HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO • NUMBER 058 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, May 2, 2017

Chair

Ms. Marilyn Gladu

Standing Committee on the Status of Women

Tuesday, May 2, 2017

● (0845)

[*English*]

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

We return to our study of Bill C-337, an act to amend the Judges Act and the Criminal Code with respect to sexual assault.

We're happy to have with us again, from the National Judicial Institute, the Honourable Madam Justice Adèle Kent, the executive director.

[*Translation*]

We also have with us Marc Giroux, Deputy Commissioner at the Office of the Commissioner for Federal Judicial Affairs Canada, and Norman Sabourin, Executive Director and Senior General Counsel at the Canadian Judicial Council.

Welcome.

[*English*]

We'll begin with Ms. Kent for five minutes.

Hon. Adèle Kent (Executive Director, National Judicial Institute): Thank you very much.

I hope I don't take my full five minutes. I'm pleased to be back at the committee and to speak with you again. I have three points.

First, you asked some questions and we have provided the responses to you. I think those have been handed out.

Second, I need to acknowledge with thanks the grant that was given by the federal government directly to the National Judicial Institute. We identified to the federal government that there is a gap in training in social context education for provincially appointed judges.

I know that's not the focus of this committee, but provincially appointed judges do about 95% of the criminal work in Canada, so it's important that they are trained as well.

We will be doing some videos. They'll be on our website, available to all judges, including federally appointed judges. The objective of those is to remind provincial court judges of the requirement that they understand social context. Then they work through some examples with them, one on gender-based violence and the other we believe on indigenous law, but we're not sure.

Third, I read with interest the evidence that was given by the other people who have been here since we were here. As you know, I stayed to listen to the three professors and the crown prosecutor and that was all wonderful information, some of which I didn't know.

I think it's fair to say with respect to professors Koshan, Craig, and Mathen that we agree with them with respect to judges analyzing and thinking through their decisions. I won't spend time now on the education that we give judges to make sure that happens, but would be happy to do so in questions.

To your last group of witnesses from the community, I thought it would be helpful to tell you about a couple of programs that we've run in the past and that show community involvement.

About two weeks ago at one of our court-based sessions, with the federal judges in one of our provinces, we did the comings and goings exercise. I don't know if you know of it, but judges are asked to take on the role of a woman in an abusive relationship. The woman has two children and a pet dog. One day her husband comes home drunk and beats her. The judges are asked to take on the role and make the choices that the woman may have to take. Does she leave the home and go to a shelter? Then the judges are told the shelter shuts down for lack of funding. Where does she go? The judges say to go to a hotel. She has no money.

At the end of the exercise the judges are put in the situation where they have two choices: be homeless or go back to the abuser. What's the objective of this? This is to allow judges, when they hear bail hearings, to understand the predicament of women who are in an abusive relationship. Do I let this fellow out? Do I give conditions when I let him out? what about child support? One of the real barriers to women leaving an abusive relationship is money. So, that's one example.

The other example is a course we put on in January. It was called “Judges with Community”. The focus was mental health and people who have mental issues but are in conflict with the law.

You ask, why are you telling me this? We're talking about gender-based violence. We all know the intersectionality between gender-based violence, mental illness, poverty, sometimes race, diversity, and the special issues that can arise in our indigenous communities.

That planning committee is made up of one of our planners, judges, academics, and a member of the community who works with people with mental challenges.

I wanted to share those examples with you. We spent time during that seminar in Halifax at a Mi'kmaq centre, doing some circle learning, understanding the views of people who are mentally ill and in conflict with the law, and the people who work with them.

Thank you, Madam Chair. I'd be happy to answer any questions.

● (0850)

[*Translation*]

The Chair: Thank you.

Mr. Giroux, you also have five minutes.

[*English*]

Mr. Marc Giroux (Deputy Commissioner, Office of the Commissioner for Federal Judicial Affairs): Thank you, Madam Chair. I'm pleased to be before you again today.

My comments will be quite brief. I don't mean to repeat what I've already said but wish to remind the committee of some of the points I raised the last time.

First, I'm of the view that it's entirely fair and appropriate that questions be asked regarding judges' education in the area of sexual assault law, in light of recent events, and that the objective in this regard is valid and important.

[*Translation*]

Nevertheless, the best way to achieve this objective must still be determined. On that note, I think the bill, as it currently exists, poses a problem in two areas. I have therefore raised two practical concerns.

One concern is that the bill creates the potential for a conflict of interest between the minister and the commissioner for federal judicial affairs, because it specifically names the commissioner responsible for the quality of the candidates' training. The rest of the legislation, including when it comes to the administration of the judicial appointment process, indicates that the commissioner acts as the minister's delegate. This issue is more technical and can undoubtedly be resolved more easily.

The other concern is more significant and problematic. Providing training before the candidates are appointed judges poses serious risks, given the number of requests our office receives. The candidate assessment process may slow down and—perhaps even more importantly—the training at this stage may be neither sufficient nor adequate.

[*English*]

One must consider how this would all work out if education in the area of sexual assault law were to be provided to candidates before they were appointed judges. How could this be done without considerably slowing down the assessment of candidates, and if this were not slowed down, would the education provided then even be satisfactory? This is where we have concerns.

In the end, what is most important is that judges be well equipped in this area of the law and that proper and sufficient training be provided. This is best done, in our view, once they are newly appointed, when there are fewer time constraints, when they can be in class, for example, and in the company of qualified experts in this area.

[*Translation*]

Thank you, Madam Chair.

The Chair: That's fine, thank you.

[*English*]

Now we will start our first round of questions, with Mr. Fraser for seven minutes.

Mr. Sean Fraser (Central Nova, Lib.): Excellent. Thank you very much to each of our witnesses for being with us today. I have a number of questions I hope to get through, so to the extent that you can keep answers short, I would greatly appreciate it if you did.

