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Chair: Ms. Iqra Khalid



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• (1105)

[*English*]

The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)): Good morning everybody, welcome to the justice committee of the 43rd Parliament.

As we had agreed at the last meeting, today we are going to start with 10 minutes from the legislative clerks to tell us a bit about proposing amendments, etc., and working through legislative bills.

Ms. Thivierge

Ms. Émilie Thivierge (Legislative Clerk): I'm Émilie Thivierge, the legislative clerk assigned to Bill C-5. My role is to provide you and the chair of the committee with some advice on the admissibility of amendments for the clause-by-clause consideration of Bill C-5.

If you have any questions on the admissibility of an amendment that you would like to bring forward, or if you have any questions on the clause-by-clause process itself, please feel free to contact me.

[*Translation*]

My phone number and email address can be found in the memo you received. It is also possible for me and my colleagues to go to you to provide you with training on the admissibility of amendments and clause-by-clause study, if you wish.

[*English*]

Finally, if you wish to discuss the admissibility of an amendment that was drafted by the legislative counsel, namely my colleague here, Isabelle D'Souza, it's always useful and beneficial to give her permission to discuss it with me.

[*Translation*]

That said, I yield the floor to her.

Mrs. Isabelle D'Souza (Legislative Counsel, House of Commons): Good morning.

My name is Isabelle D'Souza. I'm a legislative counsel at the Office of the Law Clerk and Parliamentary Counsel. I am the person assigned to Bill C-5 regarding the drafting of amendments. If you plan to submit requests for amendments to this bill, please forward them to me as soon as possible.

Please be advised that all our exchanges are confidential and non-partisan. If you intend to make requests, all you have to do is send me your instructions in writing, in your own words. If you are

planning to make multiple requests, we have created a template that you may find useful in preparing your instructions.

Otherwise, when I receive your instructions, I will make sure to turn your idea into law, with the appropriate legal effects. If I believe that some of your proposals raise legal, charter or jurisdictional issues, I will bring this to your attention and, if possible, find alternatives.

Please note that the process for drafting amendments is similar to the process for drafting private members' bills. Each amendment must go through the drafting, approval, proofreading, translation and jurilinguistic revision stages. This means that the process can be quite lengthy, depending on the complexity and volume of requests received and on the fact that we sometimes work on several bills at the same time.

That takes me back to square one. Please send me your requests as soon as possible. Feel free to call me or contact me if you have any questions at any stage of the process, I will be happy to assist you.

Thank you for your time.

[*English*]

The Chair: Thank you very much for that.

We have two minutes, if anybody has any quick questions. If not, I would ask that you get in touch with these wonderful, very smart legislative clerks.

Mr. Lawrence.

Mr. Philip Lawrence (Northumberland—Peterborough South, CPC): I have a simple new member question. Is the contact information provided in the binder for the committee?

The Chair: We can circulate their contact information again, so that everybody has it.

Moving on, we'd like to welcome our two panellists for this first hour, the Honourable Michael MacDonald from the Canadian Judicial Council, and Madam Justice Adèle Kent from the National Judicial Institute.

Both of you will have 10 minutes each for your remarks, followed by lines of questioning from members of the committee.

Justice Kent.

• (1110)

Hon. Adèle Kent (Chief Judicial Officer, National Judicial Institute): Thank you. My colleague, Mr. MacDonald, and I decided that our presentation will be somewhat intermingled between the two of us.

I would invite Mr. MacDonald to begin.

Hon. J. Michael MacDonald (Acting Executive Director and Senior General Counsel, Canadian Judicial Council): Thank you, Madam Chair.

I'm pleased to have been invited to speak to the honourable members of this House in my capacity as interim executive director of the Canadian Judicial Council. While I am no longer a judge or a member of the council, I do have significant knowledge of the council, as I am the former chief justice of Nova Scotia and I was a council member for over 20 years.

Madam Chair, if it's fine with you, Justice Kent and I propose the following approach. She will soon speak about the excellent educational programming available to all judges in Canada through the National Judicial Institute. I will then speak to the council's overall view of Bill C-5 and its laudable goal of strengthening public confidence in our justice system, particularly for sexual assault survivors. The goal is one that the judiciary in Canada wholeheartedly agrees with.

We do, however, want to respectfully stress two concerns for your consideration. Firstly, the principles of judicial independence and separation of powers require judicial education to always remain under the control and supervision of the judiciary and free from outside influence. Of particular concern would be influence from government, which after all, is a party to all sexual assault cases.

[Translation]

The second area of concern involves the fact that this legislation covers only federally appointed judges. Yet our provincial and territorial judges hear the vast majority of sexual assault cases. In our view, they require access to the same judge-led training opportunities as their federal counterparts.

If the government is intent on passing this bill, then to address our judicial independence concerns, I will propose some minor adjustments to the bill's present language to temper and moderate the bill's effect on the principles of judicial independence.

[English]

Then we would be happy to take questions.

[Translation]

First, I would like to say a word about the role of the Canadian Judicial Council. The council is composed of all federally appointed chief justices and associate chief justices of Canada's superior courts. It works to preserve and enhance public confidence in the judiciary. Chief justices must be, and be seen to be, leaders in the education of judges.

[English]

Furthermore, honourable members, as Justice Kent will detail, Canadian chief justices are and must be leaders in judicial education. Overseeing judicial education is a fundamental responsibility of the judicial branch of government and is a key focus of our council's mandate. I can assure each and every one of you that every council member takes very seriously their responsibility to provide oversight and guidance on the kinds of continuing education the respective judges undertake.

In short, to ensure public confidence in the administration of justice, the justice system relies on a well-educated, professional and independent judiciary.

• (1115)

Let me again make it clear that we entirely agree with the laudable objectives of this legislation and what it seeks to achieve. All Canadian judges must be keenly aware of the challenges faced by survivors of sexual assault. I have three daughters. My daughter is a first-year lawyer. She reminds me that the social context to education of the type targeted by this bill is as important and fundamental as our understanding of contract law, tort law, criminal law and other substantive law.

As my colleague, Justice Kent, will attest to and provide more detail on, the National Judicial Institute, Canada's primary education provider for Canadian judges, is committed to ensuring that its professional development programs and resources meet the needs of Canada's judiciary and ultimately help to strengthen the justice system.

The judiciary is keenly aware of the need to continually improve and learn to maintain the confidence of the public. Let me respectfully say, in our humble opinion, we are on top of this.

[Translation]

My colleague, the NJI judge, will now provide you with more details in this regard.

[English]

Hon. Adèle Kent: First of all, let me thank all of you for allowing me this occasion to attend here and give you some information about the judicial education that we offer to Canadian judges.

The National Judicial Institute, NJI, is a not-for-profit independent organization dedicated to developing and delivering high-quality professional development to all Canadian judges, federal, provincial and territorial. The NJI is bilingual and recognizes the importance of incorporating indigenous legal principles into our training.

One of the NJI's fundamental principles is that judicial education must be judge-led. This is consistent with the International Organization for Judicial Training declaration on judicial training, which states that "the judiciary and judicial training institutions should be responsible for the design, content, and delivery of judicial training."

We have available for you the NJI's 20 principles of judicial education. One of the primary and fundamental ones is the necessity that judicial education be judge-led.

[*Translation*]

It is important that everyone involved in a trial is treated with respect, as the fundamental role of a judge is to be fair and impartial. This ensures that the rights of all participants, whether they are the complainant, the accused or witnesses, are respected.

Since 1990, the Canadian Judicial Council has required that all of these essential programs include social context education to ensure that judges, particularly newly appointed judges, are aware of the challenges faced by vulnerable groups in society.

From January 2014 to January 2020, the NJI offered 42 sessions dealing with sexual assault law, the skills required in sexual assault trials and the context of witnesses in these cases. Some sessions consisted of multi-day programs, while others were part of a larger program. Some of these sessions consisted of national programs and others were offered at specific provincial superior courts.

In addition, 15 other sessions focused on related issues such as domestic violence, trafficking in persons, victims' rights and trauma-sensitive approaches.

[*English*]

From the date of their appointment, all judges have immediate access to NJI's Internet site, which houses a series of videocasts on issues related to sexual assault cases. This suite of videos continues to grow. It includes videocasts not only on the laws and on the skills judges need to manage their cases, but also on the reality of vulnerable witnesses in sexual assault cases.

I'm now going to talk for a few minutes about the education for federally appointed judges, then provincially appointed judges. I'll explain to you why I'm making that distinction.

