LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A SECTION 116 REINSTATEMENT APPLICATION

BY ROBIN BRIAN CAMP

A FORMER MEMBER OF THE LAW SOCIETY OF ALBERTA

Practice Review Committee

Calvin Johnson, QC – Chair
Tamela Coates – Panel Member
Glen Buick – Lay Bencher

Appearances

Alain Hepner, QC – Counsel for Mr. Camp
Karen Hansen – Counsel for the Law Society of Alberta (LSA)

Hearing Date

November 14, 2017
Last day of written submissions - February 26, 2018

Location

LSA offices**,** at 500, 919 – 11th Avenue SW, Calgary, Alberta

PRACTICE REVIEW COMMITTEE DECISION

Overview

1. Mr. Robin Camp is a former judge who has applied for reinstatement to the Law Society of Alberta (the LSA) pursuant to Rule 116 of the *Rules of the Law Society of Alberta* (the Rules).

2. Mr. Camp resigned as a member of the LSA to accept an appointment to the Provincial Court, Criminal Division, in March 2012. In 2015, Mr. Camp was appointed to the Federal Court of Canada. He resigned as a Federal Court Judge in March 2017 after the

Canadian Judicial Council (CJC) found that he was guilty of judicial misconduct and recommended to Parliament that he be removed from office. The CJC's recommendation to remove Mr. Camp from office resulted from comments made by Mr. Camp during the 2014 *R*. v. *Wagar* trial, over which he presided while a Provincial Court judge in Alberta.

3. Rules 116-118 deal with applications for reinstatement of retired judges and former members.

4. Pursuant to Rule 118(1)(c), the Executive Director of the Law Society may refer an application for reinstatement made under Rule 116 to the Practice Review Committee (Committee) and did so in this case.

5. Pursuant to Rule 118(2)(b), the Committee, upon concluding its review of the matter, may:
   a) approve the applicant's reinstatement,
   b) object to the reinstatement, or
   c) approve the reinstatement subject to any conditions or requirements allowed to be imposed under other provisions of Rule 118.

6. The decision of the Committee is subject to a right of appeal to the Benchers (Rule 118(9)).

7. In addition, Rule 117(b) provides that where a former judge is reinstated, it is a condition of the reinstatement that the member must not appear in chambers or in any court in Alberta as a barrister and solicitor without first obtaining the approval of the Benchers.

8. On November 14, 2017, the Committee convened at the Calgary office of the LSA to hear Mr. Camp's application.

9. After considering the evidence and written submissions, and for the reasons set out below, the Committee has determined that Mr. Camp should be readmitted to the Law Society of Alberta, subject to a condition to engage with the Practice Management Department prior to practicing law, as further detailed below.

Preliminary Matters

10. Mr. Hepner, counsel for Mr. Camp, and Ms. Hansen, counsel for the LSA, confirmed that there were no objections to the constitution of the Committee and to its jurisdiction. There being no objections, a hearing proceeded. The hearing was held in public, as agreed between the parties.

11. In support of his application, Mr. Camp called five witnesses and gave evidence himself before the Committee.

12. A book of Agreed Exhibits was also admitted into the record. It included the Report and Recommendation of the CJC Inquiry Committee (Inquiry Committee) to the CJC, the Report of the CJC to the Minister of Justice (including dissent), and transcripts of the testimony before the Inquiry Committee of Madam Justice [DM] , Professor [BC] , and Dr. [LH] . None of the other testimony before the Inquiry Committee (including the testimony of Mr. Camp) was put before this reinstatement Committee.

13. The LSA took a neutral position on the reinstatement application, neither opposing nor supporting it. It did not call witnesses and did not cross-examine any of the witnesses or Mr. Camp.

14. As had been agreed to at the outset between the parties and allowed by the Committee, the hearing was adjourned to allow for argument from Mr. Hepner and counsel for the LSA in writing following the conclusion of the evidence and oral argument. The Committee also asked them to address the relevance and weight to be afforded to that portion of the testimony from the CJC Inquiry which was before the Committee, the report of the Inquiry Committee, and the report of the CJC.

15. Following receipt of submissions from the parties, by letter of January 16, 2018 the Committee asked for further written submissions on matters arising therefrom. In particular, the Committee asked for additional submissions related to the issue of rehabilitation. Further written submissions were provided by Mr. Hepner and counsel for the LSA in that regard.

Submissions of the Parties

The LSA

16. Counsel for the LSA provided submissions on the applicable law and tests to apply. The LSA submitted that the burden of proof on this reinstatement application lies with Mr. Camp (*LSUC* v*. Evans*, 2008 CanLII 34276, paras 46 – 48) and that the standard of proof is the balance of probabilities (*Moll* v. *College of Alberta Psychologists*, 2011 ABCA 110, para 22).

17. The LSA stated that neither the Rules nor the *Legal Profession Act,* RSA 2000, c L-8 (the Act) set out the factors that must necessarily be considered by the Committee in this application. It described this as a matter of discretion and balancing. The Committee's ultimate task was to balance the interests of Mr. Camp to a fair, transparent proceeding, a reasonable decision, the need to earn a living, and his unblemished record with the LSA, with the public's interest, which public included victims of sexual assault and of women's rights groups, and the reputation of the legal profession in the public's eye.

18. The LSA submitted that the Committee should be guided by the LSA's mandate to govern the profession in the interests of the public as dictated by sections 40 and 49 of the Act.

