdensome on all involved parties, but I think the costs to complainants in sexual assault cases imposed by judicial errors are greater. Imagine having to go through the process of testifying as a complainant in a sexual assault case not once but twice.

The Chair: I'm sorry. That's the end of your time. We'll get back to you on the questions.

We're going to go now to Jennifer Koshan, for five minutes.

● (1000)

Professor Jennifer Koshan (Professor, Faculty of Law, University of Calgary, As an Individual): Good morning. Thank you for the opportunity to speak to the committee this morning.

You have heard that I'm a law professor at the University of Calgary. I want to note I'm also a former crown prosecutor, and I was one of the complainants in the Robin Camp matter before the Canadian Judicial Council. I would also like to note that I have participated in judicial education sessions focusing on sexual assault, which have been very comprehensive in both law and social context. In my experience, the judges at those sessions have for the most part been engaged and took their training very seriously.

Nevertheless, we are currently seeing a profound lack of confidence with respect to the justice system's handling of sexual assault cases. I think it's crucial for us to keep in mind that sexual assault remains the most under-reported crime in Canada, resulting from many different barriers in the justice system. I believe training for all the players in the justice system is key to facilitating access to justice in sexual assault cases.

Turning to the specific focus of the bill, I would like to comment on two of its major aspects.

First, I would like to comment on the requirement for training on sexual assault law and context before judges can be appointed. I believe this is an important means of seeking to ensure that judges understand a relatively complex and specialized area of the law, and it's an area that many judges have had no experience in before being appointed to the bench.

Judges as the gatekeepers of the justice system must be watchful for rape myths and stereotypes that may creep into their own reasoning but also those that may be used in defence lawyer strategies and even by crown prosecutors on occasion.

Currently there's a case before the Alberta courts called Barton where the crown referred to a homicide victim as a native sex worker in front of the jury without going through the required application to introduce this as sexual history evidence under the Criminal Code. It's up to the judge to try to ensure that those improper myths and stereotypes don't come out either in their own reasons or those of the defence or crown.

In other cases, judges have made problematic assumptions about complainants' supposedly reduced inhibitions while intoxicated. They have considered intimate relationships between the accused and complainant as somehow relevant to whether consent occurred on a particular occasion.

These might appear to some people to be common-sense assumptions about sexual behaviour. However, they are rooted in myths and stereotypes that judges must guard against as they rely on false logic and discriminatory rationales.

Again, as the persons in charge of sexual assault proceedings, judges must ensure the fair trial rights of both accused persons and complainants are respected and these sorts of myths and stereotypes are rejected, whatever their source.

Specialized education on law and social context will help to equip judges to properly fulfill these obligations in sexual assault proceedings and may help to avoid needless appeals by reducing errors of law.

Second, I would like to comment on the requirement of written reasons in sexual assault proceedings. This requirement will help to ensure judicial reasoning is capable of being understood and assessed by the accused, the crown, the complainant, and members of the public.

We must recognize sexual assault cases like other criminal cases are not simply matters between private parties. They involve systemic issues that require the ability of the public to access and understand judicial decisions. It's been noted that most members of the public don't have access to trial transcripts supporting the requirement that judicial decisions should be written and published in accessible formats.

I believe the bill could go further and require written reasons not just when a verdict is reached but also for interim applications in sexual assault proceedings such as rulings on sexual history evidence. However, it has also been noted that we must recognize that the requirement of written reasons will have an impact on judicial resources at a time when these resources are already strained. If the bill is passed, consideration should be given to ensuring adequate judicial resources to enable the written reasons requirement to be implemented.

● (1005)

Thank you, and I look forward to the questions of the committee.

The Chair: Excellent, thank you.

We'll go to Ursula for five minutes.

Ms. Ursula Hendel (President, Association of Justice Counsel): Thank you very much for the invitation to appear here today. My name is Ursula Hendel, and I'm the president of the Association of Justice Counsel representing about 2,600 federal lawyers, including the prosecutors responsible for conducting sexual assault prosecutions in Canada's north.

