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A Comment on Bill 14, The Provincial Court (Sexual Awareness Training) Amendment Act, 2022

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Bill Commented On: [Bill 14, the Provincial Court \(Sexual Awareness Training\) Amendment Act](#), 30th Legislature, 3rd Session (Alberta, 2022)

On March 30, 2022, the Alberta government introduced Bill 14, the *Provincial Court (Sexual Awareness Training) Amendment Act, 2022*. This very short Bill imposes the requirement that new applicants for Alberta Provincial Court judicial appointments will have “completed education in sexual assault law and social context issues” before they can be appointed (see s 3 of the Bill, which will amend the *Provincial Court Act*, [RSA 2000, c P-31](#), s 9.1(2)). People who are already on the appointment eligibility list when the Bill’s amendments come into force must undertake to complete this education after being appointed (s 3 of Bill 14, adding s 9.1(2.1) to the *Provincial Court Act*). Bill 14 passed Second Reading on April 20, 2022 and is now before the Committee of the Whole.

This post will analyze Bill 14 and compare it to [Bill C-3, An Act to amend the Judges Act and the Criminal Code](#), 43rd Parliament, 2nd session (Canada, 2021), which provided for judicial education for federally appointed judges on sexual assault. Bill C-3 went through several iterations and extensive consultations and received royal assent in May 2021. The federal Bill offers insights on several issues: the scope of judicial education on sexual assault law and social context, who should be involved in the design of these judicial education programs, transparency around judicial education, and how to balance the principles of judicial independence, judicial impartiality, and judicial accountability.

I will also comment on whether Bill 14 should be extended to require judicial education on intimate partner violence, again taking guidance from a bill at the federal level, [Bill C-233, An Act to amend the Criminal Code and the Judges Act \(violence against an intimate partner\)](#), 44th Parliament, 1st session (also known as Keira’s Law).

A Textual Comparison of Bill C-3 and Bill 14

Bill C-3 had its beginnings as [Bill C-337, The Judicial Accountability through Sexual Assault Law Training Act](#) (42nd Parliament, 1st Session, 2017). Bill C-337 was a private member’s bill introduced by Conservative MP Rona Ambrose, and was eventually replaced by two government bills – [Bill C-5](#), which died on the order paper when a federal election was called, and [Bill C-3](#), which eventually amended the *Judges Act*, [RSC 1985, c J-1](#). As noted in [this post](#) with Deanne Sowter, these bills were considered by the [Standing Committee on Justice and Human Rights](#) and the [Standing Committee on the Status of Women](#), which heard submissions from a wide range of

parties, including anti-violence and equality advocates, lawyers, the [Canadian Judicial Council](#) (CJC) (the body that governs federally appointed judges), and the [National Judicial Institute](#) (NJI) (the body that designs and delivers judicial education in Canada, working with the CJC). These consultations led to several key features in the final version of Bill C-3:

- Bill C-3 has a lengthy preamble that refers to several objectives the Bill seeks to promote, including:
 - the faith of sexual assault survivors in the Canadian criminal justice system;
 - judicial independence;
 - the value and importance of judges participating in continuing education, including on matters related to sexual assault law and social context; and
 - Parliament’s interest in being made aware of judicial education seminars offered to judges on these matters and of judges’ participation in the seminars.
- “Sexual assault law” as elaborated on in Bill C-3, includes “instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings” (at s 2(2); see also s 60(3)(b) of the *Judges Act*, as amended).
- “Social context” is explained in Bill C-3 to include systemic racism and systemic discrimination, as well as myths and stereotypes associated with sexual assault complainants (at ss 2(1) and 2(2); see also ss 60(2) and (3) of the *Judges Act*, as amended).
- Bill C-3 adds to the list of seminars for the continuing education of judges that the CJC “may” establish by including sexual assault law and social context. It also provides that the CJC “should” consult on the content of that education with “sexual assault survivors and persons, groups and organizations that support them, including Indigenous leaders and representatives of Indigenous communities” (at ss 2(1) and (2); see also ss 60(2)(b) and 60(3)(a) of the *Judges Act*, as amended).
- The final form of Bill C-3 only requires judicial applicants to undertake that they will participate in continuing education on sexual assault law and its social context (at s 1(2); see also s 3(b) of the *Judges Act*, as amended). It does not deal with continuing education for judges who are currently sitting – this is the subject of the CJC’s [Ethical Principles for Judges](#) (which provide for judges’ responsibilities around continuing professional development in Part 3.C, including social context education, but say nothing specific about education in relation to gender-based violence).
- Bill C-3 states that the Canadian Judicial Council should report annually to the Minister of Justice on the sexual assault education it offers and the number of judges who attended, and that the Minister shall table such reports in each House of Parliament (at s 3, see also s 62.1 of the *Judges Act*, as amended).

