LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF M. NAEEM RAUF
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

W. E. Brett Code, Q.C. – Chair and Elected Bencher
Catherine A. Workun, Q.C. – Committee Member and Lawyer Adjudicator
Dr. John S.J. Bradley – Committee Member and Public Adjudicator

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta
M. Naeem Rauf – self-represented
Simon Renouf – Counsel for [JAB] (January dates only)

Hearing Dates

November 3, 2017, and January 29, 30 and 31, 2018

Hearing Location

Law Society of Alberta offices,800, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Introduction and Summary

1. The Law Society of Alberta (LSA) alleged that, in criticizing an appointment to the Court of Queen's Bench, by way of a letter written and disseminated publicly by him, Mr. Rauf breached the Code of Conduct and that such conduct was conduct deserving of sanction.

2. After a hearing, the Hearing Committee (Committee) came to the conclusion, for the reasons set out below, that Mr. Rauf is guilty of conduct deserving of sanction.

3. The hearing will now move to the sanction stage.

Jurisdiction, Preliminary Matters and Exhibits

4. On November 3, 2017, this Committee convened at the Edmonton office of the LSA to conduct a hearing regarding certain conduct of Mr. M. Naeem Rauf. The Committee was appointed by the Chair of the Conduct Committee pursuant to s. 59(1)(b) of the *Legal Profession Act*, RSA 2000, c. L-8 (the Act). Mr. Rauf had been given notice of the members of the Committee. At the commencement of the hearing, he was asked whether he had any objection to the composition of the Committee. He had no objection.

5. The jurisdiction of the Committee was established by Exhibits 1 through 4, all of which were consented to by Mr. Rauf. Exhibit 1 is the letter of appointment signed by the Chair of the Conduct Committee. Mr. Rauf acknowledged, accepted, and consented to the entry as exhibits of the following:

a. Exhibit 2, which is his Notice to Attend, requiring that he attend the hearing and that he give evidence before the Committee related to the misconduct alleged in the Notice to Solicitor.

b. Exhibit 3, which is the Notice to Solicitor. Dated September 11, 2017, that Notice advised Mr. Rauf that the Conduct Committee had directed that a Hearing Committee deal with his conduct, advised him of the time, date, and place of the hearing, and advised him that the Committee would hold a hearing to determine whether he, as a member of the Law Society of Alberta, is guilty of conduct deserving of sanction, in respect of the following citation:

> It is alleged that in criticizing an appointment to the Court of Queen's Bench, M. Naeem Rauf's comments were in breach of the Code of Conduct and that such conduct is conduct deserving of sanction.

Mr. Rauf signed that document, acknowledging receipt of it.

c. Exhibit 4, which is the Certificate of Status of the Mr. Rauf, advising that, as of October 18, 2017, he was an active member of the LSA and that he did not have a student-at-law.

A Public Hearing

6. The LSA also tendered as Exhibit 5 a document entitled Private Hearing Application Notice. With that document, the LSA assured the Committee that it had considered all of the individuals who might be interested in this matter and who might have a privacy interest to protect and that the LSA had given notice to those individuals of their ability to

make an application to have the Committee order that all or part of the hearing not be public but be held in private. The Committee was advised that such notice was given to Mr. Rauf, to [JAB], and to [JJR].

7. None of those individuals made an application, pursuant to either s. 78 or s. 112 of the Act, therefore the Committee proceeded, as in the ordinary course, to hold the hearing in public.

8. Members of the public did attend, as did members of the press.

Application of Mr. Rauf to Tender Evidence of His Own Good Character

9. On the first day of the hearing, the Committee heard argument on the issue as to whether there should be a limit placed by the Committee on character evidence that Mr. Rauf had suggested might be called by him.

10. We were advised that:

a. during the first pre-hearing conference (PHC), on May 17, 2017, Mr. Rauf advised the PHC Chair that he intended to call 35 to 40 live character witnesses during the fact-finding/guilt phase of the hearing and that he expected each person to speak for approximately 7 to 10 minutes, excluding cross-examinations,

b. during the second PHC on June 28, 2017, Mr. Rauf reduced the number of live witnesses to 10, and

c. on September 29, 2017, Mr. Rauf submitted his brief, to which he attached 30 documents, including letters and Christmas cards, and 6 transcripts, along with a 10-page summary of the character evidence contained in the brief itself.

11. As Mr. Rauf had already provided the Committee with the written character evidence he intended to rely upon, the issue we were asked to consider was whether the Committee should exercise its discretion to impose limits on the type of character evidence that is admissible during the fact-finding/guilt phase of the conduct hearing.

12. The Committee was advised that our jurisdiction to make a ruling on that issue arose from section 68 of the Act, which creates a wide discretion to decide what evidence is permissible during a hearing:

> Evidence
> 68(1) In proceedings under this Division, a Hearing Committee, the Practice Review Committee or the Appeal Committee

(a) may hear, receive and examine evidence in any manner it considers proper, and
(b) is not bound by any rules of law concerning evidence in judicial proceedings.

13. After hearing most of the legal submissions and some of the evidence, a compromise was proposed and agreed. That agreement, accepted by the Committee, resulted in a procedural direction from the Committee. As a result of the compromise negotiated near the conclusion of arguments on the application regarding the admissibility of good character evidence, a go-forward procedure was discussed and agreed. LSA Counsel and Mr. Rauf agreed to the contents of the document, signed by both counsel, which was eventually entered as Exhibit 6. The contents of that procedural direction were then followed and implemented fully.

Private Hearing Applications of [JAB]

14. By letter, dated December 21, 2017, from Mr. Simon Renouf, counsel to [JAB] (the Applicant), an application was made that the hearing, or part of it, be held in private. The Applicant took the position that any portion of the Hearing that repeats, attempts to justify or refers to the attacks on the Applicant's integrity should be held in private.

15. By letter, dated December 22, 2017, the Committee sought submissions from counsel. We received further submissions from Mr. Renouf for [JAB], from Mr. Seidenz for the LSA, but did not receive any submissions from the three lawyers then representing Mr. Rauf. Instead, we received submissions directly from Mr. Rauf.

16. By letter, dated January 24, 2018, we delivered the following decision:

> Even though we ruled that the hearing would be a public hearing, we do continue to have jurisdiction, under s. 78(2) of the *Legal Profession Act*, to consider any private hearing application.
>
> According to Paragraph 9(a) of the Hearing Guide, as adopted and approved by the Hearing Committee in the matter involving Ruellen Forsyth-Nicholson, LSA conduct hearings should be held in public except to the extent required to protect a compelling privacy interest. The burden of demonstrating that there exists a compelling privacy interest is on the person making the private hearing application. We are of the unanimous opinion that the Applicant here has not done so, that is, that the Applicant has not demonstrated a privacy interest that is sufficiently compelling to cause us to determine that any portion of the Hearing be held in private.

17. We advised counsel that, under s. 78(2) of the Act, the Committee continued to have jurisdiction to hear applications as to whether all or part of the hearing be held in private. We also directed that the hearing would proceed as a public hearing, and that the Committee would reconvene as planned on January 29, 2018. The Committee advised that assuming that there were no further applications, counsel should be prepared to proceed with opening statements, if any, and with the presentation of their evidence.

18. Mr. Renouf made a further application and delivered it to the Committee on January 26 – the Friday before the commencement of the hearing on Monday, January 29.

19. The Committee heard preliminary argument from counsel on January 29. After a brief adjournment, the Committee made the following unanimous decision, which has been corrected for errors and completed:

> We have had the benefit of all of the material that has been provided since December 21st, including the material provided to us by Mr. Renouf on Friday afternoon, as well as material provided to us by Mr. Rauf on Friday afternoon, which was in response to the LSA's prior submission.
>
> In all of that material, and having reviewed it all, we continue to be of the same view as we were on January 24, 2018, and we have decided that we are able to rule now, without an adjournment and without any further submissions: we do not think that the application can succeed and that it has not succeeded and is dismissed.
>
> We, again, will always have the ability to rule on what evidence is admissible and inadmissible. We have a statement from the LSA in its material that the LSA's intention is to object to inadmissible evidence when it arises as we proceed through the hearing with the citation and clarification of the citation, as particularized. There will be an opportunity to determine what evidence concerning the Applicant and the content of the Letter that should be heard and admitted and what evidence should not, and we shall hear submissions on that issue, piece of evidence by piece of evidence, if necessary, until we get to an understanding of what is admissible and what is actually at issue.
>
> We are not prepared to sacrifice the primary interest of these proceedings being held in public. While we acknowledge the privacy interest of the Applicant and its importance, we think that the importance of that privacy interest is outweighed by the public interest in the main issues before this Committee and that a public hearing is the appropriate forum for those to be heard and decided. We are not persuaded that the Applicant's individual privacy interest is one that, on balance, is more important than is the open hearing principle. Mr. Rauf wishes to have this

hearing in public, and he considers that a public hearing is a matter of administrative and procedural fairness, among other things – all of which were set out in detail in his written submissions. The Committee is determined to ensure that Mr. Rauf has not only a fair hearing but one that he considers to be fair. In all the circumstances, therefore, we unanimously agreed that the application of the Applicant that all or part of the hearing be held in private is dismissed.