19. Subsection 40(2) of the Act speaks to the criteria for enrollment of a student-at-law in the Law Society, one of which is the requirement that the person prove to the Executive Director's satisfaction that the person "is of good character and reputation."

20. Section 49 of the Act speaks to conduct deserving of sanction:

> 49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
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> (a) is incompatible with the best interests of the public or of the members of the Society, or
>
> (b) tends to harm the standing of the legal profession generally,
>
> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

21. Accordingly, the LSA submitted that in considering this application for reinstatement, the Committee should consider whether Mr. Camp "is of good character and reputation" and whether the readmission of Mr. Camp would be "incompatible with the best interests of the public or of the members of the Society" or would "harm the standing of the legal profession generally."

22. The LSA indicated that it took no issue with Mr. Camp's integrity or competence. Mr. Camp has no disciplinary history with the LSA from his thirteen years of practicing as a member of the Alberta bar before his appointment to the Provincial Court. However, in light of the CJC findings, the LSA stated that the reputation of Mr. Camp is in issue. Accordingly, the LSA submitted that the Committee should focus its deliberations on whether Mr. Camp's reinstatement would tend to harm the reputation of the legal profession.

23. The LSA stated that it could find no Alberta authority on point but did refer the Committee to the Ontario case of *Law Society of Upper Canada* v. *Evans* (*Evans*). In that case, a judge, who resigned after being found by the Ontario Judicial Council to have committed acts of serious misconduct involving six female subordinates, applied to have his membership in the Law Society of Upper Canada restored pursuant to Ontario's *Law Society Act*, RSO 1990, c. L 8.

24. As pointed out by the LSA, the Ontario Act in issue when *Evans* was decided differs from the Alberta Act. In Ontario, the membership of a member of the LSUC who takes office as a judge is held in abeyance and "shall" be restored upon application after the

judge ceases to hold office (subs. 31(1) and (2)). Restoration could be refused if the hearing panel:

> [F]inds that the person was removed or resigned from an office described in subsection (1) because of:
> (a) conduct that was incompatible with the due execution of the office;
> (b) failure to perform the duties of the office; or
> (c) conduct that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor.

25. While not referred to by counsel for the LSA, the Committee also notes that the Ontario Act, on its face, only permitted approval or rejection of the application. Unlike the Alberta Act, the Ontario Act did not expressly permit conditions to be attached to an approval. Whether a hearing panel could do so was very much at issue in *Evans*.

26. The hearing panel who heard Mr. Evans' restoration application at first instance applied the following seven-part test for readmission after disbarment to the restoration application before it:

> i. the readmission or restoration will not, when viewed objectively, have a serious adverse impact on public confidence in the legal system;
> ii. a long course of conduct showing the applicant to be a person of good character who is to be trusted and is in every way fit to be a lawyer;
> iii. conduct that is unimpeached and unimpeachable, as established through the evidence of trustworthy persons, especially members of the profession and persons who have known the applicant since the misconduct findings in question;
> iv. a sufficient period has elapsed since the misconduct finding;
> v. the applicant has purged his guilt;
> vi. there is independent corroborating evidence that it is "extremely unlikely" that the misconduct will recur if the applicant is permitted to return to practice; and,
> vii. the applicant is current in the law.
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> *LSUC* v *Evans,* 2006 ONLSHP 40 (CanLII) (*Evans HP*)

27. The hearing panel dismissed Mr. Evans' reinstatement application, having concluded that no conditions could be attached were it to have approved the application. Mr. Evans' appeal to an appeal panel was allowed, which the Committee notes was with conditions and a dissent.

28. On appeal, the appeal panel accepted the seven-part test applied by the hearing panel but decided that it was appropriate to add an eighth part to the test:

viii. Whether the misconduct that terminated the official career would have resulted in disbarment had the applicant been a lawyer who engaged in similar conduct.

LSUC v *Evans,* 2007 ONLSAP 5 (CanLII) (*Evans AP*)

29. The *Evans* appeal panel's decision was appealed to the Ontario Superior Court of Justice, Divisional Court, which affirmed the appeal panel's decision to grant the application with the conditions that had been imposed (*LSUC* v *Evans,* 2008 CanLII 34276 (ON SCDC) (*Evans Court*).

30. The Ontario Court accepted the applicability of the test for readmission after disbarment to Evans' circumstances. However, it provided the following qualifications to the eighth part of the test:

> In my view, in considering restoration under s. 31(3) it is reasonable to apply a test that is similar to the test for readmission of a disbarred lawyer, with appropriate adjustments. It is also reasonable to take into account the seriousness of the conduct involved. In a readmission case, the seriousness of the conduct is already known to be sufficient to warrant disbarment. However, removal from office as a judge may cover a greater spectrum warranting a separate consideration of seriousness. In this context, it is not inappropriate to take into account how the conduct would have been treated if engaged in by a lawyer, as long as that is done while also bearing in mind the significance of a judge engaging in the conduct. Certain types of conduct could result in a judge being removed from office that would not be inappropriate at all for a lawyer (e.g., publicly calling for the repeal of legislation or speaking out publicly in support or against the position taken by a political party). Other conduct, while also wrong for a lawyer, is even more egregious when committed by a judge. An example would be a conviction for a minor criminal offence or conduct which would be an abuse of the power vested in the judge. The fact that similar conduct might not be grounds for disbarring a lawyer may simply be a reflection that it is the nature of being a judge that made the conduct particularly blameworthy. That does not necessarily make it more excusable when it comes to a consideration of restoration to the practice of law.
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> *Evans Court*, at para 55

31. The Court therefore concluded that it is relevant, but not determinative, to consider how the misconduct would have been treated had the applicant been a lawyer rather than a judge at the time.