Law school prepares us well for the rules of evidence, the burden of proof, and the ethical responsibilities of lawyers, but it does not teach us very much about human behaviour. The common law traditions under which we work presume that triers of fact like judges are supposed to draw on ordinary experience and common sense when assessing human behaviour and when determining matters like credibility and reliability.

I have heard the statistic that one in four women will experience some form of sexual assault in her lifetime but, in my experience, factors of privilege, whether you're white, whether you're educated, whether you're financially independent, and whether you're male make us less likely to experience sexual assault. Ironically or not, those are all the same factors that tend to make it less likely that you'll be a judge.

So, while we're expected to rely on common sense and ordinary experience, when it comes to sexual assault, most of us who work in the courtroom have no ordinary experience. I was not so lucky. As a student-at-law, I was subject to unwanted sexual advances from someone who I thought was a friend. I was a young woman full of confidence, full of privilege, and the world was my oyster. In fact, I was studying feminist legal theory. And yet, when it happened to me, I did not react in a way that I would expect. I froze, and I needed my friends to come rescue me. Fortunately, I was in a public place. I spent many years thinking about that experience, and I think it helped me as a prosecutor present the facts to a judge or a jury because I understood that, unless it happens to you, you actually have no idea how ordinary people would behave when something completely out of the ordinary happens to them. We think that we do —we all think that we do—but I don't think that we do.

I have been a prosecutor for 20 years. In the first 10 years of my career, I estimate I prosecuted over 500 cases of sexual assault. I did not receive training in relation to sexual assault at all for at least the first five years of my career. When I did, it was more about the evidentiary rules and not about the psychology of being subjected to unexpected trauma. That was some time ago. Things may have changed since the Jurassic age, but the truth of the matter is that no training of any kind is actually mandatory for federal prosecutors. While prosecutorial agencies like the one my members work for, the Public Prosecution Service of Canada, the PPSC, are very committed to the idea of training, much like the judicial institutes we heard from earlier, our reality is that the service has too little money and we prosecutors have far too little time.

The PPSC has only one formal training session called the school for prosecutors, which is offered once a year for five days. Only a fraction of our prosecutors are able to attend, so many of us struggle to meet our professional responsibilities for training that our various law societies require. It is a real challenge to get any training at all, including what is mandated by the law society. I haven’t gone back to check every year, but at least for 2016, there is no sexual assault training on the agenda at the school for prosecutors.

The regional offices make every effort to find training opportunities—they do their very best—but most prosecutorial agencies are so chronically under-resourced that they can't afford to send the prosecutors away for training, not only because they don't have the money to pay for the training, but even more importantly, because the prosecutors are required in court every day. There are no spare bodies to cover that court and run those trials.

Plus, there are so many topics to cover when it comes to training that I believe it continues to be our reality that we do not get adequate training. We particularly do not get adequate training on the trauma of sexual assault. Since it's our job as prosecutors to present the evidence to the trier of fact in the most logical, persuasive, and coherent way, we are also the link between the criminal justice system and the complainant.

● (1010)

We have court workers now in many cases to assist us, but we are still their voice in court. If we don't understand the experience of the victims, we are going to fall short.

If you really want to bridge the gap you're trying to bridge, we need to train prosecutors in addition to judges. I see in their report there was a recommendation to implement an educational curriculum for crown prosecutors, and I look forward to seeing the government's response to that.

Thank you very much.

The Chair: Thank you.

We'll begin our questioning with Ms. Vandenbeld, for seven minutes.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much to all of the witnesses, particularly Ms. Hendel for talking about your own personal experience.

Before I get to my questions, I'd like to have Mr. Serré ask a question specific to some of the testimony. Then I'll come back.

Mr. Marc Serré: Thank you.

My question is to Professor Craig. You indicated that your experience is in constitutional law, and you spoke about written and provincial responsibility. In your opinion, does Bill C-337 create any provincial jurisdiction issues, and also, does the bill undermine a judge's independence?

We have 30 or 60 seconds.

Prof. Elaine Craig: I'm not going to speak to the judicial independence point, because my analysis and research focus most recently has been on the written reasons part. There is a possibility that subparagraphs 62.1(1)(b) and (c) could have a division of powers issue in terms of a province's legislative jurisdiction over the administrative of justice.

Mr. Marc Serré: Thank you.

