

Lessons from the Canadian Judicial Council

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Most professions adjudicate allegations of sexual abuse by their practitioners. There is increasing scrutiny of how the legal system, including regulators of professions, deals with such concerns. In particular, how can adjudicators appropriately hear and evaluate sexual abuse allegations fairly?

The report of the Inquiry Committee to the Canadian Judicial Council in the Justice Robin Camp matter provides some valuable guidance. That case flowed from Justice Camp's hearing of charges of sexual assault against a Mr. Wagar. In the course of the trial, Justice Camp said things that resulted in a complaint to the Canadian Judicial Council. Its Inquiry Committee held an extensive hearing. In addition to counsel presenting the case and counsel for Justice Camp, two organizations supporting victims of sexual abuse were permitted to make written submissions.

In its report, the Inquiry Committee said:

On the record before the Committee, we find that throughout the Trial Justice Camp made comments or asked questions evidencing an antipathy towards laws designed to protect vulnerable witnesses, promote equality, and bring integrity to sexual assault trials. We also find that the Judge relied on discredited myths and stereotypes about women and victim-blaming during the Trial and in his Reasons for Judgment.

Accordingly, we find that Justice Camp committed misconduct and placed himself, by his conduct, in a position incompatible with the due execution of the office of judge

In reaching this conclusion the Inquiry Committee made a number of important observations.

1. Adjudicators should be hesitant to criticize a law when its validity is not being challenged. For example, Justice Camp's comment during the criminal trial that a restriction on defence counsel's ability to question a complainant about her sexual history was a product of "contemporary thinking" was seen as inappropriate. This hesitancy may be particularly pressing where the purpose of the law is to prevent the "re-victimizing" of people reporting sexual abuse.
2. Adjudicators are encouraged to apply the "plausibility" test when assessing the credibility of witnesses. However, adjudicators also need to recognize that some of their inherent presumptions about human behaviour, particularly when in an area in which they are not familiar, may consist of inaccurate or stereotypical thinking. For example, Justice Camp made some comments that were dismissive of the view that people react differently to sexual assaults. He also expressed an expectation that those who are sexually abused will resist at the time of the abuse and will likely tell others about it soon afterwards. The most notorious of these comments was Justice Camp's question to the witness asking why she did not keep her knees together. This inappropriate application of

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“plausibility criteria” can result in “victim-blaming”.

3. Adjudicators need to be careful as to how they use evidence of dishonest or criminal behaviour of a witness. It is permissible to use evidence of past dishonesty or criminal conduct when assessing the credibility of the witness. However, it is generally not permissible to use such conduct to conclude that the person is likely to engage in the alleged conduct. There is also no need to make general assertions of bad character (e.g., that a party of witness is generally amoral) which the Inquiry Committee found that Justice Camp had done.
4. Adjudicators should avoid comments about perceived characteristics of demographic groups. For example, Justice Camp’s advice to Mr. Wagar, after acquitting him of sexual assault, to be more “patient” and “gentle” when interacting sexually with women so that they do not become “upset” and so that he could avoid “trouble” in the future was seen as highly inappropriate.
5. Adjudicators should appreciate the values underlying the provisions they are applying. The Inquiry Committee accepted that Justice Camp’s conduct was not willful. However, it concluded that his unwillingness to reflect on the reasons for the reforms of the law of sexual assault over the last four decades made his conduct inexcusable. In the professional regulation sphere, adjudicators should recognize the underlying values of equality, client protection and public interest that support the specific rules. It is not sufficient to apply the strict letter of the provisions without regard to those principles.
6. Adjudicators should consider the impact of their actions upon the entire regulatory scheme. Their decisions affect more than just the parties before them. The Inquiry Committee said: “Justice Camp’s conduct in the Wagar Trial, in addition to eroding public confidence in the judiciary generally, renders it more difficult for judges to make credibility findings adverse to a complainant in a sexual assault prosecution without fear of facing complaints that they too are part of a system rife with bias.”
7. It is not only acceptable, it is also appropriate, to provide social context education to adjudicators. The Inquiry Committee said: “Social context education is designed to address a judge’s fundamental beliefs about how the world works and how society conducts itself. It also teaches that some of the beliefs that judges developed earlier in life are not necessarily the ones that are appropriate for the present, and that a judge may need to interrogate and reconsider those beliefs.”
8. Sometimes a sincere apology and remedial steps (in this case, extensive education and counselling) is insufficient to avoid removal from the profession. The Inquiry Committee concluded that the misconduct had been too grave and had done too much harm to permit Justice Camp to remain on the bench. It is recommending removal of Justice Camp from his position.

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Another interesting aspect of the report is its citation of the extensive media reports as evidence as to the impact of the conduct on the public confidence in the judiciary. This may be an aspect of the Inquiry Committee's report that should be followed with significant caution.

The Inquiry Committee's report can be found at:
http://www.cjc-ccm.gc.ca/cmslib/general/Camp_Docs/2016-11-29%20CJC%20Camp%20Inquiry%20Committee%20Report.pdf