One item that we haven't really dug into yet was the categories of offences that judges should require training in. I think the sponsor of the bill has done a pretty good job highlighting the kinds of offences that deal with sexual assault. I've gone through the Criminal Code and have highlighted a few others that I think should apply, such as section 162 on voyeurism, section 163 on child pornography and, potentially, section 264 on criminal harassment and cyber-violence.

Have you had a chance to consider what's included, whether it's comprehensive, whether it covers offences that are too great, or is this beyond your review?

Hon. Adèle Kent: To be quite frank, I haven't looked at the bill in terms of what it should include. I can say, as you list those off, that there are a number of offences under the Criminal Code that may not be obvious and that could be gender-based and violent. It sounds like some of those are, but I haven't done a review.

Mr. Sean Fraser: Do others have feedback? Are you in the same boat?

A voice: Yes.

Mr. Sean Fraser: That's fine.

The issue I want to dig into the most today had to do with written reasons. Justice Kent, you specifically mentioned Professors Craig and Koshan, whom I had some familiarity with before my role as a member of Parliament. I have tremendous respect for them. I really enjoyed their testimony about the exercise of putting together written reasons. I see a lot of parallels as a member of Parliament, because I often speak from bullet points in the House of Commons; but if I were going to write something for public consumption, I would go through a slightly different and perhaps more comprehensive exercise.

One of the fears I have as well was borne out in my community in the past few weeks, in the town of Antigonish. A university professor has had a charge of sexual assault stayed as a result of the Jordan decision. I am concerned about requiring these written reasons and causing additional procedural delays for sexual assault crimes as a result.

Do you think this would lead to more sexual assault cases being stayed as a result of the Jordan decision?

● (0855)

Hon. Adèle Kent: I can't be that specific, but I can tell you that requiring what we call “reserve reasons”, like written reasons, could possibly delay the outcome for litigants. Let's face it: litigants are first interested in being successful, but secondly, in finding out the results and not being left in limbo.

Let me take what Professors Koshan and Craig said. I can't remember which one said this, but they're absolutely correct. The requirement to sit down and write it out makes you think whether or not you're coming to the right conclusion. We have an expression in judgment writing: if it doesn't write, you've got a problem with where you're going.

What we train judges to do in our oral judgment course is to hear the evidence, to hear the submissions, and to adjourn. You take the time overnight or take the time to the next week, and you set another hearing date. But that night or that weekend, whatever it is, you sit and you write it out so you have something. Then you go into court. You have your decision. It is written. You read it. It's audio recorded, and people can get a copy of it.

So there is the process of writing. What it avoids is the stack that I can always see on my desk, where I take what we call “reserve judgments” and I line them up. At some stage we know there's going to be delay.

I think the process of writing something down is good. My view is that it's probably not necessary to legislate written reasons, which might suggest this process of reserve judgment.

Mr. Sean Fraser: If I can take it one step further, another piece of the testimony that I recall hearing during the same panel was that without the reporter who happens to be sitting in the courtroom, even though there might be a transcript you can order for a fairly modest fee, it may never come to the light of day. I am sympathetic to that argument because I think, in addition to providing justice for the litigants, there is some sort of public duty, particularly in the case of a systemic lack of publication of sexual assault decisions.

Is there a way that we could ensure that the oral transcripts get into a legal database, like CANLII, Westlaw, or Quicklaw, so that they're publicly accessible?

Hon. Adèle Kent: It's not something that I can talk about because I think it would fall within the administration of justice and what the provinces want to do.

I will tell you my practice. If I know that the litigants lack funds, I will start my judgment with “Madam Clerk, would you please order the transcript of my reasons to be prepared and have them delivered to both sides at the cost of the provincial government?” Of course, they're responsible for that.

As for where else that goes, you'd have to ask someone dealing with the administration of justice. I just don't know.

Mr. Sean Fraser: Whether it's wise or not, do you know technically if it's possible to make these available, or is that beyond your...?

Hon. Adèle Kent: I honestly don't know.

Mr. Norman Sabourin (Executive Director and Senior General Counsel, Canadian Judicial Council): I would like to point out that the CJC expressly supports the position of the CBA on this. We think there may be concerns expressed by the judiciary down the road about a legislative requirement for written reasons and how that would be interpreted.

Mr. Sean Fraser: Okay. I've only got one minute left.

Mr. Giroux, in your last appearance you talked about the capacity to actually provide this training. I know that certain courts don't deal with crimes of sexual assault. I'm thinking of the federal tax court as an example. If we take the suggested approach of the CJC and put an undertaking on the application form, is there a way that we could limit that to the people who may actually be dealing with sexual assault cases to make sure that we're putting the training resources where they will make the biggest difference?

Mr. Marc Giroux: There may be a way of doing so, but one needs to remember that oftentimes candidates will apply to more than one court. They may apply to the Federal Court, but they also may apply to the superior court in their own province. So while there may be a way, there would be certainly limits to trying to limit the delays.

Mr. Sean Fraser: I think that wraps up my time.

Thank you very much to each of you.

The Chair: Very good.

Now we go to Ms. Vecchio for seven minutes.

Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC): Thank you for joining us once again.

Justice Kent, I will start with you, if you don't mind.

Last time you were here, we talked about the degree of participation, and we received some information back from you today. I want to look at the participation rates when we're talking about the period of time. We've got these programs indicated here, and you show that you're talking about 932 judges attending the seminars. During that period, are they coming for one of the programs out of the 10 days, or are they fulfilling the actual 10-day program and taking in all of that information? Is their attendance based on registration and fulfilling the 10 days, or is it based on registration and participating in at least some of the programs?

● (0900)

Hon. Adèle Kent: The best I can say to that is that these statistics tend to show us that all federally appointed trial judges—except for some understandable exceptions such as family emergencies and so on and so forth—attend their two court-based programs each year. Those court-based programs tend to be two and a half to three days long, so that's six days right there.