Ms. Anita Vandenbeld: One of the things we heard in our violence against young women and girls study is that different groups of women experience violence differently. I noted that Ms. Hendel talked about factors of privilege. I know Professor Koshan has written on myths and stereotypes, and Dr. Craig on *The Inhospitable Court*. We heard this significantly as a deterrent for women in seeking justice.

One of the key issues is that there is an intersectionality with different identity groups. LGBTQ women, indigenous women, those living with disabilities, newer immigrants, and other identity groups have even more difficulty. I noted that in Bill C-337 there isn't a specific lens in terms of intersectionality.

I'll start with Ms. Hendel, and then I'll let others respond. Do you think it would be an improvement to the bill if we were to include a necessity for that? Also, are you aware whether this kind of training already exists, or is this something that's already absent?

Ms. Ursula Hendel: I can't speak to what's available to judges. For what's available to prosecutors, it certainly improved quite a bit since I first came onto the scene in 1997, 20 years ago. We still have a lot more we could do, though. There's so little time, and so much to learn. Some of it is about prioritizing. If you mandate something, you put it to the top of the priority pile. Other things will not get trained, and that's a conscious choice this group is eminently capable of making, if it so chooses.

Prof. Carissima Mathen: I would agree with that. There is great complexity in how you train on these issues. They do really merge in terms of when you are actually sitting in that role, and having to decide cases involving complainants and accused persons from all different backgrounds. There is a risk of perhaps seeming to emphasize one type of training as more required than other types of expertise. That is a trade-off, and essentially a calculation you have to make.

● (1015)

Prof. Jennifer Koshan: I agree with what's been said so far. My interpretation of the bill is that the language of social context training would include training on intersectionality issues. I don't think something needs to be added to the bill to include that, as long as it's understood that social context training would include the sorts of things we're talking about.

Prof. Elaine Craig: I agree with Professor Koshan. I would just add that I understand that aspect of the bill to be a structure and not something substantively directing the content of the training, but presumably it would have to cover intersectionality.

Ms. Anita Vandenbeld: Thank you. Perhaps making that more explicit might be of benefit.

Are there other aspects of the bill missing? Is there anything in the language that you think might be either too narrow, or even anything in the language that you consider too broad?

Ms. Ursula Hendel: I think I would leave comments about the likely constitutionality to the experts, the professors on the panel.

Prof. Carissima Mathen: Here are a couple of quick comments.

First, on the content of the training specified under the Judges Act that is to be completed to the satisfaction of the commissioner, I think it might be helpful to appreciate that those really relate to different kinds of knowledge deficiencies.

The myths and stereotypes training I think is something that many people do not have and that would certainly be helpful, but you want to think about whether you're unnecessarily expending resources, for people who are versed in criminal law, to require them to demonstrate recent training in sexual assault law and evidentiary prohibitions.

On the other side, if someone is deficient in something such as evidentiary prohibitions and other basic aspects of criminal law, then that's a much more foundational training that probably needs to be ensured. For example, there's no reference to burdens of proof, which actually can become quite complicated in criminal law and can trip people up.

I guess I worry that you may be trying to do too much through what may be interpreted as a one-shot, one-size-fits-all component.

That's what I would say for now.

The Chair: That's your time. We're going now to Ms. Vecchio for seven minutes.

Mrs. Karen Vecchio: Thank you very much to all the witnesses today. You have brought forward a lot of information.

I'm going to start off with Ms. Hendel.

Once again, thank you very much for sharing your story, because I think it has a profound impact on what you do and how you do it. I really appreciate it.

We talked a lot in the last panel about the mandatory judges school for new entrant judges. I have worked with our community foundations, our community groups, that have dealt with sexual violence. From your experience, do you feel that there is enough conversation going on between such things as the mandatory judges school and training for judges and what actually happens on the ground and through these women's centres? Do you think there's enough communication happening between them right now so that at the end of the day we are serving Canadians the best way we possibly can?