When we compare Bill C-3 to Bill 14, the skeletal nature of the latter is apparent. Bill 14 contains no purpose clause or preamble, so one must infer its objectives. Bill 14 does not explain what should be included in “education in sexual assault law and social context issues” as Bill C-3 does. Bill 14 does not make it clear who is responsible for developing or delivering this educational programming. Nor does Bill 14 include Bill C-3’s important stipulation that those developing these programs should consult on the content and delivery of the education with survivors and the groups and organizations supporting them, including Indigenous community leaders (and presumably groups who can speak to other forms of systemic racism and systemic discrimination in the sexual assault context). Lastly, Bill 14 does not include an obligation for whoever develops and delivers the sexual assault education programming to report on the contents of the education seminars or on how many judges attended, nor for any Minister to table such reports in the Legislature. This means that the feature of transparency around judicial education is missing from Bill 14, which has implications for its accountability goals. Bill 14 could benefit from the guidance of Bill C-3 with respect to each of these omissions.

There is one aspect of Bill 14 that is stronger than Bill C-3 from an accountability standpoint. The final version of Bill C-3 requires only undertakings to complete sexual assault education from all judicial applicants, rather than the mandatory language that was included in earlier versions of Bill C-3 that required judicial applicants to do so. In contrast, Bill 14 in its current form does require judicial applicants to actually complete the education before they are eligible for appointment, unless they are already on the eligibility list. This model suggests that the education will be completed while these applicants are still lawyers, which leaves open the question of who will and should develop and deliver the programming. It also raises issues about whether judicial independence has been adequately balanced with judicial accountability in Bill 14. Whether representatives of the Alberta Provincial Court will have an opportunity to comment on Bill 14 to raise this type of concern is unclear.

Bill 14 also has an odd title. Its reference to “sexual awareness training” sounds more like the type of training universities provide on consent, bystander intervention, and the like. While this training is very important, it does not capture the scope of Bill 14, which is education related to the judicial treatment of sexual assault law and social context.

Some of these gaps in Bill 14 were addressed during the legislative debates on Bill 14, which I turn to next.

Legislative Debates on Bill 14

At First Reading, Bill 14 was introduced by UCP MLA Whitney Issik, Associate Minister of the Status of Women. In her brief remarks, typical of a First Reading, she indicated that the Bill was motivated by the need to “provide a safe environment for victims and their families within our courtrooms” and to “reduce the risk of victims of sexual violence from being revictimized during a trial” (at 536).

Associate Minister Issik opened Second Reading by noting similar concerns, adding some examples of notorious judicial decisions such as that of former Justice Robin Camp, who eventually resigned after the CJC recommended that he be removed from the bench. She also

emphasized the importance of avoiding revictimization for victims and their families who are Indigenous, members of minorities, or are otherwise vulnerable. At the same time, she noted the importance of judicial independence in connection with individuals who are currently on the appointment eligibility list (at 673).

Several opposition MLAs spoke to Bill 14 at Second Reading (in the interests of full disclosure, some of them reference a [Twitter thread](#) I posted when the Bill was first introduced). The NDP MLAs were generally supportive of Bill 14 but raised ways in which the Bill and other responses to gender-based violence and inequality could be improved, including the following:

- ensuring that the separation of powers and judicial independence are adequately protected (see [here](#) at 729 (MLA Ganley)).
- adding a requirement for ongoing training of judges post-appointment on issues related to sexual assault and social context (see [here](#) at 674 (MLA Goehring), 676 (MLA Sweet), 677 (MLA Feehan), 678 (MLA Sigurdson), 680 (MLAs Bilous and Loyola); [here](#) at 728 (MLA Irwin), 731 (MLA Pancholi)).
- clarifying who is responsible for developing and delivering the education, and including a requirement for consultation with individuals and groups with lived experience of sexual violence, trauma, systemic racism and discrimination (see [here](#) at 676 (Sweet), 678-9 (Sigurdson), 680 (Bilous); [here](#) at 728 (Irwin), 729 (Ganley), 731 (Pancholi)).
- adding a definition of “social context” and ensuring it includes intersectional inequalities and systemic racism and discrimination (see [here](#) at 728 (Irwin), 730 (Ganley), 731-2 (Pancholi)).
- committing to the funding necessary to deliver judicial education as well as funding for the legal system more broadly (raising concerns such as trial delays) (see [here](#) at 675-6 (Sweet), 680 (Bilous)).
- considering the addition of judicial education on intimate partner / family violence given concerns about myths and stereotypes in this context (see [here](#) at 677 (Feehan); [here](#) at 730 (Ganley), 732 (Pancholi)).
- considering mandatory education for lawyers on issues of gender-based violence (see [here](#) at 678 (Feehan), 679 (Sigurdson)).
- committing to funding for other issues related to women’s equality, including economic security and the income gap ([here](#) at 679 (Sigurdson)), supports for victims of crime, including survivors of gender-based violence ([here](#) at 728 (Irwin), 729-30 (Ganley)), and child care and measures to address poverty ([here](#) at 732 (Pancholi)).

Associate Minister Issik and other UCP MLAs did not address these comments at Second Reading (at least not in a way that is discernible from Hansard).

Commentary on Judicial Education Efforts on Gender-Based Violence

To put the debate about Bill 14 in context, it is instructive to review the observations of two experts on judicial education, Rosemary Cairns Way and Donna Martinson (see “Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada” (2019) [97 Canadian Bar Review 367](#)). They note how the CJC and NJI have been delivering social context education (SCE) since the 1990s, and it has gone from controversial to relatively mainstream (at 377-8). However, the idea of mandatory SCE has been resisted by the judiciary traditionally on the basis of judicial independence, with the thinking that judicial education should be judge led and delivered, and non-prescriptive (at 379-80). The authors note the importance of viewing judicial impartiality as the “pre-eminent judicial obligation”, with judicial independence serving that goal and substantive equality informing it (at 375). They argue that the relative privilege of judges supports their need to consult with survivors and associated groups and organizations on the content and delivery of sexual assault SCE (at 396-7). Far from being an “inappropriate influence” by “special interest groups”, this type of consultation should be seen as a recognition of the constitutional imperatives of substantive equality (at 398).

At the same time, Cairns Way and Martinson raise concerns about whether judicial education legislation can meet its objectives, and worry that it may cause other problems. For example, pre-appointment education requirements can lead to delay in filling judicial appointments, especially if the education programs still need to be developed, which has ramifications for justice system delays (at 388). They also question how the impact of judicial education can be assessed (at 388). As noted above, Bill C-3 in its final form includes the stipulation that the CJC should report on the content of its seminars on sexual assault law and social context as well as how many judges attended, but this reporting is not mandatory and does not address the impact of education on judges’ perceptions and handling of cases in any event. A related concern is the extent to which education at the pre-appointment stage will be fully appreciated by applicants for judicial positions who are not yet hearing sexual assault cases (at 389). Restricting education to applicants may be an effort to accommodate judicial independence, but it also raises the concerns noted by opposition MLAs in Alberta as to the need for education for currently sitting judges. Cairns Way and Martinson’s view of judicial impartiality as the “pre-eminent judicial obligation” would support mandatory ongoing education on sexual assault and social context for current judges as well. Prince Edward Island recently amended its *Provincial Court Act*, [RSPEI 1988, c P-25.1](#), to add provisions on sexual assault and social context education that include a requirement on the Chief Judge to “establish and implement a continuing education plan for judges” (at s 6(1)) that encompasses sexual assault and social context education (both of which are defined along the same lines as in Bill C-3).

As noted above, Bill 14 is actually stronger than Bill C-3 in imposing mandatory education for new applicants for appointment to the Provincial Court. However, it fails to include a requirement for consultation on the content of judicial education, which is problematic for the reasons articulated by Cairns Way and Martinson (and opposition MLAs at Second Reading). Bill 14 would also benefit from including a preamble to make its objectives more explicit, as well as more detail on the scope of sexual assault education and social context and inclusion of continuing education for current judges.

Cairns Way and Martinson observe that it is unusual for politicians to enter the fray of judicial education, and “dangerous” when the government sets the priorities for that education (at 390). While they do acknowledge that the federal bill spoke to a specific and important political goal in addressing sexual violence (at 383), this last comment is interesting in the context of judicial education on intimate partner violence (IPV).

