

INCLUDING PUBLIC STAKEHOLDERS IN JUDICIAL EDUCATION: THE POLITICS OF JUDICIAL ACCOUNTABILITY

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Judicial participation in high quality, relevant judicial education is critical to public confidence in the administration of justice. The Canadian Judicial Council (CJC) has, until recently, insisted that judicial independence requires exclusive judicial control over judicial education. However, a series of legislative initiatives directed at judicial education on sexual assault and intimate partner violence has complicated this understanding of judicial independence. We argue that government willingness to interfere is a political response to public dissatisfaction with the judicial treatment of gender-based violence. We suggest that this public dissatisfaction should trigger an institutional judicial reconsideration of what judicial independence requires in the judicial education context. Any reconsideration should focus on the key recommendations in the legislative amendments: 1) the need for increased transparency about judicial education, and 2) the importance of involving expert public stakeholders in the development of educational materials on the social context of gender-based violence. In our view, neither increased transparency, nor respectful collaboration with relevant public stakeholders pose a threat to judicial independence properly understood. Rather they are a necessary response to the complex relationships between judicial independence, judicial impartiality and judicial accountability in a legal system that takes women's equality seriously.

This article is a follow-up to "Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada" (2019) 97:2 Canadian Bar Review 367. In that piece we analyzed proposed federal legislation on sexual assault education for federally appointed judges. That bill died on the order paper but two recent legislative interventions, in 2021 and 2023, amend the judicial education provisions in the Judges Act. Both received unanimous political support. In this article we focus on Bill C-3, which deals with sexual

¹ A note on authorship. Former Justice Martinson and Professor Cairns Way met while working on the Social Context Education Project (SCEP) at the NJI in 1997. In 2019, they wrote "Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada" (2019) 97:2 Canadian Bar Review 367 (Judging Sexual Assault). The article was written after two decades of direct collaborative work on the development and delivery of judicial education programming on social context and equality issues across Canada. This article is a follow-up. Professor Cairns-Way held the pen. However, it remains deeply collaborative. Justice Martinson regularly provided helpful commentary and advice during the drafting process. We intend the authorship attribution to acknowledge this ongoing collaboration.

assault and social context, and “Keira’s Law” which deals with intimate partner violence and coercive control in intimate and family relationships.

La participation des juges à des formations juridiques pertinentes et de qualité élevée est essentielle au maintien de la confiance du public dans l’administration de la justice. Jusqu’à récemment, le Conseil canadien de la magistrature (CCM) insistait sur le fait que l’indépendance judiciaire nécessitait le contrôle exclusif par les juges de leur formation juridique. Toutefois, une série d’initiatives législatives visant la formation des juges sur les agressions sexuelles et la violence entre partenaires intimes a complexifié cette compréhension de l’indépendance judiciaire. Les auteures pensent plutôt que la volonté d’intervention du gouvernement est une réponse politique à une insatisfaction du public à l’égard du traitement par les juges de la violence fondée sur le genre. Elles proposent que cette insatisfaction du public doit déclencher un nouvel examen judiciaire institutionnel de ce que nécessite l’indépendance judiciaire dans le contexte de la formation des juges. Tout nouvel examen devrait porter sur les principales recommandations figurant dans les modifications législatives : 1) la nécessité d’une transparence accrue au sujet de la formation des juges et 2) l’importance de faire participer des intervenants publics experts à l’élaboration de documents de formation sur le contexte social de la violence fondée sur le genre. À leur avis, ni la transparence accrue ni la collaboration respectueuse avec des intervenants publics ne constituent une menace à l’indépendance judiciaire. Il s’agit plutôt d’une réponse à une relation complexe entre l’indépendance judiciaire, l’impartialité des juges et la responsabilité des juges dans un système juridique qui prend l’égalité des femmes au sérieux.

Le présent article fait suite à l’article « Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada », dans La Revue du Barreau canadien, vol. 97, no 2, 2019, p. 367. Les auteures y avaient examiné la mesure législative fédérale proposée relative à la formation sur les agressions sexuelles à l’intention des juges de nomination fédérale. Ce projet de loi est mort au Feuilleton, mais de récentes interventions législatives, en 2021 et en 2023, ont modifié les dispositions visant la formation des juges dans la Loi sur les juges. Les deux ont reçu un appui politique unanime. Dans le présent article, les auteures se concentrent sur le projet de loi C-3, qui aborde les agressions sexuelles et le contexte social, ainsi que sur la « loi de Keira », laquelle porte sur la violence entre partenaires intimes et le contrôle coercitif dans les relations intimes et familiales.

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Judicial education is critical to public confidence in the administration of justice. ... The (Canadian Judicial) Council recognizes the public’s expectations surrounding judicial education, and in particular, the evolving realities with regard to sexual assault law, unconscious bias and systemic discrimination. It also recognizes the need to balance considerations related to accountability, transparency and judicial independence.

Fifty Years of Service to Canadians,
Report of the Canadian Judicial Council, December 2021²

[A] fear that certain kinds of education might create bias in the judiciary, has historically proven to be a roadblock to much-needed judicial education, especially on topics like gender-based violence and other “social issues.” It is time to set that fear aside in favour of ensuring that judges ... have the knowledge they need to correctly evaluate the evidence provided to them.

Pamela Cross, *The Challenge of Judicial Education*, May 2023³

Introduction

In February 2022, Bill C-233, a private member’s bill amending the *Judges Act*⁴ to approve of judicial education on intimate partner violence and coercive control in intimate partner and family relationships (IPV)⁵ was

² Canadian Judicial Council, [Fifty Years of Service to Canadians](#), (Report of the Canadian Judicial Council 2021) at 24, on-line at <<https://tinyurl.com/4d3m6fmh>> [perma.cc/NLN5-YBHZ].

³ Pamela Cross, “[The Challenge of Judicial Education](#)” (May 2, 2023) on-line at <<https://tinyurl.com/k5cpamms>> [perma.cc/P7BE-2DS7].

⁴ *Judges Act*, R.S.C., 1985, c. J-1.

⁵ References to IPV are intended to include both “intimate partner violence and coercive control in intimate partner and family relationships.” We recognize that there are important distinctions between intimate partner violence and coercive control in intimate partner and family relationships. Any judicial education which is developed and delivered in response to C-233 must provide a nuanced, and contextualized understanding of these two patterns of behaviour. Both are widely misunderstood and subject to discriminatory stereotypes. The question of whether to criminalize coercive control is currently before

given first reading in the House of Commons.⁶ Fourteen months later, in April 2023, the bill was proclaimed in force, having received unanimous support in both the House and the Senate. The bill was dubbed “*Keira’s Law*” after four-year-old Keira Kagan.⁷ In February 2020 Keira was the victim of an apparent murder-suicide while in the unsupervised custody of her father.⁸ Tragically, an emergency motion suspending the custody arrangement had been sought and subsequently adjourned to the Monday following her death.⁹ The bill was the result of the sustained and powerful advocacy of Keira’s mother, Dr. Jennifer Kagan and Keira’s stepfather, Philip Viater. Dr. Kagan’s testimony about her experience of intimate partner violence and coercive control with Keira’s father, her ex-husband, was found irrelevant to his parenting abilities during child custody hearings.¹⁰ Speaking publicly after the unanimous passage of the

Parliament. [Bill C-322, An Act to amend the Criminal Code](#) (controlling or coercive conduct), was put before the Standing Committee on Justice and Human Rights in February 2024. Information about the bill can be found at <<https://tinyurl.com/yc22nyvt>> [perma.cc/L9Z3-JLLZ]. There are a range of views regarding this expansion of criminal law, with most witnesses urging caution. The [briefs](#) are available on-line at <<https://tinyurl.com/yc22nyvt>> [perma.cc/57TG-MCT7].

⁶ [Comprehensive information on the bill](#) can be found at <<https://tinyurl.com/45yxks8y>> [perma.cc/9RZK-H3LB]. In addition to the sections on judicial education, the Bill includes a section dealing with electronic monitoring during interim judicial release. This paper considers only the judicial education provisions.

⁷ This analysis will continue to refer to the legislation as Keira’s Law, out of respect for a child, and to avoid confusion with the other two similar pieces of legislation discussed.

⁸ Keira’s death was reviewed by Ontario’s Domestic Violence Death Review Committee (DVDRC). That report was released on February 8, 2023, three years after her death. The Committee concluded that the death was both predictable and preventable. Twenty-two risk factors were identified. Only seven risk factors are required to trigger a conclusion that there is a high risk of death. See Pamela Cross, “[A Damning Report—Part one](#)” (February 14, 2023) at <<https://tinyurl.com/yh3cb3de>> [perma.cc/253M-C4BF], and [Part two](#) (February 21, 2023) at <<https://pamelacross.ca/a-damning-report-part-two/>> [perma.cc/ZSX9-MV5L]. An [inquest into Keira’s death](#) was announced by Ontario’s Chief Coroner on February 9, 2023. <<https://tinyurl.com/5n7c2xjz>> [perma.cc/8PLT-96E9]. As of this writing (April 30, 2024) we were unable to find any further information about this inquest.

⁹ More than fifty decisions related to Keira’s custody were delivered by at least ten different family court judges over a four year period. See Pamela Cross, Part one, *supra* note 8.