Ms. Ursula Hendel: Those of us who work in the justice system really can improve a lot; there's a lot of work to do. I think there's a resistance among certain elements of the bench and bar to the sort of soft psychology whereby we evidence lawyers are supposed to be charter experts, are supposed to be Criminal Code experts, and are supposed to know the rules of criminal procedure and the rules of criminal.... That's a lot. It's the sort of hard stuff that we consider erudite, as opposed to what I'll call touchy-feely—

Mrs. Karen Vecchio: —soft skills?

Ms. Ursula Hendel: Yes. I think it's changing and that there's more of an openness, but there is also a sense of isolation. We're very guarded. We're not the victims' lawyers, and there's a tendency for complainants to see us as their lawyer. We have to guard against that, because it's problematic.

We try, then, to take a very isolationist approach, sometimes for good reason, but it gives us sometimes a sense that we're inaccessible. We're really busy and are not given enough incentives, if I can put it that way, to really learn about human behaviour in some problematic areas. Robbery perhaps is not an area in which we need to learn more about insight into victims and their experiences, but I think sexual assault definitely is.

● (1020)

Mrs. Karen Vecchio: Thank you very much.

Are there any comments from anyone else on the panel on this question?

Okay.

I'm just going to move forward, continuing with the judges school. I want to know whether everybody thinks this is great enough. I recognize that we're talking about education once they're on the bar, but I also believe that any time you're doing education, it helps you, whether you're a prosecutor or a defence lawyer. Anything like that would make you greater at what you do.

Some of my concern is with the mandatory training that they're putting forth; that there isn't enough time. We talked about deficiencies already. With this judges school, do you think that the mandatory training, when they go, is enough, or do you think we should do more? We have to recognize that laws change, cases come up that we should always be aware of. Do you think we should be doing more? Once judges have been sitting on the bench for five or more years, should they have mandatory training?

I'm going to ask the whole panel, if you don't mind, or whoever wishes to comment.

Prof. Carissima Mathen: I'm certainly a proponent of lifelong learning, no matter what the endeavour. I am a proponent of that for lawyers generally, and judges have a responsibility to ensure that they continue to be educated.

I would agree with the comments in the previous panel. I do think that is something that has to be governed by judges and I believe there is a risk zone for Parliament in mandating training for sitting judges.

Prof. Elaine Craig: The fact that the Canadian Judicial Council has taken the new step of actually mandating training for new judges suggests clear recognition of these deficiencies, and there's no reason to think that new judges school would be sufficient or that judges, just like the rest of us, don't need to continue to develop their substantive competence as well as their understanding of the social context that produces sexualized violence.

Mrs. Karen Vecchio: Dr. Craig, I want to continue with you regarding the written decisions.

One thing I learned from my mother is that if you don't want it to come back, don't put it in writing. I sometimes look at that as a potential thing with these court cases, because as you said, it's that second thought. When you're writing it down, you might also recognize that it's very inappropriate.

We have also heard of zombie laws occurring, so I think any time a judge is making a statement or putting something in as a decision, that is a good way of making sure the sources are correct. Can you continue a bit more about the written part?

I think some people are concerned that it's going to take up more time. However, at the same time, what's worse is having to come back and say, “This is what my decision was”, and having to do it through national media. That would waste more time, if we're looking at a wrong decision. Can you continue with that, please?

Prof. Elaine Craig: There's no question that it would require resources, so that's just a decision: does the government want to commit those resources to improving the experience that complainants have in the criminal trial process?

Also, it has to be just as a matter of common sense. True, oral decisions and written decisions are different. For any of us, if we're drafting something that we know is quite likely to end up on a database for the world to scrutinize, it's going to look different from something that's recorded in court but is, in many cases, likely to be heard only by the individuals who were present in court that day.

Again I'll go back to the example that the CBA used, which is the Al-Rawi case from Halifax. He issued that oral decision without making reference to a single legal precedent in a very difficult area of sexual assault law, assessing consent in the context of a very intoxicated complainant. It strongly contrasted with a similar decision out of Ontario, also involving a severely intoxicated complainant, but a written decision, where the judge surveyed the case law extensively and wrote a considered and thorough analysis.

● (1025)

The Chair: Very good.

We'll go to Ms. Kwan for seven minutes.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you to all the witnesses as well for your presentations.