32. In addition to *Evans*, the LSA also referred to an unreported Canadian case provided by the Barreau du Quebec in relation to a readmission application of a former judge. The Barreau approved the application for reinstatement and commented as follows:

> While noting that the fault attributed to [a former member] is such that it has prevented him from keeping his commission as a judge of the Provincial Court of Québec, the Committee considers in the light of written evidence and *viva voce* witnesses, that the fault was committed in a very particular and unique context and that, five years having already gone by, is not in of the type to undermine the credibility of the profession and does not prevent the applicant from reintegrating into the profession all while assuring the protection of the public.
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> *[a former member]* v. *Barreau du Quebec,* 2001, at para 17 (translation of unreported decision, redacted for privacy) (*Barreau du Quebec*)

33. The LSA also submitted that the present case is somewhat analogous to the situation when a member seeks to be reinstated after resigning in the face of discipline or being disbarred. The LSA referred to *Law Society of Alberta* v. *Sychuk,* [1999] LADD 15 (*Sychuk*), as well as a recent 2016 unreported LSA decision, in which the panel developed the following test or approach for considering such applications:

> Has the Applicant proved, on a balance of probabilities, by tendering clear, cogent and convincing evidence:
> a) having regard to s. 40 of the LPA and to the Code of Conduct of the LSA, that he is a proper person for reinstatement as a member of the LSA; and
> b) having regard to s. 49 of the LPA, that his reinstatement as a member:
> a. would be compatible with the best interests of the public and of the members of the LSA; and
> b. would not tend to harm the standing of the legal profession generally.
>
> *[a former member]* v. *Law Society of Alberta* 2016 (unreported decision redacted for privacy) (the *2016 LSA Decision*)

34. The LSA submitted the approach that should be taken in this case should be analogous to the *2016 LSA Decision*; that is, while the considerations noted in the test used in the *Evans* case can be used to inform the Committee's deliberations, the central issue here is whether Mr. Camp's readmission would tend to bring the reputation of the profession into disrepute.

35. The LSA further submitted that the test must be applied objectively and therefore from the point of view of the "reasonable person." In its view, the reasonable person in this case would be:

- A resident of Alberta who is not legally trained;
- but who supports society's fundamental values and respects the rule of law including the legislative reforms to the sexual assault laws;
- who is informed of all of the circumstances of Mr. Camp's case, including the findings of the CJC, and the evidence Mr. Camp provided regarding his rehabilitation;
- who recognizes the distinction between the role of a judge and that of a lawyer; and
- who considers this issue in a thoughtful and reasoned manner.

36. With respect to the Committee's request that the parties comment upon the relevance and weight to be afforded to the testimony submitted during the CJC Inquiry, the report of the Inquiry Committee, and the report of the CJC, the LSA stated that both parties agreed that the evidence could be considered by this Committee. However, the LSA submitted that the relevance and weight of that evidence will depend on the Committee's determination of the test to be applied in these circumstances.

37. In its further submissions in relation to rehabilitation, the LSA reiterated that rehabilitation is one of many factors to consider, but it is not determinative. The case law supports the principle that no misconduct is so grave that a former lawyer should be automatically precluded from reinstatement if rehabilitation can be proven. Evidence of rehabilitation is relevant even though there has been no finding of professional misconduct or discipline imposed by the LSA in this case. However, in the LSA's view, the pivotal question is whether Mr. Camp's readmission would undermine the standing of the legal profession generally.

38. In terms of the requisite degree of rehabilitation required for readmission, the LSA submitted that the case law supports an analysis that considers how the judge's misconduct would have been treated had Mr. Camp been a lawyer rather than a judge at the time.

39. The LSA noted that Mr. Camp's conduct occurred in 2014. The nature and gravity of his misconduct was contextual and role-specific; in his role as a judge, his conduct was so egregious that removal from office was recommended. However, the LSA submitted that, had Mr. Camp conducted himself similarly as a lawyer, it might not have warranted regulatory involvement.

40. Even if the Committee views Mr. Camp as fully rehabilitated in respect of his judicial conduct, the LSA noted that the Committee can still find that his readmission as a member of the Law Society would be detrimental to the standing of the profession.

41. With respect to the weight to be attributed to the expert evidence tendered in this case, the LSA noted that, as a master of its own procedure, the Committee is not bound by the strict rules of evidence. The Committee has broad discretion in relation to the admission and assigning of weight to evidence. The LSA further advised that the expert evidence had been admitted by consent, and therefore there was no issue with respect to its admissibility or reliability.

42. The LSA stated that two factors may result in the Committee attributing less weight to the expert evidence - the different purpose for which it was tendered (i.e., rehabilitation efforts in relation to his judicial role) and the degree to which the expert evidence is necessary to assist the Committee in determining the issues before it (i.e., since the Committee has significant expertise in relation to admission and readmission criteria for members of the Law Society).

43. In addition, while the Committee may rely upon the factual findings of the CJC Inquiry Committee, the CJC's determinations on whether the allegations were made out and whether the test for removal from the Bench was met are not binding on the Committee. The conclusions drawn by the CJC were based upon Mr. Camp's testimony before it, which is not before this Committee.