For the federally appointed judges, pursuant to the professional development policy of the Canadian Judicial Council, each judge is expected to take 10 days of education. Two kinds of programs are available: national programs, which the NJI designs and delivers; and their own court-based programs, which we also assist in delivering.

For new judges, within their first year of appointment, they are mandated to take two weeks of education, one spring, one fall. During those 10 days of education, two days are dedicated to criminal law. That, of course, addresses in part sexual assault cases. In addition, they take a session on social context. One of the parts of that addresses myths and stereotypes in sexual assault cases as well.

Then in their second year to their fifth year, all federally appointed judges are expected or mandated to take a course called "Judging in Your First Five Years: Criminal Law". This is a five-day course on, start to finish, how to manage and run a criminal trial. Because sexual assault trials are technically very challenging trials, the hypothetical examples that run throughout the week, which the judges use to practise their skills, are both sexual assault hypotheticals.

• (1120)

We've run this course twice now, in 2019 and in January 2020, and each time, 60 newer federally appointed judges attend it.

In the course, the judges practise their skills. These include how to address issues in cross-examination. They watch on video a cross-examination of a complainant and an accused. They sit at tables with senior criminal judges and academics and discuss when the cross-examination went out of bounds, when lawyers were asking inappropriate questions such as about a complainant's past sexual history, and so on, and how to manage those particular cases.

In addition, during the week, to ensure that judges understand the needs of vulnerable witnesses, we have sessions that address particular groups. In the offering of last January, we were very fortunate to have Commissioner Marion Buller, Counsel Christa Big Canoe and Elder Kathy Louis, all of whom worked on the missing and murdered indigenous women and girls commission. They talked to us about the particular challenges that are facing indigenous women, who face an overrepresentation of violence, both sexual violence and family violence, from the historical issues we all are so familiar with.

The session was hosted by two indigenous judges from British Columbia: Justice Len Marchand, from the B.C. Supreme Court; and Judge Alex Wolf, from the B.C. Provincial Court.

There was also a session on children, and children as witnesses, because, of course, they have particular vulnerabilities. As the course develops throughout the years, we will be offering additional segments to the judges on other vulnerable witnesses, such as those with handicaps, recently arrived immigrants to Canada and so on.

It is a mandated program that the judges must take. In addition to this program, from that point on, for the rest of their judicial career, they have available to them the curriculum from the NJI, which contains sessions and courses on sexual assault law.

The annual criminal law course treats not only sexual assault cases, but also related issues. For example, in 2019, a portion of the criminal law course was on human trafficking. Of course, human trafficking can be for many things, and one of them is for sex.

Evidence, again, is an intensive course where judges work through hypotheticals. The criminal law hypothetical is a sexual assault case: a camp counsellor and one of his charges.

We also do programs with the Canadian chapter of the International Association of Women Judges, which often treats these issues.

In addition, the courts have their own programming, twice a year. Often, issues involving sexual assault trials are part of those programs.

Many of the courts have developed what they call “101” courses for their new judges. One of the 101 courses that we assist with is on sexual assault cases.

That's a bit of a laundry list of what's available to the federally appointed judges. Let me turn to the provincial court judges now, because this is important.

We don't have exact figures, but we estimate that about 95% of sexual assault cases are heard by provincial court judges. NJI works with the Ontario Court of Justice, and there is training in sexual assault trials within its training program. However, I think it's fair to say that for provincial and territorial judges, in total, they do not have access to the same amount of education, because of a lack of resources from their governments.

Provincial and territorial judges may attend NJI programs, but it's rather restricted. For example, the intensive program that I explained to you that's mandatory for federally appointed judges, that addresses sexual assault cases in detail, is not available to provincial court judges because of the funding mechanism for designing and delivering that course and because of the demand we now have amongst our federal judges. They can attend other programs, but again, because of the funding model, their attendance is restricted.

• (1125)

In conclusion, I would like to make three points.

First of all, from my meeting with and working with judges across Canada every day, judges recognize the importance of education and recognize the importance of education in sexual assault cases. They particularly recognize that they need to understand the context of all the people who come into their courtroom.

Second, it's important that we, as an institute, along with the Canadian Judicial Council, recognize that provincial and territorial judges are in need of this training, as well. They conduct most of the sexual assault cases in the country.

Finally, the NJI, along with the CJC, has committed to working with the federal government, as we can, to strengthen our justice system in Canada.

Thank you very much, and I'll turn it back over to Mr. MacDonald.

Hon. J. Michael MacDonald: Madam Chair, would I have a few minutes?

The Chair: Unfortunately, we're hitting almost a minute and a half over for Justice Kent, and we must move to rounds of questioning. Perhaps what you would like to address can be addressed as a response to a question that will be asked.

Hon. J. Michael MacDonald: Thank you.

The Chair: In the first round of questioning, we'll have six minutes per party. It will go from Conservative to Liberal to Bloc to NDP. Then we'll go to the second round, should there be sufficient time.

Mr. Maguire, you have six minutes.

Mr. Larry Maguire (Brandon—Souris, CPC): Thank you, and thank you to our witnesses for being here today.

It's great to hear your testimony on this bill. I'm very interested in the educational aspect that both of you clearly pointed out.

Justice Kent, you mentioned it's very important to provide the training at both provincial and territorial levels, and the importance of education being recognized.

Having said that, we hear a lot in the country about where the justice system is at, the faith in the justice system, restoration and this sort of thing. Do you think this legislation goes far enough in restoring that faith in our justice system, given that the federal ombudsman for victims of crime has stated that only one of every 20 victims comes forward? That's about 5% of victims that contact law enforcement. Is this helping to give confidence to more people coming forward?

Hon. Adèle Kent: Any discussion about matters of sexual assault cases should ensure that victims who have been assaulted and wronged come forward, and that they are respected as they go through the process, from their first contact with the police right through to the courtroom. It's important they are assured that they are respected, that they are treated with dignity, and that their cases are tried fairly. As a judge, I'm always reticent to comment on legislation. That is in your domain, but I always welcome the chance to discuss it.

Mr. MacDonald, you may have something to say about the legislation.

• (1130)

Hon. J. Michael MacDonald: Confidence in the judiciary, like confidence in all our institutions, is fundamental. It's hugely important. To answer your question, I believe this bill will go a long way—I too am concerned about the stark statistics about under-reporting—toward giving confidence to the public but also to the victims of sexual assault.

Another important aspect about confidence in the justice system is an independent judiciary. Perhaps I could just take an opportunity to elaborate on that. The concern is that while all parties agree with the noble spirit of this legislation, not all policies will be agreed upon. There could be some controversial policies. The concern we have is that when the language used in the bill....

We will provide you, Madam Chair, with a document of the bill with some very slight changes to highlight the importance. When the verbs are “must” and “shall”, you have to look at the spectre of five or 10 years from now, or 10 or 20 years from now. What if a government not so well intentioned were to direct judges to learn about, say, “the myth of the residential schools”. Let's say there's a reference made to the Supreme Court of Canada on a controversial policy. Pick whatever it may be—climate change or whatever policies are hotly debated now in Parliament. What if Parliament were to direct judges to say, “We want you to learn about the myth of the Holocaust; we want you to learn about our version of climate change; we want you to learn about our version of this”?

That's the concern we have. We are humbly suggesting that maybe the language could be tempered so that the verbs “must” and “shall” are not there and the vision and the laudable goal of the legislation would still be met.

Mr. Larry Maguire: Thank you. I caught your words in your opening comments about the laudable goal, sir, as well.

That kind of leads me to my next question. Elaine Craig, an associate professor at Dalhousie University, wrote a book entitled *Putting Trials on Trial*. She stated that judges can, through their demeanour, make the trial process more humane for sexual assault claimants, whom I just referred to, without threatening the constitutional rights of the accused.

She outlines specific cases, as you did, Madam Kent, in regard to how these can be handled differently by judges in the training you have and that sort of thing. Is it possible to create that culture within the courtroom without having to do the legislation?

The Chair: You have 30 seconds for a response.

Hon. Adèle Kent: The short answer is yes. As I said in my closing, judges are dedicated to ensuring that everybody is treated respectfully. When I was a... I have only another second to go, so I won't go into my past, but I think without the legislation, yes, judges know that they have to treat everybody with respect and will take the education that is needed to do that.

The Chair: Thank you.

Mr. Maloney, you have six minutes.

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Thank you, Madam Chair.