20. Finally, during the legal submissions of the LSA, Mr. Renouf made a further application on behalf of [JAB] to have specific references to the Letter excised from the public record. The essence of Mr. Renouf's application was that further publication of the Letter and the examples given in it by Mr. Rauf would create unfairness for the Applicant particularly as, the allegations not being brought forward in anything like a timely way, [JAB] lacks the procedural protections she would have enjoyed had Mr. Rauf made the complaints whenever the incidents are alleged to have occurred. For those reasons, among others, Mr. Renouf submitted that the privacy interest of [JAB] acquired more importance, to the point of exceeding the importance of holding the whole of the hearing in public, including specific reference by way of legal submissions to the very language of the Letter.

21. After hearing argument from LSA counsel and from Mr. Rauf, the Committee adjourned and then delivered the following decision, which has been corrected and completed:

> Mr. Renouf, on behalf of his client, has made an application to have references to the Letter excised from the public record, to have those portions of the public hearing where those references to the Letter are discussed made private, and to have the public excluded from hearing those excerpts.
>
> We recognize the important privacy interest of [JAB], and we respect that privacy interest. We are concerned for her reputation, and we are concerned about the inability that she has to defend her own reputation in this proceeding other than by way of objection of her counsel, or, as she has done, by making a request for a private hearing. We understand our obligation in that regard to be an important one; that is, to protect the reputations of all of the third parties mentioned in these proceedings, much as we did this morning when reference was made to one of Mr. Rauf's former clients during the character evidence portion of the hearing. We will continue to be concerned about her privacy interest, but we do not grant the application and dismiss it.
>
> We note that the authorities that the LSA has presented today include *Doré v. Barreau du Québec*, a conduct case in which the Supreme Court of Canada quoted in full the letter and thereafter discussed in some detail the contents of

the letter, its salient portions, its language, and the expressions with which issue was taken.

Mr. Rauf has said that, in his own defence, he must go through the Letter and that he is entitled to full answer in defence of the citation against him. We therefore believe that, like the Supreme Court did, there must be reference to the impugned letter and to the impugned statements in these proceedings. As we have said previously, we do believe that there is a very important public interest at stake here and one on which comment will have to be made, and the full facts will have to be available to us. Therefore, we dismiss the application.

I say this. Mr. Renouf noted that during the evidence yesterday, counsel for the LSA and Mr. Rauf seemed to avoid, when possible, reference to these matters that may negatively affect the privacy interests of [JAB], that they seemed to respect that privacy interest even though the application for privacy had been dismissed and it was a public hearing. We ask that counsel continue to abide by that spirit, and we, again, say that we will be open to any further objection through the remainder of the proceedings, but that, in general, the matter is public, must be public, and in order for a fair hearing to be conducted, we believe that reference to the letter must be made in public.

22. No further private hearing applications were made.

The Hearing into the Merits of the Citation

23. A binder of Agreed Exhibits was tendered. Mr. Rauf consented to the entry of each of the Exhibits in that binder.

Citation

24. Exhibit 7 is a particularization of the citation that had been sent to Mr. Rauf in the Notice to Solicitor. Prior to the hearing, Mr. Rauf had requested particulars regarding the citation. The LSA provided particulars six or seven months prior to the hearing. The citation was particularized as follows:

> It is alleged that in criticizing an appointment to the Court of Queen's Bench, M. Naeem Rauf's comments were in breach of the Code of Conduct, and in particular of Rules 4.06(1), 6.02(1), 6.02(6), and 6.05(1), and that such conduct is conduct deserving of sanction.

The references to the Code of Conduct are to Version 2015_V1, which was in effect between June 1, 2015, and December 1, 2016. The specific provisions of the cited Rules had been provided to Mr. Rauf in a timely manner and were tendered as part of Exhibit 7. Therefore, the Committee finds that Mr. Rauf had full disclosure and that he had notice of the case to meet.

Evidence

25. The evidence consisted of an Agreed Statement of Facts, the tendered Exhibits, the testimony under oath of Mr. Rauf, and the testimony under oath of four witnesses called by Mr. Rauf.

The Agreed Statement of Facts

26. On May 19, 2017, Mr. Rauf signed a document, entitled Agreed Statement of Facts. It was tendered as Exhibit 8. Mr. Rauf consented to having it entered as an Exhibit.

27. Mr. Rauf was admitted as a member of the LSA on March 19, 1984. Mr. Rauf had previously been admitted, in 1976, as a member of the Law Society of Upper Canada and of the Law Society of the Northwest Territories.

28. On [date], the Minister of Justice and Attorney General of Canada announced the appointment of [JAB] as a Justice of the Court of Queen's Bench in Edmonton.

29. On September 15, 2016, Mr. Rauf wrote a letter to the Editor of the *Edmonton Journal*. That newspaper did not publish his letter. Sometime after he wrote it, Mr. Rauf provided copies of his letter to other lawyers and to members of the public. He also left copies of that letter on a table in the cafeteria at the Edmonton Courthouse. It is not known by the Committee how many copies were left on that table, how many lawyers, if any, picked it up and read it, or how many members of the public, if any, picked it up and read it.

30. On October 3, 2016, [JJR] sent a letter of complaint concerning the contents of the letter to the LSA.

31. On [date], [JAB] was sworn in as a Justice of the Alberta Court of Queen's Bench.

The Letter

32. The following, written on the formal, legal letterhead of Mr. Rauf, was addressed to the "Letters Editor" of the Edmonton Journal, and was dated September 15, 2016:

M. Naeem Rauf
Barrister & Solicitor

#[XXX], [XX] Street, Edmonton, Alberta [XXX XXX]
Telephone: [(XXX) XXX-XXXX] Cell: [XXX-XXX-XXXX]
Fax: [(XXX) XXX-XXXX]
E-mail: [XXXXX}
September 15, 2016
Via Fax: [XXX-XXX-XXXX]

Letters Editor
The Edmonton Journal
Box 2421
Edmonton, AB T5J 2S6

Dear Sirs:

Re: The Appointment of [JAB]

It was with shock that I heard of the appointment of [JAB] to the Court of Queen's Bench of Alberta. When I heard about her appointment, I could not help wondering whether her appointment was approved by the same brilliant judges of character who appointed now [JRC] to the Bench, initially of the [court] and subsequently, the [court].

Rarely, if ever, in my 40 years at the Bar of two provinces and the Northwest Territories, have I come across Counsel who I found to be more ethically challenged than [JAB]. To me, it is almost laughable that now she will go around being referred to as The Honourable [JAB]. In my experiences with her, she way anything but honourable. Every encounter I had with her left me with a sour taste.

The first encounter I had with [JAB], as she then was, was in relation to the prosecution of a client of mine. She told the Court that the young woman's face appeared so fat, not because the young woman was overweight, but because the beating administered to her was so bad it caused her face to swell.

And then, of course, when the sympathy-evoking young woman appeared in court, she was quite overweight with quite a fat face.

On another occasion, a client was charged with most serious allegations against him. [JAB], as she then was, appeared before the Justice of the Peace at a bail hearing. The allegations involved horrifying threats in writing. She told the Justice of the Peace that the handwriting had been analysed and found to be that of the client whom I was representing.

Now, when Crown Counsel appears before a Justice of the Peace, she is the only one who knows what is in Crown's Brief. Therefore, it is incumbent upon such a Crown to be meticulously accurate in relating the facts to the Justice

of the Peace. In this case, what she said to the Justice of the Peace was simply untrue. Whether she lied intentionally or was mistaken, what she represented was deplorable. She had a duty of utmost good faith when putting forth the facts of a case at a time when she would have known the Justice of the Peace would have relied on those facts in determining the liberty of a subject.

I can tell you that subsequently, the charge against my client was dropped.

I had a jury trial with [JAB] in which her conduct caused the Court of Appeal to order a new trial because her conduct may have resulted in a miscarriage of justice. In this instance as well, the Crown eventually dropped the charge against my client. [JAB's] conduct earned her a severe rebuke from the Court of Appeal when they directed a new trial.

The following is what happened:

R. V. [KM]. [JAB], as Crown Counsel, in her closing address to the jury said:

"…Defence counsel or I have a duty to put before our own, the other side's witnesses what our side is going to say. That means that defence counsel has, if he knows he'll be calling a different version of events, he has to ask the Crown's witnesses about those events so that they can respond. It's only fair. If that opportunity is not given to them, it has to effect the weight of the evidence that comes out later."

The Court of Appeal said in its judgment:

"Crown Counsel then listed for the jury four topics from the Appellant's evidence which she said had been improperly omitted from Defence Counsel's cross-examination of Crown witnesses. She described them in detail. The topics are somewhat detailed, and it is arguable that they are too small or narrow to have been mandatory topics for cross-examination.

But what if one assumes, for the sake of argument, that those three topics should have been put to Crown witnesses? On appeal, the Crown concedes that it would have been better for the prosecutor to have complained to the trial judge and not to the jury. We agree. The sting of what the prosecutor told the jury went beyond an explanation for gaps in the Crown's evidence. It was accusation of wrong doing by defence Counsel, and a suggestion that the jury's factual verdict be used to redress the misconduct. In concept, that is harsh medicine (even if worded delicately here). If it were to be administered, it should be by the trial judge, not Counsel. It would have to be explained and hedged in much more carefully. More fundamentally, any statement to the jury was completely unnecessary…

We cannot agree that the Prosecutor's statement to the jury was harmless here."

Even the Crown conceded one part of [JAB's] cross-examination was improper. As put by the Court of Appeal, "Crown Counsel now admits that generally such cross-examination of an accused is improper. For one thing, it violates common law and Charter right to silence, and transforms the usual police caution that the person detained say nothing into a trap. The Court concluded:

"Once again, we have no basis for concluding that this dangerous and untrammelled evidence could make no difference to the verdict. Presumably the trial prosecutor thought that it would help extract a guilty verdict."