The statistics also tend to show that the same number of judges go to one national program: on evidence, it's for five days, and on the charter, it's for four days. The one I just talked about is for two and half days. I can't say that they actually took the full 10 days, but it looks like they're taking somewhere between six and eight or nine.

Mrs. Karen Vecchio: Okay. So actually—

Hon. Adèle Kent: I would point out that most courts also have some in-house education as well. We don't do all the training.

Mrs. Karen Vecchio: Okay.

Hon. Adèle Kent: You could probably, if you added that in... you'd certainly err in the range of 10 days.

Mrs. Karen Vecchio: Well, I actually had a chuckle, because in regard to seminar attendance on evidence-based things, it has the word “assume”, and we know that “assume” is something that the courts would not want to be doing, especially in sexual assault trials. I'm looking at this part because we're talking about fulfilling the 10 days. Let's say, for instance, that we have these great courses going on, and we already know that 168 judges are not attending out of them.... You may say that's a small percentage, but if they're not fulfilling the entire program, we don't know if it's just 168 judges or if it's 668 judges.

I think those are things where there needs to be clearer data showing the participation rates. I realize that there's judicial independence, but it's really hard for me to believe that everybody has taken the course and that we should be patting everybody on the back if they've not fulfilled the course. That's why I think something like this is extremely important, because we talk about these 10 days....

One of the other things that I want to know is about the programs. We keep on talking about the courses and what the courses are going to be. I'm asking, are you willing to share the programs with us? When we're looking at that 10-day period of time, can you tell me specifically how many hours or days relate specifically to actual sexual assault and domestic violence issues? We realize how large and broad this legal system is, but if we're looking at it and if there are only two hours put in because there are so many topics to address.... You're dealing with real estate. You're dealing with investments. You're dealing with everything else. How do we know how much time is being put towards sexual assaults? Can you advise me on this? How much time is actually given to sexual assault in that 10-day course or in those three and half or four days?

Hon. Adèle Kent: That is a very difficult question to answer because, as I've said before, when we put on a course dealing with mental illness, there may be elements of it that deal with gender-based violence and how those two intersect. It's a very difficult thing to do on a quantity basis as opposed to quality—

Mrs. Karen Vecchio: I understand—

Hon. Adèle Kent: Yes.

Mrs. Karen Vecchio: —but we're looking at the larger umbrella. We could sit there and say that under that this umbrella of sexual assault we can talk about whether it's dealing with first nations or a variety of different things, but there should be some sort of data, some sort of quantitative measurement we have that indicates that judges have taken at least 50% or more of their training specifically in sexual assault. I'm wondering why that data is not available. When we're looking at what needs to be done, we don't have that information.

Hon. Adèle Kent: Let me turn this over to Maître Sabourin, because I think that falls under his umbrella. The NJI does design and deliver the courses, but it is the chiefs and the judges who decide what courses to attend.

Mr. Norman Sabourin: I would just say, Madam Chair, that in the CJC position paper on Bill C-337 we do map out from a quantitative perspective that the CJC intends to publish the title, description, and overview of all education seminars approved by the CJC in the preceding year. We propose to publish the dates and duration of each seminar, and we propose to publish the number of judges who attend each seminar.

On a qualitative basis, I think that to start talking about 22% of sexual assault training would be a grave error, because we are taking a very comprehensive approach to social context education. As Justice Kent has pointed out, you might have a course on evidence that has integrated into it clear objectives of social context education, such as gender-based inequality and the intersectionality of the issues that surround gender-based issues.

● (0905)

Mrs. Karen Vecchio: I'm going to go on to another thing. I'm sorry, Justice Kent, but I'm back at you.

You mentioned that you're looking at hearing from people on the deficiencies in the current training. As you know—you've read all the information—one thing that's lacking is these organizations and groups. We're talking about high-level national organizations. They feel that there has not been any outreach and they have not been part of the training or decision-making. Can you answer that? We're hearing from one side that they are being spoken to, but we're hearing from them that they're not. Can you please clarify that?

Hon. Adèle Kent: Sure.

As I said, I read the transcript of the hearings you had. There were six wonderful groups, and in fact I really champion the work they do. It's important work.

Some of those groups are advocates, and we can't have advocates teaching our judges. We need the balance. So if we have a prosecutor —

Mrs. Karen Vecchio: Okay, I'm going to ask why we cannot have advocates, because sometimes advocates specialize in that subject. It's important to have both sides of the issue.

Hon. Adèle Kent: Well, we have to be careful about balance for the judges. One example is that when we have a prosecutor come to talk about something involving criminal law, we will always have someone from the defence bar. There needs to be balance.

I understand that some of these advocates that you've heard from appear before the courts. We cannot have people who appear before judges in our training sessions, because the very next day a judge may walk in and have one of them in front of them.

I do know that of the people you had there, there was one group, I think it was Ms. Porteous who had been involved....

We do involve the community, but we do so carefully because the judges need a balanced approach to it.

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

We're going to Ms. Malcolmson for seven minutes.

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

Thank you to the witnesses for returning again.

I'd like to carry on from my colleague's questions. I just want to make sure that we don't overstate the testimony of Tracy Porteous from the Ending Violence Association of British Columbia. She said, "I've been working in this field for 35 years and just last year was invited to do a one-off workshop for a group of provincial court judges at a national judges' conference on domestic violence and homicide."

I think we need to be careful. She said that she has been asked once. I would hope very much, based on the testimony from the six organizations, who all said that they'd never been consulted.... I don't think they were asking to train the judges. They thought, based on, in some cases their lifetime of experience in working with victims of domestic violence, that their ability to be consulted on the content, or even being able to see it, would create more transparency. It would mean that the on-the-ground impact of the judicial system, at every level, might be filtered in there.