¹⁰ Jennifer Kagan appeared before the Standing Committee on the Status of Women during consideration of Keira’s Law. She testified: “I was a victim of domestic violence in my previous marriage. It was a short marriage, and I was subject to multiple types of domestic violence, which included isolated episodes of physical violence as well as coercive control. I had a young daughter and I was able to safely escape the abuser, but when I sought protection for Keira in the family court system, I found that the court system was not equipped to protect a small child. I was before, I believe, between 10 and 12 different judges, none of whom had an understanding of domestic violence and

bill, Dr. Kagan said she hoped its passage would signal “a change in the way domestic violence will be treated by the family and criminal court system.”¹¹

Keira’s Law is the second recent example of federal legislative intervention in judicial education.¹² The first began as a private member’s bill named the “*Judicial Accountability through Sexual Assault Law Training Act*,” (the *JUST Act*) introduced in February 2017.¹³ Opposition MP Rona Ambrose said that the legislation was intended to “build more confidence in our judicial system when it comes to the handling of cases involving sexual assault and sexual violence.”¹⁴ The bill was a political response to the Camp Inquiry,¹⁵ and the “me too” movement, both of which drew

coercive control. During my trial, when I went to the stand to talk about the abuse I had experienced, I was cut off by the judge and told that abuse is not relevant to parenting and he was going to ignore it.” [House of Commons, Standing Committee on the Status of Women, Evidence](https://tinyurl.com/y94f2p59), 44-1, No 18 (May 6, 2022) at 1305, <<https://tinyurl.com/y94f2p59>> [perma.cc/C4TF-AAFC].

¹¹ David Fraser, “[Keira’s Law will strengthen law’s on domestic violence, advocates say](https://tinyurl.com/4zsna8du)” (April 19, 2023) online at <<https://tinyurl.com/4zsna8du>> [perma.cc/4VWY-UT3D].

¹² Both federally appointed and provincially appointed judges deal with gender-based violence (including sexual assault, intimate partner violence and coercive control) in their court rooms. Most sexual assault cases are dealt with in provincial court. The division of jurisdiction over IPV is more complex, as it arises in both family and criminal law contexts. We estimate that approximately half of the cases are heard by superior court judges, and the rest by the provincial courts. This paper focusses on how the federal government has used legislation on judicial education as a remedial response to systemic failures of the justice system to respond to gender-based violence. The Canadian Judicial Council has authority over federally appointed judges. Similar [bodies with authority over provincially appointed judges exist in every province](https://tinyurl.com/572yerpf). These bodies manage the delivery of judicial education for their courts. See, for example, <<https://tinyurl.com/572yerpf>> [perma.cc/8GH5-A8ZA]. In Ontario a version of Keira’s law, Bill 102, The Strengthening Safety and Modernizing Justice Act, received royal assent in June of 2023. Schedule 3 of that Act amends the Courts of Justice Act to prohibit a person from being appointed as a provincial judge unless the person undertakes to participate in courses designated for newly appointed judges by the Chief Justice of the Ontario Court of Justice.

¹³ We discuss the social, legal and political context of the Act in “Judging Sexual Assault” *supra* note 1. Bill C-337, *An Act to amend the Judges Act and the Criminal Code (sexual assault)*, 1st Sess, 42nd Parl, 2017 [*The Judicial Accountability through Sexual Assault Law Training Act*]. It was dubbed the [JUST Act](https://tinyurl.com/5n8az36m) by its sponsor, MP Rona Ambrose. To avoid confusion, we will use the JUST Act moniker when referring to this draft legislation, which ended up dying on the order paper. Comprehensive information about the Bill is available at Legisinfo online: <<https://tinyurl.com/5n8az36m>> [perma.cc/BTY5-RA39].

¹⁴ [House of Commons Debates](https://tinyurl.com/25emyhcx), 42-1, No 148 (February 23, 2017) (Hon Rona Ambrose) online: <<https://tinyurl.com/25emyhcx>> [perma.cc/YL62-VRRM].

¹⁵ Canadian Judicial Council, [In the Matter of an Inquiry Pursuant to s. 63\(1\) of the Judges Act Regarding the Honourable Justice Robin Camp, Report and Recommendations](https://tinyurl.com/25emyhcx)

public attention to the prevalence of sexual violence and the inadequacies of the legal response.¹⁶ The *JUST Act* eventually died on the order paper in 2019, but was re-introduced as a government bill a year later. Bill C-3, *An Act to amend the Judges Act and the Criminal Code*, was proclaimed in force in May 2021.¹⁷ The amendments to the *Judges Act* are twofold. First, the amendments change the eligibility criteria for judicial appointment. New appointees must “undertake to participate” in continuing education on matters related to sexual assault law and social context.¹⁸ Second, and significantly for our purposes, the amendments engage with both the substance of CJC authorized education, and the process of program development by: 1) empowering the CJC to establish “seminars on matters related to sexual assault law and social context, which includes systemic racism and systemic discrimination;” 2) suggesting Council should ensure that these seminars were “developed after consultation with persons, groups or organizations that Council considers appropriate, such as sexual assault survivors and persons, groups and organizations that support them, including Indigenous leaders and representatives of Indigenous communities” and; 3) suggesting that Council submit a yearly report to the Minister of Justice on the seminars held pursuant to this new mandate.¹⁹ The Bill received unanimous political support. For politicians, it offered an attractive, uncontroversial and low-cost way to publicly position themselves on sexual violence and gender equality. It sent a clear

[of the Inquiry Committee to the Canadian Judicial Council](https://tinyurl.com/44zhrbds), (Ottawa, Canadian Judicial Council, 29 November 2016), online: <<https://tinyurl.com/44zhrbds>>.

¹⁶ Professor Elaine Craig has written a compelling analysis of these failures in Elaine Craig, “Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession” (2018) McGill Queen’s University Press. For discussions of the impact of the “#metoo” movement see Jamie Cameron “[Victim Privacy and Open Justice 2.0 At the Frontiers of Change](https://tinyurl.com/mu9y7r9j)” (2020), at <<https://tinyurl.com/mu9y7r9j>> [perma.cc/A8QQ-83K7].

¹⁷ [Comprehensive information about the Act](https://tinyurl.com/2reuk6f8) is available at <<https://tinyurl.com/2reuk6f8>> [perma.cc/NA2B-LBCQ]. In addition to the sections on judicial education, the Bill included a section which required judges to provide reasons for decisions in sexual assault rulings. *Criminal Code*, RSC 1985, c C-46, Section 278.98(1). Our discussions in this piece, and the one which preceded it focus only on the judicial education provisions.

¹⁸ We are grateful to one of our anonymous reviewers for this point. The reviewer reminded us that the creation of this new criterion of eligibility was a legislative acknowledgement that judicial education could be made mandatory without compromising judicial independence. The CJC had, in fact, already confirmed that by making participation in New Judges Training mandatory for newly appointed judges in 2018. See the most recent Canadian Judicial Council Professional Development Policies and Guidelines, in particular [Policies Applicable to Recently Appointed Judges at 5](https://tinyurl.com/24a77zy4) (Approved by Council September 2018) online at <<https://tinyurl.com/24a77zy4>> [perma.cc/89QG-83XE].

¹⁹ See text infra at (Part 2).

but unexpected signal²⁰ to the judiciary and to the public. Parliamentarians were prepared to use unprecedented methods to demand that judicial education be accountable to those victimized by gender-based violence. The speedy passage of *Keira's Law* seems to confirm that Bill C-3 was not an aberration, and that politicians have abandoned their unspoken commitment to remaining at arms-length from the substance of judicial education.²¹

The purpose of this article is to examine the significance of the federal government's turn to judicial education as a remedial response to gender-based violence. It is a follow-up to an article Justice Martinson and I published in 2019. In that piece, "Judging Sexual Assault," we analyzed the original judicial education provisions in the *JUST Act*.²² We focussed on how the draft legislation navigated the complicated balance between judicial accountability and judicial independence. The apparent tension between those two objectives was evident at the committee hearings.²³ Public stakeholders testified about the vital importance of judicial education on sexual violence, explaining that survivors and organizations working with them had lost faith in the justice system and in the judiciary. They insisted that comprehensive and effective education on sexual assault needed to incorporate evidence of the lived reality of sexual violence for survivors, and those who worked directly with them.²⁴ Most indicated that

²⁰ The Act was unexpected in that it signalled a shift in the political understanding of the separation of powers.

²¹ Judicial education for federally appointed judges is funded via The Commissioner of Federal Judicial Affairs relying on section 41 of the *Judges Act*, R.S.C., 1985, c. J-1. The federal government has also provided one-time arms-length funding intended to assist courts in addressing particular issues. The Social Context Education Project involved one such arms-length agreement. The Department funded the additional resources required to develop the programming. See, Rosemary Cairns Way "Contradictory or Complementary: Reconciling Judicial Social Context Education with Judicial Independence" in Adam Dodek and Lorne Sossin, eds, "Judicial Independence in Context" (Toronto: Irwin Law, 2010) 220 (Contradictory or Complementary). In Budget 2017 the federal government allocated 2.7M over five years (and .5M per year thereafter) to support judicial education. The Budget specifically targeted gender and diversity training. House of Commons, [Budget 2017, Building a Strong Middle Class](https://tinyurl.com/3ye3ekfh) at <<https://tinyurl.com/3ye3ekfh>> [perma.cc/TR43-G3YL] (Part 5 at 189). In December of 2022, after [Keira's law passed second reading in the Senate](#), the Minister of Justice announced that the NJI would receive \$869,861 over four years for judicial training on IPV and family violence in the family justice system. <<https://tinyurl.com/5n79529v>> [perma.cc/W6SH-WCVL].

²² Judging Sexual Assault, *supra* note 1.

²³ [Materials related to the Standing Committee on the Status of Women's review](#) are on-line at <<https://tinyurl.com/2z3x37dy>> [perma.cc/4UHS-FWA8].