This is the type of person the Federal Government has seen fit to appoint to The High Court.

Crown Counsel, must at all times, be a minister of justice, fair, not seek to signal to witnesses the answers she expects. In a trial I had with [JAB], before perhaps one of the most creative compassionate and intelligent judges on any bench, Her Honour [JD], on more than one occasion, it was apparent that [JAB] did not receive from one of her witnesses the answer which she expected. She then repeated the question in a tone of surprise which could only signal to the witness that the evidence of the witness was not what the Crown expected that witness to say. While I cannot remember the exact questions and answers which, to me, [JAB] sought to telegraph to the witness, the answer was not what was expected, it went something like this:

The witness may have said, for example, he or she did not witness the accused with a weapon. As I say, and wish to emphasize, this was not precisely what happened, but it was the type of thing that happened. [JAB], with surprise in her voice said:

"You didn't see the accused with a weapon?"

[JD] picked up on this deplorable tactic and took [JAB] to task for it.

When Counsel are in court, no matter how learned, how experienced or skilled, there are always gaps in our knowledge with even trite law. When that is so, the custom is to make one's submissions with some qualification such as that my understanding of the law is or my submission, subject to correction, et cetera. It is a technique of advising the Court that is Counsel's understanding of the law but it allows the judge to know that is a tentative opinion only.

In a preliminary inquiry which I had with [JAB] before [JM], she quite flatly said that the standard of proof for statements of the accused was on a balance of probabilities. She did not qualify in any way that was her submission. She was flatly wrong. The standard proof of the voluntariness of a statement even at a preliminary inquiry is beyond a reasonable doubt.

These are just five instances which I remember. I feel certain there were

others which I left what I call a sour taste in my mouth.

As I have written elsewhere, the great Anglo-Irish playwright, Brendan Behan, said he did not respect the law. Judges are forever demanding respect for the courts. Of course, we all know that respect is something that is earned. I do not scruple to say that I have no respect for [JAB]. In my view, it is a disgrace that such a one has been appointed to the Honourable Court of Queen's Bench of Alberta.

Yours truly,

M. Naeem Rauf
NMR/ts

Testimony of Mr. Rauf

33. The LSA's only witness was Mr. Rauf, who swore an oath on the Bible.

34. The Letter contains five instances that Mr. Rauf said left a "sour taste" in his mouth and that he reported upon to demonstrate the justification for the Letter. Asked why he did not use the Law Society processes to report his allegations of prior misconduct of [JAB], which under the Code of Conduct he had a duty to do if he then honestly believed that she was guilty of misconduct, Mr. Rauf:

a. said that he was not a "tattletale,"
b. compared the requirements of that Rule in the Code of Conduct to "the mindset of a Stalinist regime where you go around denouncing people,"
c. asserted that there was an obligation on the Dutch family who sheltered Anne Frank to report Jewish people but that family did not do so, and he said that that is to be admired, not deplored, and
d. asserted that, if there had been RCMP officers who had refused to enforce the rules regarding the snatching of children away from their families to send them to residential schools, "we would have been clapping for them," and he made reference to the negative consequences of enforcing a bad law.

After citing those examples, Mr. Rauf said that he thought "it is disgraceful to go around tattling, tattletaling."

35. Mr. Rauf testified further on this point as follows:

> I believe there is a moral obligation not to obey immoral laws. This particular rule, in my view, whether it is passed by Benchers or anyone else is reminiscent of the Stalinist requirement to denounce your neighbour or the Nazi requirement

to turn in Jews. The Dutch family who sheltered Anne Frank's family in breach of laws then in force in Holland are to be admired rather than sanctioned. The requirements set out in Rule 4 place an obligation on lawyers to go around denouncing people. And I refuse to do that. Whatever the consequences to myself, I refuse to obey any law which requires me to go around denouncing colleagues. That kind of rule, in my view, is reflective of a Stalinist mindset.

36. LSA counsel pressed Mr. Rauf on the issue of using the ordinary requirement of the Code of Conduct to report misconduct by other lawyers and put the question this way:

> Q: . . . So I'll just ask for your reflections on the following question. If you were very concerned about this most ethically challenged lawyer, would it not have made sense at the time to report the conduct? If that conduct was proven to be true, it would form part of the Law society discipline history that might be reviewed by the Judicial Committee.
>
> A Hindsight is 20/20. Maybe I should have reported. I didn't because I didn't want to be a tattletale. But let me tell you, I never dreamt – that's why I said I was shocked. Because her reputation in the Bar was so bad with so many people that I didn't think that she would pass muster. That's why I was shocked and appalled. So I didn't - - it didn't occur to me that at some future date she would be applying to become a judge.

37. Asked then for his opinion regarding the Rule in the Code of Conduct about how to express criticism of a judge or how to express oneself civilly, Mr. Rauf said:

> What I do feel is that we should stop being so mealy-mouthed and speak directly. So that when Americans blow up 300 children in Afghanistan and say, well, that was collateral damage instead of saying our drones killed 300 children who witnessed their parents' body parts flying through and - - yes, so it doesn't apply to everything, but I'm free to discuss my - - express myself with vigour rather than in the vacuous prose that fills governments, NGOs, all corporations. And all these emails talk about the nauseating prose.

38. With regard to the criticism in the Letter of the judicial appointment process, Mr. Rauf was asked whether he was aware of how judges are appointed. He answered this way:

> Not really. I don't care. I mean, I'd accept a judgeship, but I'm not going to go suckholing around to get a judicial appointment, so I've never investigated how exactly judges are appointed.

39. As part of his defence, Mr. Rauf spoke of a letter he wrote in which he celebrated the appointment of the new Chief Justice of the Alberta Court of Queen's Bench. After writing that letter, he purported to report himself to the LSA for writing a complimentary letter. When asked whether he saw the difference between his complimentary language there and the derisory language in the Letter, he said that he did. When asked why he sent it to the LSA, he said that he thought there should be an even playing field, by which he meant that, if lawyers are not disciplined for writing complimentary letters, they should not be disciplined for writing critical ones. When pushed as to whether he believed that one should report oneself for writing complimentary letters and under which provision of the Code he was purporting to report himself, Mr. Rauf said: "I don't read your hundreds of pages of codes."

40. Mr. Rauf was asked why he wrote the Letter. He said:

> Because, as I've said - - I hope you've been listening - - that when things - - Lord Denning, when things are - - silence is not an option, Mr. Seidenz, when things are ill done. And let me remind you of what I said in my opening, quoting the Zimbabwean singer/songwriter:
>
> > When I see something wrong, I have to point it out. I can't stand by and look when these things are happening to my people.
>
> So when there's a terrible appointment to the bench, then that is something that's happening to the public.

And later, on the same point:

> I'm saying that silence is not an option. When things are wrong done, I have to say something. So I did. I find it my duty as a lawyer committed to the improvement of the administration of justice. And all those letters, I challenge anybody to have received as many letters as I have from clients: You are a man of God and so on. So I am enhancing the reputation of the legal profession.

41. Mr. Rauf also testified that what he wrote in the Letter was true. He said that, if it was not true, he challenged the judge herself to sue him for defamation. He also asserted that there was a duty on members of the Bar to rise to the defence of judges who are wrongly criticized. Mr. Rauf was asked why the judge would get into the fray with him. He responded by testifying as follows:

> You'd have to ask her. I'm saying that if, what I wrote was the truth. What I wrote was the truth. If it was untrue, there's a difference between defaming somebody - - if somebody defamed me and called me a child molester, certainly, I would sue them. It doesn't matter what the consequence.

42. The following exchange occurred:

> Q. You're asking why - - certainly why the profession might not leap to the defence on this judge. Is it possible that the profession, firstly, doesn't know about it, and secondly, feels that your comments are silly, unwarranted, or mistaken?
>
> A. They could have. And that's what I'm saying. Certainly the profession knew about it, or those who engaged in the courts know about it because it was left, as you said, on the cafeteria table. I gave it to lots of lawyers. It was sent as a Letter to the Editor of the *Edmonton Journal*. So, if somebody wants to write, then I say welcome, write. If you think my comments were silly, unwarranted, or unfair or untrue, then respond to it. And if I'm saying - - challenging your integrity, that's a serious challenge. I respectfully submit to you. And the fact is I'm not saying that she should have sued me. I'm saying that that's one factor to be taken into account as to how accurate and truthful that letter was. Because, of course, if she answered me, my defence would have been the truth.

43. At the conclusion of the LSA questioning of Mr. Rauf, the Chair of the Committee asked Mr. Rauf if he wished to continue testifying and to testify on his own behalf or lead his own evidence. He said: "No. I've said everything I have to say, all the letters and so on."

44. After that, the LSA closed its case, subject to the possibility of reply evidence being called after Mr. Rauf led his character evidence.

45. Mr. Rauf called four witnesses who spoke in glowing terms of Mr. Rauf, as a man and as a lawyer. They each testified about his character, his warmth, his compassion, his faithfulness, and his trustworthiness, and of his dedication. The themes of their testimony were that they thought of him as a man of high integrity and superior legal skills. His witnesses affirmed that his conduct for them as a lawyer had positively improved their view of the law, of lawyers, and of the legal profession. It was said of him that it was rare to find a lawyer who is so personable, so invested, and so kind.