Should Bill 14 be Extended to Education on Intimate Partner Violence?

I have argued previously that there is a pressing need for judicial education on intimate partner violence and coercive control and the social context underlying these forms of violence (see [here](#); [here](#); and [here](#)). This is because myths and stereotypes may influence judicial decision making in cases involving IPV just as they influence judicial decision making in sexual assault cases. Indeed, courts have made more progress in recognizing myths and stereotypes about sexual assault than those about IPV, so the issue of what should be a priority for judicial education is squarely raised. I will not rehash my arguments in favour of judicial education on IPV here; rather, I will look at whether Bill 14 is an appropriate vehicle for mandating this education and what lessons Bill C-233 can offer.

Bill C-233, *An Act to amend the Criminal Code and the Judges Act (violence against an intimate partner)*, is a private member’s bill that is also known as Keira’s Law after [Keira Kagan](#), who is assumed to have been killed by her father in a murder-suicide (the matter is still under investigation). Their deaths followed family law proceedings that failed to restrict the father’s access in spite of his history of IPV against Keira’s mother. If passed, Bill C-233 would add to the provisions imposed by Bill C-3 by including “matters related to intimate partner violence and coercive control” (at ss 2 and 3, which would amend ss 60(2)(b) and 62.1 of the *Judges Act*). Bill C-233 unanimously passed [Second Reading in the House of Commons](#) on April 29, 2022 and has been referred to the Standing Committee on the Status of Women. A similar amendment was proposed to Bill C-3 when it was before the [Senate](#), but the amendment was defeated, apparently due to concerns about further delay in passing the Bill.

Similar amendments on judicial education in the area of IPV and coercive control could certainly be added to Bill 14 along with the other amendments I suggested above. This would require a change to the title of the Bill, which I already think is a good idea. Also, it is important to recognize that sexual assault education is primarily of relevance to judges hearing criminal matters, whereas education on IPV and coercive control would need to acknowledge that these issues also arise in family law and child protection matters, amongst other areas. This breadth of legal areas affects the necessary content of the education programs and the scope of consultations on that content that would be appropriate if judicial education on IPV and coercive control is to be included in Bill 14. But these considerations are not sufficient to restrict Bill 14 to sexual assault law and its social context. In my view, an amendment to add judicial education on IPV and coercive control to Bill 14 would not alter the Bill beyond its original objectives – rather, it would enhance them.

It is interesting to note that at Second Reading of Bill 14, Associate Minister Issik stated that “We’re not talking about just any type of assault; we are talking about sexual assault, an assault on a person’s most intimate, personal parts of themselves” ([here](#) at 673). This statement may have been intended to pre-empt the type of amendment that I am recommending here. But as I argued

above, the rationale for judicial education on IPV should be beyond dispute; it is only the vehicle for implementing that education that is debatable.

Conclusion

As I noted in my [last post](#), judicial education is not a panacea for all of the issues faced by survivors of gender-based violence (GBV), whether sexual violence or intimate partner violence (and of course the two overlap). Although advocates of judicial education hope that more informed judicial decisions will instill confidence in survivors and encourage them to report GBV, there are many other legal actors who would benefit from social context education. Not all complaints or disputes end up in court, and in the context of IPV, we do not yet have mandatory education for alternative dispute resolution professionals in Alberta (see [here](#)). Also important is education for lawyers and law students on different forms of GBV, including how to avoid reasoning based on myths and stereotypes and how to take a trauma-informed approach to lawyering. Alberta laws also need updating to extend some of the protections available to survivors of IPV to survivors of sexual violence – for example, provisions related to employment leave and residential tenancies (for further discussion, see [here](#)). As noted by several opposition MLAs during Second Reading on Bill 14, mandating judicial education is just one facet of the governmental responses that are required in order to address the intersecting inequalities that arise in the context of GBV and more broadly.

As I was finalizing this post, a draft of what appears to be the Supreme Court of the United States' majority reasons on the constitutionality of abortion restrictions [was leaked](#). This bombshell reinforces the point that judicial decisions on matters related to systemic inequalities may be influenced by a judge's politics regardless of whatever education they participate in. It also reinforces the need for governments to respond to their constitutional obligations to protect and implement equality rights in Canada. There is much more that the government can and should do with Bill 14 and beyond.

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