As we're talking about the issue around resources, it certainly strikes me that resources are needed on all fronts, whether it be for written judgments or for training, because you're going to be stretched at every end.

I want to explore this issue a little more in terms of justice, because it is a question of priorities and where you place those priorities to ensure that justice is served. In that context, here with the bill we're talking about the suggestion of written requirements, written judgments in training.

With respect to this bill, what other systemic problems exist in our system where we need to ensure changes are brought in to allow women who face assaults or violence to be able to get the justice that they're seeking? This is the system really all the way through from reporting, as was mentioned. The cases of conviction are very low, and there's a question as well about whether people will even come forward to report the incident.

I would like to start with Professor Koshan, if I may, on this issue. What other actions do you think are necessary to ensure that justice is in fact served?

Prof. Jennifer Koshan: You're right, the research has shown that there are barriers to seeking justice in sexual assault cases that start right from the time the complainant decides whether she's going to go to the police or not. For me, one of the things that is very important for us to think about is training at all stages of the process: training for police and—we've heard Ms. Hendel speak to this need—training for crown prosecutors. I think those are a crucial part of the system in addition to training for judges.

I will just leave it there for now and let my colleagues address other things that they may want to say.

Ms. Ursula Hendel: I completely agree. You've heard me make my pitch for training for prosectors, but I think the front lines are on the police. If victims don't feel safe enough to report in the first place, all the training that the judges and prosectors have will go for naught. There's a complete, holistic need to understand better the perspective and reality of sexual assault.

I like the emphasis on the social factors, as opposed to the principles of evidence and the special rules that we have in the Criminal Code. I think we do a better job there. Where we really fall short is in understanding the social factors.

Prof. Carissima Mathen: I have two points.

First, we need resources to monitor and collect statistics about decisions that are being made at every stage of the process. There was just this incredible story that revealed these unfounded rates. That took so much independent investigation by a very committed journalist, whereas I think it would be more helpful to have those kinds of statistics collected regularly.

The second point would be the need for structured support for complainants, to provide them with information about the process and what they can expect. As Ms. Hendel said, the crown is not the complainant's lawyer, although that may be a perception that can then create further damage.

Prof. Elaine Craig: I agree with everything that Professor Koshan said, but I will add that a lot of the initiatives that could improve the experience for complainants—and to be clear, I think there is decent research suggesting that fear of the criminal justice system is one of the reasons people don't come forward—could be done at the provincial level, as a result of the division of powers. But at least some aspects of this, with proper resources, could be done by the federal government. I have lots of ideas about what the provincial governments could do, but this is a clear example of where the federal government could act, at least in part.

● (1030)

Ms. Jenny Kwan: Thank you.

Just to bring that further then, my next question is: should this be mandatory training at all the different stages?

I'll start with you, Professor Craig.

Prof. Elaine Craig: Again, like I said, the move to make training mandatory for new judges on the part of the CJC is recognition of the need for exactly this type of training. Given that the harms are unique, and given the complexity of this particular legal issue, I think mandatory training is needed. Also, given the fact that there are all sorts of people appointed to the bench who have no professional experience in this particular area of law, mandatory training is necessary.

Ms. Jenny Kwan: Thank you.

Could I just have a quick answer from everyone else?

Ms. Ursula Hendel: I think the only way to make sure that it will happen is to make it mandatory.

Prof. Carissima Mathen: There needs to be mandatory training, but respecting the jurisdictions of the various institutions, including the judiciary.

Prof. Jennifer Koshan: Yes, I support mandatory training as well, and I think it's important to recognize that what we're talking about here is trying to prevent errors of law from taking place. When we see it in that context, to me it's not a direct assault on the notion of judicial independence.

Ms. Jenny Kwan: I want to bring this up as well. In my own community, the missing and murdered women is a very big issue, something I've worked on for the better part of over two decades.

Related to that, of course, there are issues pertaining to the understanding of culture, and very much the issues of discrimination around different cultural groups. Aside from training in the area of sexual assault and the human aspect of it, as was mentioned—

The Chair: Unfortunately, that's the end of your time.

We will go to Ms. Damoff, for seven minutes.

Ms. Pam Damoff: Thank you, and thank you to all of our witnesses for being here today.