Justice Kent and Justice MacDonald, thank you very much for coming today. Your presentations have been very informative and very helpful.

In terms of my background, I practised before the courts in Ontario for 20 years. I grew up surrounded by people in the legal profession. I say that only because it gives me some insight. I believe we have the greatest justice system in the world. We live in a world now where it's easy for people—journalists, politicians, the public—to pick one-off situations and use them to attack the system. That is fundamentally wrong, in my opinion.

Justice MacDonald, I'm glad to hear you say that we're on top of this, because I do believe we are. I know that in Ontario, the education system for judges is top-notch. You get judges appointed from a civil litigation background. They need to be trained on criminal

procedure and some update on criminal law, or vice versa. The training system we have is extraordinary, in my opinion. Forty years ago when judges were appointed, they came from a general background. They practised all these different areas. They didn't need the training. Now they do.

This is the latest example, but we can't do anything that fetters the discretion of the judges. That's why I'd be very interested to hear what amendments you propose. I will go through some of the language in the legislation in a moment. The preamble of the act says, “survivors of sexual assault in Canada must have faith in the criminal justice system” and “Parliament recognizes the importance of an independent judiciary”. That has to be paramount in anything that's done here.

I'll ask you, Justice MacDonald, as it wouldn't be fair to Justice Kent, if there are any specific amendments you would recommend right off the top. I'm looking at some of the sections, for example, on the reporting of judges who go to seminars.

• (1135)

Hon. J. Michael MacDonald: I wonder if we could hand out the handout. I will stay within my time, Madam Chair. I can answer that question a lot better with it.

In the meantime I can start by getting right to what the concern would be. The concern is that in 20 years from now, if the government of the day were to direct judges to learn about the myth of residential schools, or something else that was just not properly spirited, you would want the judiciary to stand bravely, courageously, and say, “You can't tell us what we have to learn. If you tell us what we have to learn, you tell us what we have to think, arguably.” That's the concern.

We want to be able to tell that government that it can't do that. We would not want the answer to be, “Well, actually that was done in 2020. Judges were told with verbs like 'must' and 'shall' that they had to learn these things.”

Our main message is, first of all, as a result of Justice Kent's detailed description, trust us; we are on top of this. Secondly, we can still meet the spirit of this legislation by tempering the verbs so that we will ably comply with the legislation without some future government trying to drive controversial education initiatives down the throats of judges.

I think that's the main concern.

If you look at—

Mr. James Maloney: Can I just interrupt for one second?

Hon. J. Michael MacDonald: Absolutely.

Mr. James Maloney: I think, part of that as well is—and you touched on this, too—the importance of the judges being the ones who create the curriculum and the ones who decide.

Hon. J. Michael MacDonald: That's right.

Mr. James Maloney: The reason for that is that if you have people who are not involved in the system doing it, they cannot provide input with the necessary context and background of understanding of the law and the legal system. That's critical to determining what these programs should be. I would say that's the same as the point you're trying to make with respect to Parliament.

Hon. J. Michael MacDonald: Well, exactly. Thank you.

I believe all honourable members have the document. Thank you, Mr. Maloney, for highlighting the preamble where it refers to "the importance of an independent judiciary". We would add, "that is free from improper influence".

We would humbly and respectfully suggest that the "Whereas" that identifies the "problematic interpretations of the law may arise", is a negative thing in the preamble. This is positive legislation. We see this as a positive thing. We have a robust appeal process. That is an unnecessary entry into the preamble.

Then if you continue on, and I'll do so very briefly, in 2(c) we're simply saying "should" instead of "shall". Again, that would ensure that in 20 years' time we can tell a government that would not be so well-intentioned that there's no precedent for saying "you shall".

Again if you turn to 2(b) on page 3, where it says "include", we would add "where the counsel finds appropriate". Again as you have indicated, Mr. Maloney, just as Justice Kent has so ably identified, it has to be judges who find it appropriate so that we are not subject to undue influence.

Again, in proposed subsection 62.1(1), where the minister asks the council.... Again, use soft language, less mandatory language, "should" instead of "must" in 62.1(1). Then proposed subsection 62.1(2) refers to any report received.

• (1140)

The Chair: Justice MacDonald, I'm so sorry, but we're out of time. I'm sure we'll continue in the next round perhaps.

Hon. J. Michael MacDonald: Thank you very much for the opportunity, Madam Chair, to answer that question.

The Chair: Monsieur Fortin, you have six minutes.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

Thank you, Madam Justice Kent and Mr. Justice MacDonald. I'm pleased to hear from you this morning.

I understand from your testimony that you have two main concerns: on the one hand, the training of provincially appointed judges who are appointed by the provinces, and on the other hand, what we just talked about, judicial independence.

These are points I'm also very sensitive to, but I think there's a small distinction to be made. As far as I'm concerned, judges who are appointed by the provinces should not be subject to interference by the federal government. In my view, it's up to the provinces to deal with these issues.

That said, judicial independence is an issue of great interest to me. I would have asked you for clarification, but the document you just sent us clarifies it.

I'd like you to confirm something for me. As I understand it, you're asking us to trust all of our judges and our courts. As a lawyer myself, I also trust our judicial system, and I share the opinion of my colleague Mr. Maloney that we may have the best judicial system in the world today.

In the distinction you make, you invite us to place this trust in the judiciary rather than in the legislature. Is that correct? If so, what about democracy, the right of citizens to elect the legislator, to elect their representatives to Parliament, so that the public can influence the issues that concern our society? Is there not a democratic problem with the choice you are asking us to make?

Hon. J. Michael MacDonald: I'll answer you in English, if you don't mind.

Mr. Rhéal Fortin: Of course, there's no problem.

[*English*]

Hon. J. Michael MacDonald: Thank you very much for identifying the issues as we have highlighted them, and for raising the issue of our provincial and territorial court colleagues, because we want to work with those involved, everyone involved, including the National Judicial Institute, the provincial court chiefs, the Federal Court chiefs, and of course the Minister of Justice and the Department of Justice, to make this laudable goal a reality not just for federally appointed judges, who hear only a small percentage of sexual assault cases, but for all Canadian judges.

We stand ready to work together. Within the judiciary, we have a wonderful history of co-operation and working together.

I must say, as has been stated earlier, that I too believe we have the best justice system in the world. That justice system respects boundaries and respects judicial independence. As chief justice, I respect entirely the fact that you are the guardians of the public purse, yet we require you to support us and to support an independent judiciary.

In Canada, we can still collaborate, work together and keep our independence. That's essentially one of our messages today. We would like to work with Parliament to make sure that this is available for every Canadian judge, not just for federally appointed judges.

[*Translation*]

Mr. Rhéal Fortin: It wasn't so much that I was concerned about that; I share that concern. As I said, this is a provincial responsibility, and I am confident that the provincial governments will take whatever measures they deem appropriate for the education of their judges.

Here's what I'd like you to help me understand. In the position you're taking this morning, isn't there some kind of contradiction? We're asking the public to trust their justice system. That goes without saying, and I trust that system as well. But they are being asked to give that confidence to the detriment of the democratic process that allows the legislator to give directives, as Bill C-5 does by proposing training for judges.

I'm not sure I understand your position on this particular issue. Citizens should take away the right of the legislator to decide these things and leave it to the judges, which I find a little difficult to accept. I would like to hear what you have to say on this point.

• (1145)

Hon. J. Michael MacDonald: That is an excellent question.

[*English*]

We live in a constitutional democracy, not a parliamentary democracy. A constitutional democracy dictates that your laws, as all of you know, have to be constitutional, and a constitutional imperative is that the judiciary has to be independent and cannot be subjected, especially, to government.

To your point, are we therefore encroaching on your democratic obligations? Again, that's where Canada shines. We balance well. You require comfort. We have an accountable judiciary. Let's think about it. We have a robust appeal process. We have a very robust—I chaired it for five years—judicial conduct process. Everything we say and do is on the record in court, and we—and Justice Kent can elaborate on this—are much more open and transparent about our educational offerings in the past two years.

I understand your point that it cuts both ways. We can't say we're so independent that we are going to subsume Parliament's obligation. Not at all. What we are saying is that, in a constitutional democracy, we need the appropriate balance, and our proposed changes strike that balance, I would respectfully submit, but Justice Kent can talk about what we view as openness.

Hon. Adèle Kent: I think the chair may differ—

The Chair: I am so sorry, but we are really strapped for time. My apologies. Perhaps Justice Kent can address that with some of the upcoming questions.