²⁴ [Testimony from direct service organizations](#) was heard on April 13, 2017. House of Commons, Standing Committee on the Status of Women, Evidence, 42-1, No 57 (April 13, 2017) at <<https://tinyurl.com/mrxmrj5v>> [perma.cc/65Q7-MNK8].

they had never been consulted or asked for their advice on how to develop and/or deliver effective training on sexual assault, despite their expertise, direct knowledge and willingness to assist.²⁵ On the other hand, both the Canadian Judicial Council (CJC) and National Judicial Institute (NJI) expressed concern that any legislative incursion into judicial education would improperly interfere with judicial independence. For them, judicial independence required that judicial education be under exclusive judicial control.²⁶ Public involvement was firmly resisted for three reasons: 1) judicial independence required that judicial education be led and controlled by judges who would independently decide if, when, and how public stakeholders could be included; 2) public consultation created a risk of inappropriate outside influence by “special interest groups”²⁷ and compromised impartiality; and 3) community involvement threatened the necessary “balance” of judicial education programs.²⁸ We argued that the theory of judicial independence underlying these concerns was inadequate in, at the least, the educational context. In our view, effective judicial education on the social context of gendered sexual violence required the input of relevant and knowledgeable public stakeholders as a

²⁵ Ms. Ambrose testified: “My understanding is right now there is really no interaction and no transparency. ... Experts have asked “Can we at least ... give you some advice on whether this is the most up-to-date, best kind of training?” House of Commons, [Standing Committee on the Status of Women, Evidence](#), 42-1, No 54 (April 4, 2017) (Hon. Rona Ambrose) at <<https://tinyurl.com/2w3heu5c>> [perma.cc/V3EP-E5TY].

²⁶ [House of Commons, Standing Committee on the Status of Women, Evidence](#), 42-1, No 56 (April 11, 2017) (Norman Sabourin on behalf of the Canadian Judicial Council) at <<https://tinyurl.com/37smwxr7>> [perma.cc/STN6-2AQX]; [House of Commons, Standing Committee on the Status of Women, Evidence](#), 42-1, No 58 (May 2, 2017) (Hon Adele Kent, Executive director, National Judicial Institute) at <<https://tinyurl.com/mphmtpz2>> [perma.cc/K48W-VBAV].

²⁷ In the early days of the SCEP some judges were concerned about hearing from what they considered to be special interests groups intent on indoctrination and not education. Today we rightly view women’s groups and sexual assault survivors not as special interest groups, but as groups who wish to ensure that women’s constitutional equality rights are respected. Ensuring equality and preventing discrimination are legal obligations and not ideological positions. See generally, *Judging Sexual Assault*, *supra* note 1.

²⁸ In testimony before the Standing Committee on the Status of Women, the hon. Adele Kent, Executive Director of the NJI at the time, explained that “the NJI has worked with some women’s groups, but does so carefully because judges need a balanced approach to education. Some of those groups are advocates and we can’t have advocates teach our judges - we need the balance.” In our view, the real risk to a ‘balanced’ program is the failure to include perspectives which have, perhaps unintentionally and unknowingly, been excluded. The premise that judges alone should determine their needs, and that judges learn best hearing from other judges is incompatible with an inclusive vision of social context education.

guarantee of balance, and as a way of ensuring that the programming was effective, and, in fact, comprehensive.

In this article we examine the recent amendments to the *Judges Act*. Our analysis is organized in four parts. Part 1 places *Keira's Law* in its political, legal and social context. Part 2 describes the well-intentioned but ultimately performative judicial education provisions now in the *Judges Act*. In Part 3, we examine the institutional judicial response to these amendments, focussing on the publicly available material on the CJC and NJI websites. Finally, we consider the Memorandum of Understanding (MOU) on the Continuing Education of Superior Court Judges.²⁹ This document was signed by the Minister of Justice and the Chief Justice of Canada as Chairperson of the CJC in April 2022, a year after C-3 was proclaimed in force, two months after *Keira's Law* was introduced in the House of Commons, and a year in advance of its coming into force. We conclude by arguing that the politicization of judicial education has been counterproductive, and suggest some simple but constructive ways of moving forward.

Part 1: Keira's Law in Context

Intimate partner violence and coercive control in intimate and family relationships has an undeniably devastating impact in Canadian society.³⁰ We agree with the federal government and the more than 100 municipalities in Ontario that have declared gender-based-violence an epidemic.³¹ Statistics make clear the systemic and deeply entrenched nature of gender-

²⁹ Canadian Judicial Council, [Memorandum of Understanding on the Continuing Education of Superior Court Judges](https://tinyurl.com/yy3vdwe4), April 2022, online at <<https://tinyurl.com/yy3vdwe4>> [perma.cc/4FJX-8KA5].

³⁰ This part is not intended to offer a detailed evaluation of intimate partner violence, coercive control in intimate and family relationships, the operative legislative framework dealing with these subjects, or the significant cases interpreting and applying that framework. Good entry points into the literature on IPV include: Jennifer Koshan, “[#Don'tDisbelieveHer: Towards Recognition of Myths and Stereotypes about Intimate Partner Violence at the Supreme Court of Canada](#)” (April 13 2022), online: ABlawg, at <<https://tinyurl.com/4j3ppe2j>> [perma.cc/T4KT-KX77]; Elizabeth Sheehy and Susan B. Boyd, “Punishing Women’s Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases” (2020) 42:1 *Journal of Social Welfare and Family Law* 80; Janet Mosher, Shushanna Harris, Jennifer Koshan and Wanda Wiegers, “[Submission to JUST on the Criminalization of Coercive Control](#)” (March, 2024) on-line at <<https://tinyurl.com/wrwnv5v7>> [perma.cc/A78F-D7GH].

³¹ See, for example Molly Hayes, “[Intimate partner violence an ‘epidemic,’ federal government says in response to coroner’s inquest](#),” (August 16, 2023) at <<https://tinyurl.com/bddv94rt>> [perma.cc/C4VY-9JBM]. After initially refusing to do so (because IPV was not a “communicable disease”), the Ontario government has recently agreed to support a law declaring IPV an epidemic. See Laura Stone, “[Ontario government will support bill](#)

based-violence in Canadian society, and there is incontrovertible evidence that myths and stereotypes distort the justice system response to sexual assault, IPV and coercive control.³² Rates of police-reported IPV have been increasing steadily since 2015 and “eight in 10 victims of such violence were women and girls.”³³ Women and girls are nearly four times more likely to be victimized than men and boys.³⁴ The experiences of IPV and coercive control in intimate and family relationships are deeply gendered.³⁵ In 2018, an overview on IPV prepared by Statistics Canada found that “overall, 44% of women who had ever been in an intimate partner relationship—or about 6.2 million women aged 15 and over—reported experiencing some kind of psychological, physical, or sexual abuse in the context of an intimate relationship in their lifetime.”³⁶ Women’s vulnerability to IPV is exacerbated by youth, Indigeneity,³⁷ disability, gender identity, and race,³⁸ and this intersectional vulnerability was significantly increased during the pandemic lockdown.³⁹ In April 2021, the Standing Committee on Justice and Human Rights released a comprehensive report, “The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships” which included recommendations directed at the potential

[declaring intimate partner violence an epidemic](https://tinyurl.com/53f6rjnd)” (April 10, 2024) at <<https://tinyurl.com/53f6rjnd>> [perma.cc/4MXX-JUQX].

³² See the very recent decision of the BCCA in *KMN v SZM*, 2024 BCCA 70 (CanLII), overturning 2023 BCSC 940 (CanLII) and the comment by Deanne Sowter and Jennifer Koshan, “[BC Court of Appeal Recognizes the Myth of False Allegations of Intimate Partner Violence](https://tinyurl.com/4fhy9uhp)” (April 22, 2024) on-line at <<https://tinyurl.com/4fhy9uhp>> [perma.cc/6URB-GXVE]. See as well *Shipton v. Shipton*, 2024 ONCA 624 decided on August 24, 2024. The most recent Supreme Court of Canada decision on myths and stereotypes is *R v Kruk*, 2024 SCC 7.

³³ Statistics Canada, [Victims of police-reported family and intimate partner violence in Canada](https://tinyurl.com/2jan55jb), Catalogue No 11-001-X (Ottawa: Statistics Canada, October 19, 2022) at <<https://tinyurl.com/2jan55jb>> [perma.cc/N5U5-D82F].

³⁴ *Ibid.*

³⁵ Statistics Canada, [Police-reported intimate partner violence in Canada, 2019](https://tinyurl.com/3kf43cut), by Shana Conroy, Catalogue No 65-002-X (Ottawa: Statistics Canada, March 2, 2021) at <<https://tinyurl.com/3kf43cut>> [perma.cc/QDN9-HUQB].

³⁶ Statistics Canada, [Intimate partner violence in Canada, 2018](https://tinyurl.com/7u4dwy8z), Catalogue No 11-001-X (Ottawa: Statistics Canada, April 26, 2021) at <<https://tinyurl.com/7u4dwy8z>> [perma.cc/5HZU-BLNK].

³⁷ See generally the [home page of the National Inquiry into Missing and Murdered Indigenous Women and Girls](https://www.mmiwg-ffada.ca/) at <<https://www.mmiwg-ffada.ca/>> [perma.cc/L2KU-WMBU] and for a comprehensive introduction to the Inquiry’s work, [Executive Summary, Reclaiming Power and Place](https://tinyurl.com/5f43xd63), at <<https://tinyurl.com/5f43xd63>> [perma.cc/TFS8-7UJZ].

³⁸ [Fact sheet: Intimate partner violence](https://tinyurl.com/yrkb879d) <<https://tinyurl.com/yrkb879d>> [perma.cc/4P34-3ZED]. <<https://www.mmiwg-ffada.ca/>> [perma.cc/492C-YFEJ].