I think we have a gap there, which I think is something that this committee is going to have to make recommendations on.

We did ask at the April 11 meeting whether we could see the content of the training, because that hasn't been seen before.

Madam Kent, you said you could provide that. Is that something that we can see? I think you offered the table of contents, but we were actually looking for the meat of it.

Hon. Adèle Kent: Yes, that's right.

What I referred to you was the document that I handed out at the last hearing.

Again, on these sorts of questions, I have to take my lead from the CJC. They are the people who approve our funding, and it is their direction that we take in terms of the courses we put on, and the content.

Mr. Norman Sabourin: One thing I can say is that the CJC is keen to make more information available publicly. We've had immense resource constraints in the past, but with the recent federal budget, we're very pleased to look forward to additional funds for publication of these things.

Number one, we want to give an overview of each course that will be delivered to judges. Number two, as we set something up, we would like to be able to share even more information.

If I might, in terms of community involvement, I take your point fully. The more we consult, the better. We are looking right now at enhancing awareness for federally appointed judges on aboriginal issues, and one of the starting points is that we're going to the Assembly of First Nations. We're going to the indigenous bar associations.

But you know, there must be 63 groups out there who would like to have a hand in shaping the course content. I would just offer a word of caution about how far you can go in saying let's involve the groups. I welcome the involvement, and we want to do that at the CJC, working with NJI to involve community groups in the development. However, I think you have to be realistic about how to mandate this, or how to frame it, so that we can reach out to as many people as possible.

● (0910)

Ms. Sheila Malcolmson: Would you agree with me that zero is the wrong number, though?

Mr. Norman Sabourin: Absolutely. As far as I know—I'm not the expert—the course content is not....

The education committee of the CJC works very hard at overseeing the development of every course that is offered to judges. The committee always look at who is on the committee that creates the development course, and, contrary to what may have been perceived by some, it's not just a bunch of judges and lawyers. There are always community experts, people from community groups, and people from academia who participate, so it's definitely not zero. That would be a very bad idea.

Ms. Sheila Malcolmson: With respect, the reason this bill has been tabled and why we've interrupted our other study to study this, and the reason this is top-of-the-fold in headlines day after day is that we have a problem in our country. There is a gap that needs to be filled and, respectfully, I would suggest more community involvement, more transparency, and more engagement. The NGOs are very good at sorting things out amongst themselves. They won't be offended if all 63 are not included. There is certainly an appetite, and I would commend their experience to all of your organizations.

I did get some feedback this past week in my riding from one of the domestic assault support groups when they saw the headline that the new federal funding would go to video training of judges and videocasts on sexual assault trials—which, as Ms. Kent says, "will be put on our website, thereby making them available to all Canadian judges." One of the executive directors said, "I wouldn't train my staff with a video." She was very concerned that this was where the money would go.

Can you tell me more? Will you go beyond a videocast on a website? Is this something that the judges do on their own time, in their own offices? Is there some kind of review afterwards to identify whether the content has been absorbed? Is there some kind of mandatory education? Assure me that this isn't the end of the road.

Hon. Adèle Kent: This is an additional tool. Judges get training at new judges school on sexual assault, as we discussed last time. There are other courses. They're court-based courses where gender-based violence is involved. I gave you an example this morning of the comings-and-goings exercise, so to suggest that the only thing will be some video learning.... I think if that were the case, we would not be doing a good job. Our pedagogy is the need for experiential learning: to have the judges in the situation that some of these women are in from time to time. It is an additional tool, just like their law books are additional tools.

Ms. Sheila Malcolmson: So this is additional to what we're doing right now? There have been problems identified with the training that's happening right now, and I'll just relay to you that the NGO feedback I got is that it isn't reassuring to them. On top of the existing group of judges we have right now, we've heard a lot of witness testimony here—not just for the most high-profile ones—that there is a fundamental problem.

Mr. Norman Sabourin: If I may answer, I think this is absolutely a legitimate concern. I have to say that the genesis of the video capsules at the outset was to try to find a way to reach out to provincially appointed judges, for which we don't have the funding or the mandate. It was very much an additional tool.

I agree with you that there are gaps. I may not agree with you that the problem is as grave as might have been represented in the media as far as federally appointed judges go, but there are gaps, and we want to work on them. On the additional funding, if it has been construed as strictly for video capsules, that's not the case at all. It's really to be comprehensive.

The Chair: Very good, and that's your time.

We're going now to Ms. Damoff for seven minutes.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you very much.

Thanks to all of you for coming back again, and thanks also for keeping up on the previous witnesses, because it's helpful when you're here again and you know what has been said.

I want to talk about the mandatory training. Both times when you've appeared, you've mentioned the requirement that everyone undertakes this education. As the bill is worded right now, anyone who applies to a federally appointed judgeship must complete "recent and comprehensive education in sexual assault law". We've heard that there are problems with that, particularly with a delay in assessment of the candidates and inadequate training.

I want you to comment. As I said, I believe that when you were here the last time, Mr. Giroux, you talked about requiring an "undertaking" to complete this education. What are your thoughts on this? Do you still think the best way for us to go is to require that they complete an undertaking to complete this training once they're appointed?

● (0915)

Mr. Marc Giroux: That was a suggestion made by Maître Sabourin—

Ms. Pam Damoff: Oh, I'm sorry.

Mr. Marc Giroux: —so he may have additional comments to make.

From our standpoint, obviously, in administering the judicial appointments process, this would not cause a problem in our administration of the process and obviously would not slow down the assessment of candidates.

With regard to the suggestion itself, it would be a simple undertaking whereby candidates indicate that they will undertake to take up that training, but I wonder if Monsieur Sabourin would have other comments.

Mr. Norman Sabourin: Thank you.