Moving on, Alistair MacGregor, it's your turn, for six minutes.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you very much, Chair.

Justice Kent, Justice MacDonald, thank you so much for coming to be with us today.

I am detecting the struggle that both of you are having with the subject, because I know you want to maintain the principle of judicial independence, and you've stressed very much that these educational programs are happening. They're being led by judges, and that's the way it should be, but at the same time, we as the people's representatives have heard from our constituents and from Canadian society that there is this loss of faith in our justice system.

We see judges who have quite recently used discredited myths and stereotypes when making their rulings. They've used insensitive language.

I guess I just want to tack onto the last line of questioning. You've made your proposed amendments to Bill C-5. Is it your view that this bill is necessary? You've talked about the laudable goals of Bill C-5, but are you quite happy with the bill being presented to us? Is Parliament fulfilling its obligation with it?

Hon. Adèle Kent: Let me start by telling you about one of the obligations that I think the NJI has. The Supreme Court of Canada has made quite clear to judges in Canada that they must understand the context of the people in their courtroom. One of the most recent examples was the witness who wanted to testify in a sexual assault case wearing her religious garb covering part of her face, and the Supreme Court said you have to balance her rights against the accused's rights in looking at a number of situations.

I see the NJI's role as ensuring that we have consultations with the community. When the first bill was introduced, Bill C-337 in the last Parliament, I had hours of consultations with groups that worked with victims and survivors of sexual assault, talking to them. We now have one of our videocasts where we have three representatives of groups that work with vulnerable witnesses talk about the experiences of those people in the courtroom, their experiences in the community, their experiences as survivors of sexual assault. I see that as one of the ways we ensure that we also respond to what you're hearing in the community.

• (1150)

Mr. Alistair MacGregor: Justice Kent, you appeared before the status of women committee in 2017 when Bill C-337 was appearing, and I've gone over the witness testimony. That was nearly three years ago. Bill C-337, for a variety of reasons, unfortunately did not become law in the 42nd Parliament, but here we are, trying again.

It's been nearly three years since you gave your testimony on that bill, and here you are again. Can you maybe explain to the committee whether, in the three years that have passed, there have been any noticeable changes in the style and content of training for judges?

Hon. Adèle Kent: Absolutely. The course I talked about, called "Judging in Your First Five Years: Criminal Law", was created in response—I won't say completely, but partially—to Bill C-337. It is now a mandatory course for newer appointed judges. That has changed as a result of the CJC policy and the program we offer.

The ever-growing suite of videocasts on sexual assault trials that I talked about is new and available to all judges, including provincially appointed judges because it's digitally transmitted.

It's fair to say that all of the courts we work with have done programs in sexual assault cases. Certainly we've seen that happen in the past three years. There is attention being given to the issues that have been raised as part of this discussion.

Mr. Alistair MacGregor: I'll get a last question in here for the Canadian Judicial Council. Bill C-5 stipulates that the courses have to be developed in consultation with persons, groups or organizations that the Canadian Judicial Council considers appropriate. Could you inform the committee how you decide who is appropriate and who to consult on these matters?

Hon. J. Michael MacDonald: That's an excellent question, and in line with earlier discussion. Justice Kent is abundantly aware of this because she does it every day.

We have to make a clear distinction between advocates and educators. We can't hear from advocates on either side because that just wouldn't be our role as it applies to being independent, but we need education.

As far as things changing, Mr. Kelloway from Nova Scotia will be interested in this. When I was chief justice, we brought our judges to the African Nova Scotian community and asked the community what it's like for them to go to court. How many bus transfers does it take to get from Preston to court? It's a \$50 cab ride. Cabs won't come to their community. Maybe if they're late for court we will better understand the challenges they face.

We've met with the Mi'kmaq community. We are trying to find that balance where we remain independent. We don't hear from advocacy groups. We hear from educators, from elders and from people who understand. We explain to them about judicial independence.

Things have really changed in the 24 years I've been on the bench. I think we are moving in the right direction.

The Chair: Thank you.

We have six minutes left. We have another full round of questioning. There are two options I recommend to committee members. We can have one minute per round, or I can open it up for rapid-fire questions to anyone who has a question they would like to ask, so we can use the six minutes on a consensus basis. I leave it to you to decide.

Ms. Sahota.

Ms. Jag Sahota (Calgary Skyview, CPC): I'd like to thank the witnesses for being here.

The Chair: Sorry, Ms. Sahota. We were just discussing how we were going to split up the rest of the time.

Ms. Jag Sahota: I thought it was a question round.

The Chair: Could I just canvass the room for who has questions? I know Pam does. There are a lot of you. I think we'll have to do three and three then.

Okay, three minutes to split among the Conservatives—

• (1155)

Mr. Greg McLean (Calgary Centre, CPC): We just have one on this side.

The Chair: Ms. Sahota, you're up for three minutes.

Ms. Jag Sahota: I want to thank the witnesses for being here. I appreciate your time and presentation.

My question is in regard to the seminars and training sessions that have been created. Could you speak to the requirements? Is it attendance-based? Are there exams or any follow-ups?

Hon. Adèle Kent: For federally appointed judges, the two weeks of training are mandatory. There is no follow-up and there are no exams, but it is mandatory for all the judges to attend. There is a lot of skills training. You ask if there are exams and I say no, but there's a lot of work in tables with facilitators and senior judges who work with the judges, so they are constantly practising.

The "Judging in Your First Five Years" course—the intensive on sexual assault cases—is mandatory for all judges somewhere in their second to fifth year. All other training is at the decision of the judge and his or her chief justice. They are expected to take 10 days of education every year.

Ms. Jag Sahota: We know this bill speaks to mandatory training and education for lawyers seeking appointments. Do you have any support for sitting judges?

Hon. Adèle Kent: All our training is with the sitting judges.

Ms. Jag Sahota: Okay.

Thank you.

The Chair: You have about a minute and a half.

Mr. Philip Lawrence: Thank you very much.

It's truly a privilege, as a member of the Ontario Bar, to be in the same room as such esteemed justices.

That being said, we've certainly seen in the United States—and we've also seen in the SNC-Lavalin affair—the inappropriateness of having too much influence or influence over the judiciary. However, on the counterpoint, we've also seen, as my colleague pointed out, some troubling comments by the judiciary. You've also talked about training going forward.

Can the Canadian public feel confident that justices across this country will not make the same types of comments, such as talking about the sexual history or even talking about how women could have possibly avoided sexual assault, saying such terrible things as they could have manoeuvred their pelvis differently?

The Chair: You have 30 seconds for an answer.

Hon. J. Michael MacDonald: We can never give a guarantee, but one guarantee is that we are doing our darndest on a number of fronts. That was so upsetting to everybody. You can rest assured that we are conscious of this daily, and we'll do our very best.

Hon. Adèle Kent: I spoke about our session in our “Judging in Your First Five Years” program, where we had Christa Big Canoe talk about the missing and murdered indigenous women. If you've ever watched her submissions to the Supreme Court of Canada in the Barton case, where she talked about Cindy Gladue, she spoke with that same force in front of our judges, and that was education. That's the kind of education we provide to our judges, and we recognize the importance of that.

The Chair: Thank you.

Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): If we do not make the changes you've recommended, do you feel that Parliament is interfering with the judiciary?

Hon. J. Michael MacDonald: Respectfully, we have concerns as it applies to judicial independence. Of course, in the Canadian way, we would like to have a compromise, and the compromise would be less mandatory language and still achieve the spirit of the legislation.

Ms. Pam Damoff: Justice Kent, it's really nice to see you here again.

When we looked at the bill the last time, we had a fairly robust conversation about making sure that sexual assault also takes into account sexual expression and gender expression, indigenous peoples, disability and ethnicity. We came to the conclusion the best wording to use in the legislation was “social context”. I'm wondering if you can assure us that when you're looking at social context in your sexual assault training, those individuals who are most vulnerable are being included. I was heartened to hear you have reached out to the groups that I know had asked you to during our previous iteration. We want to have some confidence that “social context” does include that particular view.

Hon. Adèle Kent: I don't want to say we've covered all those bases absolutely up to now. For example, a videocast that we've just launched includes Nneka MacGregor, Deepa Mattoo and Fran Odette, all of whom are heading groups that work with vulnerable witnesses, whether indigenous, racialized women, women with disabilities and so on.

I can't say it's all done as of today, but we are working on it. I can give you that confidence.

• (1200)

Ms. Pam Damoff: Okay.