44. However, the LSA also observed that it was open to the Committee to draw a similar conclusion as the CJC Inquiry Committee; that is, the Committee may accept and attribute some weight to all the evidence regarding Mr. Camp's rehabilitation efforts and nevertheless conclude that his reputation dictates that he cannot be reinstated as a lawyer without harming the standing of the legal profession.

45. The LSA argued that the most weight should be attributed to the direct and uncontroverted evidence on rehabilitation presented by Mr. Camp in this hearing as it was the only first-hand and contemporaneous evidence available to the Committee.

46. The LSA noted that the LSA did not advocate as to how a reasonable person might view and balance the various factors in this case because it is not taking a position on the ultimate question as to whether Mr. Camp should be reinstated as a member of the LSA.

Mr. Camp

47. Mr. Hepner agreed that Mr. Camp bears the burden of proof and that the standard of proof is on a balance of probabilities.

48. Mr. Hepner submitted that while comments Mr. Camp made during the *Wagar* trial were relevant to the mandate of the CJC, a different test rests with this Committee to address his fitness to return to private practice. His reinstatement to practice law would not put

the public at risk nor would there be an adverse impact on public confidence in the legal system amongst a fully-informed public.

49. Similar to the LSA, Mr. Hepner also found no Alberta authority directly on point and referred to the *Evans* case law from Ontario. He argued that *Evans* is key and that its eight-part test is comprehensive and should be considered by this Committee, even though some elements of it are not a good fit with the circumstances of the current case.

50. While he acknowledged that the LSA did not take issue with Mr. Camp's character and that this was not a character hearing, Mr. Hepner submitted that character nonetheless played into it and that he framed the evidence submitted on behalf of Mr. Camp in accordance with the test set out in *Evans*.

51. Mr. Hepner argued that Mr. Camp meets the eight-part test for reinstatement.

Part 1: Applicants must show that the readmission or restoration will not, when viewed objectively, have a serious adverse impact on public confidence in the legal system.

52. Mr. Hepner argued that Mr. Camp’s conduct would not have led to his disbarment, had he been a member of the LSA at the time. The transgressions were very much specific to the context of whether he should be allowed to continue as a Judge.

53. Mr. Camp led considerable evidence with respect to his credibility, integrity, character, repute and fitness to practice. Five witnesses testified in person on behalf of Mr. Camp at the reinstatement hearing, and transcripts of evidence from three witnesses from the CJC Inquiry, as well as letters from colleagues at the Federal Court and others, were also submitted.

54. With respect to the relevance and weight to be afforded to the evidence provided by three experts who testified at the CJC inquiry, Mr. Hepner was in agreement with counsel for the LSA that this evidence is admissible, reliable, and necessary. He also argued that it is relevant as it relates to the extraordinary efforts taken by Mr. Camp to address the issues that arose during the *Wagar* trial, that the evidence is well-informed, and is objective.

55. As a result, Mr. Hepner argued that considerable weight should be attributed to the evidence of these three experts.

56. According to Mr. Hepner, the body of evidence speaks to Mr. Camp’s character, diligence, temperament, integrity, competence and reputation. This evidence was consistent and uncontroverted. Mr. Hepner suggested that, in addressing this issue, this Committee must determine if Mr. Camp's conduct at the *Wagar* trial is an event so

egregious as to override the uncontroverted evidence attesting to Mr. Camp's career-long body of work, and his reputation for credibility, integrity, character and competence.

57. Mr. Hepner noted that from the day the controversy surrounding his conduct of the trial in 2014 surfaced, Mr. Camp has accepted responsibility for his actions. He apologized immediately to his colleagues and worked diligently to better understand himself and any beliefs that might have contributed to his behaviour. During this course of counselling, mentoring and instruction Mr. Camp came to understand and accept that his questions and comments during his conduct of the trial were often insensitive and failed to show adequate regard for laws to protect the disadvantaged. He then apologized publicly (the contents of Mr. Camp's apologies were not put before the Committee or tendered for the record in this reinstatement application).

58. In summary, Mr. Hepner argued that Mr. Camp's conduct at the *Wagar* trial

> […] would not have led to his disbarment had he been defence counsel at the time. Insensitive comments, comments evidencing a belief in rape myths or critiquing the law, are all significant issues for a Judge conducting a sexual assault trial, but less so for counsel. Such comments would not constitute laudatory behaviour, and would invite objection by the Crown, but no more. In such circumstances, reinstating Mr. Camp as a member of the Law Society of Alberta, when viewed objectively, is most unlikely to have a serious adverse impact on public confidence in the legal system.

59. Mr. Hepner further submitted that Mr. Camp's efforts to address and correct this conduct have been exemplary, citing his course of study, counsel, and self-examination. He argued that these efforts satisfy the principle of genuine and enduring rehabilitation, and a fully and accurately-informed public would be even less likely to view the reinstatement as having a serious adverse impact on public confidence in the legal system.

Part 2: Applicants must show by a long course of conduct that they are persons of good character who are to be trusted and who are in every way fit to be lawyers.

60. Mr. Hepner referred to the considerable uncontroverted evidence submitted to this Committee related to Mr. Camp's integrity and character. Further, he submitted that prior to his appointment, Mr. Camp had an impeccable reputation and his behaviour throughout the CJC investigation and hearing process was beyond reproach. He therefore argued that Mr. Camp is in every way fit to be a lawyer.

Part 3: Applicants must show that their conduct is unimpeached and unimpeachable, and this can only be established by evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment or similar disposition.