³⁹ See Nicole Thompson, “[Reports of domestic, intimate partner violence continue to rise during pandemic](https://tinyurl.com/275n4vzh)” Canadian Press February 2021 online at <<https://tinyurl.com/275n4vzh>> [perma.cc/3PHC-2SBS].

criminalization of coercive control as well as “training of judicial system actors, such as police, lawyers, and judges, about the dynamics of [coercive and controlling] behaviour.”⁴⁰

The horrifying connections between IPV and homicide have been very much in the public eye recently. The Nova Scotia Mass Casualty Commission released its final report in May 2023, delivering this sober warning about the consequences of society’s inability to respond to gender-based violence:

Our work revealed that the antecedents of the mass casualty ran deep into the perpetrator’s history of violence and misconduct. This history, in turn, reflects the broader context of our collective social and institutional failures to perceive and respond effectively to gender-based, intimate partner, and family violence. Such failures extend well beyond this perpetrator.⁴¹

The Commission made one hundred and forty recommendations in a seven volume final report. They emphasize the necessity of continuous and respectful engagement with survivors and with the gender-based violence advocacy and support sector. Recommendation 15 (Women-Centred Strategies and Actions), for example, advises that “recognition of the expertise and experience of the gender-based violence advocacy and support sector, including survivors of gender-based violence, is essential,” and that “no effective solutions can be developed without input from the people for whom they are being developed.”⁴²

Similar accountability measures were recommended by the Coroner’s Inquest into the femicides of Carol Culliton, Anastasia Kusyk, and Nathalie Warmerdam in September 2015.⁴³ The report recommended the creation of an “independent Intimate Partner Violence Commission dedicated to eradicating intimate partner violence (IPV) and acting as a voice that speaks on behalf of survivors and victims’ families.”⁴⁴ The Commission’s mandate was to be developed through “meaningful consultation with

⁴⁰ House of Commons, “[The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships: Report of the Standing Committee on Justice and Human Rights](https://tinyurl.com/bdez7zs3)” by Iqra Khalid (Chair), Sessional Paper, 43-2, No 9 (2021) at <<https://tinyurl.com/bdez7zs3>> [perma.cc/MGN9-PWQZ].

⁴¹ Nova Scotia Mass Casualty Commission, [Turning the Tides: Final Report of the Mass Casualty Commissioner](https://tinyurl.com/3v4bdast), Vol. 3 (March 2023), online: <<https://tinyurl.com/3v4bdast>> [perma.cc/3LU-KZ8F] at 106.

⁴² *Ibid* <<https://tinyurl.com/483p28rj>> [perma.cc/AJ5Y-LVKU] at 10.

⁴³ See [Verdict of the Coroner’s Jury](https://tinyurl.com/yc58x7pv), June 20, 2022 on line at <<https://tinyurl.com/yc58x7pv>> [perma.cc/3C55-NQ2R]. See this [powerful discussion of the femicides and the response](https://tinyurl.com/35h7nau5). <<https://tinyurl.com/35h7nau5>> [perma.cc/AR3S-9RSN].

⁴⁴ See <<https://tinyurl.com/3k8a9yvw>> [perma.cc/23U2-KXT9].

IPV stakeholders and experts in the field” and supported by “stable and adequate funding.”⁴⁵ Neither of these accountability recommendations were implemented by the province, despite the fact that gender-based violence experts hailed the recommendations as a “gift of solutions” to a systemic crisis.⁴⁶

Feminist academics have thoroughly documented the gendered myths and stereotypes that contaminate courtroom responses to intimate partner violence.⁴⁷ Professor Jennifer Koshan argues that these myths are as insidious, prejudicial, and legally wrong as the “twin myths” which ground the evidentiary regime in section 276 of the Criminal Code.⁴⁸ In Keira Kagan’s case, the judge’s refusal to acknowledge the relevance of the IPV evidence to the custody decision suggests, at the least, an unforgivable inability to understand the harms and risks of IPV and coercive control, and, at the most, a discriminatory assumption that Dr. Kagan’s evidence was a strategic exaggeration intended to strengthen her custody claims. Koshan identifies strategic exaggeration as “one of the most common myths about IPV: that litigants make false or exaggerated claims of violence to gain an advantage in family law disputes.”⁴⁹ These credibility myths are closely interwoven with “misassumptions about the type of violence reported and, even if believed, the significance of the violence to the legal issues in the case.”⁵⁰

Canadian courts have made significant progress since Justices Bertha Wilson and Claire L’Heureux-Dubé recognized the impact of gendered myths and stereotypes on women’s access to equal justice in the context of self-defence and sexual assault respectively.⁵¹ Since then the Supreme Court of Canada has made it crystal clear that discriminatory myths and stereotypes have no place in Canadian court rooms and

⁴⁵ *Ibid.*

⁴⁶ Molly Hayes, *supra* note 29.

⁴⁷ Donna Martinson and Margaret Jackson, “Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases” (2017) 30:1 Can J Fam L 11, Deanne Sowter, “[Judging Family Violence: Recommendations for Judicial Practices and Guidelines in Family Violence Cases](https://tinyurl.com/cwk2wc4k)” (December 2021) at <<https://tinyurl.com/cwk2wc4k>> [perma.cc/7V3F-CDGD].

⁴⁸ Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases” (2023) 35:1 Can J Fam L 33; Jennifer Koshan, “[The Myth of False Allegations of Intimate Partner Violence](https://tinyurl.com/rmxtzj9)” (November 8 2023), Online: ABlawg, <<https://tinyurl.com/rmxtzj9>> [perma.cc/M68H-JM9M].

⁴⁹ *Supra* note 48, “The Myth of False Allegations”.

⁵⁰ *Ibid.*

⁵¹ *R v Lavallee*, [1990] 1 SCR 852; *R. v. Seaboyer*; *R v Gayme*, [1991] 2 SCR 577. See the powerful dissenting opinion of L’Heureux-Dubé J (Gonthier J concurring).

judicial proceedings.⁵² The idea that judges may unknowingly rely on discriminatory myths and stereotypes and thereby perpetuate inequality and unfair disadvantage is no longer controversial. In fact, the Ethical Principles for Judges states: “The obligation of impartiality does not presuppose that judges are free of life experiences, sympathies or opinions. Rather, it requires judges to be sensitive to their own biases and to consider different points of view with an open mind.”⁵³ This obligation of self-knowledge is legally grounded in the constitutional guarantee of substantive equality. The Principles urge judges to “educate themselves on the extent to which their assumptions rest on stereotypical thinking.”⁵⁴ Formalized programs of judicial education addressing the judicial role, the constitutional value of equality, the meaning of judicial independence and the pervasiveness of gender-based myths and stereotypes have been the primary vehicle for this form of judicial professional development in Canada.⁵⁵ Since the late 1990s the Canadian judiciary, to its credit, has been both proactive and progressive in its commitment to an expanding⁵⁶ program of social context education, understood as a measure to assist judges in delivering impartial justice, and to enhance public confidence in the administration of justice. Meanwhile, the legislature has restricted itself to the provision of arms-length funding. That changed in 2021.

Part 2: The Legislation

Stories have the power to move legislators. I have advocated for years for this kind of change but it took Jennifer (Kagan) to accomplish it.

Pamela Cross, Director of Advocacy, Luke’s Place⁵⁷

⁵² See, for the most recent example, *R v Kruk supra* note 32.

⁵³ Canadian Judicial Council, [Ethical Principles for Judges \(EPJ\)](https://www.cjc-ccj.ca/ethical-principles-for-judges-epj/), (2021) 5A4 at 39 (Impartiality) available on-line <<https://tinyurl.com/mr3pzpk8>> [perma.cc/BKC5-99GF].

For a thoughtful analysis and critique of the EPJ see Richard Devlin, Jula Hughes, Pooja Parmar, Stephen GA Pitel, Amy Salzyn, “A Mixed Bag: Critical Reflections on the Revised Ethical Principles for Judges” (2022) 100:3 Canadian Bar Review 325.

⁵⁴ EPJ *supra* note 53 4C3 at 41 (Impartiality).

⁵⁵ See generally Rosemary Cairns Way, “Contradictory or Complementary” *supra* note 21.

⁵⁶ In 1994, the CJC resolution approving the SCEP provided that social context issues “included gender and race. (aboriginal peoples, blacks, and other visible minorities)” *Ibid* at 234. Most recently, social context issues have been described as including “an understanding of circumstances related to, among other things, gender, race, ethnicity, religion, culture, sexual orientation, differing mental or physical abilities, age, socio-economic background, children and family violence. Memorandum of Understanding, *supra* note 29 at para 19.

⁵⁷ “[Keira’s Legacy of Hope: Judicial Training on Family Violence](#)” Special Event, July 25, 2023. Centre for Research and Education on Violence Against Women (CREVAW) <<https://tinyurl.com/4ktx7wtp>> [perma.cc/RWC5-PQVN].

The judicial education provisions in C-3 and *Keira's Law* amend three key sections of the *Judges Act*: section 3, the eligibility criteria; section 60, Council's powers with respect to professional education; and section 62, a new reporting provision. As amended, these provisions read as follows:

Eligibility for appointment

3 No person is eligible to be appointed a judge of a superior court in any province unless, in addition to any other requirements prescribed by law, that person ...

(b) undertakes to participate in continuing education on matters related to sexual assault law and social context, which includes systemic racism and systemic discrimination, including by attending seminars established under paragraph 60(2)(b).

Objects of Council

60 (1) The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service, in superior courts.

Powers of Council

(2) In furtherance of its objects, the Council may ...

- (b) establish seminars for the continuing education of judges, including seminars on matters related to sexual assault law, intimate partner violence, coercive control in intimate partner and family relationships and social context, which includes systemic racism and systemic discrimination.

Seminars related to sexual assault law

(3) The Council should ensure that seminars on matters related to sexual assault law established under paragraph (2)(b)

§ (a) are developed after consultation with persons, groups or organizations the Council considers appropriate, such as sexual assault survivors and persons, groups and organizations that support them, including Indigenous leaders and representatives of Indigenous communities; and

§ (b) include, where the Council finds appropriate, instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants.