I agree that our criminal justice system is the best in the world, but we have failed survivors of sexual assault. It's not just judges.

It's police services and supports throughout the system. I would argue we've also failed a number of survivors of intimate partner violence or domestic assault.

Justice Kent, is there a need for more training around intimate partner violence?

Hon. Adèle Kent: I call it domestic or family violence because we know how it affects the whole family. We do some training. It's a little complicated; we won't get into it here, because of the provincial jurisdiction of some of the legislation involved. Could we do more? Absolutely. It's important. It intersects with sexual violence as well, and it's important training that we need to do.

Ms. Pam Damoff: I think that's all the time I have, isn't it?

The Chair: You have 20 seconds if you want to sneak something in.

Ms. Pam Damoff: I don't think there's really time. Thank you.

The Chair: With that, I would really like to thank the witnesses for your very thoughtful remarks today. We really appreciate having your input. I'm going to suspend the meeting as we switch our witnesses. I'm sure the members will get a chance to say hello to you in person.

Hon. J. Michael MacDonald: Thank you, Madam Chair, and members.

The Chair: Thank you.

• (1200)

(Pause)

• (1205)

The Chair: Welcome back, everyone, to the second hour of this justice meeting discussing Bill C-5. We're honoured to have Minister Lametti—our Minister of Justice and the Attorney General of Canada—here to talk about this. We also have department officials Nancy Othmer and Stephen Zaluski. Welcome to our committee.

Without further ado, I pass it to you, Minister Lametti, for your opening remarks.

Hon. David Lametti (Minister of Justice and Attorney General of Canada): Thank you, Madam Chair.

[*Translation*]

Thank you all for being here.

[*English*]

I am pleased to be here today to speak to you about Bill C-5, an act to amend the Judges Act and the Criminal Code.

Bill C-5 proposes amendments ensuring all newly appointed provincial and territorial superior court judges participate in continuing education in sexual assault law and social context. Further, it would require the Canadian Judicial Council to report on the participation of all sitting superior court judges in sexual assault law education. Finally, the bill would also require judges to provide reasons in writing or on the record for decisions in sexual assault matters.

The underlying objective of Bill C-5 is to enhance public confidence and, in particular, the confidence and trust of survivors of sexual assault that the criminal justice system will treat them fairly. It is to reassure them that, when they do come forward, they will be treated with dignity and respect by judges who have the knowledge, skills and sensitivity to correctly apply what is a very complex and nuanced area of the law.

The bill serves as an example of parliamentary collaboration. We have our former colleague and previous Conservative Party leader, the Honourable Rona Ambrose, to thank for this. I want to start by recognizing her initiative on this critical issue.

Ms. Ambrose's private member's bill, Bill C-337, started the conversation for the need for judicial training in the area of sexual assault law and the imperative for elected officials to do what they can do to support this. Bill C-5 was informed and inspired by Bill C-337.

The criminal justice system has long faced challenges in responding to sexual assault in Canada. Much progress has been made by both our government and previous governments in bringing forward reforms aimed at enhancing the equality, privacy and security rights of complainants by countering the myths and stereotypes that have persisted in our criminal justice system. These reforms have, at the same time, balanced the rights of the accused in a manner consistent with the relevant Supreme Court of Canada jurisprudence.

• (1210)

[Translation]

However, despite the robustness of our legal framework in this area, there are still extremely low rates of reports, charges and convictions in sexual assault cases. One of the main reasons for this is that victims of sexual assault tend to fear that they will not be believed, and that they will be humiliated or singled out. These fears are reinforced by some cases reported in the media, where judges or other actors in the justice system actually do so. These cases have seriously undermined the confidence of Canadians in our justice system.

[English]

Bill C-5 aims to increase public confidence and trust in the ability of our criminal justice system to hear cases in a manner that is fair, respectful, treats people with dignity, and above all, is in accordance with the law that has been carefully developed to ensure this.

Judicial independence is critical to public confidence and a core constitutional principle. Judicial independence requires judicial control over the training and education of judges. A bill that seeks to enhance public confidence in the justice system cannot achieve

its goal if at the same time it undermines public confidence in judicial independence.

[Translation]

The bill before us includes the amendments proposed to Bill C-337 by the Standing Senate Committee on Legal and Constitutional Affairs. These amendments were designed to respond to concerns expressed by the judiciary and other stakeholders that the original bill went beyond the limits of what judicial independence permits. The proposed amendments made the necessary adjustments to the bill, while respecting its underlying objectives.

[English]

Canada is fortunate to have one of the most robustly independent, professionally competent and highly regarded judiciaries in the world. I know members have just heard about the work of the Canadian Judicial Council and the National Judicial Institute with regard to their internationally recognized work on judicial education.

This bill in no way targets or undermines the credibility and respect our superior court judiciary rightly deserves; rather, it seeks to balance the legitimate need to enhance public confidence while carefully preserving the judiciary's ability to control judicial education.

[Translation]

I would now like to turn to the key elements of the bill.

First, the bill would amend the Judges Act to establish a new condition of appointment as a judge of a superior court. Under the bill, to be eligible for such an appointment, candidates would be required to commit to undertake, if appointed, training on sexual assault law and the social context in which it occurs.

These changes ensure that the government will know that the candidates it appoints are committed to training. The public can be assured that all newly appointed judges will have received such training and that judicial independence is respected, as it will not impose training on judges currently in office.

• (1215)

[English]

Second, the bill would amend the Judges Act to require that the sexual assault training established by the CJC be developed after consultation with survivors of sexual assault, the groups that support them, or with other groups and individuals that the council considers appropriate. The requirement to consult is intended to ensure that judicial education will be balanced and informed by the experiences of individuals affected. It is left up to the council to determine who precisely it consults and to determine the content of the training, to respect the constitutional principle of judicial independence.

Bill C-5 requires the Canadian Judicial Council to provide to the minister, for tabling in Parliament, an annual report containing details on seminars offered on matters relating to sexual assault law and on the number of judges attending. This measure is intended to enhance accountability in the education of sitting judges for sexual assault law and act as an incentive to encourage the participation of current superior court judges in sexual assault law education.

[*Translation*]

The last item in the bill consists of amendments to the Criminal Code. They are intended to ensure that decisions in sexual assault cases are not influenced by myths and stereotypes about sexual assault victims and how they should behave. The Supreme Court of Canada has made it clear that these myths and stereotypes distort the court's truth-seeking function.

Canadians and victims of sexual assault have a right to know that the strong laws relating to sexual assault that have been put in place in Canada are being properly applied in court decisions. It is for this reason that Bill C-5 would require judges to provide, in writing or on the record of the proceedings, reasons for their decisions in sexual assault cases. This provision would help to prevent misapplication of the sexual assault laws and would contribute to greater transparency in judicial decisions in sexual assault cases, as recorded and written decisions can be reviewed.

It was also suggested that the bill does not address the real problem, which is the decisions made by provincially and territorially appointed judges. That is true to some extent. The fact is that over 80% of sexual assault cases are heard in provincial and territorial courts. The Parliament of Canada has no authority to legislate in relation to provincially or territorially appointed judges. As a result, it cannot directly implement change where it is most needed. Nevertheless, this does not prevent Parliament or other stakeholders from doing what they can to ensure that our justice system is fair and responsive.

[*English*]

The bill serves as a clear call to governments and the judiciary in the provinces and territories to take a careful look at their own legislative framework and suite of policies and programs and consider whether there are additional measures that can be taken to address the same concerns in their own relative jurisdictions. Following Ms. Ambrose's introduction of the former Bill C-337, a number of jurisdictions followed suit and did just that. At least one province, Prince Edward Island, enacted similar legislation. I understand that Saskatchewan and others are carefully considering policy and legislative responses.

I have sent a letter to my provincial and territorial colleagues outlining the initiatives in Bill C-5 in the hopes that all will follow suit, and I've instructed the Department of Justice Canada officials to explore options for increased availability of training for provincially and territorially appointed judges. Our government has committed significant resources to support the availability of enhanced judicial training. In budget 2017, the Canadian Judicial Council was provided with \$2.7 million over five years and half a million per year thereafter to ensure that more judges have access to professional development, with a greater focus on gender and culturally sensitive training.

As I already noted, an important objective of Bill C-5 is to restore the confidence of the public and survivors in the ability of the criminal justice system to hear sexual assault cases in a manner that is fair and dignified and respects the statutory framework that Parliament has set out. Bill C-5 will send a message to all Canadians, and survivors of sexual assault in particular, that Parliament is firmly committed and prepared to act to ensure a justice system that all Canadians can trust, especially the most vulnerable.