The CJC proposal is to make candidates commit to taking this type of education. The reason we've made this proposal, which we've communicated to the Minister of Justice, is that we see it as linking the ethical obligations of judges with respect to professional development with their appointment if they are successful. So a judge can't come after the fact and say, "Well, gosh, gee, I didn't know I was supposed to take this training." If they fail to uphold the policies of the CJC, including the 10 to 15 full days of training during the year, they will expose themselves to an ethical shortcoming. This is what we want to achieve with that proposal. The reason we like it is not only because we think it achieves the objectives proposed in the bill, but also because it would be efficient. We don't see any practical difficulty in implementing it.

Ms. Pam Damoff: Moving on to something else, is there a definition for intersectionality found in law, and if there were a list of intersectional identities added to this bill, how easy or difficult would it be for judges to read a marginalized group identity into that enumerated list?

Hon. Adèle Kent: That's a big question. I'm not an expert in answering that. I can tell you that in our social context education, we identify a number of groups, disadvantaged groups. I suppose it's fair to say that lists are always dangerous because you might not include everybody. In terms of the definition of intersectionality, though, I'm afraid I can't answer that.

Ms. Pam Damoff: Do either of you have any comment? No?

We had excellent testimony on crown prosecutors and the need to train them, and today we've been talking about sexual assault training for provincial judges. One of the things that has come up in testimony is that, in my understanding, most sexual assault cases actually go to provincial court, not federal court.

How much ability do we have as a federal government to actually legislate what's happening at the provincial level, or is it more discussions between our justice minister and provincial justice ministers? I don't want people to get a false sense of confidence with legislation we're bringing in that this is going to provide training for our provincial counterparts. Could you clarify that for us?

Hon. Adèle Kent: You're absolutely right that 95% of the Criminal Code offences are tried in provincial court. I am not an expert on federalism, but there are a couple of things that I've thought about. The Criminal Code is a federal statute, so to the extent that there is funding for provincial court judges, I would argue that it would be in the interest of the federal government to give that funding because it's their statute that's being interpreted. Is it some sort of accord between the federal and provincial ministers of justice? Perhaps. That's another alternative. I think you would have to look at someone who is schooled better than I am in federalism.

I just want to add one thing. I was taken very much by the crown prosecutor who was here last time. I didn't realize they didn't get the training, and as much as it's important for judges to be trained, it is important as well for the crown prosecutors, because sometimes it is helpful if your crown says, “Excuse me, My Lady, that evidence is inadmissible; it is an old rape myth.” That is of assistance. If they let it go, it slows the process because the judge has to say, “Okay, wait a minute; I think that's a myth; I have to adjourn,” and so on and so forth. I think having a broad-based look at this is also something that may be considered by others in the executive and legislative branches.

● (0920)

Ms. Pam Damoff: Again, I think our crown prosecutors are trained provincially. They're not getting training from the federal government. So we get into those challenges and I think we heard that from her. It's not only the training itself but having the time for the crown prosecutors to actually take the training, even if it were available. Again, that all falls within the provincial government, which is outside our jurisdiction.

Hon. Adèle Kent: I think that's right.

Mr. Norman Sabourin: That's right, and from having listened to your work in the past, I think this committee has identified the importance of training at all levels. Ms. Ambrose has spelled out how important it is to train police officers, crown prosecutors, and the judiciary.

From the CJC's perspective, we had tried to capitalize on the outstanding work of the NJI in developing programs to see what can be shared with provincial judges. I am often in discussions with the Canadian Council of Chief Judges provincially. Using video capsules was an idea to make material available to provincially appointed judges at very limited cost—almost no cost. Likewise, when there are courses delivered in person, we look to see whether we can fit in five or six more people, what the incremental cost is, and if we could offer it to provincial judges. We're looking for ways to help, but primarily it's a provincial responsibility.

The Chair: Very good.

Now we'll go to Ms. Harder for five minutes.

Ms. Rachael Harder (Lethbridge, CPC): Norman, you made a comment before about conduct discipline. I find this curious because it's clear that numbers or attendance are not necessarily being monitored very accurately. I'm confused as to how conduct discipline would be laid out, then, if you don't actually know who attended or for how long, which courses they picked up and which ones they were absent from. How do you enforce conduct discipline when this is the scenario?

Mr. Norman Sabourin: In terms of judicial conduct generally, the executive director has authority to initiate a review about a judge. Any time information comes to my attention, I can do that. More importantly, judges have ethical obligations to signal or to flag where they see ethical shortcomings in regard to other judges. Contrary to other countries, we don't have a type of inspection service in Canada where somebody goes into judges' offices and says, “Where were you last month? What courses did you attend? Did you go to any public event and get inebriated?” We don't do that kind of inspection that goes on in other countries, but when there are ethical shortcomings they usually get flagged.

As for judicial education specifically, the policy of the CJC is very clear: 10 to 15 days a year. We know that new judges, newly appointed people, all attend. If anybody thinks there's a problem there, it's a red herring.

Ms. Rachael Harder: I'm sorry but I'm going to have to cut you off there, because you don't know that they all attend. In fact, your statistics show that 168 of them don't.

Mr. Norman Sabourin: No, that's in regard to ongoing training for all judges.

Ms. Rachael Harder: That's only for ongoing training.

Mr. Norman Sabourin: Correct.

Ms. Rachael Harder: Then I'm going to pick up there, because when you say that all judges are attending new-judge school, if I agree to give you that, we still have a problem and it is this: clearly making it mandatory to attend training is not actually the answer or the solution to the problem before us, because you're saying that's already happening. However, we have cases such as Judge Camp's taking place consistently across this country. If those cases are still taking place, clearly our situation is not about making it mandatory, it's about the content of the training that's being provided.

My question for you then is, do you believe that adequate training is provided with regard to sexual assault cases?

Mr. Norman Sabourin: As I said earlier, first of all I have to disagree respectfully that there's a consistent problem among the judiciary and their training on sexual assault matters. I cannot agree with that.

