



The Advocates' Society La Société des plaideurs

May 3, 2022

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The Honourable Whitney Issik, M.L.A.
Associate Minister of Status of Women
Office of the Associate Minister of Status of Women
Culture and Status of Women
224 Legislature Building
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The Honourable Tyler Shandro, Q.C., M.L.A.
Minister of Justice and Solicitor General
Office of the Minister
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10800 - 97 Avenue
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Dear Ministers:

RE: Bill 14, *Provincial Court (Sexual Awareness Training) Amendment Act, 2022*

The Advocates' Society writes this letter to express our concerns regarding the impact of Bill 14, the *Provincial Court (Sexual Awareness Training) Amendment Act, 2022*, on judicial independence in Alberta. We understand Bill 14 is scheduled for consideration by the Committee of the Whole on May 4, 2022.

Established in 1963, The Advocates' Society is a not-for-profit organization representing more than 5,500 diverse lawyers and students across the country, including in Alberta—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, and inclusion in the justice system and legal profession.

As courtroom advocates, members of The Advocates' Society believe that a strong, vibrant, and independent judiciary is fundamental to our Canadian justice system and essential to upholding our country's democratic values and the rule of law. The Advocates' Society has published a statement on judicial independence, entitled [Judicial Independence: Defending an Honoured Principle in a New Age](#); you may find the statement, and in particular the section on Judicial Education, relevant to further consideration of Bill 14.¹

I. The Proposed Amendment

Bill 14 proposes to amend section 9.1(2) of the *Provincial Court Act*, R.S.A. 2000, c. P-31, to add a new requirement for eligibility for appointment as a judge of the Provincial Court of Alberta: that the person “has completed education in sexual assault law and social context issues.”

¹ Part III.4 (“Judicial Education”), p. 11.

The amendment is clear that this education must be completed prior to appointment as a judge, in order for a candidate to be considered eligible for appointment.

II. The Importance of Judicial Education, and Its Relationship to Judicial Independence

Judicial education is critical to maintaining and improving judicial competence, and by extension, the quality of justice in Canada. Judges must be educated about changes in the law and society on an ongoing basis. The Advocates' Society endorses a robust approach to judicial education and training on a wide variety of issues, including sexual assault law and social context issues.

It is imperative that judicial education serve the interests of justice. A cornerstone of the Canadian justice system, judicial independence ensures that judges can make their decisions free from external influences or interference. In order to maintain the independence of the judiciary, judicial education must remain under the control and supervision of the judiciary and free from outside influence.²

A legislative requirement for legal education and training of the judiciary in one area is therefore of concern and should be resisted. Efforts by legislatures to dictate what judges are taught as part of mandatory judicial education risk interfering with the perception of judicial neutrality. The independence of the judiciary is too important a principle to allow it to be undermined or diminished in any sense, no matter how laudable the objectives of the legislation might be.

III. Further Negative Practical Consequences of the Proposed Amendment

In addition to our fundamental concern regarding the impact of Bill 14 on the independence of Alberta's judiciary from the legislative branch of government, The Advocates' Society is concerned that the proposed amendment will have a number of negative practical consequences.

The first relates to the uncertain quality and content of the proposed mandatory education. Albertans are entitled to expect that any training of the province's judges be of the highest quality. Bill 14 contains no information about who is meant to provide the pre-appointment training on sexual assault law and social context issues. Bill 14 also does not contain any measures to ensure the quality of that training. Moreover, Bill 14 contains no information about the content of the proposed mandatory education and does not define the broad concept of "social context issues", which creates uncertainty about how candidates can fulfil the requirement.

In addition, absent any indication in Bill 14 to the contrary, it appears that candidates for appointment to the Provincial Court must shoulder the cost of the training themselves. This may disadvantage lawyers

² As observed by the Canadian Judicial Council, "Judicial independence is a fundamental principle of our justice system. It stipulates that judges must make decisions with integrity and impartiality, free from the pressure of external influences. Training sessions provided to judges must therefore serve the interests of justice alone and not that of external forces, governmental or otherwise" (Canadian Judicial Council, [Basic Principles Supporting the Training of Judges](#)). To that end, the Canadian Judicial Council has recently signed a Memorandum of Understanding with the Minister of Justice on judicial education, which "affirms, in keeping with the requirements of judicial independence, that the education that judges receive following their appointment to the bench must be controlled by the judiciary itself, free from outside influence or interference" (Department of Justice, "Backgrounder: Memoranda of Understanding between the Canadian Judicial Council and the Government of Canada", April 28, 2022.)

who generally have more limited financial resources, including sole practitioners and lawyers who practise at small firms. These practice settings see more representation from lawyers from equity-seeking groups, whose appointment would diversify the provincial bench.

The proposed amendment would also compromise the confidentiality of the judicial appointment process. The judicial application process is presently highly confidential. A requirement that applicants for judicial office enroll in education that is mandatory for judicial applicants will necessarily undermine the confidentiality of the application process, which is likely to create a chilling effect on applications by otherwise qualified candidates, who may not want clients, colleagues, employers or others to become aware that they have applied. The Bill provides no measure of assurance that such applicant training courses can be organized or delivered in a manner that will protect an individual applicant's confidentiality.

Moreover, even if implemented, Bill 14 would provide no additional benefit to Albertans. New and sitting judges of the Provincial Court of Alberta benefit from robust judicial education and training programs, including education provided by the Alberta Provincial Judges' Association, the Canadian Association of Provincial Court Judges, the National Judicial Institute, and the Provincial Court itself. In 2014, the Provincial Court established an Education Committee, the mandate of which is to support, improve, and enhance professional competence of the Provincial Court's judges and justices of the peace. The Provincial Court's 2021 New Judges Education Plan includes shadowing and mentoring programs, as well as a requirement to attend two new judges' programs which address substantive law, judicial skills, social context, and judicial development, with particular emphasis on topics including sexual offences law, Indigenous Justice, and programs to understand cultural dimensions of judging. New judges are further expected to develop education plans for their first five years on the bench, which must include sexual offences law education if relevant. The Provincial Court also has a more general Education Plan to establish measurable goals for 2021-2024, and provide judges and justices of the peace with a broad range of educational opportunities.³

IV. Conclusion

While the goals of Bill 14 are undoubtedly admirable, The Advocates' Society believes the bill will negatively impact judicial independence in Alberta and has the potential to create a further barrier to many qualified, diverse candidates, without offering any benefit to Albertans. The Advocates' Society submits that judicial independence is better preserved and enhanced when responsibility for judicial education rests with the judiciary.

Thank you for the opportunity to make these submissions. We would be pleased to answer any questions you may have.

³ See The Provincial Court of Alberta, [Strategic Plan 2021-2024](#); The Provincial Court of Alberta, [Judicial Education](#); The Provincial Court of Alberta, [Professional Development for Provincial Court Judges and Justices of the Peace of Alberta](#) (2021); The Provincial Court of Alberta, [New Judges Education Plan](#) (September 2021); The Provincial Court of Alberta Judicial Education Committee of the Chief and Council, [Education Plan 2021-2024](#).

Yours sincerely,



Deborah E. Palter
President



Tamara Prince
Chair, Alberta Advisory Committee

Attachments:

1. The Advocates' Society, *Judicial Independence: Defending an Honoured Principle in a New Age* (April 2020)

CC: Sherina Dhala, Chief Legislative Counsel, Government of Alberta
Irfan Sabir, M.L.A., Official Opposition Deputy House Leader & Critic for Justice and Solicitor General
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The Advocates' Society's Task Force on Bill 14:

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