But action must happen at all levels of government. It is my hope that Bill C-5 will be a catalyst for all jurisdictions and judiciaries in Canada to consider what measures can be taken that go beyond the symbolic and will result in meaningful and sustainable changes to the manner in which people are treated by the criminal justice system.

• (1220)

[*Translation*]

That concludes my formal remarks. I will of course be pleased to answer any questions committee members may have.

Thank you.

[*English*]

The Chair: Thank you, Minister Lametti, for your remarks.

Going on to our first round of questioning, we'll start with Mr. Moore. You have six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Minister, for appearing here today on this important bill. Thank you for the recognition of the role that the Honourable Rona Ambrose played in the bill getting here to this point.

Conservatives are pleased to support this legislation, and as we enter this phase of the committee doing its work, it's important for us to take a strong look at the legislation and hear from witnesses and you on the bill. We just heard from the Canadian Judicial Council and the National Judicial Institute. I know you mentioned in your remarks the importance of judicial independence, and that was a theme of some of that conversation. They've put forward a proposal for softening some of the mandatory language in the bill—for example, where it says “shall” replacing it with “should”. Can you comment on their proposal in the name of judicial independence?

Hon. David Lametti: First of all, I thank you for your party's support for the bill. I think that's important to outline at the outset.

The second thing that's important to outline at the outset is the really good work that both the CJC and the NJI do to help create what I think is the best judiciary in the world and what a number of experts around the world think is one of the best judiciaries. They already do a great deal of very good work in order to improve the quality of our judicial decisions and, frankly, help raise the standard of the judiciary.

I haven't seen those proposals yet. There's enough, sort of, ministerial hubris to say that you think every bill that you put out is perfect, but obviously we will look carefully at those proposals and we will also hear what you have to say when your committee comes back.

Hon. Rob Moore: Thank you, Minister.

I have another question. The Honourable Justice Michael MacDonald is asking for trust in this body to implement without the imposition of the language around mandatory. I think that's an important testimony that we take note of.

Justice MacDonald raises a concern that this bill starts a trend whereby there'd be more and more mandatory courses for judges. That's not a trend, I don't think, that I would like to see come to fruition. We know that there is a great deal of training for our judges. Do you think that's a legitimate concern? How do we keep that in check, in light of the paramount role that our judges play and the importance of judicial independence in our entire system, sending the message that this wouldn't begin a trend whereby new mandatory training take place for our judges on different issues?

Hon. David Lametti: I will admit that I'm less worried about a trend. In fact, I'm not worried at all.

First and foremost, the principle of judicial independence is well entrenched in our Canadian legal system. In this particular bill, we have tried to respect that very principle of judicial independence, as Ms. Ambrose did in her original private member's bill. I think we have succeeded.

Secondly, we also have to remember the context in which this private member's bill came out. There were a couple of very high-profile cases, both at the provincial court level, in which things were said in the course of the trial that demonstrated that more training was needed.

This is a particular response to a particularly delicate challenge, and a particularly significant challenge in terms of equality, in terms of treating the victims of sexual assault fairly and sensitively. I'm not worried about that as an across-the-board problem.

• (1225)

Hon. Rob Moore: Thank you, Minister.

Minister, in the minute I have remaining, do you or your officials have any examples now of groups or organizations that would be consulted on the seminars relating to sexual assault that will be established? Is there some notion of what groups you'd like to see consulted on those seminars?

Hon. David Lametti: Again, the final decision will rest with the CJC; at best, we could suggest. There are a number of groups that have traditionally worked with survivors of sexual assault, and we would expect that those various groups would be amongst those, but there would be others, too.

Hon. Rob Moore: Thanks, Minister.

The Chair: We'll move on to Ms. Damoff. You have six minutes.

Ms. Pam Damoff: Thank you, Chair; and thank you, Minister, for being here today.

I have to say, it's a real privilege to be working on this bill for the second time. I know it's slightly different this time, but it was important then and it's important now. I applaud you for bringing it forward.

Hon. David Lametti: Thank you.

Ms. Pam Damoff: You mentioned the funding in budget 2017 for videos. It's interesting. In 2017, Justice Kent mentioned that she was looking forward to producing them. Today, she told us how they're produced. She has also consulted with groups that we strongly felt she should consult with, so there has been a lot of really positive progress made.

In the bill, what types of safeguards are there? We had a fairly robust discussion last time about social context and the right wording for legislation. We want to make sure that the training is not just about sexual assault but also ensuring that it's about sexual assault of the most vulnerable, indigenous women, people who express different gender identities for LGBTQ....

What is in the bill to ensure that it's intersectional and culturally competent?

Hon. David Lametti: As I responded a moment ago to Mr. Moore, it is ultimately up to the CJC and then working with the NJI to decide what goes in the training. What we're doing here is suggesting terms such as "social context". Again, there's no magic in that term in the sense that, if there are other suggestions around the table, we will look at them.

However, we can suggest, and then the CJC will take that on. They will incorporate the people they wish to incorporate. They will consult the people they wish to consult.

There's a lot of good faith here. There's a lot of good faith in this room. There's a lot of good faith on the part of the CJC and there's a lot of good faith on the bench, and we shouldn't underestimate that.

We will respect the principle of judicial independence. The CJC will try to get at the very concepts that you've identified in your question and try to train judges accordingly. What we have done is, through the nomination process in this particular bill, ensure that newly nominated judges will have engaged on their own to take on this training as a measure of assuring that this will happen.

Ms. Pam Damoff: Actually, the wording "social context" came from the legislative clerk, so it wasn't the committee that came up with that. It's one that the legislative clerk at the time said was most encompassing.

Hearing what we heard today, I'm pretty confident that what we intended is being done in the education. I was really pleased to hear what we heard.

• (1230)

Hon. David Lametti: Good.

Ms. Pam Damoff: I have a question as a non-lawyer. I know the answer, but other people who may look at the bill may not. There's a provision in the bill that judges have to enter their reasoning into the record of proceedings, or if the proceedings are not recorded, give a written reasoning. Can you maybe explain to the non-lawyers what the record of proceedings is?

Hon. David Lametti: That's a more technical question. Actually, even though you're a non-lawyer, you've asked a question knowing that you know the answer, which is actually the mark of a lawyer. Never ask a question to which you don't know the answer.

I'm happy to turn over the more technical answer to either Nancy or Stephen.

Mrs. Nancy Othmer (Assistant Deputy Minister, Department of Justice): I'll let Stephen correct me if I'm wrong on this. It really just means that the judge can orally give their reasons and include it in the record of the proceedings for that. It's a verbal reason.

Ms. Pam Damoff: One of the reasons it was important to have this was that in some of the cases that were the impetus for the bill, it was difficult.... It was several years before they actually found out what was said during the trial. That was the reason that was included in the original member's bill from Ms. Ambrose.

Mr. Stephen Zaluski (General Counsel and Director, Judicial Affairs, Courts and Tribunal Policy, Public Law and Legislative Services Sector, Department of Justice): I'll just add to that. The purpose is to ensure that the reasons are in the record one way or the other, whether by the transcript of the oral proceeding or by the written reasons that a judge would provide.

There had been some consideration given to including the requirement for written reasons in all cases. For Jordan-related and other delay reasons, that would have bogged down the process too heavily. That's why it covers off both options, including the recorded version.

Ms. Pam Damoff: Thank you.

You don't have a lot of time, so I'll try to get to it quickly. This is a little bit outside of the actual bill, but when we studied it before, the head of the DisAbled Women's Network Canada talked about the importance of diversity on the bench. I just wondered if you could speak for a minute about the changes that have been made, so that the bench actually is more reflective—we're not there yet—of Canadian society.

Hon. David Lametti: We are trying to have a more diverse bench. I won't go into the detail right now unless somebody else asks me. The point of it is that people will feel more confident when they see a bench—or actors in the judicial system—that reflects them, however they conceive themselves, and they might share common experiences. It has been the case that shared experience is what's critical. That forms a bridge between the people who are formal actors in the judicial system, such as judges, and the people who appear before them. That bridge is absolutely critical to the confidence that people have in the system.

Ms. Pam Damoff: Thank you.

The Chair: Mr. Fortin, you have six minutes, please.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

Mr. Lametti, thank you so much for being here with us today.

We heard from two witnesses who made us very aware of the issue of judicial independence. You won't be surprised to hear that we agree with that. We think it's important for the courts to have

this flexibility that is essential to their work and to the protection of democracy.