46. None of the four had read the Letter.

47. Mr. Rauf then closed his case.

48. Attached to the Agreed Statement of Facts as Tab 8 of that Exhibit was Mr. Rauf's letter to the LSA in response to notice that the complaint had been made. Among other things, he said:

> Of course, truth is a defence to libel. I stand by every word I wrote in my letter …. If there was a libel in my letter, then I should be sued upon it. I am fully

prepared to justify the truth of what I wrote. I would hate to think that the judiciary or the legal profession would shrink from the truth.

…

My letter was a severe criticism of the appointment of [JAB] to the bench. Frankly, in view of my experiences with her, it sticks in my craw to refer to her as the Honourable [JAB]. My experiences with her caused me to form the view she was anything but honourable in her dealings with me. If the Judges only want to hear praise and not frank and candid opinions, I am sorry for that, but I will not descend to hypocrisy and pretend to respect someone for whom I have no respect.

…

Surely if the Judges are unhappy with my letter to the editor, the proper approach is not to attempt to squelch my freedom of expression by reporting me to my governing body but to refute what I have written by intellectual [even non-intellectual] argument to demonstrate flaws in my views.

…

My firm opinion remains that it is laughable that she should be referred to as "the Honourable." That is my view. I am entitled to hold it. I am entitled to express it.

…

The [JJR] writes "the Court considers this communication to be entirely inappropriate, and in Law Society conduct language, 'conduct unbecoming'." It is noteworthy the [JJR] does not say why it is inappropriate and conduct unbecoming. It is conduct unbecoming to express honest and candid opinions about a public servant? I would respectfully suggest it would be conduct unbecoming not to say anything when one knows of incapacities. Silence is not an option – in the words of Lord Denning – when things are ill done."

…

As it appears to me, there seems to be so much ignorance about the ability to criticise Judges, who are not immune from criticism, I should end by some further statements made by outstanding authorities about the ability of the Bar to express its opinions freely about the bench. If there are terrible Judges or Judges who behave appallingly or Judges who should not be appointed to the bench, why should the public not know?

49. In a letter, dated November 20, 2016, addressed to the LSA and attached as Tab 10 to the Agreed Statement of Facts, Mr. Rauf said, among other things:

> To whom did I distribute my letter? Frankly, I can't exactly remember. I did distribute it to many defence counsel. …
>
> Frankly, I simply do not remember to how many people I provided copies of the letter. It was probably quite a few. When I provided copies to some of my colleagues at the Bar, I requested that they provide it to others as well, since it is a subject of such great importance.
>
> Again, I don't remember whether I provided my letter only to lawyers. Certainly, I provided a copy of my initial letter to lawyers. I feel certain that I would have provided copies of the letter to members of the public as well since it is the public which judges are meant to serve. It is the public which has the right to know the quality of its servants.
>
> Where did I distribute the letter? Generally, I handed it over to my colleagues. It is my practice when I write letters which may be of interest to the Bar and which I view to be important, to leave copies at the cafeteria on one of the tables.

50. In a letter, dated January 25, 2018, which is incomplete and marked draft, but which was signed by Mr. Rauf and sent by Mr. Rauf to the members of the Committee, he said, among other things:

> My position is that [JAB] was not made the subject of unfair comments. She was made the subject of fair comment. It is not unfair to speak the truth about anyone. That is what I did.
>
> I remain utterly astonished that writing or speaking the truth constitutes conduct unbecoming a barrister or solicitor or conduct deserving of sanction.
>
> My comments about [JAB] were not abusive. They were the truth. Why are the powerful so afraid of the truth?

Submissions of the LSA

51. LSA Counsel's submissions were straightforward. In his view, the Committee can, and should, come to the conclusion that Mr. Rauf is guilty on the basis only of the language of the Letter.

52. The LSA did not spend much time on the Letter itself, asserting that much of the LSA's case was admitted, including that Mr. Rauf wrote the Letter, that he intended to write what he wrote, that he intended to publish it, and that he disseminated it publicly.

53. Although much of Mr. Rauf's evidence and a large proportion of his legal submission focused on the legitimacy of criticism by lawyers of judges, the LSA concedes that issue, submitting that it is not in issue. The Code of Conduct expressly permits criticism of the judiciary by lawyers, and the Supreme Court of Canada has also unanimously supported the same principle.

54. The issue, the LSA submits, is not whether Mr. Rauf was entitled to write a critique of the process and of the person, but whether the manner in which he did it, the language, tone, and content of the Letter, all intended by Mr. Rauf, constitute conduct deserving of sanction under s. 49 of the Act.

55. While Mr. Rauf is focused on the right of free speech or free expression, the LSA submits that, for lawyers, there is no untrammeled or unfettered right to free speech. A lawyer's speech is limited in many ways by the requirements of legal ethics and professionalism, and some of them are also specifically limited by the Code of Conduct.

56. In the context of the circumstances here, the LSA submits, the added limitation on the freedom of a lawyer to criticize judges is the known and accepted reality that judges cannot respond and do not respond in their own defence. That reality creates a responsibility on lawyers to ensure that any critique they write is fair, civil, and courteous – that is, that the critique accords with the express language of the Code of Conduct.

57. The Letter was written and disseminated after [JAB] was appointed, but before she was formally sworn in. Consequently, the Letter does not criticize [JAB] in her role as a justice of the Court of Queen's Bench. Rather, it criticizes her, her appointment and the appointment process because of things that Mr. Rauf says occurred while she was a lawyer – some of them 10 or more years prior to her appointment. Therefore, the LSA submits this is a conduct matter that is on the line between improper criticism of a judge and of incivility toward another lawyer. The LSA also submits that that particular content is problematic, for, if true, they would have been matters that the LSA could have dealt with had Mr. Rauf complained about them at the time they occurred.

58. Among other questions regarding the credibility and reliability of Mr. Rauf, LSA counsel said the following in this context:

> Yesterday, I feel like we've seen two versions of Mr. Rauf, a very calm version in speaking with his witnesses, but yesterday Mr. Rauf, I put it to you, was very tenacious, I guess is the word I would use. But some examples from yesterday and the contradictions in Mr. Rauf's opinions, I would just like to point out. Mr. Rauf said that he will not remain silent when things are ill done, yet he remained silent at the time he thought things were being ill done at the time they happened. Thirteen to fifteen years later, he brought them to the attention of the public. Too

late to investigate, too late to learn the truth. Mr. Rauf is a defence lawyer, and I presume that he takes to heart the procedural protections that are afforded to his clients, but he accords no such protections to someone he does not respect.

Mr. Rauf yesterday told the story about a Crown who misrepresented a DNA report but he will not tattletale on that person, but is more than willing to leave a poison pen letter lying around for somebody he does not respect.

Mr. Rauf says he does not see the difference between praising a judge, which is not in the Code, and excessive criticism, which is in the Code, which he said he had not read all of it because there are hundreds of pages.

59. The LSA submits that the Letter is a breach of Rule 4.06(1) and its commentary because Mr. Rauf is a lawyer with 40 years' experience, because he is respected by the Bar, and because, as he himself proved, his clients respect him and believe in him. The consequence of that is that his intemperate criticism in the Letter does the opposite of taking care to ensure that his words do not weaken or destroy public confidence in our judges and courts and in our appointment process.

60. The LSA submits further that the Letter constitutes breach of Rule 6.02(1), it being discourteous, uncivil, abusive, personal, and intemperate, and that the comments risk interference with the orderly administration of justice.

61. The LSA submits that the Letter breached Rule 6.02(6) as it is abusive and offensive and inconsistent with the proper tone of a professional communication from a lawyer.

62. The LSA also submits that the Letter breaches Rule 6.05(1), that it is a communication to the public that goes beyond that which is permissible by a member of the LSA.

63. As to the Letter itself, the LSA says that its language crosses the line into conduct deserving of sanction in three ways: name-calling; denigrating characterization; and personal opinion designed to express lack of respect.

64. The LSA submits that, in twelve places, the Letter breaches the Code and submits, on the basis of those breaches, that Mr. Rauf is guilty of conduct deserving of sanction. The LSA suggests that some of the statements are breaches of the Code of Conduct themselves, but also says that, taken together, and considering the whole of the Letter, there is no doubt that Mr. Rauf is guilty of conduct deserving of sanction.

65. In support of its position, the LSA provided several case authorities, some of which are discussed below.

66. During the LSA submissions, LSA Counsel was asked whether he disagreed with the many quotations presented by Mr. Rauf that are supportive of the position that judges and the judiciary should be subject to criticism. He did not disagree. To the contrary, he agreed with Mr. Rauf, saying:

> Judges should be subject to criticism. It is how you go about doing it. If you do so in a disrespectful manner, you are offside our Code of Conduct. The Code of Conduct is quite clear that lawyers can comment on judges. They need to do it respectfully.

He confirmed that that was the position of the LSA and that it was supported by reference to direct quotations in the commentary to Rule 4.06(1).

Submissions of Mr. Rauf

67. Mr. Rauf also submitted a straightforward position. He submits that lawyers, including him, have the right to criticize the administration of justice so that it can be improved. He asserted that his intention in writing the Letter was to improve the administration of justice by improving the appointment process, and by cautioning the public about what he believed was a disgraceful judicial appointment. In his opening statement, Mr. Rauf advised us that his defence rested on four propositions, which he presented in these words:

> I rest my defence, then, on four propositions. I have the constitutional right, the human right, to freedom of expression.
>
> Two, I have a duty as a lawyer to express my views about the appointment of a public servant.
>
> Three, that I have the right to express myself directly and forcefully and not condescend to the type of mealy-mouthed prose that is so characteristic of our mealy-mouthed age, the fear our writers seem to have of using plain expressions.
>
> Four, that what I wrote was true and accurate. Writing or speaking the truth should never be conduct deserving of sanction, except, perhaps, in the Soviet Union or China or North Korea, those admirable societies we all seek to emulate.