Report—seminars

62.1 (1) Within 60 days after the end of each calendar year, the Council should submit to the Minister a report on the seminars referred to in paragraph 60(2) (b) on matters related to sexual assault law, intimate partner violence, coercive control in intimate partner and family relationships and social context, which includes systemic racism and systemic discrimination, that were offered in the preceding calendar year. The report should include the following information:

§ (a) the title and a description of the content of each seminar, its duration and the dates on which it was offered; and

§ (b) the number of judges who attended each seminar.⁵⁸

A Closer Look:

Section 3 of the Act now requires that judges appointed after the legislation comes into force “undertake to participate” in continuing education on particular subjects. The permissive and forward-looking language are concessions to judicial independence, understood until very recently as a requirement that judges exercise independent judgement over their voluntary consumption of continuing education. In 2017, the CJC changed its position that any mandatory education violated judicial independence.⁵⁹ The CJC now requires recently appointed judges to participate in the New Judges Program and the Judging in Your First Five Years Program(s).⁶⁰ Both programs have existed for many years and include sessions on judging and social context, and the law of sexual assault.⁶¹ In other words, section 3 imposes no new obligations on newly appointed judges. While the undertaking does not apply to judges appointed before its enactment,

⁵⁸ *The Judges Act*, *supra* note 4.

⁵⁹ See CJC Professional Development Policies and Guidelines, *supra* note 18. The CJC in fact changed its position in 2017 and formalized it in 2018. The 2017 document is archived on the webpage.

⁶⁰ *Ibid.*

⁶¹ The [most recent on-line description of New Judges Training](https://tinyurl.com/3veb8a9w) provides, for example: “All participants jointly attended sessions on judicial independence, conduct and ethics, judgment writing, civility and effective communication in the courtroom, unconscious bias, strategies to ensure equal access to justice for persons with disabilities, and the relationship between the judge’s role and the social context, with particular emphasis on sexual assault law, racial discrimination, and cases involving Indigenous people.” <<https://tinyurl.com/3veb8a9w>> [perma.cc/EPD7-27AM]. The [description from 2017 is less detailed](https://tinyurl.com/3ymnfasb), but virtually the same. Online at <<https://tinyurl.com/3ymnfasb>> [perma.cc/884C-7SZM]. [Descriptions of the two Judging in your First Five Years programs](https://tinyurl.com/37h7nand) are available on-line at <<https://tinyurl.com/37h7nand>> [perma.cc/B6XW-T3GG]; and at <<https://tinyurl.com/4dr6ckwe>> [perma.cc/5U7A-KCLP].

those appointed from 2017 onwards would be subject to the 2017 CJC Policy.⁶²

Section 60(2)(b) provides that the CJC, may, pursuant to its mandate to “improve the quality of judicial service ... establish seminars for the continuing education of judges.” As amended, the current provision sets out a non-exhaustive list of potential seminar topics. It acknowledges that sexual assault and IPV occur in a social context characterized by multiple and intersecting inequalities, including systemic racism and discrimination. In effect, the amended provision is redundant. It does not expand the CJC’s power to authorize seminars “improving the quality of judicial service” and none of the subjects are incompatible with the CJC’s objectives.

The current legislation contains a surprising inconsistency between the topics listed in section 3 and those listed in section 60(2)(b).⁶³ Section 3 does not require newly appointed judges to “undertake to participate” in education related to IPV, the focus of *Keira’s Law*. In the circumstances, we suspect it will have no substantial impact. There is no reason for the CJC or the NJI to ignore *Keira’s Law* when developing programs for newly appointed judges. The legislation does not make any of the programming mandatory. It does, however, provide important insight into where judicial education is necessary to maintain public confidence.

There are two significant clauses in Section 60(3), both related to the substance of the judicial education curriculum, and both limited to seminars dealing with sexual assault. Both clauses are permissive. It is unfortunate that section 60(3) was not amended as part of the passage of *Keira’s Law* to include IPV and coercive control. This would have meant adding persons, groups and organizations with expertise in IPV and coercive control to the list of suggested organizations in 60(3)(a), and taking the time to identify the legal moments, in both family and criminal law, where discriminatory myths and assumptions about IPV and coercive control are particularly harmful. Section 60(3)(b) does that work with respect to sexual assault. The failure to carefully analyze how IPV and coercive control play out in courtrooms was a major, missed opportunity, the product of hasty drafting and a rushed process.⁶⁴

⁶² The policy was formalized in 2018. *Supra* note 18.

⁶³ This [inconsistency was noted by several witnesses](#) appearing before the Standing Committee on the Status of Women on Friday May 6, 2022 <<https://tinyurl.com/y94f2p59>> [perma.cc/BPE6-H2PW]; [House of Commons, Evidence](#), 44-1, No 18 at 1315 (Phillip Viater) and Tuesday May 10, 2022, <<https://tinyurl.com/3ed8y66s>> [perma.cc/ZU7D-ZJEX] House of Commons, *Evidence*, 44-1, No 19 at 1620–1625 (Pamela Cross, Luke’s Place), and 1630–1635 (Cee Strauss, LEAF).

⁶⁴ This issue was also pointed out by Pamela Cross and Cee Strauss, *supra* note 63.

Section 60(3)(a) identifies the vital contribution that survivors and front-line organizations can make to the effectiveness of judicial education on the social context of sexual assault. Unfortunately, the significance of the recommendation is doubly diluted—by the “should” in the opening phrase, and by the fact that Council is given overarching discretion to determine whose contributions are “appropriate.” This legislative concession to Council’s discretion is consistent with the deferential approach to judicial independence which characterizes the amendments. It also reflects the apparently absolutist theory of judicial independence which grounds the judicial response. We will consider that theory in Part 3, below.

Finally, section 62 sets out a new, but permissive reporting requirement. Council “should” submit a report to the Minister “on the seminars referred to in paragraph 60(2)(b).” The suggested content for the annual report includes the duration of each program ... and the number of judges in attendance. More ambiguously, the provision requests “descriptive content”, presumably intended to enhance transparency. The CJC has, in fact, been providing the Minister of Justice with voluminous, comprehensive, and mostly unhelpful yearly reports on programming since April 2018.⁶⁵ Nothing in the permissive language of 62(1).1 requires the CJC to change their approach. In Part 3, below, we examine whether this approach fulfills the CJC’s public commitment to transparency.

Part 3: The Judicial Response

Judges must be completely impervious to any outside influence, whether governmental, political, family, organizational or other.⁶⁶

We begin by acknowledging the significant judicial education accomplishments of both the CJC and the NJI over the last 25 years. Both are publicly committed to social context education, and the NJI delivers an impressive array of programming. Both the CJC and the NJI responded quickly and creatively to the challenges of a global pandemic, focusing on protecting access to justice while continuing to deliver programs. Our objective is to ensure that judicial professional development continues to play a significant role in maintaining and increasing public confidence in the justice system. We are especially concerned with the (accurate) public perception that the courts are not always safe places for those victimized by gender-based violence. We think that 1) the CJC and NJI can become

⁶⁵ The CJC introduced its new website in 2018. The annual report of courses is prepared in March of the subsequent year. The *JUST Act* was introduced in 2017.

⁶⁶ Canadian Judicial Council, [Judicial Independence: The Foundation of our Justice System](https://tinyurl.com/mr2p5ue) online at <<https://tinyurl.com/mr2p5ue>> [perma.cc/JX]6-KKP9].

even more transparent, and 2) the CJC and NJI can improve the quality, impact, comprehensiveness and credibility of their judicial education programming by involving and including public stakeholders with expertise and direct lived experiences of gender-based violence.

The amendments in C-3 and *Keira's Law* are political responses to public events (the Camp inquiry, the death of Keira Kagan) but also suggest mounting public frustration over the judicial response to gender-based violence. Judicial reliance on myths and stereotypes regarding sexual violence and IPV continue to deny women's constitutionally guaranteed right to equal treatment before and under the law, despite substantive legislative change, and more than 25 years of judicial social context education. The recent amendments deliver two important messages. Both must be taken seriously by the judiciary. The first message is about transparency. The second is about the importance of substantial and relevant public involvement in judicial education.

Transparency: Course Information

The CJC made judicial education programming public when its new website was released in April 2018. The website provides important information on the court system, advice on how to make a complaint about judicial conduct, information on the resolution of complaints, and access to CJC publications, including press releases, archived publications and annual reports.⁶⁷ It reveals the CJC's understanding of transparency, identified as one of its key commitments on the home page.⁶⁸ The overview of judicial training begins with the following:

In the interest of transparency to the Canadian public, the Council publishes a list of courses, seminars, and other events that were held during the year. By making this information accessible to the public, the Council gives Canadians the opportunity to understand its many judicial training initiatives as well as the seriousness with which it takes its mission.⁶⁹

⁶⁷ [Access to publications](https://tinyurl.com/mutmzk6z) is available at <<https://tinyurl.com/mutmzk6z>> [perma.cc/6UPV-F58G] (Last accessed April 15, 2024). Five publications on governance over judicial education date back to 2017. There are 416 accessible publications dating back to 1990.

⁶⁸ These [key commitments](#) are providing life-long learning, upholding the highest ethical standards, protecting judicial independence for Canadians, and fostering public confidence through increased transparency at <<https://cjc-ccm.ca/en>> [perma.cc/ARR9-T3QB].

⁶⁹ [Overview of Judicial Training](#) at <<https://tinyurl.com/4je42fxt>> [perma.cc/HYQ3-X8UQ] (Last accessed April 15, 2024).

