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LEGISLATIVE SUMMARY



Bill C-337: An Act to amend the Judges Act and the Criminal Code (sexual assault)

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LEGISLATIVE SUMMARY OF BILL C-337: AN ACT TO AMEND THE JUDGES ACT AND THE CRIMINAL CODE (SEXUAL ASSAULT)

1 BACKGROUND

Bill C-337, An Act to amend the Judges Act and the Criminal Code (sexual assault),¹ was introduced in the House of Commons on 23 February 2017 by the Honourable Rona Ambrose. It was studied by the House of Commons Standing Committee on the Status of Women, which in its report on the bill recommended amendments to three clauses and the deletion of one clause.² The House of Commons passed the bill with the committee's amendments on 15 May 2017. Bill C-337 received first reading in the Senate on 16 May 2017 and was referred to the Standing Senate Committee on Legal and Constitutional Affairs on 31 May 2018.

Bill C-337, whose short title is the Judicial Accountability through Sexual Assault Law Training Act, has three central purposes:

- It adds a new eligibility requirement for lawyers to qualify to become a judge of a superior court in any province – namely, that they must have completed recent and comprehensive education in sexual assault law, as well as social context education, to the satisfaction of the Commissioner for Federal Judicial Affairs.
- It requires the Canadian Judicial Council (CJC) to submit an annual report to Parliament through the Minister of Justice on the delivery and uptake of sexual assault law seminars established by the CJC.
- It requires reasons for decisions in sexual assault cases to be recorded or provided in writing.

1.1 RECENT SPOTLIGHT ON JUDICIAL TREATMENT OF SEXUAL ASSAULT CASES

In her testimony before the House of Commons Standing Committee on the Status of Women, the Honourable Rona Ambrose stated that she introduced the bill after noting “a disturbing number of sexual assault cases that have shaken the public’s confidence in our justice system.”³ These cases involved judges who made statements in court or in their decisions with respect to sexual assault trials that critics said relied on discredited stereotypes about victims of sexual abuse. In one case, a judge resigned from the bench after the CJC recommended his removal in light of comments “evidencing an antipathy toward laws designed to protect vulnerable witnesses, promote equality, and bring integrity into sexual assault trials.”⁴

In a case from 2016, a retrial was ordered on appeal when the judge was found to have relied on myths about the “expected” behaviour of a victim of sexual abuse in his reasons for acquittal.⁵ In 2017, another judge was widely criticized for using insensitive language when referring to a woman who was intoxicated at the time of the alleged sexual assault.⁶

Senator Raynell Andreychuk, sponsor of Bill C-337 in the Senate, stated that such cases add to the factors that deter victims from reporting sexual assault. She emphasized that Bill C-337 aims to prevent further judicial decisions that rely on stereotypes about victims of sexual assault and to restore survivors' confidence in the court process.⁷

1.2 REPORTING OF SEXUAL ASSAULT IN CANADA

Sexual assault is one of the most under-reported crimes in Canada. According to the 2014 Statistics Canada General Social Survey on victimization, only 5% of sexual assaults were brought to the attention of the police that year.⁸ Research indicates that reasons for under-reporting include “the shame, guilt and stigma of sexual victimization,” “the normalization of inappropriate or unwanted sexual behaviour,” and “the perception that sexual violence does not warrant reporting.”⁹ Many victims also report refraining from coming forward because of their “belief that they would not see a positive outcome in the justice system.”¹⁰

In 2014, sexual assault was the only violent crime type for which the victimization rate had remained relatively stable since 1999, while the rates for other violent crimes were significantly lower in 2014 than in 1999.¹¹

1.3 OVERVIEW OF THE CANADIAN JUDICIARY

The Canadian court system is composed of courts with either provincial or federal jurisdiction, the Supreme Court of Canada being the final appeal court for all other Canadian courts. According to the Department of Justice:

The provinces and territories are responsible for providing everything the courts under their jurisdiction need, from building and maintaining the courthouses, to providing staff ... to paying provincial/territorial court judges. The federal government appoints and pays judges for the superior courts in each province, as well as judges at the federal level. It is also responsible for the administration of the Supreme Court of Canada and federally created courts.¹²

Provincial superior court and federal judges are governed by the *Judges Act*, which sets out requirements for matters including judges' age of retirement, eligibility for appointment, and the payment of salaries. The provinces are responsible for appointing provincial court judges. The majority of criminal cases in Canada are heard in the provincial courts.