68. Fundamental to Mr. Rauf is that judges should be subject to criticism, that they are public servants, and that they should not fear the truth. He submits that judges should not fear criticism but should be open to it so that they can learn from it.

69. Equally fundamental is his idea that judges are public servants and that the public should be told about the various ways in which the judges, ultimately employed by them, fall below the standards of excellence that they should attain.

70. Mr. Rauf submits that the right to so criticize is also a duty, and he suggests that the Letter was written in answer to the call of his duty to speak truth to power, to point out errors in the administration of justice, in order to improve it. As he said during his opening statement, Mr. Rauf believes that this case "involves the inalienable rights of a human being, the constitutional rights of a Canadian citizen, and the duty of fearlessness and courage of a barrister." Mr. Rauf firmly asserts that what he did in writing and distributing the letter was part of his duty as a member of the LSA.

71. Mr. Rauf's view of his conduct here is that, among other things, he wrote the Letter to avoid being one of those who stands by the bank and watches the river flow by, that he steps into the river and speaks his mind forcefully so as to improve the administration of justice. He was exercising what he calls a right to criticize the administration of justice so that it can be improved, cautioning that we should be wary of the smugness and self-satisfaction which so many people attribute to the legal profession. Mr. Rauf said that he speaks of the duty of a lawyer to do everything in his power to ameliorate the legal profession and the courts, and says: "That duty is not fulfilled by sycophancy – that's one of my favourite words – the sycophantic acceptance of everything that happens in the administration of justice." He told the Committee that he cannot stand by what he views "to be appalling and shocking appointments to the high court."

72. Mr. Rauf asserts that there is nothing that restrains [JAB] from responding, from defending herself, and insists that the answer to allegations of defamation is the truth. Further, he says, where judges truly cannot speak for themselves, it is a tradition of the Bar that lawyers who disagree with unfair criticism of judges or the judiciary have a duty to, and must, rise to defend the judges. While Mr. Rauf often asserted that no one had in any way risen to the defence of [JAB], he eventually agreed that the actual evidence before us was that he did not know of anyone who had so risen.

73. The final, and to Mr. Rauf, most important of his submissions, is that the Letter is the truth. Consequently, he asserts that speaking the truth cannot be a breach of the Code of Conduct and cannot amount to conduct deserving of sanction. Of the truth, in his final submission, he said several things but the key one is this, his belief that:

> Of course, if I express an opinion, -- if I express an opinion, that is what I believe the truth to be. Otherwise, I wouldn't be expressing it.

74. Following a quotation from the *Doré*[1] case discussed below, in which the Supreme Court of Canada said that law societies must be tolerant of "discordant criticism," Mr. Rauf told us that his criticism "was not discordant. It was accurate. It was my experience and I had a right to express it."

75. What he meant by "the truth" came clear during his legal submissions. Mr. Rauf's submission related to the truth is that he may speak as freely and as bluntly as he wishes so long as his speech is not defamatory or abusive. As he told the Committee, for him, it was true if he believed it or if it was his opinion. His opinion or his belief might be corrected, and he might be wrong, but, to him and in his opinion, it was "true," therefore he could say it. It is a notion of the truth that is relative, subjective, "true" to him, whether anyone agrees with him or not.

76. He considers the citation as an attempt by the LSA to "shut him up" and to prevent the public from knowing what he thinks and believes.

77. While admitting that his language was strong and vigorous, Mr. Rauf asserts that it was not abusive, uncivil, or discourteous. He says that the language used expressed the truth, in his experience. His views on [JAB] were conscientiously held, true to him, and he was free to express them because he believes them to be true.

78. Mr. Rauf admitted that he did not, at the time of writing the Letter, have in mind any of the limitations on speech or expression set out in the Code of Conduct. At another point he asserted that he did not think there was anything in the Code of Conduct "that says there's limits on how I can express myself." Mr. Rauf similarly submitted the following:

> It was Lord Denning who said silence was not an option when things are ill done. Certainly, in my view, the appointment of [JAB] to the Court of Queen's Bench was something that was ill done. I did not view silence as an option. I thought I could express myself as freely and bluntly as I want, as long as it's not abusive or defamatory.

79. As to the line-by-line language used by him in the Letter, Mr. Rauf's submissions were the following:

a. Where he expressed shock, he says, "Well, all I can say is that is true. I was shocked."
b. "The second sentence is equally true. When I heard about her appointment, I could not stop wondering whether her appointment was approved by the same brilliant judges of character, not judges of law, who appointed [JRC] …. I did wonder that. Who appointed her? So what if I wondered that?"

[1] *Doré v. Barreau du Québec,* [2012] 1 SCR 395

c. “Three, I did say that rarely have I come across counsel who I found to be more ethically challenged than [JAB] was. Well, that again is true. I have rarely come across - - I didn’t say I never came across - - counsel who I found to be more ethically challenged. So I say that’s true. I do not recall any lawyer with whom I have had contact about whom I would say that, almost every contact that I had with that lawyer left me wondering about his or her ethics. That is also true. I have never met a lawyer who caused me to wonder about his or her ethics as I did about [JAB]. That was a true expression of my experience with [JAB].”
d. “Four, it was almost laughable to me that she would go around being referred to as The Honourable [JAB]. People can refer to her, if they like, to show [respect] for the Court or whatever. Because in my experience, she was anything but Honourable, and that’s the truth. That was my experience I’m writing about.”

80. Following that, an exchange occurred between the Chair of the Committee and Mr. Rauf, during which Mr. Rauf confirmed what he meant by the truth in his submissions and in the Letter:

> THE CHAIR: When you're using the words “the truth" here --
>
> MR. RAUF: Yes.
>
> THE CHAIR: -- you're using it very specifically to reference your own opinion, your own point of view. It's just for you, it's true; therefore, you can say it?
>
> MR. RAUF: Yes.
>
> THE CHAIR: There's nothing more to it than that, is there?
>
> MR. RAUF: Well, there is, in the sense that if I say it's a cloudy day, that's the truth.
>
> THE CHAIR: If I say the Earth is flat and I'm a Flat-Earther, does that make it true?
>
> MR. RAUF: No.
>
> THE CHAIR: No. So what we're talking about is what's true -- that is, the Earth isn't flat -- and what you think is true, as a Flat-Earther, that the Earth is true. What you're telling us is that, for you, every single line of this was true to you.
>
> MR. RAUF: Yes.
>
> THE CHAIR: This is subjective truth.
>
> MR. RAUF: Yes.

81. In summary, the thrust of his evidence was that, while Mr. Rauf did not want to admit that the truth, as he had been discussing it and as he had been proffering it in his defence, was subjective, he did admit that the truth of which he was speaking was

subjective, was the truth according to him, according to his experience, and that it was a truth subjectively held and believed, and about which he was free to express himself. During Mr. Rauf's submissions, as set out in part above, he stated that his opinions and his experiences expressed the truth, in his experience. His views on [JAB] were conscientiously held, true to him, and he was free to express them because he believes them to be true. Mr. Rauf believes, and his defence is, that he is able to express whatever he believes to be true, whatever he has experienced as the truth according to him, and that, therefore, no one, including the LSA by way of its Code of Conduct or otherwise, should be able to limit the expression of his subjectively held beliefs. He permits of contradiction and correction by others of his subjectively held truths, but he claims an absolute and fundamental right to express them without limitation, other than the limitations set by the law of defamation and so long as the language he uses to express his truth is not abusive.

Legal Authorities and Legal Analysis

82. Mr. Rauf provided no case authority in support of his position. Mr. Rauf quoted many statements and opinions, mostly of rather historical origin, from judges, academics, novelists, thinkers, writers, and singers.

83. The LSA provided us with a list of cases, prime among which is the unanimous decision of the Supreme Court of Canada in *Doré v. Barreau du Québec*, [2012] 1 SCR 395. Many of the issues raised by Mr. Rauf before us were dealt with by Madam Justice Abella writing for a unanimous Court in that matter. The decision is persuasive, and the principles underlying it are binding on us. Therefore, it is worth exploring the *Doré* decision in some detail.

84. Mr. Doré appeared before a judge of the Superior Court of Quebec on behalf of a client. In the course of his argument, the judge criticized him. In his written reasons rejecting Mr. Doré's application, the judge levied further criticism, accusing him of using bombastic rhetoric and hyperbole, of engaging in idle quibbling, of being impudent and of doing nothing to help his client discharge his burden. Mr. Doré then wrote what he called a private letter, asserting as does Mr. Rauf here, that the letter was not written in his professional capacity but in a purely personal one. The Assistant Syndic of the *Barreau du Québec* filed a complaint against Mr. Doré based on that letter, alleging that he had violated art. 2.03 of the Code of ethics of advocates, which states that the conduct of advocates "must bear the stamp of objectivity, moderation, and dignity."

85. In *Doré*, the Supreme Court of Canada stated that a proper and complete analysis of the propriety of Mr. Doré's letter could not be done by summarizing some of the language it contains. They quoted and analyzed the whole of the letter there, as we have done. The issue as to whether such a letter constitutes conduct deserving of sanction requires

that an administrative tribunal, and this Committee, look at both the letter as a whole and its constituent parts. We have not set out the entirety of Mr. Doré's letter here. It is available in the reported version of the decision.