A hyperlink embedded in “Training that never stops” takes the reader to a list of courses dating to 2017.⁷⁰ The list includes 542 courses, seminars and other learning activities.⁷¹ While undoubtedly comprehensive, it is difficult to navigate. Readers can organize the list chronologically and narrow their search with tags related to an extensive list of topics.⁷² The detail provided in each course description is divided into an overview, objectives and summary. They are widely variable. Some descriptions are relatively specific and give the reader a good sense of what topics the program covered.⁷³ Others are repetitive, vague and obviously boiler-plate.⁷⁴ The descriptions, understandably, preserve the anonymity of presenters,⁷⁵ who, if described at all, are described generically as “subject matter experts, senior judges, practitioners and legal academics.” No

⁷⁰ [Training that never stops](https://tinyurl.com/3a3x47nk), online at <<https://tinyurl.com/3a3x47nk>> [perma.cc/H7WS-UK73]. The list is updated every year. The CJC has released a list of courses delivered every year since 2017. The list for 2023 was released on March 19, 2024.

⁷¹ We have recently discovered another [list on the NJI website](#). It is a list of courses delivered between January and December 2023. It is divided into national programs (organized chronologically) and court-requested programs (organized by province). The descriptions seem to be the same as those on the CJC website but the organization is different. The list is not searchable. It fits awkwardly, if at all, into the listing on the CJC website, and, as far as we can ascertain, is not mentioned on the CJC website. These “discoveries” confirms the impression that web sites filled with hyper-links, moving images, and interconnected sections are impossible to research. See <<https://tinyurl.com/mr6d4jfi>> [perma.cc/DAW4-XGUA].

⁷² The tags are bewildering. They clearly overlap, making searching cumbersome.

⁷³ One of the best descriptions was of a program delivered to superior court judges in Manitoba. Canadian Judicial Council, [Court of King’s Bench of Manitoba Education Seminar—Fall 2022](#). Online at <<https://tinyurl.com/h4vrkpf>> [perma.cc/XES2-B3TG]. What made the description compelling is 1) The faculty was diverse and included an Indigenous community leader; 2) the coverage of IPV focussed on its impact on women and children; 3) Interactive scenarios were used to explore complex topics related to the admissibility of a complainant’s sexual history.

⁷⁴ A less helpful, relatively recent description of a BC Superior Court seminar provided mostly generic descriptors such as “a range of topics related to substantive law, judicial skills, the social context of judging, and courtroom and trial management.” The Methodology was described broadly as “[a combination of presentations and interactive discussions](#).” Canadian Judicial Council, *Supreme Court of British Columbia Education Seminar (2)* Online at <<https://tinyurl.com/em26kjiyw>> [perma.cc/6Y5Y-B6RD]. [An even less informative recent course description](#) provided: “This education seminar covered a variety of topics relevant to appellate judges in Alberta. The objectives of the seminar were to improve participants’ awareness of current issues facing the court and to expand on substantive skills and knowledge in relation to a variety of topics.” Canadian Judicial Council, *Court of Appeal of Alberta Education Seminar* On-line at <<https://tinyurl.com/mv9vetjd>> [perma.cc/Q6F5-7TA5].

⁷⁵ Sadly, the prevalence of social media means that identifying presenters would put them at risk of, at the least, on-line harassment.

course description provided information, either specific or general on who planned the program, or whether public stakeholders were consulted.⁷⁶

In our view, the voluminous list on the CJC website fails to fulfill either the purpose of the reporting “suggestions” in section 62, or the CJC’s commitment to transparency. Section 62 is aimed at the concerned public reader who is interested in reasonably accessible information on how and how often judicial education addresses topics enumerated in 60(2)(b). The assumption is that public concern about judicial knowledge on the enumerated topics can be alleviated with information about the depth, frequency and judicial consumption of relevant educational materials. It was virtually impossible to answer those questions with the tools provided.⁷⁷ The sheer volume of information and its organization make it practically inaccessible to all but the most knowledgeable and determined reader, and certainly not to the ordinary Canadian whom it is intended to inform.

Transparency: Curriculum Review

The public portion of the NJI website offers general information about the Institute’s approach to judicial education, its international work, and its governance.⁷⁸ The NJI regularly publishes a review of Judicial Education. The latest four are available on-line. “Building Better Justice,” the Review from 2022–23 is a celebration of 35 years delivering judicial education.⁷⁹ Building Better Justice devotes eight pages to the NJI’s “comprehensive, complementary and current” curriculum.⁸⁰ It describes

⁷⁶ National Judicial Institute, [Building Better Justice: Celebrating 35 Years](https://www.nji-inm.ca/building-better-justice-celebrating-35-years) available at <<https://tinyurl.com/b7tkmxnd>> [perma.cc/3UGQ-AHCH]. The review includes the following appreciation for volunteer judicial planners. “[Finally, we wish to say a special thank you to our many, dedicated volunteer judges who so generously contribute their time, knowledge, and experiences to judicial education. Our judicial contributors make it possible for us to fulfill our mandate to build better justice.](#)” <<https://tinyurl.com/rbmcpmjk>> [perma.cc/58NR-LEZR].

⁷⁷ An example: Were one interested in examining how, and how often training on matters of sexual assault were addressed in judicial education programming, one could tag at least eighteen different topics and with each tag, generate a list of courses, most including one session on sexual assault. We realize that our digital inadequacies may be part of the problem.

⁷⁸ Much of the [NJI website](https://www.nji-inm.ca/) is password protected and intended for judicial use. It contains, inter alia, specific information about upcoming courses, completed courses, on-line educational resources, electronic bench books, and a judicial library. See <<https://www.nji-inm.ca/>>.

⁷⁹ *Building Better Justice*, *supra* note 76.

⁸⁰ We note with dismay that the word “credible,” with its gesture to accountability, seems to have been abandoned. Neither complementary nor current capture the same values as credible and in-depth. We fear that complementary relates primarily to the

a “recently completed ... formal and in-depth review” of the entire judicial education curriculum intended to “objectively assess the quality of the NJI curriculum, its alignment with best practices in judicial education pedagogy, its responsiveness to judicial needs, and the degree to which it ultimately supports the achievement of professional development objectives.”⁸¹ While the formal review “did not identify any significant gaps or omissions,” it did make “33 recommendations intended to enhance and promote the quality and effectiveness of the NJI curriculum.” None of the recommendations are disclosed, although the reader is assured that they have “catalyzed frank discussions” which will inform the development of a “new strategic plan.”⁸²

We applaud the Institute’s decision to engage in curriculum review. Unfortunately, the information provided here provokes more questions than it answers, particularly with respect to the legitimate public interest in the education of judges. Relevant questions include: Who did the review? Who was consulted? Did the review consider whether and how the curriculum met the needs of the public generally, and those who use the courts in particular? Did the review assess how the curriculum advanced the NJI’s public commitment to involving “the community”? Did the review consider the implications of the new legislation on sexual assault and IPV for curriculum coverage and design?

There is a difference between being transparent and being accountable. In our view, both the CJC and the NJI conflate these two concepts in their public facing materials. Transparency alone is an incomplete measure of accountability. Accountability requires asking what information the public is reasonably entitled to know about judicial education in order to maintain its trust. There are clearly degrees of transparency, especially in an age where pervasive and invasive social media creates tangible risks to private interests, and where judicial independence is constitutionally guaranteed. Reasonable people may well disagree. But, an examination of their public facing materials suggests that neither the CJC nor the NJI has considered these questions with the requisite due diligence. The answer appears to be: “Trust us, we are doing an excellent job.”

connections between virtual resources and in-person resources and is a pragmatic rather than aspirational descriptor.

⁸¹ *Building Better Justice*, *supra* note 76 at 16.

⁸² A search of the public website for any previous strategic plans came up with nothing, as did a search for community.

Public Involvement

Both the CJC and the NJI are fully aware, and have been since at least the mid-2000s, of the importance of public involvement in the development and delivery of judicial education. Community involvement was critical to the conception, development and delivery of the SCEP at the NJI.⁸³ As the SCEP evolved, so too did a series of best practice principles applicable to all forms of judicial education,⁸⁴ eventually approved by the NJI Board of Governors in 2006. Twenty principles now guide the NJI's conceptualization and implementation of judicial education.⁸⁵ They recognize that comprehensive judicial education must include three dimensions—substantive content, skills training and social context awareness. And to be credible to the public it serves, and the judges it assists, judicial education requires the participation of three pillars—judges and legal practitioners, legal and other academics, and members of the community. Principle nine explicitly recognizes that “programming is enhanced by involvement of legal practitioners, legal and other academics and members of the wider community.”⁸⁶ The NJI is justly proud of these twenty principles and presented them to the International Organization for Judicial Training (IOJT), an organization that supports the work of judicial educators around the world, in 2015.⁸⁷ And they were explicitly re-endorsed in the National Judicial Institute's Report on Judicial Education (2016-18).⁸⁸

Both the CJC and the NJI were reminded of the significance of public involvement in judicial education when they appeared as witnesses during the committee hearings into the *JUST Act* in April 2017. Both organizations knew of the urgency with which the amendments were being pursued, the non-partisan support they enjoyed and the likelihood

⁸³ See Donna Hackett & Richard F. Devlin, “Constitutionalized Law Reform: Equality Rights and Social Context Education for Judges” (2005) 4:2 *JL & Equal* 157 at 161-173. See as well Rosemary Cairns Way “Contradictory or Complementary” *supra* note 21.

⁸⁴ Hackett and Devlin, *supra* note 83 at 178 – 201 describing what were then ten principles of judicial education.

⁸⁵ National Judicial Institute, [Advancing Judicial Education](https://tinyurl.com/2euu9p) (2016–2018) at 9, available online at <<https://tinyurl.com/2euu9p>> [perma.cc/2J4K-4A7Q].

⁸⁶ *Ibid* at 10.