Ms. Rachael Harder: I'll let the cases speak for themselves.

Mr. Norman Sabourin: There are thousands and thousands of cases decided by judges every year. We may have a difference of opinion on that, but I do agree that there are gaps. There have always been gaps. However, since the early 1990s, it is the CJC that has taken the leadership in identifying the need for social context education, building on the work of such people as Claire L'Heureux-Dubé, and famous scholars in the field of gender equality. We have required the NJI to build their programs in a way that includes social context training so that, as Justice Kent described, in specific instances, judges understand the problems of the people who come before them.

Could it be better? Of course. Are judges human beings? We tend to forget that they are. They make errors, and those errors are corrected on appeal and they are corrected by the transparency of their decisions. When we identify shortcomings in a judge's competency, steps can be taken in terms of conduct.

● (0925)

Ms. Rachael Harder: Sure. You mentioned before that the problem with undertaking is that judges can actually be seeing criminal law cases before they've even received the training. That is my understanding. Let's say when they come in, it's spring, but that training session isn't offered until December. That's a good six months, maybe even eight months, or 10 or 11 months, before they actually receive training in the area of the cases over which they're presiding.

When you say "undertaking", I need some clarification in terms of exactly what you mean by this phrase. Also, I need some clarification with regard to the CJC policy on training and whether judges can in fact hear cases that they are not actually adequately trained to hear.

Mr. Norman Sabourin: That is a very good question. In terms of the first part you mentioned, a lot of the responsibility lies not only with individual judges, but with their chief justice.

I cannot speak to what happened with Justice Camp when he was a provincial judge. I can't speak to these other provincial court cases. However, I know the chief justices of the federally appointed courts very seriously consider what cases to assign to which judges. If you have a judge who was just appointed after 23 years as a criminal guy, he's not going to do a family case. They're very careful about that. I've heard judges repeatedly ask, "Can I take the following training, because I'd like to do a jury trial and my chief says that I haven't had the experience of jury trials and I have to take this course?" That's the first part of your question.

On the second part, the undertaking, I think it's very elegant because it forces judges to recognize that the policy to take 10 to 15 days of training a year—full days, not an occasional hour here and there—is a requirement that they must discharge professionally. They cannot come and say, "Gosh, I knew I had to take training, but I thought it was every couple of years." I think there's a real elegance in this undertaking to ensure that judges understand their obligations to pursue their professional development in a rigorous manner every year.

The Chair: Very good.

Now we'll go to Ms. Ludwig for five minutes.

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

Thank you very much for coming back. It's very good that we are able to circle back and ask the questions and get more answers.

We've heard from a number of witnesses at this committee that this law will have possible unintended consequence in naming and shaming justices. I've heard that this risk is most prevalent in the section of the bill dealing with the report to the minister that would be tabled in Parliament. I'm wondering what your thoughts are about improving this section and if any further unintended consequences may result from this bill.

Mr. Norman Sabourin: The key concern that we have at the CJC is that it appears to be an attempt to do indirectly what you cannot do directly, which is to say, naming judges who were attending which course at what time in order to say, you made the following decision and we will attempt to characterize the validity or how defensible your decisions are based on what training you did or did not take.

I think that is a very difficult leap of logic to make. If you're going to try to identify which court had how many judges attend such a course over a period of time, I think the obvious objective is to find out, over time, which judge did not attend which course and when, in order to characterize or otherwise make a judgment about their decisions. CJC is of the view that this would be very problematic, not only from an independence perspective, but also from the perspective of trying to draw conclusions about the decisions of judges based on what training they may or may not have received.

● (0930)

Ms. Karen Ludwig: Thank you.

I want to add to that as well.

We've also heard from witnesses that you're considering the crime funnel. The incident takes place and the victim maybe reports it or doesn't. Let's say in the case of a woman, the woman then reports it to the police. They may find it to be unfounded. Maybe it goes a step further. The accused has defence counsel. She has the crown attorney. Based on their best practices or lack of practice, as it goes through that crime funnel, then we hit the provincial court system within that system. We know that in the case of Justice Camp—which often hear as an example—that not only was he a provincial court judge, but that he was also appointed by the previous government to the Federal Court, with the government knowing about his comments. When we get to that stage, are we really doing the service we think that we're doing? How do we get this to be more comprehensive? One of the concerns we have heard about the naming and shaming is the decision the judge puts forward is often based on the best evidence they've received in that court. That follows through on the naming and shaming aspect as well.

Mr. Sabourin, I'm wondering about the curriculum itself. Is the curriculum reviewed? Could you share broadly the learning outcomes from that curriculum?

Hon. Adèle Kent: Is the curriculum reviewed? The NJI curriculum is reviewed periodically. In fact, my director of education programs and I are in the process of doing a review right now. The second part of your question was—

Ms. Karen Ludwig: The learning outcomes.

Hon. Adèle Kent: The learning outcomes is not a phrase I know.

Ms. Karen Ludwig: As a result of taking this training or this education, this is the expected learning to result.

Hon. Adèle Kent: All of our courses are developed. The first thing we do is to ask what the objectives of the course are. The judges will know the objectives of this course. In the case of comings and goings, the objectives of this course will be to understand the difficulties faced by a woman leaving an abusive relationship. Then the course hopefully addresses the objectives. Then we have the judges evaluate it to see whether we've met our objectives.

Ms. Karen Ludwig: Thank you.

I do want to commend you for the videos. As someone who has worked in post-secondary education and understands pedagogical outcomes, I believe that the introduction of videos is important because there's a variety of training resources out there and a variety of methods to access those resources. If it makes it easier, it may be more likely to be viewed. That would tie then into the learning outcomes.