In addition to the courts, bodies that are important to the administration of justice in Canada include:

- The Office of the Commissioner for Federal Judicial Affairs (FJA): The goal of the FJA is to safeguard the independence of the judiciary and provide federally appointed judges with administrative services independent of the Department of Justice. The FJA reports directly to the Minister of Justice. Duties and responsibilities include administering Part I of the *Judges Act*, which deals with eligibility for appointment, among other elements.

The FJA provides services to all federally appointed judges (approximately 1,200 judges).¹³

- The Canadian Judicial Council (CJC): A federal body created under the *Judges Act*, the CJC has as its main purpose to establish policies and provide tools that help the judicial system remain efficient, uniform and accountable. The CJC has authority over the work of federally appointed judges. It is composed of 39 members and is chaired by the Chief Justice of the Supreme Court of Canada, the Right Honourable Richard Wagner. Council membership consists of the chief justices, associate chief justices, and some senior judges from provincial and federal superior courts across Canada. The CJC has the power under the *Judges Act* to investigate complaints made by members of the public, and referrals made by the Minister of Justice or the attorney general of a province about the conduct (not the decisions) of federally appointed judges. After an investigation, the CJC can deliver recommendations, including the removal of a judge from office.¹⁴
- The National Judicial Institute (NJI): The NJI is an independent, not-for-profit institution whose goal is to improve the justice system in Canada and internationally through leadership in the education of judges. The NJI delivers education on its own or in collaboration with courts and other organizations and is “involved in the delivery of the majority of education taken by judges in Canada.”¹⁵

2 DESCRIPTION AND ANALYSIS

Bill C-337 consists of a preamble and five clauses that make amendments to the *Judges Act* and the *Criminal Code*.

2.1 PREAMBLE

The preamble sets out the context giving rise to the bill. It emphasizes the effect that sexual assault proceedings have on the lives of those affected and their potential to revictimize survivors of sexual violence, and warns of problematic interpretations of the law during sexual assault trials. It notes that lawyers currently seeking to be appointed as judges are not required to have completed sexual assault law training and declares that Parliament recognizes the importance of judges participating in continuing legal education.

The preamble further emphasizes that Parliament wishes to be informed of the participation of judges in sexual assault law training and affirms the value of written reasons for decisions in sexual assault proceedings.

Finally, it affirms the need for survivors of sexual violence to have faith in the criminal justice system and Parliament’s responsibility to ensure that Canada’s democratic institutions reflect the “values and principles” of Canadians. However, it balances this statement with an acknowledgment of the importance of a free and independent judiciary. By recognizing both the need for a fair criminal justice system and a free and independent judiciary, the preamble recognizes the precautions Parliament must take when legislating with respect to judicial appointments.

2.2 *JUDGES ACT*
(CLAUSES 2 TO 4)

Clause 2(2) modifies the eligibility requirements for judicial appointments contained in the *Judges Act*. Under new section 3(b)(i) of the *Judges Act*, to be eligible to be appointed a judge of a superior court in any province, a candidate must have completed recent and comprehensive education in sexual assault law, to the satisfaction of the Commissioner for Federal Judicial Affairs. The new section stipulates that education in sexual assault law must be developed in consultation with sexual assault survivors, as well as with groups and organizations that support them. The new provision further stipulates that this education must include instruction in issues related to evidence, consent and the conduct of sexual assault proceedings, as well as myths and stereotypes associated with sexual assault complainants.

Under new section 3(b)(ii), a candidate must also have completed social context education. This criterion was added in an amendment proposed by the House of Commons Standing Committee on the Status of Women after witnesses informed the committee that training in sexual assault law alone was too narrow.¹⁶ Social context training requires judges to consider the context of the cases they hear and not be influenced by attitudes based on stereotypes, myths or prejudice.¹⁷

Clause 3 amends section 60(2)(b) of the *Judges Act*, which empowers the CJC to establish seminars for the continuing education of judges. The amended section stipulates that the continuing education seminars must include courses on matters related to sexual assault law and social context. Consistent with the changes made to the eligibility for appointments section explained above, courses on sexual assault law and social context must be developed in consultation with sexual assault survivors, as well as with organizations that support them.

Clause 4 adds new section 62.1 to the *Judges Act*, requiring the production of an annual report from the CJC. The report must be submitted to the Minister of Justice and contain information on the above-mentioned seminars offered in the preceding calendar year, including, among other details, a description of their content, their duration, the number of judges who attended and the courts on which they serve, and the number of sexual assault cases heard by judges who have never participated in such a seminar.