⁸⁷ The [program for Judicial Excellence Through Education](https://tinyurl.com/4pzftwba) can be found online at <<https://tinyurl.com/4pzftwba>> [perma.cc/D94G-ADLT]. More information about the IOJT is available on-line at <https://www.iojt.org/about-us>. It appears that the 2015 presentation and ensuing discussion led the IOTJ to adopt a [Declaration of Judicial Training Principles in 2017](https://tinyurl.com/cwr3tewz). Online at <<https://tinyurl.com/cwr3tewz>> [perma.cc/2LSX-SLHU].

⁸⁸ National Judicial Institute, *Advancing Judicial Education*, *supra* note 85 at 10.

that they would be passed. They also heard directly, via witness testimony, from front-line organizations who were disappointed by the judiciary's failure to consult them, and concerned that the training would, as a result, be compromised.⁸⁹ The hiccups and delays surrounding the eventual implementation of the consultation section of the legislation were situational,⁹⁰ not substantive. There was every reason for both the NJI and the CJC to begin, or re-invigorate an appropriate protocol for consulting with relevant public stakeholders. However, there is no evidence in publicly available information that they have done so.⁹¹

Most telling are the on-line descriptions of the programming initially targeted by the *JUST Act* in April 2017, and now identified in the *Judges Act*, for new and recently appointed judges' training on sexual assault. The description of the New Judges Program has changed very little since 2018.⁹² There is no evidence in the on-line description that community experts or front-line organizations have ever been consulted as part of program planning, or participated as speakers. In 2022, the publicly available CJC description states that "the seminars were led by experienced judges, with the assistance of seasoned lawyers."⁹³ Neither the family nor the criminal law program for judges in their first five years⁹⁴ appear to involve relevant communities in any capacity. In 2022, the family law program was "led by judicial leaders from courts across Canada, [and] legal experts and interdisciplinary academics drawn from psychology and social work." The criminal law program was "led by a multi-disciplinary

⁸⁹ See the evidence from the committee meeting of April 13, 2017 from, for example, the Avalon Sexual Assault Centre, the Ending Violence Association of British Columbia, the DisAbleD Women's Network Canada, the Native Women's Association of Canada, the Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel. House of Commons, [Standing Committee on the Status of Women, Evidence](https://www.parl.gc.ca/Document/54/1-4/20170413/14822022/14822022-eng.htm), 42-1, No 57 at <<https://tinyurl.com/mrxmrj5v>> [perma.cc/8TES-ZQUP].

⁹⁰ A global pandemic and a federal election in October 2019.

⁹¹ We recognize that consultation is a compendious term which covers a wide spectrum of possibilities. What qualifies as meaningful consultation depends on the context. The legislation seems to envisage, at the least, that relevant communities of expertise be given an opportunity, once a program has been mapped out, and objectives have been identified, to assist in developing the actual content and methodology of sessions (or modules) devoted to IPV or sexual assault. A more thoroughgoing approach to consultation might involve relevant communities at an earlier stage of program development, perhaps as a member of the planning committee, or more broadly, at an initial needs assessment intended to identify learning objectives which reflect the concerns of the expert community. Both of these models of community involvement may lead to the inclusion of members and/or leaders of the relevant community as speakers at judicial education programming.

⁹² *Supra* note 61.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

faculty of experienced judges, practitioners, and academics.” While we have no doubt that faculty members were diligent, rigorous and effective, they were unlikely⁹⁵ to be speaking from the direct, lived experience of gender-based violence.

Two public documents on the CJC website provide further evidence of the CJC’s position on public engagement. Both discuss judicial independence, public confidence, and social context education. Neither address the public interest in judicial education. The first document, *The Professional Development Policies and Guidelines*, have been in place since 2018.⁹⁶ The document makes no mention of community involvement and the word public is used only with respect to the importance of public confidence in the judiciary.⁹⁷ Unsurprisingly, given the time frame, the document uses very strong language about judicial control of judicial education,⁹⁸ while simultaneously recognizing the importance of broadly inclusive education on the social context of decision making. In our view, these two commitments are inherently contradictory. Requiring professional development to be planned, implemented and supervised by judges may in fact thwart the delivery of programming which helps judges understand the reality of those who appear before them. The guidelines leave many questions unanswered. Precisely what level of judicial control is necessary in the educational context? Is judicial independence inconsistent with hearing directly from those whose trust in the judicial system has been compromised by the existence of myths and stereotypes? Is judicial independence inconsistent with including public stakeholders in program planning, at the micro or macro level? Is judicial independence threatened by reconceptualizing curriculum development so that it takes account of relevant community expertise as well as the public interest? Is judicial independence threatened by outreach intended to facilitate information exchange between community representatives and members of the judiciary? We would argue that none of these examples of public engagement threaten judicial independence.

In 2021, the CJC released the second document, a revised and updated *Ethical Principles for Judges (EPJ)* for all federally appointed

⁹⁵ We do not mean to suggest that gender-based violence is not a universal phenomenon, but rather that traditional speakers are unlikely to have been asked to speak about their lived experience of it.

⁹⁶ *The Professional Development Policies and Guidelines* *supra* note 18. There is also a [Fact Sheet on Judicial Education for Federally-Appointed Judges](https://tinyurl.com/3z5jw5eb), February 2020 available at <<https://tinyurl.com/3z5jw5eb>> [perma.cc/6EBL-A5L8]. The policies and guidelines are discussed in *Judging Sexual Assault*, *supra* note 1.

⁹⁷ *Ethical Principles for Judges*, *supra* note 53. See for example Principles A3, C1 and D1 and Statement B, *ibid*.

⁹⁸ See Principles A4, B2, and C1, *ibid*.

judges.⁹⁹ The Principles are not a code of conduct. They are intended to offer non-binding guidance, both general and specific, about ethical questions. The revision of the EPJ responded to, among other things “evolving expectations of the public, and societal developments.”¹⁰⁰ While the revised edition offers some welcome clarity on specific ethical challenges,¹⁰¹ it is often understandably abstract, especially when the particular ethical issue is multi-faceted, and associated with more than one ethical principle. Professional development raises independence, competence, equality and impartiality issues, and there are relevant, often overlapping commentaries in each of those sections. The EPJ, like the Professional Development Guidelines, urges judges “to take advantage of opportunities to engage with and learn from the wider public, including communities with which the judge has little or no life experience” as long as this is “consistent with their duties.”¹⁰²

The commentaries are silent with respect to how lived realities connected to inequality can be identified and incorporated into judicial education programs in a manner consistent with judicial duties. They suggest caution with respect to community outreach, advising judges to “take care that these efforts enhance and do not detract from their independence and impartiality.” Implicit here is a suggestion that community outreach creates a particular and special threat to judicial independence. The task of differentiating between helpful public input into judicial education programming and inappropriate advocacy by “special interests” is complex, and itself burdened by unexamined assumptions. In our view, extreme risk aversion which rules out public involvement writ large misses an important opportunity for constructive exchange. One way of proceeding is to make explicit connections between judicial educational needs (at either a particularized or systemic level) and community expertise. Advance identification of the particular objectives of any consultation, curriculum development exercise, or program planning activity related to judicial education can assist with the identification of relevant public stakeholders. Outreach predicated on these principles is perfectly consistent with judicial independence in the educational context. And it is consistent with a purposive understanding

⁹⁹ *Ethical Principles for Judges*, *supra* note 53.

¹⁰⁰ *Ibid* at 6. Cristin Schmitz, “[Public wants judges to engage, be more open about justice system, their roles, work: CJC consultation](#)” September 4, 2019 reports that: “Most Canadians believe judges should “proactively exchange with the general public on questions relating to the justice system and their work”—and should actively seek out opportunities to do so, according to feedback received by the Canadian Judicial Council (CJC) during its recent public consultation on new ethical guidelines for the federal judiciary.” Online at <<https://tinyurl.com/z7hxx6uf>>.

¹⁰¹ For example, Employment after retirement, Use of social media

¹⁰² *Ethical Principles for Judges*, *supra* note 53.

of judicial independence as a means to the constitutionally guaranteed end of impartiality.

The NJI home page invites “public input about issues of relevance to judicial education.” Interested members of the public and “organizations or individuals who interact with the justice system” are invited to complete an on-line questionnaire.¹⁰³ Participants are asked to self-identify and, if applicable, describe the organization they represent. They are then invited to respond to a general question about what “judges need to better understand in order to serve the public well” with respect to each of the three dimensions of judicial education, the law, social issues or reality, and skills or abilities. The final question invites participant to provide any other “information you would like to share with the National Judicial Institute with a view to improving the public’s experience with the judicial system.” Participants are thanked for contributing, informed that the information collected will be used “solely for pedagogical objectives,” and told that they may be contacted with follow-up questions.¹⁰⁴ The questionnaire is the only concrete example of public outreach on the NJI (or CJC) website. As a technique for enhancing public confidence it is manifestly inadequate. No obligations of response or engagement are imposed on the NJI, and there is no evidence of how and whether the NJI has publicized the opportunity to become involved beyond the website. The burden of communication rests on community members and public stakeholders. The extremely general questions are unlikely to generate helpful responses, as they assume a sophisticated understanding of what judges do and how they do it. And nothing in the questionnaire suggests that input on specific challenges, such as gender-based violence, would be particularly welcome, despite the amendments to the *Judges Act*, and the commitments made by both the NJI and the CJC to education about the lived experience of inequality. In short, nothing about this web-based outreach seems likely to contribute to the creation of collaborative, respectful and constructive dialogue about judicial education between the judiciary and the communities it serves.

Part 4: The Memorandum of Understanding (MOU)

The final piece of this indirect political–judicial exchange is the MOU signed on April 28, 2022.¹⁰⁵ The MOU addresses the fundamental question raised by C-3 (and a year later by *Keira’s Law*). Does the valid public

¹⁰³ See <<https://tinyurl.com/4ye854nf>> [perma.cc/69Z5-XG5Q] on the [NJI home page](https://www.nji-inm.ca/) <<https://www.nji-inm.ca/>>.