61. To satisfy this portion of the test, Mr. Hepner referred to the body of uncontroverted evidence of Justices, Members of the Alberta, Ontario and Botswana Bars, and non-members of the Bar who interacted with Mr. Camp, all of whom explicitly or by implication support Mr. Camp's reinstatement.

Part 4: Applicants must show that a sufficient period of time has elapsed before an application for readmission or restoration may be granted.

62. Mr. Hepner argued that this portion of the test does not mesh well with the facts of this case. He suggests that the length of time prior to the application for readmission should be affected by the nature of the misconduct and the quality of the time spent (and here, how the time following the *Wagar* trial in 2014 was taken up largely with counselling, mentoring, and education). With more than 3 years having passed since the impugned conduct, he submits that a sufficient period of time has elapsed.

Part 5: Applicants must show that they have entirely purged their guilt.

63. Mr. Hepner argued that this portion of the test needs to be modified in these circumstances. He indicated that Mr. Camp's conduct of the trial did affect, at the very least, the complainant and the accused, both of whom had to endure a second trial. Mr. Camp apologized publicly for his comments and to his colleagues on the Bench. He also immediately embarked on a course of counseling, mentorship, and instruction.

Part 6: Applicants must show, including by independent corroborating evidence, that it is extremely unlikely that they will misconduct themselves if permitted to resume practice.

64. Mr. Hepner submitted that Mr. Camp's misconduct was unique to the role of presiding over a trial and judging. None of the problematic elements of how Mr. Camp conducted the trial can or will be repeated as he is no longer a member of the judiciary. He submits that, for this reason, this element of the test should be viewed through the prism of the eighth element: it should be read in the context of the need to establish "that it is extremely unlikely that the applicant will engage in conduct deserving of sanction which is similar to the misconduct if permitted to resume practice."

65. If that or something similar is the test, Mr. Hepner submitted that the evidence of the three experts who appeared before the CJC Inquiry is clear that Mr. Camp made significant strides in addressing his underlying beliefs and understanding the impact that such beliefs have the potential to cause.

Part 7: Applicants must show that they are current in the law.

66. Mr. Hepner submitted that, as detailed in Mr. Camp's reinstatement application, Mr. Camp is current in the law. He noted Mr. Camp's background as a commercial litigator

and knowledge of civil procedure, his pursuit of continuing legal education and practical experience while on the Bench, as well as the personal and professional development counselling and mentoring Mr. Camp received.

67. Mr. Hepner also referred to the comments of the LSA's Manager of Membership Services, who noted that: "Although one of the issues in the CJC proceedings was competence, I am satisfied by the evidence of the three tutors who provided him with education and counselling that there is no issue of current knowledge to refer to that committee."

Part 8: Whether the misconduct that terminated the official career would have resulted in disbarment had the applicant been a lawyer who engaged in similar conduct.

68. Mr. Hepner argued that this is an important addition by the Ontario Court to the *Evans* seven-part test and critical to adapting the test for readmitting a disbarred lawyer to the context of former judges who have resigned or been removed from the Bench.

69. In his view, the Court confirmed that it is relevant whether the conduct that led to removal from the Bench was conduct that would have led to disbarment as a lawyer. It can lessen the gravity of the conduct or it can increase it.

70. He argued that, in this case, the problem with Mr. Camp's conduct was primarily contextual. The questions asked and statements made were problematic because he was the presiding judge. If counsel had asked similar questions, they would have been similarly objectionable, but counsel opposite could have objected to the judge. When the comments were made by the judge, they created not just a problem in the trial but also with public perception and confidence in the system. Mr. Hepner submitted that such is the clear message from the CJC recommendation.

71. Mr. Hepner further submitted that the situation is not only different for members of the LSA, but dramatically so. Members of the LSA are not only allowed to advance controversial positions and to aggressively test and argue for changes, the system is stronger for it. Members of the LSA take controversial stances and defend unpopular clients and positions. It cannot be reasonably argued that a well-informed public would think less of the legal profession because a lawyer who might make those arguments has been readmitted. Much less, he submitted, can it be argued that such a move would, when viewed objectively, have a serious adverse impact on public confidence in the legal system.

72. Mr. Hepner submitted that Mr. Camp's misconduct, while admitted and for which he has apologized, does not rise to the level of misconduct in the *Evans* case. Aside from the media coverage that accompanied the CJC inquiry and hearing, and the inevitable public misconceptions that arose despite the well-documented facts of what actually occurred, Mr. Hepner urged the Committee to decide based on the actual record and not the

précis reported in the press. He submitted that such is a delicate task as the task at hand is to consider whether readmission, when viewed objectively, would have a serious adverse impact on public confidence in the legal system. However, as is clear from the *Evans* case, this test imports the concept of an "informed" public, well-informed of all of the facts and not select events reported in the press.

73. Mr. Hepner argued that while there was considerable public concern and media commentary about Mr. Camp's questions, comments and conduct at the *Wagar* trial, Mr. Camp is aware of no evidence to suggest that those concerns would exist equally, or even to any great degree, with the public if Mr. Camp were to be readmitted to practice law.

74. Mr. Hepner submitted that the evidence suggests that reinstatement would have no serious adverse impact on public confidence in the legal system. That is particularly the case with an informed public, informed not only about Mr. Camp's actions during the *Wagar* trial, but also of his substantial efforts to obtain, complete and follow multiple courses of counseling, mentoring and education, and to better understand and apply the concepts he failed to advance during the *Wagar* trial.