86. The Supreme Court stated at paragraph 17, the Disciplinary Council of the Barreau rejected Mr. Doré's argument that art. 2.03 violated s. 2(b) of the Charter. Justice Abella said, that, while acknowledging that the provision infringed on freedom of expression, the Disciplinary Council found that this is a limitation on freedom of expression that is entirely reasonable, even necessary, in the Canadian legal system, where lawyers and judges must work together in the interest of justice. In further summary of the decision of the Disciplinary Council, she said, in paragraph 17:

> Moreover, it concluded that Mr. Doré had willingly joined a profession that was subject to rules of discipline that he knew would limit his freedom of expression. While the rules may [TRANSLATION] "be seen as restrictions imposed on the members of the Barreau in comparison to the freedom that may be enjoyed by other Canadian citizens", they are made in exchange for "the privileges conferred on lawyers as members of an 'exclusive profession'" (paras. 109-10). On July 24, 2006, based on what it found to be the seriousness of Mr. Doré's conduct and on his failure to show remorse, the same panel suspended Mr. Doré's ability to practise law for 21 days (2006 CanLII 53436).

87. Mr. Rauf makes the same submissions before us as did Mr. Doré, that the Code of Conduct improperly restricts his freedom of speech and that, in using it to accuse him of conduct deserving of sanction the LSA improperly restrains his freedom of expression. He said that the LSA was using the Code of Conduct and the citation to "shut him up" and to prevent the public from knowing the truth about [JAB].

88. On the constitutional issue before it, the Supreme Court of Canada found that there is nothing in the administrative law approach that is inherently inconsistent with the strong protection of the Charter's guarantees and values. An administrative law approach recognizes that administrative decision-makers are both bound by fundamental values and empowered to adjudicate them, and that administrative discretion is exercised in light of constitutional guarantees and the values they reflect. An administrative decision-maker exercising a discretionary power under his or her home statute, has, by virtue of expertise and specialization, particular familiarity with the competing considerations at play in weighing Charter values and will generally be in the best position to consider the impact of the relevant Charter guarantee on the specific facts of the case. Under a robust conception of administrative law, discretion is exercised in light of constitutional guarantees and the values they reflect.

89. We take the Supreme Court's words as our direction and as authority for us to apply our expertise in the manner described in that case to the facts of the case before us involving Mr. Rauf. We recognize the extreme importance of the role and of its potential difficulty. We spent much time considering the matter before us in light of the words used in *Doré,* including all of what the Court said in its application of the law to the case before it, set out at paragraphs 59 to 72 of that decision.

90. The Supreme Court of Canada provided a detailed analysis as to how to understand the limits on freedom of expression in the context of a lawyer's professional duties. It had reference to specific rules in the code of conduct applicable in *Québec*. Here, we are dealing with similar rules. Of those, the Supreme Court of Canada said that they set out a series of broad standards that are open to a wide range of interpretations and that the determination of whether the actions of a lawyer violate art. 2.03 in a given case are left entirely to the Disciplinary Council's discretion.

91. In *Doré*, the Supreme Court of Canada said, in paragraph 61, that no party in that dispute challenged either the importance of professional discipline to prevent incivility in the legal profession, namely "potent displays of disrespect for the participants in the justice system, beyond mere rudeness or discourtesy", or that the duty to encourage civility, "both inside and outside the courtroom", rests with the courts and with lawyers. Before us, Mr. Rauf challenged both, his position being that the LSA could not restrict his ability to state what he called the truth, and he believed that his letter-writing, even on his own legal letterhead, was a personal matter not subject to regulation by the LSA. While pursuing his habit or hobby of writing letters to the editor of newspapers, Mr. Rauf believes that he is essentially exempt from any limitations in the Code of Conduct.

92. The Supreme Court of Canada, while analyzing the conduct provision specific to Québec, recognized in paragraph 62 that the Québec provisions have national application to all lawyers in Canada, by way of the various codes of conduct in force in each province and territory. They specifically cited the code of conduct of the Canadian Bar Association, and a provision that is very similar to Rule 4.06(1) and Rule 6.02(1) of the Code of Conduct, both of which form part of the citation against Mr. Rauf.

93. As to the application of such provisions to particular instances of lawyer conduct, Justice Abella clearly cautioned disciplinary bodies such as the Committee here (at para 63):

> But in dealing with the appropriate boundaries of civility, the severity of the conduct must be interpreted in light of the expressive rights guaranteed by the Charter, and, in particular, the public benefit in **ensuring the right of lawyers to express themselves about the justice system in general and judges in particular** (MacKenzie, at p. 26-1; *R*. v. *Kopyto* (1987), 1987 CanLII 176 (ON CA), 62 O.R. (2d) 449 (C.A.); and *Attorney-General* v. *Times Newspapers Ltd*., [1974] A.C. 273 (H.L.)). [emphasis added]

94. It cannot be clearer that, in Canada, lawyers have a right to express themselves about the justice system in general and about judges in particular. There is no doubt of that at all. Mr. Rauf spent much time trying to persuade us of the existence of this right; he need not have. In terms of the appropriate functioning of the legal system and the administration of justice, such a right is undisputed, unquestioned, and the LSA supports that right.

95. In Alberta, Rule 4.06(1) of the Code of Conduct expressly recognizes the right discussed by the Supreme Court of Canada.

96. The Supreme Court of Canada, in paragraph 68, Justice Abella stated that lawyers "not only have a right to speak their minds freely, they arguably have a duty to do so". However, Justice Abella states that lawyers are constrained by more than the law of defamation, saying that "they are constrained by their profession to [express their minds] with dignified restraint."

97. The Supreme Court of Canada adopted the statement of the Manitoba Court of Appeal, strongly supporting the right of lawyers to express themselves with the goal of ensuring accountability among Canada's judges. At paragraph 64, Justice Abella said:

> In *Histed v. Law Society of Manitoba*, 2007 MBCA 150 (CanLII), 225 Man. R. (2d) 74, where Steel J.A. upheld a disciplinary decision resulting from a lawyer's criticism of a judge, the critical role played by lawyers in assuring the accountability of the judiciary was acknowledged:
>
> > Not only should the judiciary be accountable and open to criticism, but lawyers play a very unique role in ensuring that accountability. As professionals with special expertise and officers of the court, lawyers are under a special responsibility to exercise fearlessness in front of the courts. They must advance their cases courageously, and this may result in criticism of proceedings before or decisions by the judiciary. <u>The lawyer, as an intimate part of the legal system, plays a pivotal role in ensuring the accountability and transparency of the judiciary. To play that role effectively, he/she must feel free to act and speak without inhibition and with courage when the circumstances demand it.</u> [emphasis added by Justice Abella]

98. Justice Abella then cautioned law societies against being overly protective of courts and judges, saying that "Proper respect for these expressive rights may involve disciplinary bodies tolerating a degree of discordant criticism." LSA Counsel before us also cited the *Histed* case. Similarly, LSA Counsel cited the *Kopyto* case, and Justice Abella gave it particular mention, saying in paragraph 65:

> . . . As the Ontario Court of Appeal observed in a different context in *Kopyto*, the fact that a lawyer is criticizing a judge, a tenured and independent participant in the justice system, may raise, not lower, the threshold for limiting a lawyer's

> expressive rights under the Charter. This does not by any means argue for an unlimited right on the part of lawyers to breach the legitimate public expectation that they will behave with civility.

99. Unlike Mr. Rauf, therefore, the Supreme Court of Canada also firmly states that a lawyer's right to criticize judges is limited, not only by the law of defamation and the limits of abuse as Mr. Rauf would have it, but by the legitimate public expectation that lawyers will behave with civility. Justice Abella emphasizes the importance of this restriction when she advises disciplinary bodies to demonstrate that they have done the following (at para. 66):

> We are, in other words, balancing the fundamental importance of open, and even forceful, criticism of our public institutions with the need to ensure civility in the profession. Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer's right to expression and the public's interest in open discussion. As with all disciplinary decisions, this balancing is a fact-dependent and discretionary exercise.

100. The final conclusions of the Supreme Court of Canada are worth quoting in full as they apply equally here. From paragraphs 68 to 71, Justice Abella said:

> Lawyers potentially face criticisms and pressures on a daily basis. They are expected by the public, on whose behalf they serve, to endure them with civility and dignity. This is not always easy where the lawyer feels he or she has been unfairly provoked, as in this case. But it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility. On the other hand, lawyers should not be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint.
>
> A reprimand for a lawyer does not automatically flow from criticizing a judge or the judicial system. As discussed, such criticism, even when it is expressed robustly, can be constructive. However in the context of disciplinary hearings, such criticism will be measured against the public's reasonable expectations of a lawyer's professionalism. As the Disciplinary Council found, Mr. Doré's letter was outside those expectations. His displeasure with Justice Boilard was justifiable, but the extent of the response was not.
>
> The Disciplinary Council recognized that a lawyer must have [TRANSLATION] "total liberty and independence in the defence of a client's rights", and "has the right to respond to criticism or remarks addressed to him by a judge", a right which the Council recognized "can suffer no restrictions when it is a question of defending clients' rights before the courts" (paras. 68-70). It was also "conscious" of the fact that art. 2.03 may constitute a restriction on a lawyer's expressive rights (para. 79). But where, as here, the judge was called [TRANSLATION] "loathsome",

arrogant and "fundamentally unjust" and was accused by Mr. Doré of "hid[ing] behind [his] status like a coward"; having a "chronic inability to master any social skills"; being "pedantic, aggressive and petty in [his] daily life"; having "obliterate[d] any humanity from [his] judicial position"; having "non-existent listening skills"; having a "propensity to use [his] court — where [he] lack[s] the courage to hear opinions contrary to [his] own — to launch ugly, vulgar, and mean personal attacks", which "not only confirms that [he is] as loathsome as suspected, but also casts shame on [him] as a judge"; and being "[un]able to face [his] detractors without hiding behind [his] judicial position", the Council concluded that the [TRANSLATION] "generally accepted norms of moderation and dignity" were "overstepped" (para. 86).