2.3 *CRIMINAL CODE AND RECORD OF REASONS*
(CLAUSE 5)

Clause 5 amends the *Criminal Code* by adding new section 278.92. The section applies only to proceedings before a judge without jury. New section 278.92(1) requires the presiding judge to provide reasons for decisions regarding certain sexual offences for which the accused is acquitted, discharged, found guilty, found not criminally responsible, or found unfit to stand trial. The offences included in new section 278.92 are:

- section 151 (sexual interference);
- section 152 (invitation to sexual touching);

- section 153 (sexual exploitation)
- section 153.1 (sexual exploitation of person with disability);
- section 155 (incest);
- subsection 160(2) (compelling the commission of bestiality);
- subsection 160(3) (bestiality in the presence of a child or compelling bestiality by a child);
- section 170 (parent or guardian procuring sexual activity);
- section 171 (householder permitting prohibited sexual activity);
- section 172 (corrupting children);
- section 173 (indecent acts);
- section 271 (sexual assault);
- section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm); and
- section 273 (aggravated sexual assault).

New section 278.92(2) stipulates that the reasons must be entered in the record of the proceedings or, if the proceedings are not recorded, must be provided in writing.¹⁸

NOTES

1. [Bill C-337, An Act to amend the Judges Act and the Criminal Code \(sexual assault\)](#), 1st Session, 42nd Parliament.
2. House of Commons, Standing Committee on the Status of Women [FEWO], [Bill C-337, An Act to amend the Judges Act and the Criminal Code \(sexual assault\)](#), Ninth Report, 1st Session, 42nd Parliament, 12 May 2017.
3. FEWO, [Evidence](#), 1st Session, 42nd Parliament, 4 April 2017, 0850 (Hon. Rona Ambrose, Member of Parliament for Sturgeon River–Parkland).
4. Canadian Judicial Council [CJC], [Canadian Judicial Council Inquiry into the Conduct of the Honourable Robin Camp: Report to the Minister of Justice](#), 8 March 2017, para. 10.
5. [R. v. A.R.D.](#), 2017 ABCA 237 (CanLII); and [R. v. A.R.J.D.](#), 2018 SCC 6 (CanLII).
6. [R. v. Al-Rawi](#), 2018 NSCA 10 (CanLII); and Frank P. Hoskins, R. Daren Baxter, and Katherine Fierlbeck, [In the Matter of Complaints Against Judge Gregory Lenehan, made pursuant to the Provincial Court Act, R.S.N.S. 1989, c. 238: Decision of the Review Committee](#), 29 March 2018.
7. Senate, [Debates](#), 1st Session, 42nd Parliament, Vol. 150, No. 128, 6 June 2017, p. 3264.
8. Samuel Perreault, [“Criminal victimization in Canada, 2014,”](#) *Juristat*, Statistics Canada, Catalogue no. 85-002-X, 23 November 2015, p. 25.
9. Shana Conroy and Adam Cotter, [“Self-reported sexual assault in Canada, 2014,”](#) *Juristat*, Statistics Canada, Catalogue no. 85-002-X, 11 July 2017, p. 4.

10. Cristine Rotenberg, "[From arrest to conviction: Court outcomes of police-reported sexual assaults in Canada, 2009 to 2014](#)," *Juristat*, Statistics Canada, Catalogue no. 85-002-X, 26 October 2016, p. 4.
11. Perreault (2015), p. 5.
12. Department of Justice, "[How Does Canada's Court System Work?](#)" *Canada's Court System*.
13. Office of the Commissioner for Federal Judicial Affairs Canada, [Welcome to the Website of the Office of the Commissioner for Federal Judicial Affairs Canada](#).
14. CJC, [Mandate and Powers](#); and CJC, [Home](#).
15. National Judicial Institute [NJI], [About the NJI](#).
16. FEWO (2017), Ninth Report.
17. For a description of social context, see FEWO, [Evidence](#), 1st Session, 42nd Parliament, 11 April 2017, 0855 (Hon. Adèle Kent, Executive Director, National Judicial Institute).
18. In many cases, judges' decisions are written, although some are made orally. Oral decisions are typically transcribed, although the practice differs from court to court. Law Connection, [The Role of Judges – Background](#).