My colleague, Ms. Damoff, asked about intersectionality in law, and you had suggested, Justice Kent, that in making a list we may miss certain groups. If we were making a change to the bill and we were introducing intersectionality, would that be encompassing enough?

The Chair: I'm sorry, but that's your time.

Ms. Karen Ludwig: Oh. I'll have to be a bit quicker.

The Chair: We'll have to go to Ms. Harder for five minutes.

Ms. Rachael Harder: Thank you.

I'll pick up where I left off with regard to undertaking training. Again, I'm faced with a problem here. If you don't actually keep track of judges, how long they attend, and which courses they're taking, then I fail to understand how you can then make it mandatory. You don't actually know whether they're attending, for how long, which courses, or which parts of the training they took. Without proper record-keeping, how is it you can make sure that it's mandatory?

Mr. Norman Sabourin: First of all, the mandatory education for newly appointed judges was just adopted as a policy by the CJC last month, so it's a recent requirement. The CJC has just decided to publish, as you know, the description, overview, duration, date of seminar, and the number of judges who attended each seminar. By developing this information, which, frankly, we didn't have the resources and ability to do in the past, we will have a better database of such information. I think what you're getting at—

Ms. Rachael Harder: As part of this, then, you will need to be keeping track of attendance. Will that be part of this new mandatory policy?

Mr. Norman Sabourin: We will know attendance for sure, because we will start monitoring it in order to publish what we've undertaken to publish as per our position paper tabled before this committee.

Ms. Rachael Harder: So you'll be keeping track of attendance, not just registration?

Mr. Norman Sabourin: For new judges.

By the way, in case there's any doubt, other than a family emergency, really, I'm not aware of a single judge who did not attend every single day of the new judges training school. So I wouldn't make any inferences about people not attending and our having to look for truants.

If I might—

● (0935)

Ms. Rachael Harder: Thank you. I feel that you're enforcing my point yet again, that the problem is not whether or not they're attending but the content of the courses they're receiving.

My next question is with regard to judicial independence. One of the things that was brought up is that this could perhaps infringe on that. Now, you've gone ahead and made the training mandatory. You've decided that this doesn't infringe on their judicial independence, yet somehow this bill, this legislation on the table, might. It appears there's some cherry-picking going on in terms of what infringes on judicial independence and what doesn't.

Can you clarify that for me, please?

Mr. Norman Sabourin: I'm not overly familiar with the phrase "cherry-picking", because English is my second language.

Ms. Rachael Harder: It's when you pick and choose what's convenient.

Mr. Norman Sabourin: Okay.

I don't think that's a fair thing to say. The reason it's okay for the CJC to adopt a mandatory education policy is that it's judges telling judges that they shall attend the school. The reason it's okay for the CJC to tell judges that they will engage in 10 to 15 days a year of education, which will include social context education, is that it's judges telling judges that this is what they shall do.

The problem with the bill is that it would make Parliament tell judges what courses they should or should not take. The CJC is of the view that this is a very slippery slope, as is outlined in our submission to the committee.

Ms. Rachael Harder: Go ahead.

Mrs. Karen Vecchio: Okay.

Thank you very much. It's interesting to hear that, because we're representing Canadians. Members of Parliament, 338 members, are representing Canadians. We're hearing from our own people in our own constituencies that these are some of the issues. It's very interesting for you to say that it's a slippery slope when Canadians are saying that this is an issue.

Last week in my own hometown, I was at a first nations learning place. Their number one issue was the judicial system and the fact that the judicial system does not represent them, does not take time to learn these things. All three cases that I dealt with were sexual assault cases.

I'm very discouraged, to be honest, after that statement. You're supposed to be representing the best of Canadians as well, just as we are. The fact that you would not listen to Canadians, when Canadians are saying that sexual assault needs to be looked at further, and you're referring to a "slippery slope".... Are Canadians wrong, then, when they're bringing up cases like "keep your knees together"? Who's wrong here—Canadians, or you guys saying that you're not going to listen to what Canadians have to say? I'm really discouraged by that simple statement that you're not willing to listen to parliamentarians, who represent all of Canadians.

Can you explain that to me?

Mr. Norman Sabourin: Well, I'll let parliamentarians decide what Canadians think is best. The judiciary is very responsive to public attitudes. The Canadian judiciary is very proud of the fact that it enjoys a very high degree of confidence from the public. I think part of the reason is that—

Mrs. Karen Vecchio: If that were the case—

Mr. Norman Sabourin: That is the case.

Mrs. Karen Vecchio: —there wouldn't be this legislation going forward.

The Chair: I'm sorry, that's your time.

We're going to Ms. Ludwig, for five minutes.

Ms. Karen Ludwig: Thank you.

Justice Kent, I'd like to carry on with that. If we were to include intersectionality, would it just be "intersectionality" as a term, as a reference, without a list?

Hon. Adèle Kent: I'm hesitating, because I'm not a legislative draftsperson. But I guess, in my parlance, understanding some of the causes and effects of gender-based violence.... The causes are poverty, race, and mental illness, and the affects are poverty and mental illness. It's so important that they're thought of together. I'm sorry, I'm stumbling because I'm not a legislative draftsman, but I acknowledge that they're certainly necessary to think of together.

Ms. Karen Ludwig: Okay. Thank you.

I'm going to ask another quick question, and then I'm going to share my time with Ms. Damoff.

Just following up on Ms. Vecchio's concern about the general public and the judicial system, if 95% of cases are heard before provincial judges, are we actually addressing that concern with this bill?

Mr. Norman Sabourin: I think it's fair to say, and I've said it before, that there are gaps. The council recognized that there are gaps in judicial education. We could always do better. I would not want to use the words "problems" and "grave" and "consistent" and "we're in trouble". I think that is a mischaracterization of the reality. The cases are few and far between in which there have been problems. There are sometimes difficulties. There are gaps. We can do better.

