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Embattled Federal Court judge Robin Camp formally resigns

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Steps taken to fire Justice Robin Camp before he stepped down this month demonstrate that judges who display bias or sexism toward complainants in sexual assault trials risk losing their jobs.

On March 9 the embattled Federal Court judge formally resigned, around the same time as Justice Minister Jody Wilson-Raybould surprised the House of Commons by seeking (unsuccessfully) unanimous consent from MPs for the government to proceed to remove him "as soon as practicable" in order to "ensure the integrity and public confidence in the justice system and in the judiciary."

The Justice minister acted minutes after the Canadian Judicial Council (CJC) made public its March 8 report to her endorsing the unanimous recommendation of its own inquiry committee last November that the former Alberta provincial court judge should be kicked off the bench for the notorious comments he made during and after the sexual assault trial of Alexander Wagar in 2014.

"The clear message to Canadian women and complainants is that their confidence in the criminal justice system matters," University of Ottawa law professor Elizabeth Sheehy said by e-mail. "To judges the message is that antipathy towards the law of sexual assault, [as] reformed to reflect and protect women's equality rights, and reliance on discredited myths and stereotypes about women and sexual assault, will not be tolerated. I can only imagine Canadian judges are relieved that this embarrassing chapter has ended."

The comments for which the judge apologized again March 9 included asking the 19-year-old,



Camp

100-pound indigenous woman why she didn't keep "her knees together" — or sink her hips into the basin to stop penetration — if she did not want to have oral sex and intercourse on a bathroom counter with a 6-foot-1, 240-pound acquaintance who followed her into a washroom during a party, locking the door behind him.

"I want to say from my perspective as minister, and the perspective of my government, sexual assault and gender-based violence is in no form acceptable, and we will continue to stand up for victims of sexual assault and gender-based violence and accord them the necessary dignity and respect that they deserve," Wilson-Raybould told reporters outside the Commons after she tried to fast-track Camp's removal.

Camp's resignation effective March 10, and the CJC's report to the Justice minister, were welcomed by the Women's Legal Education and Action Fund (LEAF), which made representations to the Camp inquiry.

The CJC's report "focuses properly on the allegations that Justice Camp expressed antipathy toward the protections contained in the law intended to protect survivors of sexual assault in the trial process so it's really important to send a message that sexual assault survivors are entitled to respect in the courtroom," LEAF's legal director Kim Stanton said.

Western University law professor Melanie Randall, an expert on violence against women, said by e-mail the CJC is sending a message "that by engaging in rape myths and discriminatory attitudes, and by expressing antipathy towards laws intended to infuse sexual assault trials with more equality and integrity, Justice Camp put himself in a position incompatible with that



Constance Backhouse

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Constance Backhouse
University of Ottawa

required by the judicial role."

She added, "The difficulty now will be how to respond to the multiple other examples of judicial decision-making infused by rape myths which keep appearing with disconcerting regularity." University of Calgary law professor Alice Woolley called the case's outcome, and the way it was handled by the CJC and Wilson-Raybould, "heartening."

"The takeaways from this are we still have robust protection of judicial independence but there is still judicial accountability for serious misconduct and the judicial council recognizes that balance," said Woolley.

A complaint by Woolley and three other feminist law professors to the CJC was the catalyst for the Camp inquiry.

"I don't think for the good judges this makes any difference at all," said Woolley. "I don't think there are many judges who would have been tempted to say the kinds of things that he says during this trial."

However University of Ottawa law professor Constance Backhouse, an expert on the history of the law of sexual assault, noted by e-mail: "I would be completely surprised if Justice Camp were

the only judge out there who looked to complainants to explain how they might have prevented the sexual assault."

She suggested that avoiding similar problems in future will require careful selection of new judges, ongoing and effective judicial education, "and above all, a deep-rooted cultural change that comes to grips with women's right to sexual autonomy in the 21st century."

All 23 of the chief justices who participated in the council's report to Wilson-Raybould agreed that Camp's conduct amounted to serious misconduct, but four argued he should not be removed since, in their view, the evidence showed he had been successfully rehabilitated through education and counselling.

"Concentrating exclusively on the judge's misconduct and ignoring the value of rehabilitation, remorse, and sincere efforts to learn runs against the public sense of fairness and proportionality," wrote the dissenters David Smith of New Brunswick, David Jenkins of P.E.I., Eugene Rossiter of the Tax Court and Lawrence O'Neil of Nova Scotia.

However, the majority of chief justices said whether or not a judge is sincerely remorseful or personally rehabilitated is not determinative. The majority explained that even if they were to accept that Camp was fully rehabilitated, "the judge's efforts at remediation must yield to a result that more resolutely pursues the goal of restoring public confidence in the integrity of the justice system."

"In our view, the statements made by Justice Camp during the trial and in his decision, the values implicit in those statements and the way in which he conducted himself are so antithetical to the contemporary values of our judicial system with respect to the manner in which complainants in sexual assault cases should be treated that, in our view confidence in the system cannot be maintained unless the system disassociates itself from the image which the judge, by his statements and approach, represents in the mind of a reasonable member of the public," the majority said. "In this case, that can only be accomplished by his removal from the system which, if he were not removed, he would continue to represent."

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