That said, among the amendment recommendations made by Mr. MacDonald and Ms. Kent, they suggest a change to subsection 2(3) of the bill amending the Judges Act. That subsection would add a subsection after subsection 60(2) of the Judges Act. The new subsection begins: "The Council shall ensure that seminars on matters [...]".

In the current version of the proposed paragraph, subparagraph (b) requires that seminars:

(b) include 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.

Ms. Kent and Mr. MacDonald's proposal is that we add, after the word "include", "where the council finds appropriate".

I'm having trouble identifying circumstances where it would not be appropriate to do so. I understand that this is not your amendment, but have you given any thought to this?

Are there any situations in which you consider that these prohibitions or principles should not be the subject of training?

• (1235)

Hon. David Lametti: As I have just told our colleague Mr. Moore, this is the first time I have heard such suggestions, and we will give them due consideration.

As you can see from the wording of the section of the proposed bill, these are very technical issues, but they are important because they address some of the myths and problems in the system.

Under the current judicial appointment process, a judge who does not necessarily have judicial experience may be appointed. He or she may come from another area of the law, but as a judge of the Superior Court, he or she may be called upon to deal with such cases.

It is necessary to ensure, from the outset, that the judges have adequate training in a field that is very technical, but also very important. Awareness is a very important aspect.

I think we're aiming for the same goal, but I'd like to have the time to study the proposals properly.

Mr. Rhéal Fortin: If I understand correctly, these are topics that you feel should be covered in the training we give new judges.

I'm not criticizing your position.

Hon. David Lametti: As a lawyer, I would say yes, but as a minister, I must respect judicial independence. So we have to find a way to ensure, in cooperation with the council, that judges are trained.

Mr. Rhéal Fortin: Do you feel that the current wording of this paragraph in any way undermines judicial independence?

Hon. David Lametti: I think not, because it only applies to people who apply for judicial appointments. It is a commitment that these people will make when they decide to apply. They will have a contractual commitment to take such training once they are appointed. It is not something that is being imposed on the judges who are sitting now.

Mr. Rhéal Fortin: I understand.

There is also talk of continuing education.

Hon. David Lametti: Again, this is a commitment that candidates will make at the outset.

Mr. Rhéal Fortin: Fine. Thank you.

The Chair: Thank you, Mr. Fortin.

[English]

Mr. MacGregor, for six minutes.

Mr. Alistair MacGregor: Thank you, Chair, and thank you, Minister, for appearing.

We know from recent decisions there are discredited myths and stereotypes that have been used, and thus we see the necessity of Bill C-5. Complainants of sexual assault are also facing inadequate social supports. They have inadequate information about the core process, and they're often confronted with a system that ignores their wishes and their complaints. Bill C-5, by itself, is not going to solve all these problems, and I hope your government and your provincial colleagues are recognizing the systemic issues that also need to be certainly addressed within the supports.

I have a question about the differences between Bill C-5 and Bill C-337. Bill C-337 went through the House of Commons with unanimous consent. Your department—and I know you weren't the minister at the time—at the time gave its consent to Bill C-337 going through. It did come with some amendments in the Senate. Bill C-5 more closely represents the version of the bill that made it through the Senate's legal and constitutional affairs committee.

There are some noticeable parts that are different. Under Bill C-337, judicial appointments would have been required to complete judicial training at the satisfaction of the Commissioner for Federal Judicial Affairs. Bill C-5 now omits this. In the reporting requirement, Bill C-337 included a section where the number of sexual assault cases heard by judges who never participated in seminars would also have to be included in the reports.

Minister, can you explain why these changes made their way into Bill C-5, and what changed in the three years? Your government originally assented to these being in Bill C-337, and now we don't see them in Bill C-5. I'd like you to explain the department's position on this.

• (1240)

Hon. David Lametti: I wasn't the minister at the time this happened. All of this was done through the work of this committee and the Senate committee, where we worked very closely with senators.

In general, we're looking for training as well as better reporting as a way of seeing how well this has been taken on by judges. On more technical matters, I think I could leave the question for Stephen.

Mr. Stephen Zaluski: I'll just follow up briefly to say, as the committee has been discussing with previous witnesses and with the minister, that the question is finding the right balance between the judicial independence principle and the encouragement that the government is trying to ensure through the legislation it's bringing forward.

The first important change is the difference between applying the legislation to sitting judges, as it would have originally, as opposed to candidates for judicial appointments. Again, that's clearly designed to recognize the judicial control over judicial education for sitting judges, moving it to an undertaking as opposed to.... That change that was moved in the Senate, the government is now supporting as reflecting a better balance.

Likewise, on the reporting requirement in terms of the level of detail, originally in Bill C-337 there was discussion of the number of sexual assault cases in particular that had been heard by judges who hadn't undergone the training and so on. There was a sense in the evidence from witnesses that this could be perceived as targeting members of the judiciary, so it's moving to a softer reporting requirement in the sense of not being seen to potentially single out particular courts or particular judges. Reporting on quantum numbers was a more appropriate approach for striking an appropriate balance.

Mr. Alistair MacGregor: Would we be singling them out if we're just reporting on the numbers like they were anonymous?

Mr. Stephen Zaluski: I wouldn't be singling them out by name, but I think the idea of reporting more globally was consistent with what the government had done in Bill C-58 in terms of the way expenses were being reported at aggregate levels, so it moves it towards a better balance of respecting judicial independence.

Mr. Alistair MacGregor: Thank you.

Minister, there are other federal decision-making bodies that have profound influence on people's lives. I can think of the Parole Board of Canada and the Immigration and Refugee Board of Canada. This bill goes after the Judges Act, but is there room for the federal government to consider mandatory training through legislation for these other federal bodies?

Hon. David Lametti: I think it's fair to say that this is an idea that a government ought to consider and that our government ought to consider. I would say not in this legislation, in part because it's not within my mandate, but also the principle of judicial independence is quite particular to judges. There would be different architectural features and possibilities that would be possible in both of the examples you've raised. There would be different ways to perhaps do things more directly in those cases that don't exist yet.

Mr. Alistair MacGregor: Will you be speaking to your respective colleagues on those matters?

Hon. David Lametti: I would be happy to speak to my respective colleagues.

Mr. Alistair MacGregor: Thank you.

The Chair: Just being cognizant of time, I will, for the second round of questioning, reduce the time to three minutes per person. I hope that's okay with you.

Moving to the Conservatives, I have Mr. Lawrence on the list for three minutes.

Mr. Philip Lawrence: Thank you.

Thank you for agreeing to appear, Minister.

The justices expressed over and over in their testimony prior to yours, and we've talked about it a fair bit, the concern of independence.

Do you believe, Minister, given the Ethics Commissioner's findings in the SNC-Lavalin affair, that your government is well positioned to protect judicial independence?

Hon. David Lametti: I think we're extremely well positioned to protect judicial independence. The principle is well entrenched. I share that opinion with the justice that I had the good fortune of clerking for at the Supreme Court, Justice Peter Cory. I saw first-hand in a very intense way the manner in which justices exercise their judicial independence. I respect that principle quite firmly, and I think so does our government.

• (1245)

Mr. Philip Lawrence: I'll also follow up on my colleague's comments.

We have a reporting mechanism of within 60 days to find out whether the training is happening. How does the department expect to find out whether we're really having an impact? Of course, we have an amazing justice system but some inappropriate insensitivities, so how are we going to measure that going forward?

Hon. David Lametti: I think we will have aggregate statistics about the number of judges who have been trained. We will be comfortable in the knowledge that newly appointed judges will be trained. We will have extrinsic evidence such as other provinces taking on training schemes within their jurisdiction for provincially appointed judges. Hopefully, we'll see in the reporting of decisions and in the popular media's reporting of the reporting of the decisions that these kinds of cases will not continue or will be much more isolated. I think all those factors will point to success.

The Chair: You have 30 seconds.

Mr. Philip Lawrence: To follow up on that, I understand it's a difficult question due to judicial independence but there'll be no monitoring or complaints system that we would look at to see whether insensitivities occurred in the courtroom?

Hon. David Lametti: It's up to judges to train their cohort. That's part of the principle of judicial independence. We can look at reported decisions as other jurists or other people in the system and the media will do that too.

All those parts of our functioning justice system will perform their roles, and I'm confident we will get to a better place.

The Chair: Thank you.

Mr. Zuberi, you have three minutes.