I want to talk about something a wee bit different. CJC talked about how just in the last month it made mandatory training for new judges. In terms of education, it's mandatory that new judges will be receiving it.

We also heard from a previous witness about changes that our government made to the judicial advisory committee to include diversity training and the makeup itself of that committee.

I want to talk about the importance of education versus the appointment of the judiciary and ensuring that we're making non-partisan, independent appointments to the judiciary. If we want to make systemic changes, will that help to deal with it? This bill and nothing we're looking at is requiring current judges to receive training. In the cases that we're citing over and over again, that have caused us all concern, caused all Canadians concern, about the decisions being made, they would not be touched by this bill. They're not being touched by anything that we can do because they're sitting judges.

Could you talk about the appointment process and the importance of that? You could each speak to that if you wish.

Prof. Carissima Mathen: At this point, I'll disclose that I provided assistance to the government in the drafting of the new questionnaire for the appointment of Supreme Court of Canada justices, which for the first time required candidates to fill out a lengthy questionnaire. At a social event, Justice Malcolm Rowe thanked me rather sarcastically for having done that. That has now been continued in an extensive questionnaire that's applied to section 96, the federal appointees.

That's been a somewhat unheralded earthquake in the world of judicial appointments in terms of what judicial candidates are being required to think about and present in terms of their current situation, their current location, how they see the achievement of justice, how their careers have affected that, and really being quite open in a way that's unprecedented.

My former colleague at the University of Ottawa, David Paciocco, was recently appointed from the provincial court to the Ontario Court of Appeal. His questionnaire is an incredible reveal into his journey as a judge. The fact they're being made public is a really important story to tell. It can only assist the committees to do the very challenging work of choosing from among many qualified candidates those who can best promote justice.

The innovations that have been done around judicial appointments, consistent with the current limitations, have been quite remarkable.

● (1035)

Prof. Elaine Craig: Diversity on the bench is a huge issue that has the potential to improve a variety of aspects of the process. It's still going to be a very narrow demographic, which is part of the point that Ms. Hendel made. Regardless of the pool, we're talking about a very narrow demographic of very privileged individuals. We're talking about a piece of legislation that's attempting, really, only to secure basic competency, understanding of legal concepts like the definition of consent, the way in which the rape shield provisions work, and the need to interrogate our own social assumptions about gender and sex. The shift in the appointments process should be celebrated, but I don't think in any way it should be considered an alternative to an initiative like this.

Prof. Jennifer Koshan: I agree with everything that's been said, but I would just add, in going to this point of complainants and their confidence in the justice system as it handles sexual assault cases, that it's very important that the bench represents the diversity of society. I think that will contribute to complainants' feelings of confidence and that of the public at large as well, and recognizing what Professor Craig said, that this needs to go hand in hand with training.

Ms. Pam Damoff: Thank you.

I will turn it over to Ms. Ludwig for the rest of my time

Ms. Karen Ludwig: Thank you.

My question is to Ms. Mathen. We've heard from witnesses this morning, and from the questions that have been posed, that candidates should identify the areas of training that they've taken regarding sexual assault. On that, I have a couple of questions.

One is, they're not taking their training through the judicial institutes that we heard from this morning. How do we standardize that curriculum so we're actually comparing apples to apples?

Two, in talking with a number of people in the legal community, one of the concerns that they've identified to me is if the mandatory training is for new judges, what if a judge does not hear a sexual assault case for five or six years, in terms of the relevancy of that early training? Perhaps you could speak to that.

Prof. Carissima Mathen: In terms of the suggestion that they should indicate the level of their training, and then that feeds into the process, I think that's a practical way to ensure you have an understanding of what level the candidate sits at with respect to particular areas of law that are a challenge, are of current concern, and that the judicial appointments committee wants to take—

Ms. Karen Ludwig: Does the provincial body speak with, let's say, the judicial institute in terms of the curriculum content for the training?

Prof. Carissima Mathen: The training is offered at different levels for judges. When you are talking about going beyond that, I think you will have coordination issues, and it's probably going to fall to the federal government to ensure some level of consistency, and that's going to require resources. As far as continuing training is concerned, I think that's something that the Canadian Judicial Council and the National Judicial Institute have always promoted. Certainly, I participated in seminars for very senior judges of courts of appeal and so forth, and that's something that has been going on for a long time. I think they have expressed a commitment to ensuring that continuing training, and I agree that is optimal.

