Barbara Kay: If ideologues are teaching our judges, the public has a need to know

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Legal academics are openly reinterpreting their mission. Historically teachers of legal principles and law codes, they now see themselves as social-justice warriors called upon to right historical wrongs for members of designated victim groups.

In 2013, Ottawa professor Elizabeth Sheehy published Defending Battered Women on Trial, a book in which Sheehy promotes women's right to kill extremely abusive male partners pre-emptively, without fear of being charged with murder. And last month, in response to the acquittal of Saskatchewan farmer Gerald Stanley in the death of Indigenous man Colten Boushie, the University of Windsor's law school declared that "a reinvention of our legal system is necessary" because "Canada has used law to perpetuate violence against Indigenous peoples."

If this way of thinking spreads — the Ontario Law Society's new compelled affirmations of social-justice principles from its members is a disturbing sign of precisely such mission creep — the burden on judges to dispense actual justice will become heavier by the day.

Since judges are law students, and then lawyers, before they become judges, the public has more reason than ever to monitor the educational materials judges encounter before they ascend to the bench. Such courses are provided by the National Judicial Institute (NJI), established by the Canadian Judicial Council in 1988 "to provide continuing education courses for federally appointed Superior Court judges." They offer "gender sensitivity" training, programs that focus on substantive law, skills training and also teach "social context issues."

What does this ominous phrase mean? It can mean everything, as we saw in the case of now-retired judge Marvin Zuker who, presiding over the 2016 trial of Mustafa Ururyar, accused by Mandi Gray of sexual assault, convicted him not on evidence, but on purely ideological grounds, with the assumption that women never lie about rape. His bizarre denunciatory monologues, and the devastating effect his judgment had on Ururyar's life, demonstrated the damage that can be wrought by a person with great, only belatedly accountable power, aligned with a radicalized mindset (Ururyar was acquitted on appeal).

I don't say Zuker acquired his virulently feminist views from the NJI. Let us say, though, it would have been unlikelyfor the NJI courses to have tempered Zuker's views. Given some of the known materials judges encounter in their social-context training, such as printouts from a book edited by feminist professors, it means the courses in this area are already quite one-sided ideologically, and will be increasingly so as the social-justice thrust in academic circles gains momentum.

Trouble is, we just don't know most of what judges are learning, because the NJI refuses to allow lawyers, journalists and the general public to see its course contents. That seems very wrong to many people, but numerous attempts to gain access have failed.

Like sexual-assault cases, custody decisions can literally make or break a parent's or child's life. Objective research in the social sciences increasingly concludes that fathers are of equal importance to children's well-being, and that equal shared parenting (in the absence of abuse) is the optimal default for most post-separation arrangements. But, given the continuing disproportion of contested cases ending with mothers winning sole custody (less so in Quebec, where shared parenting is more likely), it is highly probable that Canadian family court judges are being trained with outdated or ideologically skewed materials.

That is something the public should know about. Unlike many branches of law, family court decisions are not a matter of following established procedures available through the study of rules of evidence in settled-fact scenarios. They require a sophisticated understanding of psychology and family dynamics. But study in these areas is rarely part of a family court judge's background. So they are vulnerable to indoctrination.

Lack of transparency in judicial training is a problem in the U.S. as well.

Interestingly, last summer the Nebraska Supreme Court ordered the Nebraska State Court Administrator to disclose materials used to train judges in rulings on child-custody cases. The Court stated that confidentiality is an important consideration in judicial independence, but "it does not necessarily follow that all records created in the course of judicial education must be confidential to preserve this important function."

In the course of researching this news item, I discovered that Wake Forest University Prof. Linda Nielsen, a national expert in this domain, whose findings favour shared equal parenting, was invited to make a presentation to the Office of Judicial Branch education (Nebraska's equivalent of the NJI), and then disinvited on spurious grounds in favour of a presentation by an opponent of shared parenting, whose source material was, in knowledgeable critics' eyes, misleading

or flat-out wrong.

A cautionary tale and more evidence, if it were needed, that it’s time for the NJI to open its “social-context” books.