[*Translation*]

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): Minister, thank you for being here.

You talked a little bit about the importance of judicial diversification and how it can help achieve the objectives of Bill C-5.

[*English*]

We're having a number of witnesses from different backgrounds, including indigenous backgrounds, people who are black, south Asian and from other communities. Can you speak a bit to how diversification of the bench could help with the spirit of Bill C-5?

Hon. David Lametti: First of all, in diversification of the bench, we've put into place a transparent system for naming judges with judicial appointment committees that are rigorously both trying to attract diverse candidates to apply and then analyzing their candidates. Hopefully a fair number of people will pass that stage and then be eligible for appointments.

On a personal level, everywhere I go across Canada, at virtually every speaking engagement I have had since becoming minister, I try to get people both to apply to the bench and to apply to the judicial appointment committees because, for a lawyer who hasn't been out for 10 years, it's critically important that they consider doing volunteer work on the judicial appointments committee to attract good, diverse candidates. Diversity helps in that bond. When one sees oneself represented in the legal system, on the bench among the other judicial actors, one sees, I think, a shared experience is possible and therefore it creates a bond between the person on this side of the bench and the person on the other side of the bench. I think that's critical to the legitimacy of the system.

[*Translation*]

Mr. Sameer Zuberi: Thank you very much for that answer.

[*English*]

Second of all, we are told that the majority of sexual assault cases are dealt with outside of where this legislation will be touching, basically within the provincial courts.

Can you speak a bit more to how you have spoken with your counterparts on the provincial side? How they can enact legislation similar to Bill C-5?

• (1250)

The Chair: Minister, you have 20 seconds to answer.

[*Translation*]

Hon. David Lametti: All right.

I wrote letters and started a discussion with my counterparts across Canada. It is also by setting an example that we set the tone, and by setting the tone, I sincerely believe that we can encourage them to see if they can do something similar, even if it is not necessarily the same thing.

[English]

The Chair: Thank you very much.

Mr. Maguire, you're up for three minutes.

Mr. Larry Maguire: Thank you, Madam Chair.

Thank you to the minister for being here.

I mentioned Ms. Ambrose's former bill, Bill C-337 to the justices this morning. When it was studied in the committee before, the federal ombudsman for victims of crime put forward a lot of recommendations. With only one of 20 victims of sexual assault coming forward...that's part of this bill, to look at the credibility of why we don't have more people coming forward and the confidence in the system. They even went so far as to say there would be a huge gap if at least some of the recommendations of the ombudsman weren't put in the new bill.

Can you outline if any of those were accepted?

Hon. David Lametti: We took the previous bill, Bill C-337, as amended in the Senate as our base to move forward because we had unanimous consent for that bill in the last Parliament. We thought this was a good starting point. That being said, we will look at what the ombudsman has to suggest. Obviously, the point of view of victims in here is critically important, again, as you have said, to the confidence in the system. I think that's absolutely right. Making sure that a system doesn't revictimize victims, making sure there is a sensitive dialogue between actors within the system when sexual assault cases are being dealt with is critically important to moving forward, so we will listen carefully to what she has to say.

Mr. Larry Maguire: Thanks, Minister.

I understand that none of those.... I couldn't find them anyway, so I wonder if that might be something to look at.

When you brought Bill C-5 forward and in drafting it, did you meet with any of the survivor groups and include any of their recommendations?

Hon. David Lametti: I have met with survivor groups in a number of jurisdictions across Canada since I was appointed just over a year ago. I've heard what they have had to say. They will inform not only this piece of legislation but hopefully other pieces of legislation as we move forward.

Mr. Larry Maguire: Can you outline some of the things you may have heard from them that are included?

Hon. David Lametti: There is—and Mr. MacGregor alluded to this—in particular a lack of support for people as they move through the process. I think that's the single most important comment that I heard time and time again.

It is mainly provincial jurisdiction, because the administration of justice is provincial, but we're working with our provincial counterparts. There are a number of very interesting proposals. I think of my home jurisdiction, Quebec, which has organisms called CAVACs, which help and accompany victims of sexual assault through these various processes. We, obviously, need to be working with the provinces to have more of those kinds of supports for victims of sexual assault.

The Chair: Thank you, Minister Lametti.

We are moving on to Mr. Sangha. I believe you're sharing some time with Mr. Kelloway.

Mr. Ramesh Sangha (Brampton Centre, Lib.): Thank you, Minister, for coming today to our committee.

It's very clear that we as legislators want to preserve the constitutional principle of judicial independence. We have heard here today Justice Kent and Justice MacDonald. They were very concerned about maintaining judicial independence.

At this time, we find that the judicial committee has to give a report to the minister, submit a report regarding the training.

Don't you think that this is one step we are taking toward diminishing the independence of the judiciary? If not, then what is the purpose of this reporting?

• (1255)

Hon. David Lametti: I share the concern around the table that it is fundamental that we maintain judicial independence in our system, and I respect that principle. It's part of my DNA.

We're trying to achieve a delicate balance here. We are trying to make sure that judges who hear sexual assault cases have the appropriate degree of training and also that they are accountable. Your question really touches on the accountability.

The gathering of statistics, as has been pointed out, in an innominate fashion—so people's names won't be attached and we won't be able to identify judges—still helps in seeing how successful we are in making sure that the bench is well trained generally. It allows us to say, okay, we're doing well and we don't need to go further. It may allow us down the road to say maybe we're not doing enough and ask if there is another way we could ensure that judges are better trained or the bench could be better prepared. It just helps us as an accounting matter.

Mr. Ramesh Sangha: Thank you.

Mr. Mike Kelloway (Cape Breton—Canso, Lib.): Thanks, Minister, and thanks to the previous witnesses.

As a person who works with a lot of front-line organizations back home in Cape Breton—Canso, I'm curious as to what you can tell me about the experiences of front-line organizations and how they might be able to inform training that the organizations in question are looking to implement here. I'm interested in your take on that.

Hon. David Lametti: First of all, those front-line organizations have a great deal to say. I've gone across the country and spoken to a number of them. It is moving and inspiring to see what people are doing in the field.

Hopefully, through the consultation process, we'll be able to nudge people toward the CJC, and the CJC will meet and consult with people who are front-line workers. Hopefully, that will have a positive impact in the process as we move forward.

Mr. Mike Kelloway: Thank you. You have—

The Chair: Sorry, that's it for your time.

Mr. Fortin, you have one minute, please.

[*Translation*]

Mr. Rhéal Fortin: Mr. Lametti, I will not repeat what I have already said and what has been said. We subscribe to judicial independence.

The second jurisdictional concern of the previous witnesses is the need for some training for provincial judges, which you've addressed. You mentioned that.

As a former Quebec law professor and a lawyer who practised in Quebec, do you feel that the training that Quebec judges currently receive meets many of the criteria contained in Bill C-5?

Hon. David Lametti: I think you understand that it would be very unwise of me to give an opinion on this. It is within the purview of my counterpart Mr. Lebel.

Mr. Rhéal Fortin: Clause 4 of Bill C-5 talks about the amendment to the Criminal Code that will require judges to give reasons for their judgments. I believe this obligation applies to both federally and provincially appointed judges.

[*English*]

The Chair: Mr. Fortin, I'm so sorry to cut you off. We're completely out of time.

Mr. Rhéal Fortin: Madam Chair, could I get maybe a yes or a no?

The Chair: Minister Lametti?

[*Translation*]

Hon. David Lametti: Yes. Traditionally, it's not mandatory, but it's very desirable. It's what we want.

[*English*]

The Chair: Thank you, Mr. Fortin.

Mr. MacGregor, do you have any questions at all before we move into committee business?

You have, literally, not even one minute.

Mr. Alistair MacGregor: Minister Lametti, I'd like just a comment from you.

The TRC's call to action 27 called for the Federation of Law Societies of Canada to implement this training. Is that something that might be applicable in the future to judges as well?

Hon. David Lametti: All suggestions are good suggestions, but we have to respect the principle of judicial independence. There has to be a way to have greater representation of indigenous peoples in our justice system, and on the bench in particular. We'll do our best to respect all these principles and try to find the appropriate balances.

• (1300)

Mr. Alistair MacGregor: Thank you.

The Chair: Minister and officials, thank you very much for coming in today. We really appreciate your being here and taking questions from the committee on this very important legislation.

I am going to suspend the meeting while we clear the room of non-members and non-staff. We have some committee business to discuss.

[*Proceedings continue in camera*]

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