75. In his further submissions regarding rehabilitation, Mr. Hepner submitted that concerns of rehabilitation and evidence of rehabilitation should arguably not factor into the pending readmission submission because the role of a Judge is materially and significantly different from that of counsel. He noted that there have been no concerns requiring conduct intervention nor discipline in Mr. Camp’s history while a member of the LSA, or the regulatory bodies in South Africa or Botswana. Further, he indicated that the combined counseling and mentoring undertaken cannot help but make him a better and more sensitive lawyer.

76. Mr. Hepner also submitted that it is not necessary to demonstrate any degree of rehabilitation to permit readmission because the Rules and Code of the LSA do not require that active members of the LSA be unburdened by belief in rape myths or to refrain from questioning whether the law is fair and appropriate or should be changed. Rather, examining and questioning the law is a task that effective counsel do daily, in challenging unfair legislation. Rehabilitation, and avoiding similar behaviour, is only sensible if that conduct would be inappropriate for LSA Members. It follows that evidence of rehabilitation may have a correspondingly lower relevance and therefore weight in the Committee’s deliberations.

77. To the extent the Committee disagrees, and views the question of rehabilitation as instructive, Mr. Hepner argued that the evidence of Mr. Camp’s rehabilitation should be reassuring. His efforts and achievements in terms of rehabilitation demonstrate character traits desirable in counsel, including a sense of responsibility, an

understanding of the need for ongoing education and self-reflection, and ambition to improve.

78. Mr. Hepner argued, however, that the expert evidence should be given considerable weight. There is clear, uncontroverted, expert evidence, along with *viva voce* evidence from Mr. Camp, of his extensive efforts to remedy his previously deficient behaviour (within his Judicial role) and to better himself as a person and a counsel. The fact and extent of those efforts are relevant to this application and directly significant to the comfort that a well-informed member of the public should have in Mr. Camp's commitment to continual improvement and to addressing his professional obligations. It is also concrete and persuasive evidence of Mr. Camp's governability.

79. In relation to the weight to be attributed to the CJC inquiry Committee's findings, Mr. Hepner noted that the CJC's conclusions were reached while considering different issues from the issues before this Committee. The CJC addressed Mr. Camp's suitability to return to the judiciary, not his suitability as a practitioner. He also submitted that no weight should be given to the findings of the CJC Inquiry Committee as fact or opinion evidence. While the findings of the CJC Inquiry Committee are not binding on this Committee, it can take note of the findings, although conclusions relating to Mr. Camp's role as a Judge are likely to be of less relevance to the readmission application and ought to be given little weight.

80. Mr. Hepner submitted that the oral evidence of Mr. Camp and primary documents entered were not contradicted nor was there any objection to them. Accordingly, they ought to be afforded full weight, provided they are relevant to the matters under consideration. The evidence of Mr. Camp on the issue of his efforts towards education and rehabilitation and the results of those efforts is the best evidence before this Committee.

81. He further noted that the documentary evidence from the CJC hearing, which went into evidence by consent, should, if relevant, be afforded considerable weight. However, he noted that this is slightly more complicated, as evidence from the CJC hearing that deals with suitability and public perception was entered for the purposes of determining "suitability as a Judge" and "public perception of Mr. Camp continuing as a Judge." Accordingly, the CJC findings that appear on first blush to be relevant, may in fact not be relevant to the decision of the Committee and the issue under its consideration.

82. Mr. Hepner submitted that the fact and extent of Mr. Camp's rehabilitation efforts would positively affect the comfort of a well-informed member of the public. His commitment to counseling and continual improvement reflects well on his ability and willingness to discharge his obligations to the profession and should be given considerable weight.

83. While there may be cases so extreme that a former member may establish that they are fully rehabilitated, and yet readmission would be detrimental to the standing of the profession, this is not such a case. This case does not achieve any level of criminality or even conduct deserving of sanction.

84. Further, Mr. Camp has established that he has rehabilitated any erroneous beliefs through his program of study, counseling and mentoring. This is not a case where the Committee ought to consider refusing readmission in the face of such rehabilitation.

85. Finally, if Mr. Camp's actions were not contrary to the LSA Rules and Code of Conduct, and considering his exemplary character, competence, and that he has undertaken a vigorous course of rehabilitation with respect to his transgressions (as a Judge), Mr. Hepner queried the basis upon which there could be a refusal to readmit. He noted that refusing readmission because of the sensational media coverage of Mr. Camp's comments would not advance the reputation of the legal profession as a self-governing institution. Mr. Camp is most competent to practice law and any refusal of readmission should only be on the basis of a clear and pressing need to protect the public.

Analysis

The Burden and Standard of Proof

86. The Committee agrees with the parties that the burden of proof rests with Mr. Camp, on a balance of probabilities.

The Test to be Applied

87. As noted by both counsel, there is no test in the Act or the Rules and no directly-applicable Alberta authority with respect to the test to be applied in a situation such as this one.

88. Indeed, this is a unique case given that Mr. Camp is:
    a) a former member of the LSA who was not disbarred and did not resign in the face of discipline as a member; and
    b) a judge who did not retire but resigned in the face of a recommendation by his (then) governing professional body, the CJC, for his removal as a result of judicial misconduct.

89. The Committee is of the view the test to be applied in this case is that summarized in the *2016 LSA Decision*:

> Has the Applicant proved, on a balance of probabilities, by tendering clear, cogent and convincing evidence:

a) having regard to s. 40 of the LPA and to the Code of Conduct of the LSA, that he is a proper person for reinstatement as a member of the LSA; and
b) having regard to s. 49 of the LPA, that his reinstatement as a member:
    a. would be compatible with the best interests of the public and of the members of the LSA; and
    b. would not tend to harm the standing of the legal profession generally.