But I was going to say, in terms of public confidence, that every decision a judge makes in this country is transparent, is public. That fosters public confidence, as revealed repeatedly in polling. These decisions are subject to appeal. When an error is made, it is reversed. So the confidence of the public in the system cannot be looked at through the lens of one or two or three cases. We want to continue to polish the curriculum and to work with our partners to make sure there is the best possible training available, and, at the risk of repeating myself, we want to have a comprehensive approach to judicial education. It's not just about one narrow area that could be subject to interpretation.

● (0940)

Ms. Karen Ludwig: Thank you.

Pam.

Ms. Pam Damoff: Thank you very much.

I actually want to concentrate on that a little bit as well, in terms of the provincial court judges. Who trains them?

Hon. Adèle Kent: They are allowed to come to our national courses for a nominal fee, because we know, depending on the province, that they have limited funds. The largest provincial trial court, the Ontario Court of Justice, has an MOU with us, so we do train them.

Ms. Pam Damoff: That's a memorandum of understanding.

Hon. Adèle Kent: Yes, sorry, a memorandum of understanding. So NJI does train them. They've been one of the most innovative courts in the country, by the way, in terms of training.

Ms. Pam Damoff: Who trains Alberta court judges?

Hon. Adèle Kent: Alberta court judges get funds, and they have a couple of seminars every year which they organize themselves.

Ms. Pam Damoff: So Justice Camp got training, not from with us, but in Alberta before he was appointed, I would assume.

Hon. Adèle Kent: I actually can't say. I don't know specifically about any judge, actually.

Ms. Pam Damoff: Okay. I think we're blurring the line a little bit with comments that have been made about provincial court judges with regard to what this bill will address, which will be training for federal court judges.

Hon. Adèle Kent: That's correct.

Ms. Pam Damoff: So when we blur those lines, if Justice Camp were appointed today, he would actually go to the new justice school you've just started, as opposed to how it was when he was appointed by the previous government, after he made those comments and then sat on the Federal Court. Is that accurate?

Hon. Adèle Kent: Well, he was appointed as a provincial judge. He was then appointed as a federal judge. I don't know any of the particulars of his training. But now with the CJC's policy, it would be a mandatory requirement for him to go to the new federal judges school on his appointment as a federal judge.

Ms. Pam Damoff: Right, but we are blurring those lines. In Nova Scotia recently there was a case about whether or not someone who was drunk could give consent. Again, that was in a provincial court, not in a federal court.

Hon. Adèle Kent: That is my understanding of that case.

Ms. Pam Damoff: Okay.

How much time do I have left?

The Chair: You have fifteen seconds.

Ms. Pam Damoff: In 15 seconds, could I change the mood a little? *Come From Away*, which has a strong gender lens, with the first female American Airlines pilot, has just been nominated for seven Tony Awards. It's Canadian.

The Chair: I'm always a fan of keeping it positive.

With that positive note, we go to Ms. Malcolmson for three minutes.

Ms. Sheila Malcolmson: Thank you, Chair.

It was off topic but that's nice news anyway.

We're talking again about Justice Camp, and I just want to make sure that everybody heard the testimony we had from the Women's Centre for Social Justice, which does Courtwatch monitoring.

The witness said that comments and attitudes such as the ones made by Justice Robin Camp are:

> ...far more pervasive and form part of the everyday misogyny in the courtrooms across the country.... No one is shining a spotlight on them, thus enabling them to continue treating victims in ways that skew the outcomes in favour of the offender with no regard for the victim.

I just want to flag, even though we're talking about Federal Court judges here, that when something goes sideways it has an inhibiting effect, whether it's on the police, the prosecutors, or certainly the victims coming forward. I'm glad we're talking about this all together, and we want to show some leadership.

I just want to get a clarification. On page 2 of your submission that you gave us this morning, question 2, you reference the design of a curriculum content. The second-last sentence says it's "designed to be responsive to the needs of the judiciary in consultation with judges, academics and the community" and that the courses are "continually reviewed and renewed".

I want to know by whom. Who is the "community" in that context, and in the review and renewing, where's the community insert?

● (0945)

Hon. Adèle Kent: It depends on the course. When we do our courses on indigenous law, we have elders on our planning committee. They will help plan and evaluate the course again, and if we repeat it, we will look with them to determine whether changes are needed. If it's a course on terrorism, for example—because we put on courses on terrorism—we will have members of the community and prosecutors looking at de-radicalization, and those kinds of things, so it depends on the—

Ms. Sheila Malcolmson: Are they in this context of domestic assault?

Hon. Adèle Kent: Well, not in this context, but I'm trying to give you an idea that, when we say this in our answer, we look to the community. It's the community that is relevant to the course we're putting on.

Ms. Sheila Malcolmson: If it's in relation to sexual violence and domestic assault, which community groups would be helping you with that?

Hon. Adèle Kent: I cannot give you names today. Depending on the focus of the course, we may reach out to community groups. I can't give you names of community groups. And we will reach out to the academy, professors who work in the particular areas. I know when we deal with poverty, for example, we have looked for a poverty simulation, to the united—

Ms. Sheila Malcolmson: Again, our time is so tight—

The Chair: Actually, our time is done.

Ms. Sheila Malcolmson: Would you undertake to give us the names of the domestic assault community groups that you referenced in your answer?

Hon. Adèle Kent: I'm not sure, because I don't have the permission of any of those people to give that information. I think I'd have to think about that. I don't want to violate the privacy of anyone.

The Chair: Certainly not.

Thank you very much. I want to thank the witnesses for appearing before us a second time. This will be helpful to us as we come to our clause-by-clause review of the bill on May 11.

I would remind committee members that your amendments are due by 5 p.m. on May 9.

Now, we're going to turn our attention to subcommittee business and will suspend to do that so we can consider our economic work plan.

Thank you.

[*Proceedings continue in camera*]