



THE CANADIAN
BAR ASSOCIATION
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March 20, 2020

Via email: Iqra.Khalid@parl.gc.ca

Iqra Khalid, M.P.
Chair, Justice and Human Rights Committee
House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Khalid:

Re: Bill C-5, *Judges Act and Criminal Code amendments*

I am writing on behalf of the Canadian Bar Association's Criminal Justice Section (CBA Section) and Judicial Issues Subcommittee about Bill C-5, *Judges Act and Criminal Code amendments*, which was introduced and received First Reading on February 4, 2020.

The CBA is a national association of over 36,000 members, including lawyers, law students, notaries and academics, and our mandate includes seeking improvement in the law and the administration of justice. The CBA Section consists of a balance of Crown and defence counsel from every part of Canada, lawyers who appear in criminal courts daily. The Judicial Issues Subcommittee addresses policy issues relating to judicial appointments, compensation, discipline and independence.

We appreciate the opportunity to comment on Bill C-5, a government bill that resembles private members' Bill C-337 from the last session of Parliament. The previous bill would have required all applicants for federal judicial appointments to obtain training in sexual assault law. The CBA Section commented on Bill C-337 in April 2017 (attached) and while Bill C-5 contains some important modifications from the earlier bill, our general comments remain applicable.

One change is that Bill C-5 would no longer specifically require all applicants to engage in sexual assault training *prior to being appointed*. It would instead require that to be eligible for appointment a person must undertake to complete training, including training by the Canadian Judicial Council, which we see as an improvement over the earlier bill. However, it remains unclear how this would work in practice. Questions remain on whether an applicant's appointment would be suspended or reserved until the training was completed, who could administer recognized training and how could it be administered. It is also not obvious who would bear the costs, or what the parameters of the undertaking would be. If a person was appointed but then unable to complete the undertaking, would the judge be subject to disciplinary charges? Or, other sanctions?

The Bill would require applicants unlikely to ever confront sexual assault cases (e.g. applicants for the Tax Court of Canada) to undertake training they would never use. And as we previously emphasized, the bill would not address sexual assault awareness for judges in provincial and territorial courts where most sexual assault cases are heard.

We are also concerned about Bill C-5's impact on the independence of the judiciary. It is troubling for Parliament to attempt to make another, co-equal, Branch of government subject to a particular type of education that it determines to be necessary. The Bill would require designated courses to be established, after consultation with specific groups, and a report made to Parliament on the seminars offered, their contents and the number of attendees. We suggest that any legislation that may erode the independence of the judiciary must be carefully scrutinized.

The Canadian Judicial Council and National Judicial Institute already offer training on sexual assault awareness. Bill C-5 aims to address a gap that does not exist in the federal judiciary while at the same time omits any proposals to address potential problems in provincial and territorial judiciaries, where almost all sexual assault cases are heard.

While the earlier private members' bill called for written reasons for decisions in sexual assault matters, the current Bill requires written reasons only if the reasons are not otherwise recorded. We appreciate that this change now allows for oral reasons. Still, we previously noted that the law already provides extensive guidance to trial judges on the need for reasons, and we see no need to legislate in this area.

We hope these observations will be helpful.

Yours truly,

(original letter signed by Gaylene Schellenberg for Kathryn Pentz and John D. Stefaniuk)

Kathryn Pentz, Q.C.
Chair, Criminal Justice Section

John D. Stefaniuk
Chair, Judicial Issues Subcommittee