90. The Committee has also considered the eight elements endorsed by the Ontario Court in the *Evans* case and the principles and considerations that were referred to by the hearing and appellate panels in *Evans.* The Committee is of the view that the *Evans* elements, principles, and considerations do not create a checklist that must be completed. Rather, the Committee reflected on such elements, principles, and considerations to help inform its consideration of the broader, foundational principles upon which membership in the legal profession is premised, as outlined in the *2016 LSA Decision* quoted above.

91. The test must be applied objectively and thus from the perspective of a reasonable person. The Committee agrees with the LSA's definition of those attributes which a reasonable person must possess in the present case, but would supplement them from the CJC Report, the case law, particularly *R v St. Cloud*, [2015] SCC 27 at paras 80-84 (*St Cloud*) and *Collins v The Queen* (1987), 33 CCC (3d) 1 (SCC), at p 18 (*Collins*), as well as decisions from this and other Law Societies cited by counsel, particularly, *Evans AP,* at para 39 and *Barreau du Quebec*, at para 18.

92. In the Committee's view, a reasonable person would therefore:

a) be a resident of Alberta who is not legally trained;
b) support society's fundamental values, including equality and respect for survivors of sexual assault and marginalized persons;
c) respect the rule of law, including the legislative reforms to the sexual assault laws;
d) be informed of all of the circumstances of Mr. Camp's case, including the findings of the CJC and the evidence before this Committee regarding rehabilitation;
e) recognize that, while both are integral to the administration of justice, there are differences between the role of a judge and that of a lawyer; and
f) consider the issues in a thoughtful and reasoned manner, without being unreasonably influenced by public and media outrage or social media-propelled opinions.

Substantive Issues

93. The LSA takes no issue with Mr. Camp's integrity or competence to practice law. Its position is that Mr. Camp's character is not in issue: only his reputation and its potential effect on the reputation of the profession. Given the wealth of evidence before the Committee regarding Mr. Camp's integrity and character, the Committee agrees.

94. Accordingly, the key issues for the Committee to determine are whether, from the perspective of a reasonable person as defined above, Mr. Camp's reinstatement as a member of the LSA:
    a) would be "compatible with the best interests of the public and of the members of the LSA;" and
    b) "would not tend to harm the standing of the legal profession generally,"

    taking into account the relevance, if any, of rehabilitation efforts and outcomes with respect to (a) and (b), above.

Preliminary Evidentiary Issues

95. In order to properly address the key substantive issues outlined above, the Committee had to first determine an evidentiary issue which, in the Committee's view, arose with respect to the relevance and weight of:
    a) the evidence put before this Committee from the CJC Inquiry; and
    b) the findings of the Inquiry Committee and of the CJC.

The Evidence of the CJC Inquiry

96. The evidence put before the Committee from the CJC Inquiry was the testimony of Madam Justice [DM] , Professor [BC] , and Dr. [LH] , both in chief and under cross-examination (the Experts).

97. The Committee finds that this evidence is relevant as it speaks to issues that the Committee must consider, such as the rehabilitation efforts of Mr. Camp. The Committee also notes that the LSA did not object to the admission of this evidence and, indeed, agreed to its admission in this proceeding.

98. In addition, the Experts' evidence is reliable, given the context in which the testimony was originally provided, the fact that it was subject to cross-examination, and the character and standing of the three witnesses. Further, it would have been costly, time-consuming and inefficient to call these three experts as witnesses when the LSA took no position on this application and did not cross-examine any of Mr. Camp's witnesses.

99. While the Committee duly considered all of the Experts' evidence, it afforded that of Dr. [LH] significant weight with respect to the issue of rehabilitation given the particular role she played in that regard, as discussed in further detail below.

The Findings of the Inquiry Committee and of the CJC

100. Mr. Camp's testimony before the Inquiry Committee was not part of the record before this Committee. Accordingly, the Committee has been careful to assess the issues before us only on the evidence in the record we have.

101. The Committee appreciates the distinction between the findings it must make on the evidence before it, including any findings of credibility, and the fact that other bodies have made their own findings in other circumstances on other records.

102. However, the Committee is of the view that, in as much as they are public record and also form part of the agreed exhibits before us, it is proper for us to refer to and give appropriate weight to the findings of fact and dispositions of the Inquiry Committee and the CJC as findings and dispositions of those bodies on the issues before those bodies--no more, no less. It is relevant to the present application that those bodies have, as matters of fact, made certain findings and disposed of the matters before them as those findings and dispositions may speak to the issue of the reputation of Mr. Camp in the eyes of the public following the proceedings before the CJC.

Assessment of the Evidence in Light of the Test

103. In the present case, Mr. Camp's (then) governing body, the CJC, has already assessed his conduct, found him guilty of judicial misconduct, and recommended a sanction, namely his removal from office. Mr. Camp's application for reinstatement as a member of the LSA is not a proper forum in which to relitigate the findings of the CJC or to punish him again, directly or indirectly. As summarized by the Appeal Panel in *Evans*:

> The Judicial Council's strong condemnation of the appellant [Mr. Evans] speaks for itself. A judicial appointment is an accolade of the first order to which many lawyers aspire and which few are honored to receive. At the same time, the fact is that the honour has now been removed from the appellant. He has paid the greatest price that can be paid by a judge who demonstrates unfitness to be a judge. Our decision is not about punishing him again as a judge who so gravely transgressed.
>
> *Evans AP*, at para 37

104. Mr. Camp's reinstatement application is an entirely different type of proceeding than that before the CJC. It has a different focus, namely the effect of Mr. Camp's reputation relative to the best interests of the public and of the members of the LSA and whether

reinstating him as a member would tend to harm the standing of the legal profession generally.