In the circumstances, the Disciplinary Council found that Mr. Doré's letter warranted a reprimand. In light of the excessive degree of vituperation in the letter's context and tone, this conclusion cannot be said to represent an unreasonable balance of Mr. Doré's expressive rights with the statutory objectives.

101. The LSA also provided us with a relevant excerpt from the second edition of *Canadian Civil Procedure Law.*[2] The authors of that text are clear that "the judiciary enjoy no immunity from public criticism, any more than any elected office holder" (at 163, para 2.138). However, they provide the following proviso in paragraph 2.139:

> 2.139 Nevertheless, there are limits. Any criticism about the judicial system of the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings the administration of justice to ridicule constitutes contempt of court. The reason why such a sanction exists is that faith in the administration of justice is a vital pillar on which democratic institutions are based. Criticism of the judicial system of judges is not subject to such censure so long as it does not impair or hamper the administration of justice. In R. v. Almon, Wilmot J. stated that:
>
> > '… attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations, and whenever men's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people.'

102. Mr. Rauf spoke frequently about his right to freedom of expression and asserted that that right protected him from being found guilty of conduct deserving of sanction on the

[2] Abrams, L. and McGuinness, K.P. [LexisNexis Inc. 2010: Markham]

citation here. The Manitoba Court of Appeal, in *Histed*, spoke directly to that issue, stating at paragraph 60 that:

> There have been a number of cases which have confirmed the importance of the objectives being considered here. Those cases have confirmed that the legislation and codes of professional conduct are directed toward two important objectives, namely, the protection of the administration of justice and the protection of the public. Those objectives have been found to be sufficiently pressing to warrant infringing freedom of expression.

Those are the very objectives to which the provisions from the Code of Conduct, as listed in the particularized citation, are directed. They expressly limit freedom of expression by members of the LSA.

We consider that that is an issue that has been decided and by which we are bound. We must therefore recognize, as stated in *Doré*, that the conduct we are discussing forms part of what is only a permitted exception to the right of freedom of expression such that we must tread carefully. And we do.

103. The Court in *Histed* cited with approval the following statement that was sourced in a decision of the United States Supreme Court, *In re Sawyer*, 79 S.Ct. 1376 at 1388 (1959):

> If, as suggested by my Brother Frankfurter, there runs through the principal opinion an intimation that a lawyer can invoke the constitutional right of free speech to immunize himself from even-handed discipline for proven unethical conduct, it is an intimation in which I do not join. A lawyer belongs to a profession with inherited standards of propriety and honour, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.
>
> Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected free speech.

104. Mr. Rauf often asserted throughout the Hearing and in his submissions that his constitutional right to free speech immunized him from discipline by the LSA. It is clear to us that Mr. Rauf is not so immune, but must comply with the Code of Conduct. All members of the LSA are bound to comply with the ethical standards set in the Code of Conduct, even if, and perhaps particularly when (as suggested in *Doré),* what appear to be fundamental rights appear to be infringed. What is called for is the application of judgment, professional, ethical judgment and wisdom. In insisting on fundamental rights

no matter what, Mr. Rauf fails in his duty as a member of the LSA, fails the public, fails the judiciary, and fails the administration of justice.

105. The Court in *Histed* confirmed the principle that Mr. Rauf supports – the right to criticize the judiciary – but also strongly insisted on the corollary principle that Mr. Rauf essentially rejects, that such criticism be tempered by civility and respect. Mr. Rauf often spoke contemptuously of notions of civility and respect as being examples of what he calls "boot-licking." He said, in his brief regarding the admissibility of character evidence, for example:

> It is, of course, easy to lick the boots of those who have something in their power to bestow upon one. It is regrettable that so eminent a Counsel as [CPH] should think that Counsel must descend to "extravagances of boot licking" to preserve the good will of the tribunal.

106. The Court in *Histed* said (at para. 75):

> The judiciary should be open to criticism, but to operate effectively, the legal system must operate with some degree of civility and respect. Criticism must be within certain parameters. Lawyers are required by the *Code* to avoid the use of abusive or offensive statements, irresponsible allegations of partiality, criticisms that are petty or intemperate and communications that are abusive, offensive or inconsistent with the proper tone of a professional communication.

The Court does not qualify that statement of principle with an exemption or exception for opinions, beliefs, feelings, or statements that the writer considers, from his or her experience, to be true. Even objectively true statements must be made to fit within the principle outlined above.

107. As discussed above, Mr. Rauf holds certain matters to be subjectively true, and those matters were fully set out and detailed by him in his defence. The Committee finds that those matters provide no defence to the citation. Mr. Rauf has a right to express himself. He has a right to express criticism of the administration of justice, of the judicial appointment process, and of [JAB] herself, personally or professionally, but, if he chooses to do so, he must do so having regard to the limits imposed by the Code of Conduct and to the limits imposed by the statements made by the Courts cited above, the most succinct of which is the one quoted immediately above by the Manitoba Court of Appeal in *Histed*.

108. The Court in *Histed* is very clear that, in that case, fundamental freedoms would have protected Mr. Histed if he were not a member of a law society. At paragraph 79, that Court said:

> While litigants and other interested persons may comment publicly on cases before the courts and may criticize judicial decisions in terms which some might consider offensive, lawyers are bound by the constraints of the professional standards which apply to all members of the legal profession. Similar to Mr. Ross in the case of *Ross*, who was free to exercise his fundamental freedoms in a manner unrestricted by the order, but only upon leaving his teaching position, if Histed wishes to have that same unfettered right to criticize the administration of justice, he may do so, but not while a member of the Law Society.

The Committee agrees with that and considers that it applies equally to Mr. Rauf.

109. The citation faced by Mr. Rauf is that in criticizing an appointment to the Court, his comments breached the Code of Conduct and, in particular, Rules 4.06(1), 6.02(1), 6.02(6) and 6.05(1). The "comments" referred to in the citation are the comments contained in the Letter. The judicial appointment criticized by him was that of [JAB].

110. Rule 4.06(1) supports the statements from the case authorities discussed above with regard both to the legitimacy of criticism of the judiciary and to the notions of civility and respect that delimit such criticism. That Rule is as follows:

> Encouraging Respect for the Administration of Justice
>
> 4.06(1) A Lawyer must encourage public respect for and try to improve the administration of justice.

111. Mr. Rauf argued that the Letter is not captured by that Rule because his letter-writing is a hobby that he undertakes on his own time and in his personal capacity. The first line of the Commentary, which is determinative regarding that argument, says:

> The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen.

Mr. Rauf's letter is written on his professional letterhead, showing his professional address. As authority for his opinions, he outlines for his readers the scope of his 40 years' experience as a lawyer. Lawyers bear the privileges of their office and benefit from those while acting in their professional and in their personal capacities. The obligations that run with the benefits of their professional status require that, at all times, lawyers conduct themselves with the probity and dignity of a member of the Law Society, that they treat others with civility and respect.

112. As the Commentary says, "the mere fact of being a lawyer" lends weight and credibility to public statements. It is for that very reason that the commentary states that lawyers should not hesitate to speak out against injustice. To use Mr. Rauf's words, quoting Lord Denning, a lawyer should not hesitate to speak out when something is "ill done." Similarly, and for similar reasons, the Commentary states that proceedings and decisions of courts and tribunals are "properly subject to scrutiny and criticism by all members of the public, including lawyers." It goes further, stating that "a lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions, and public authorities." Consequently, the Commentary encourages lawyers "to lead in seeking improvements in the legal system."

113. However, the Commentary, and therefore the Rule, impose the limitations and restraints succinctly set out in paragraph 75 of *Histed*, quoted above. The Commentary states that "a lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations."

114. To this, Mr. Rauf's response in argument appeared to be that he was merely a Legal Aid lawyer. He used the term "downwardly mobile Legal Aid lawyer." By this he was trying to persuade the Committee that his opinions did not matter, that they had no public influence, and therefore that they could not be seen or understood to "weaken or destroy public confidence in legal institutions or authorities." We are not persuaded by that suggestion. His attempts to diminish the potency of his influence were not credible. We are unanimously of the view that Mr. Rauf, in his writing and his letters to the editor, intends to influence public opinion and that he does so, at least for that group of people who respect and admire him, and they seem to us to be many based upon the evidence tendered.

115. None of the authorities cited by either Mr. Rauf or by the LSA require that the lawyer speaking inappropriately have a national voice and the ability to cause harm nationally. The idea behind applying these limitations on criticism to each and every lawyer is to ensure that all those within the sphere of influence of each and every lawyer hear or receive only criticisms that are not irresponsible, that are *bona fide*, that are reasoned, and that are not petty or intemperate, among other descriptors contained in the Commentary and the case law. The expectation of the Rule itself is that each lawyer will responsibly use his or her influence and position as a lawyer not to discourage public respect for the administration of justice, but will use that influence to encourage respect. The obligation to so encourage public respect is a positive obligation of membership in the LSA.