● (1040)

The Chair: That's your time.

We'll go to Ms. Harder, now, for five minutes.

Ms. Rachael Harder: Sure, thank you.

My first question here is for Ms. Koshan. I'm going to read a quote to you, and I would like your reflections on it. Dr. Margaret Jackson and the honourable Donna Martinson wrote that much more than a one-time attendance at an education program, such as a new judges program, is required. While new judge's school is a good start, they argue that competency requires ongoing, in-depth education throughout the judge's judicial career.

I'm wondering if you could just further comment on this, whether you agree or disagree, and why.

Prof. Jennifer Koshan: [*Inaudible—Editor*] the position, and I support the need for ongoing training. One of my experiences in working with judges on judicial education and training has been in the domestic violence context, and perhaps I can just give an example from that context. There's new research that's come to light recently about the effects of trauma on children. I participated in a session where judges were receiving information about that new research. I think we need to recognize that not only does the law change, but social context can change, research about things like trauma-informed approaches to sexual violence can change. I think for all of those reasons it's very important to support ongoing training for judges.

Ms. Rachael Harder: One of the decisions, of course, that was just made was with regard to now making training mandatory. I can appreciate that. I think that's largely due to public pressure, and so I congratulate the public on that. But one of the things that isn't mandatory is training for existing judges. They're just talking about incoming judges. What would your feelings be with regard to making training mandatory for all judges?

Prof. Jennifer Koshan: Here's where I think we do bump up against the principle of judicial independence. As I mentioned earlier, my view on that is that if training is aimed at ensuring that judges aren't making errors of law, that they're applying the law appropriately, and that they're not using rape myths and stereotypes in their reasoning, to me, that is still within the reasonable bounds of protecting judicial independence. We're simply asking judges to do their jobs with the best information available to them.

I don't think that means we're going to avoid things like, perhaps, appeals by accused persons who may feel that these new requirements for training, especially for sitting judges, may violate principles of judicial independence. We saw those sorts of appeals when the government made decisions around judicial salaries. I don't think we can be immune to that, or that we can ignore that possibility. My own view is that even ongoing training for sitting judges would be acceptable in terms of judicial independence.

Ms. Rachael Harder: Thank you very much.

Ms. Hendel, you said that you are trained in areas of law but not necessarily trained in working with people. I believe it was you who made that statement.

Can you further comment on why this sort of training would be important?

Ms. Ursula Hendel: I think it goes back to what I said about how the trier of fact is supposed to assess credibility and reliability using common sense and ordinary experience. That isn't anything any of us are taught in law school. It's supposed to come to us naturally. That's a 500-year-old approach, and I think we've become better at recognizing that it's deficient, particularly when you are asked to judge somebody who has a very different background and perspective, and maybe a different culture, and who certainly comes from a different place than you do. It's not that easy to crawl under somebody's skin, necessarily, when you are sitting on the bench or when you are in your prosecutor's robes.

Ms. Rachael Harder: Very quickly, can you comment with regard to training and making records known, for example, registration and participation rates, and those sorts of things? Is this a good mechanism of transparency for us to pursue, as a Canadian judicial system?

● (1045)

Ms. Ursula Hendel: I'm sensitive to the concern. There are risks. Certainly the last thing I would want to see is a ground of appeal generated as a result of some requirement that someone has indicated wasn't complied with. I'd be sensitive to the degree to which record-keeping is done. I think the idea is one of more than moral persuasion. If you recommend training, the resource reality means the training won't happen to the degree you want it to. Even if you strongly recommend training, we don't get trained unless we're forced to, and even then we're all scrambling to try to meet our mandatory requirements. But we meet them. Making it mandatory is a way to have it happen. As to how to check up on it, I think there are some risks.

The Chair: That's the end of our time today, unfortunately. I want to thank all our witnesses today.

You were amazing. I appreciate all the work you're doing in this area.

I thank the committee for its great questions.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca