

**CANADIAN JUDICIAL COUNCIL**

**IN THE MATTER of an Inquiry pursuant to section 63(1) of the *Judges Act*  
regarding the Honourable Justice Robin Camp**

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**NOTICE OF RESPONSE TO THE ALLEGATIONS**

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**A. Overview**

1. On May 2, 2016, the Inquiry Committee delivered a Notice of Allegations to Justice Robin Camp, setting out the allegations that will be raised against him at the Hearing. This Notice of Response sets out Justice Camp's position on the allegations. It does not represent a review of the evidence supporting Justice Camp's position. At the hearing, both Presenting Counsel and Justice Camp will present evidence in support of their respective positions.

2. Justice Camp's position is that he has not rendered himself incapacitated or disabled from the due execution of the office of judge for any of the reasons set out in paragraphs 65(2)(b) to (d) of the *Judges Act*. Justice Camp agrees that he made insensitive and inappropriate comments during the *Wagar* trial. He has apologized generally and specifically. He intends to apologize at the Inquiry Committee hearing. He has undergone counseling and training with Superior Court Justice Deborah McCawley, with a psychologist, Dr. Lori Haskell, and with an expert on the law of sexual assault, Professor Brenda Cossman, with a view to interrogating his beliefs and improving his understanding of the law, the social context of sexual violence and the psychological impact of sexual assault. His counseling has given him a deeper understanding of the trauma faced by survivors of sexual assault and about the discriminatory history of sexual

assault law. Justice Camp understands his insensitive and inappropriate comments were hurtful towards sexual assault survivors in particular and Canadians generally. He will not make these types of comments again.

3. Justice Camp wishes to continue to serve as a judge. He believes he can make a positive contribution as a member of the Canadian judiciary. He will strive to keep improving and to keep learning. He believes his training, counseling and this process as a whole have left him better equipped to judge cases with the empathy, wisdom and sensitivity to social context to which all judges aspire. He now understands that some of his prior thinking was infected by stereotypical beliefs and discredited myths. Justice McCawley, Professor Cossman and Dr. Haskell will testify at the Hearing about their discussions with Justice Camp. Justice Camp will present evidence of his good character, integrity and record as a judge. He will respond to the widespread allegation that he willfully refused to apply the law in the *Wagar* trial, insofar as this factually incorrect claim is relevant to the public perception of his ability to be impartial and “judicial” in the future.

4. Justice Camp’s responses to the specific allegations in the Notice of Allegations are as follows.

**B. Response to the Allegations**

**Allegation 1: In the course of the *Wagar* Trial, the Judge made comments which reflected an antipathy towards legislation designed to protect the integrity of vulnerable witnesses, and designed to maintain the fairness and effectiveness of the justice system**

5. This allegation relates to comments Justice Camp made regarding the “rape shield” law in s. 276 of the *Criminal Code*. Justice Camp agrees that he made the comments attributed to him in the Notice of Allegations. He agrees that these comments were insensitive and inappropriate. He denies harbouring antipathy towards s. 276. Justice Camp’s comments about s. 276 were made in the context of his correct application of the provision.

6. Section 276 is designed to prohibit the defence from introducing evidence that the complainant has engaged in sexual activity other than the sexual activity that forms the subject matter of the charge. The purpose is to foreclose “twin-myth” reasoning: that a complainant, by virtue of her sexual past, is more likely to have consented to the sexual activity that forms the subject-matter of the charge, or is less worthy of belief. Justice Camp never permitted counsel to adduce any evidence about the complainant’s sexual history in the *Wagar* trial and never engaged in twin-myth reasoning.

7. The Notice of Allegations quotes several comments made by Justice Camp in the course of two s. 276 rulings. First, the Crown sought to invoke s. 276 to prevent the defence from introducing evidence of a verbal exchange between the complainant and another man shortly before she had sex with the accused. The defence did not seek to introduce evidence of sexual contact and the evidence was not led to suggest the complainant was unchaste. Nevertheless, the Crown argued that s. 276 applied because the verbal exchange was “flirtatious”. Justice Camp held that s. 276 did not apply. His decision was correct. His comments that s. 276 is “incursive” and must be applied “narrowly” were made in the context of the Crown seeking to engage s. 276 where it did not apply.

8. Second, the defence sought to elicit evidence that immediately after the sex act that was the subject matter of the charge, the complainant, the accused and two other people went into a laundry room to take turns kissing each other. This evidence was also not elicited to support twin-myth reasoning. It was post-event narrative elicited to show the complainant's state of mind in the minutes immediately following the sex act. Had defence counsel brought a pretrial application, this evidence would have been admissible. However, defence counsel failed to take this preparatory step and, as a result, Justice Camp prohibited the defence from leading this evidence. His comment that s. 276 does not always work fairly was made in the context of explaining the harshness of this result to the accused.

**Allegation 2: In the course of the Trial and in giving his reasons for judgment, the Judge engaged in stereotypical or biased thinking in relation to a sexual assault complainant and relied on flawed assumptions that are well-recognized and established in law as rooted in myths**

9. Justice Camp agrees that the comments set out under this allegation were insensitive and inappropriate. He denies that he engaged in biased reasoning. Some of the specific examples listed in the Notice of Allegations under this allegation are quotes and others are summaries of Justice Camp's words. Justice Camp agrees that he said the things attributed to him in the quotes with the following exception. The Notice of Allegations states that one of the ways in which Justice Camp displayed stereotypical or biased thinking was by stating: "Young wom[e]n want to have sex, particularly if they're drunk." This excerpt alters the meaning of Justice Camp's words by quoting an incomplete sentence and then changing the word "woman" to "women" through the use

of square brackets. The actual quote and context is as follows. The Crown argued the complainant would not have consented to sex with the accused because they had met only recently. Justice Camp stated:

[I]f -- if I accept his version and -- if I can't reject it, then I have to go into the air of reality. Is it -- is it unreal for me to accept that a young man and a young woman -- young woman want to have sex, particularly if they're drunk?"

10. On a fair reading of his Reasons, Justice Camp was not suggesting that an intoxicated woman cannot be raped. He was saying that it was possible the complainant and the accused, who were both highly intoxicated, might have agreed to sex despite meeting only recently.

11. With respect to the non-quoted summaries of his words, the Notice of Allegations first alleges that Justice Camp “judg[ed] the complainant’s veracity and whether she consented to sexual activity by her not fighting off her alleged aggressor and/or blaming the complainant for the sexual assault and by her lack of visible reaction to the alleged assault.” This allegation is not made out in the record. As set out in his Reasons, Justice Camp rejected the complainant’s account because her evidence at trial was internally inconsistent and was inconsistent with her earlier statement to police in which she told the police she wanted to have sex with the accused, because an independent witness testified the complainant told her she intended to have sex with the accused minutes before they in fact had sex, and because a second independent witness testified he walked in on the complainant having sex with the accused and it appeared to be consensual. On a fair reading of his Reasons, Justice Camp did not disbelieve the complainant because she failed to fight off an attacker.

12. Second, the Notice of Allegations alleges that Justice Camp “hypothesiz[ed] a scenario in which the complainant was seeking revenge against the accused which was not based on the evidence before the judge.” The passages cited in support of this allegation are colloquies between Justice Camp and the Crown. The complainant testified at trial that she harboured animus towards the accused’s brother. Justice Camp asked the Crown if this animus could provide a motive to fabricate. Justice Camp’s suggestion was rooted in the evidence and did not amount to bias or disqualifying misconduct.

13. Finally, the Notice of Allegations alleges that Justice Camp “adversely commented on the character of the complainant in a way that went beyond assessing her credibility to denigrating her character and to suggesting that her character would make it more likely that she consented to sexual relations.” This allegation is not made out in the record. Justice Camp never suggested the complainant’s character would make her more likely to consent. The Notice of Allegations cites only two passages in support of this allegation and they read as follows:

What we have are four witnesses and they were all unsavoury witnesses, in my view. Mike perhaps the most savoury, the least unsavoury, but certainly the complainant and the accused are amoral people. I get the sense is the truth is what they can get others to believe.

Their morality -- and I’m leaving sexual morality aside, but their morality, in general -- and for the moment I’ll leave Mike Skinner to one side, and Skylar, because apart from criminal convictions, we know little about her morality. Certainly the complainant and the accused’s morality, their sense of values, leaves a lot to be desired. The complainant, as will appear from the evidence, had spent the day in question sneaking into the movies without paying. I suppose many young people do that. That isn’t the end of the world. However, she’d also spent a considerable amount of time stealing clothes, and then went on to steal a consider -- considerable amount of liquor. It didn’t cross her mind that she should work to earn money to buy those things. The accused did not seem to find any of that

reprehensible and indeed was impressed and respected one of his friends who had been part of the liquor stealing.

14. On a fair reading, these passages do not show Justice Camp engaged in twin-myth reasoning or thought the complainant was more likely to consent to sex because of her character. Justice Camp simply commented on the credibility problems of both the complainant and the accused, as he was entitled to do.

**Allegation 3: In the course of the Trial, the Judge asked questions of the complainant witness reflecting reliance on discredited, stereotypical assumptions about how someone confronted with sexual assault would or would not behave and/or blaming the complainant for the alleged assault**

15. This allegation relates to questions Justice Camp asked of the complainant, such as why she did not sink her body into the basin so the accused could not penetrate her and why she did not keep her knees together. Justice Camp agrees that he asked her these questions. Justice Camp did not blame the complainant for the sexual assault. He admits these questions were asked in insensitive and inappropriate language. He has apologized unreservedly for his choice of language. He will not ask questions this way again.

16. While his words were insensitive and inappropriate, he was legally entitled to ask questions in this factual area. The accused testified that the complainant gave him a verbal “yes”. If Justice Camp accepted or was left in doubt by this version, he would then have to consider whether any apparent consent given by the complainant was vitiated by reason of force or fear. The Crown thought this issue was important and asked the following questions of the complainant:

- [In relation to the accused performing oral sex on her] Why didn't you say anything?

- What do you think would happen if you didn't do what he told you?
- What do you think would happen if you didn't do what he wanted?
- [In relation to her talking to the accused after the fact] Why didn't you run away?

17. If the Crown can ask these questions, the trial judge can clarify on the topic. The issues were relevant, permissible and on topics already explored by counsel. Justice Camp was entitled to explore the issues of force and fear. He will apologize at the Hearing for the insensitive and inappropriate manner in which the questions were phrased, which he will not seek to justify or excuse.

**Allegation 4: In the course of the Trial, the Judge made a rude or derogatory personal comment about Crown counsel in the course of disparaging a legal principle she was advancing in her submissions**

18. Justice Camp agrees that he made the statement attributed to him in the Notice of Allegations. It was made during a colloquy with the Crown in which the Crown suggested the recent complaint doctrine prevented Justice Camp from considering whether or not the complainant said "no" during the sex act. Justice Camp correctly told the Crown that this was an overbroad reading of the recent complaint doctrine and the Crown eventually agreed with him. Justice Camp's agrees that his comment to the Crown that "I hope you don't live too long" was rude and derogatory. For this he will apologize unreservedly.

**Allegation 5: In the course of the Trial and in giving his reasons for judgment, the Judge made comments tending to belittle and trivialize the nature of the allegations made by the complainant**

19. Justice Camp agrees that he said the things attributed to him in the quotes under this allegation in the Notice of Allegations. With the exception of the statement “There is no real talk of force here”, all the quoted statements were made in the course of colloquies with Crown counsel in an effort to test the Crown’s position. They were not conclusions he had arrived at on the evidence. The statements were nonetheless insensitive and inappropriate. He will apologize for making these statements.

**20. Allegation 6: In the course of the trial and in giving his reasons for judgment, the Judge made comments tending to belittle women, and expressing stereotypical or biased thinking in relation to a sexual assault complainant**

21. Justice Camp agrees that he said the things attributed to him in the quotes under this allegation in the Notice of Allegations. The statements were insensitive and inappropriate and he apologizes for making them. The gender sensitivity counseling he has undergone has given him insight into the impropriety of these statements. He will not make statements like this again.