116. Mr. Rauf testified and submitted about the importance of this case, of the importance of freedom of speech, freedom of expression. He quoted from legal and literary luminaries

to support what he considered to be fundamental rights that were being trampled upon by the LSA. As has been said above, those rights and principles are of the utmost importance, but they are not what this hearing is about. It was recognized from the very beginning of the hearing that lawyers are free to criticize the judiciary. It is recognized that Mr. Rauf is free to criticize [JAB]. What is at issue is not whether he can criticize her Ladyship, or others, but whether he can do so in the manner he did.

117. The Letter does not engage those higher principles cited by Mr. Rauf. It does not say anything of importance at all, instead, it only demonstrates that Mr. Rauf had a severe dislike for one of his colleagues at the Bar and felt the urge to lash out at her, at her appointment, and at those who appointed her.

118. The Letter criticizes the judicial appointment process, but Mr. Rauf admitted that he is unfamiliar with the process. As quoted above, when asked whether he was aware of how judges are appointed, Mr. Rauf said:

> Not really. I don't care. I mean, I'd accept a judgeship, but I'm not going to go suckholing around to get a judicial appointment, so I've never investigated how exactly judges are appointed.

"Suckholing": he has written it for LSA officials to read, and he used it in front the Committee. The word is a kind of slang intended to express derision in language that is painfully close to language that is generally not permitted to be used by members of the Bar before tribunals. In the Committee's assessment, his intention in using such profane and vulgar slang cannot be other than to undermine the administration of justice by pejoratively ridiculing the appointment process.

119. Such criticism can in no way be said to be encouraging public respect for the administration of justice. It can only undermine such respect. No thoughtful lawyer considering his or her obligations under the Code of Conduct could ever consider it justified to so criticize the judicial appointment process while knowing, as Mr. Rauf admitted, that he knew nothing at all of the process. Mr. Rauf intentionally connected the recent headlines concerning [JRC's] appointments with the appointment of [JAB], appearing to give them some kind of equivalence, and he lashed out. The entire first paragraph of the Letter, which sets the tone for the remainder, is entirely unacceptable from a member of the LSA. That paragraph alone is sufficient for us to find that Mr. Rauf is guilty of conduct deserving of sanction.

120. Mr. Rauf justifies those statements by saying that he truly believed what he was saying, that those statements are the expression of his true beliefs. Such highly critical commentary, intended to be published, and eventually distributed to the public, cannot

be justified by one's own personal feelings, particularly when, to the author's knowledge, the opinions are grounded in ignorance of the judicial appointment process.

121. The Committee notes that Mr. Rauf's language in the course of both his testimony and his submissions was equally intemperate in many ways. For example, in describing aspects of the Code of Conduct, he employed terms such as "Stalinist," "vacuous," "mealy-mouthed," and "sycophantic." The intemperate language employed by him at those moments demonstrated contempt.

122. Of his use of the word "shocked" in the first paragraph, Mr. Rauf submitted no more than this: "Well, all I can say is that is true. I was shocked." Throughout his letters to the LSA, during his testimony, and in his submissions, Mr. Rauf spoke to the Committee of the defence of "the truth," that there can be no criticism of "the truth," that those in power should not so fear "the truth." What he meant was that he was doing nothing but telling the public how he felt. He felt shock, he says. Having felt shock, silence was not an option for him. Mr. Rauf told the public of his feelings.

123. Here, it is worth repeating what Justice Abella said in *Doré* (at para. 68):

> Lawyers potentially face criticisms and pressures on a daily basis. They are expected by the public, on whose behalf they serve, to endure them with civility and dignity. This is not always easy where the lawyer feels he or she has been unfairly provoked, as in this case. But it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility. On the other hand, lawyers should not be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint.

In expressing his personal feelings in the manner that he did in the first paragraph of the Letter, Mr. Rauf failed entirely to heed the words of Justice Abella and breached the Code of Conduct. The expression of his feelings in the Letter is undignified and demonstrates incivility.

124. As to the second sentence of the Letter, Mr. Rauf submitted that it was true that he wondered what he says there. His defence is not that there is some justification based upon advancing the administration of justice. Instead, his defence comes to only this: "The second sentence is equally true. When I heard about her appointment, I could not help wondering …. I did wonder that." Then he asks, without answering, "Who appointed her? So what if I wondered that?"

125. While Mr. Rauf rhetorically raised these queries during his legal argument in his own defence, the Committee believes that there are a significant number of people who respect Mr. Rauf sufficiently to care about the highly pejorative way in which he expressed his wondering. The Committee concludes that he expressed his wondering in that pejorative way precisely so that he would produce an emotional reaction among those who agree with his opinions, so that his words would have a negative effect, and so that his audience would take away from his statements an equal disdain and disrespect for [JAB], for the appointment process and for the administration of justice.

126. A similar analysis applies to the next portion of the Letter. In it, Mr. Rauf creates authority for his personal opinion of [JAB] by lauding his long experience as a member of three law societies. In the Letter, he does not advise his readers that he is no more than a "downwardly mobile Legal Aid lawyer." He speaks expressly of his membership in these various law societies. In so doing, Mr. Rauf imports into his own writing the very expectations that the LSA intends the public to have of lawyers as set out in the Code of Conduct and the case authorities, and as written about by many of the illustrious authors Mr. Rauf himself frequently quoted before us. The Committee finds that those words are intended to impress the reader, and they are intended to cause the reader to accept and to share his opinion.

127. Mr. Rauf states in the Letter that he had "rarely, if ever" "come across Counsel who I found to be more ethically challenged than [JAB]." To justify these comments, Mr. Rauf stated during his submissions, "that again is true…. That was a true expression of my experience with [JAB]." Essentially, Mr. Rauf had a handful of experiences with her, some more than 10 years prior to the Hearing, he formed an opinion, and, came to the conclusion for himself that silence was not an option. In doing so, the Committee finds, Mr. Rauf used pejorative language that could only have been intended to undermine public faith in [JAB] and thereby to undermine public faith in the administration of justice. Mr. Rauf breached the Code of Conduct.

128. The remainder of that paragraph is written in the same style, with language chosen expressly and intentionally to cause his audience to agree with him that there was something almost laughable about [JAB's] title as the Honourable Madam Justice, to believe that she was "anything but honourable," and that they, like him, would be left with a "sour taste" after they had any experience with her.

129. Mr. Rauf asserted that his intention in writing the Letter was to advance the administration of justice and to improve the appointment process. The Committee does not believe that he had any such intention. We find that the prime purpose of the Letter was to undermine the reputation of [JAB] and the appointment process. The Committee finds that the language used in the Letter amounts to personal attacks which undermine rather than advance public respect for the administration of justice.

130. We have therefore concluded that Mr. Rauf breached Rule 4.06(1).

131. For similar reasons, we are of the view that Mr. Rauf breached Rule 6.02(1). Mr. Rauf's choice of language and his decision to express long-held personal opinions and disdain for [JAB] in the Letter demonstrate discourtesy and incivility that are unacceptable. We do not believe that the Letter was written in good faith. We believe, and we find, that it was written in bad faith, that Mr. Rauf's purpose was to harm [JAB], to use the influence he had, which he knew to be quite extensive, to undermine her and her reputation. In our view, and in particular considering our finding that Mr. Rauf intended to harm [JAB] and her reputation, Mr. Rauf has crossed the lines described above in the case law and authorities. His conduct is misconduct, deserving of sanction.

132. While the Committee does not have the power to cite Mr. Rauf in contempt, we do nonetheless find that his statements were contemptuous and were intended to ridicule [JAB].

133. For similar reasons, we find that Mr. Rauf has also breached Rule 6.02(6), as his public communication expressing his personal disdain for [JAB] is abusive, offensive, and inconsistent with the proper tone of a professional communication from a lawyer. Being nothing more than Mr. Rauf's personal opinions, however held, they are not true. They are opinions. His intention appears to have been to sway public opinion with his personal opinions, and to persuade his audience – intended by him at the time of writing the Letter to be all readers of the *Edmonton Journal* – that his opinions of this particular judge were correct, true, and valuable. Mr. Rauf wanted people to hear his opinions, to believe them. In writing, publishing and disseminating those opinions, Mr. Rauf abused his position as a member of the LSA, and he abused [JAB].

134. Finally, the Committee finds that Mr. Rauf's decision to disseminate the Letter, particularly in light of the decision of the Letters Editor of the *Edmonton Journal* not to publish the Letter, is a breach of Rule 6.05(1). Having much experience with publication of his many, many letters, a large number of which were exhibited and read by the Committee, Mr. Rauf has personal knowledge of the power of the press and of the power of publication of letters filled with opinions such as the Letter. Mr. Rauf, we find, believed that a letter written in the fashion of this one, expressing personal opinions of disdain purporting to be the authoritative product of long legal and ethical experience, was the very type of letter that would be published in the ordinary course by the *Edmonton Journal*. In writing the Letter with that belief and with the intention that it be published and broadly disseminated among lawyers and members of the public, Mr. Rauf infringed his obligations to the profession, the courts, and the administration of justice.

135. For all of the above reasons, we find Mr. Rauf guilty of the particularized citation set out above. The Committee is unanimous in its conclusion that, in writing, publishing, and disseminating the Letter, Mr. Rauf is guilty of conduct deserving of sanction in accordance with s. 49 of the Act.

136. We shall move now to the sanctioning phase.

Dated at Calgary and Edmonton, Alberta, May 31, 2018 by:

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W. E. Brett Code, Q.C.

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Catherine A. Workun, Q.C.

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Dr. John S.J. Bradley