¹⁰⁴ We became aware of one organization that responded to the request in December 2023. On request, the organization told us that they had not received any response from the NJI. In the interests of their potential ongoing relationship with the NJI, we offered not to disclose the name of the organization. Notes on file with the author.

¹⁰⁵ *Memorandum of Understanding*, *supra* note 29.

interest in the content and quality of judicial education justify legislative involvement? Or, does any government initiative, no matter how well-intended, targeting judicial education run the risk of unintentionally endangering judicial independence? The MOU is a non-binding attempt to answer these questions by establishing a “framework to clarify and govern” the relationship between the Minister of Justice and the CJC on “matters of judicial education.”¹⁰⁶ In other words, it is an attempt to agree on what the amendments to the *Judges Act* actually mean in practice. In fact, the MOU clarifies very little. The language is sweeping yet vague, and frequently internally inconsistent. Clearly, the Attorney General understood the CJC’s concern about a potentially precedent-setting legislative intrusion into the development, scope and delivery of judicial education. Once the bill became law, it made political sense to document a mutual understanding of what the legislation required from the CJC, and whether it opened the door to encroachments on judicial independence. In fact, the MOU captures the stalemate which currently exists between the political urges of the legislative branch, and the defensive instincts of the judiciary.

The document identifies the legitimate public interest in judicial independence, democratic accountability, transparency and the separation of powers. But, it also recognizes the legitimate public interest “in the content and quality of judicial education.”¹⁰⁷ It is the balance between these ideals which is elusive. The MOU offers little assistance. The document confirms that judicial education is within the exclusive purview of the judiciary, free from outside influence or interference.¹⁰⁸ Confusingly, the document also recognizes the legitimacy of government initiatives which reflect the public interest in judicial education, as long as these initiatives do not compromise judicial independence.¹⁰⁹ The MOU is silent about the nature of those legislative initiatives, but notes that they should be undertaken after consultation with the CJC and in a “spirit of mutual understanding and respect.”¹¹⁰

The MOU specifically acknowledges the CJC’s interest in maintaining public trust. In relation to judicial education, this means that it “listens to the concerns and interests of the public,” and makes “publicly available information about judicial education in order to foster public understanding and confidence.”¹¹¹ In addition, the CJC acknowledges that the steps in Bill C-3 “represent an ongoing commitment to include awareness of the social

¹⁰⁶ *Ibid* at para 12.

¹⁰⁷ *Ibid* at para 6.

¹⁰⁸ *Ibid* at para 14.

¹⁰⁹ *Ibid* at para 6.

¹¹⁰ *Ibid*.

¹¹¹ *Ibid* at para 15.

context as part of the judiciary's professional development."¹¹² Finally, the CJC commits to maintaining their current position on mandatory judicial education, now instantiated in judicial eligibility criteria.¹¹³ The document says nothing, at least directly, about public involvement in judicial education, despite the fact that consultation is a key component of the legislation. However, the need for public involvement is implicit in both the CJC's commitment to educate judges on the lived experiences of those who appear before them and its recognition that maintaining public trust requires listening to the concerns and interests of the public.

Conclusion

We begin by acknowledging and thanking the hard working advocates who work tirelessly for women's equality before the law and in Canadian courtrooms. We wholeheartedly support the goal of increasing women's confidence in the criminal law and family law systems. Improved judicial education is a partial, but necessary way to achieve that goal. We have no doubt that both C-3 and *Keira's Law* were well-intentioned and, at least symbolically, significant. Judicial knowledge gaps and assumptions about sexual assault and IPV are paradigmatic examples of why women lose confidence in the courts. Unfortunately, the recent amendments to the *Judges Act* are incoherent, reactive, and primarily performative. When legislators are offered a low-cost, uncontroversial, media friendly method of demonstrating their commitment to eradicating gender-based violence, they will seize it. The political urgency which motivated these amendments allowed legislators to avoid complicated questions of judicial independence and judicial accountability by using permissive and deferential language. There is a very real risk that those who advocated for these amendments will be disappointed by their impact, and that their lack of confidence in the judicial system will be reinforced rather than allayed.¹¹⁴

We also worry about the cautious, defensive tone of the institutional judicial response. We wonder, with respect, whether the self-congratulatory quality of much of the publicly available material regarding judicial education reflects a misplaced confidence in the adequacy of current programs, and in particular, education designed to encourage critical self-evaluation on stereotypical myths and assumptions. The institutional judicial response, likely provoked by the unexpected and attention-grabbing legislative enthusiasm for interfering with judicial education,

¹¹² *Ibid* at 19.

¹¹³ *Ibid* at 21.

¹¹⁴ Much of the media coverage of *Keira's Law* misrepresents the potential impact of the legislation. See for example, David Fraser, "*Keira's Law*" *supra* note 11.

improperly relies on judicial independence as a shield against public inclusion. It seems to us that this acontextual understanding of judicial independence, which fails to distinguish appropriate public input in the educational context from inappropriate interference in decision-making, has led to a subtle shift in judicial attitude to community involvement. While both the CJC and NJI websites “talk the talk” of public inclusion, the evidence that they have “walked the walk” is hard to find. Publicly available evidence suggests that the judiciary is reluctant to engage public stakeholders, survivors and their advocates in developing and delivering judicial education, even in the face of evidence that public trust in the administration of justice might well be enhanced by such involvement. In short, we worry that the politicization of judicial accountability through education may have the unintended effect of discouraging the kinds of judicial public engagement which might enhance both judicial accountability and public confidence.

We have argued that the judiciary can minimize this risk by heeding what can be learned from the legislation. The first lesson is that there is still a great deal of work to do in order to ensure that women victimized by gender-based violence are seen, heard and understood in Canadian courtrooms. The fact that the CJC and the NJI have both committed to ongoing social context programming as an essential aspect of judicial education suggests that the judiciary understands the importance of that ongoing obligation. The second lesson is that transparency is important, and that meaningful transparency about judicial education can enhance public confidence. It is time for the CJC and the NJI to enrich their thinking about transparency and re-examine how they make information about judicial education programming available to the public. The public is entitled to know about particular programs, and also entitled to know more broadly about the scope and design of the curriculum itself. This re-examination should start with a simple question. What is the public reasonably entitled to know about judicial education? What risks are inherent in the provision of more accessible, more explicit, and more fulsome descriptions of judicial education and of the judicial education curriculum? How can those risks be minimized while a) maximizing the potential for transparency to educate the public about the judiciary, and b) providing specific evidence of how the judiciary is responding to the legitimate public concerns identified in the recent amendments to the *Judges Act*? We suspect that these obligations of transparency can be relatively easily met by both institutions. A simple reset of expectations about the provision of information to the public, along with an institutional reassessment of legitimate risks can make a significant difference.

The third, and most important lesson, is about the critical importance of public inclusion in judicial education. We have argued that public

stakeholders have invaluable expertise to offer judicial educators. This expertise will improve both the quality and credibility of education intended to expose judges to lived experiences of inequality. It will also send stakeholders the message that their views are taken seriously. We recognize that involving public stakeholders in judicial education requires time, dedicated resources, and great care. We regret the fact that while the legislative amendments rely on optional consultation to ensure public legitimacy, they offer neither protocol, nor support, for purpose-driven, meaningful, and effective public outreach. Ironically, the *Judges Act* now appears to assume (without mandating) that a judiciary institutionally constrained by judicial independence can and will reach out to public stakeholders. The burden of educating that same judiciary is placed on chronically under-resourced and over-burdened front-line workers, organizations and advocates. To our knowledge, no resources have been provided to support institutional judicial follow through, and no parallel legislative effort is promised. While the provision of arms-length, directed funding could assist the CJC with the development of a meaningful protocol for community consultation, we have argued that public engagement is, as a matter of law, essential to the development and delivery of judicial education which enhances impartiality, merits public trust, and protects judicial independence.

In 2019, former Justice Martinson and I concluded that “public involvement in judicial education is the natural and inevitable result of the inextricable links between impartiality, equality and independence,” and argued that a “continuous and dynamic collaboration among judges, legal and other academics, and community members with relevant experience and expertise characterized by respect and open-mindedness would be mutually beneficial.”¹¹⁵ There have been many words, and much “sound and fury”¹¹⁶ since then, but little substantive progress. The legislation is purely advisory – actual control over judicial education continues to reside with the judiciary.¹¹⁷ Despite the fact that it is permissive, the legislative advice about transparency and public consultation deserves to be taken seriously. Unfortunately, the judiciary’s response to this perhaps unwanted advice appears defensive, and relies on a decontextualized understanding of judicial independence to justify retrenchment over outreach. In the end, an opportunity for a dynamic, respectful and mutually beneficial

¹¹⁵ Judging Sexual Assault, *supra* note 1 at 36.

¹¹⁶ William Shakespeare, [The Tragedy of Macbeth, Act V, Scene V](https://www.youtube.com/watch?v=4kc583s3), Macbeth, on being told of the death of his wife online at <<https://tinyurl.com/4kc583s3>> [perma.cc/XE3V-4RW8].

¹¹⁷ To be clear, we are not arguing that the legislation as it stands could have been made mandatory without compromising judicial independence. Our concern is that the potential for this legislation, on its own, to make a significant difference, is widely misunderstood.

exchange may have been missed. This would be an unfortunate result of a well-intentioned legislative attempt to improve judicial education on gender-based violence, and enhance public confidence in the rule of law. In our view, whether the most recent amendments to the *Judges Act* will in fact “change the way domestic violence is treated” or whether the earlier ones will “ensure judges hearing sexual assault matters will have the necessary training to fairly and properly decide matters, without the influence of myths and stereotypes” remains very much an open question.