105. The overarching factor in the present case is the confidence of the public in the profession and thus the effect which reinstating Mr. Camp would have on the reputation of the profession. As expressed by the dissenting member of the *Evans* Appeal Panel:

> For if a judge is found to have abused his judicial office (a position of trust at a higher level than that of a lawyer), the responsibility of the Law Society to maintain public confidence in the profession is onerous. Especially in the case of a judge who was found guilty of misconduct, the Hearing Panel has a duty to ensure that the confidence of the public in the legal profession and in the legal system, in general, not be tarnished (*Re Therrien*, [2001] 2 S.C.R. 3).
>
> *Evans AP*, at para 102

106. The Committee agrees that the responsibility of the LSA is indeed onerous. To maintain and strengthen confidence in the legal profession, the LSA must ensure that the reputation of the profession, collectively, takes precedence over that of the fortunes of any of its members, individually. In the oft-quoted decision of *Bolton v Law Society*, [1994] 2 All ER 486 (CA) (*Bolton*), the Court of Appeal of England made the point as follows:

> The second purpose [of a disbarment or suspension order] is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the end of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission… Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
>
> …The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.
>
> *Bolton*, at p 492-3

107. Public confidence is based on such matters as a lawyer's credibility, integrity, character, repute, and fitness. While compassion has its place, it should not compromise an impartial adjudication of a reinstatement application (the third principle from *Evans HP*, at para 18).

108. In the present case, the following weigh against Mr. Camp's reinstatement:

a) Judges occupy a special position within the administration of justice, as a whole, and are held to the highest standard of behaviour (e.g., *Evans AP*, at para 119). As such, judicial misconduct is of particular significance in assessing the public's confidence in the reputation of the legal profession given its role in the administration of justice;

b) The CJC Inquiry Committee constituted by the CJC to investigate the conduct of (then) Justice Camp found that, of the 21 specific allegations of misconduct, 17 were fully made out and two were partially made out. As a result, it concluded that (then) Judge Camp committed misconduct, and placed himself in a position incompatible with the due execution of the office of a judge, in each case within the meaning of paragraphs 65(2)(b) and (d) of the *Judges Act*, RSC 1985, c. J-1. The Inquiry Committee further concluded that Mr. Camp's remediation efforts could not adequately repair the damage caused to public confidence in the judiciary by his conduct. The CJC noted in that regard that the Inquiry Committee had held that:

> …where judicial misconduct is rooted in a profound failure to act with impartiality and to respect equality before the law, in a context laden with significant and widespread concern about the presence of bias and prejudice, the harm to public confidence is amplified. In these circumstances, the impact of an after-the-fact commitment to education and reform as an adequate remedial measure is significantly diminished.
>
> Exhibit 5, at paras 4-13

c) The CJC agreed with the Inquiry Committee that there had been judicial misconduct. The issue before the CJC was whether the gravity thereof warranted removal. Of the 22 members of the CJC who voted in this matter (the Chairperson having no vote except in the event of a tie), 19 found that Mr. Camp failed to meet the high standards expected of a justice in Canada and that he:

> …acted in a manner that seriously undermined public confidence in the judiciary.
>
> . . .
>
> We find that the Judge's conduct, viewed in its totality and in light of all of its consequences, was so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence is sufficiently undermined to render the Judge incapable of executing the judicial office.
>
> Accordingly, Council recommends that Justice Camp be removed from office.

Exhibit 5, at paras 3 and 53-4

d) The ability to practice law is not a right but a privilege (the fourth principle from the *Evans HP*, at para 18).

109. Having carefully considered all of the foregoing, however, the Committee is of the view that the negative impact on the reputation of the legal profession that such factors may have, if considered in isolation, is mitigated when one considers all of the evidence from the perspective of the reasonable person with the qualities set out in paragraph 92, above. In particular, the Committee finds that the following merit significant consideration in the present case:

a) Mr. Camp's rehabilitation efforts and outcomes; and

b) the important differences between the role of a judge and that of a lawyer.

Mr. Camp's Rehabilitation

110. Rehabilitation is a fundamental societal value and a cornerstone of the judicial system itself:

> A fundamental precept of our system…is that men can be rehabilitated. 'Rehabilitation …is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.' Time and experience may mend the flaws of character which allow the immature man to err. The chastening effect of a severe sanction such as disbarment may redirect the energies and reform the values of even the mature miscreant. There is always the potentiality for reform, and fundamental fairness demands that the disbarred attorney have opportunity to adduce proofs.
>
> *Sychuk* para 34, citing a passage from *Hiss* (Mass. 333 N.E.(2d) 429 (1975) at p 434)

111. It logically follows that the gravity of the misconduct should not, in and of itself, preclude reinstatement for a person who has truly rehabilitated him or herself. However, the Committee agrees with the Evans Hearing Panel that the nature and seriousness of the conduct and how recently it occurred are factors for this Committee to consider in assessing the requisite degree of rehabilitation required and whether the test for reinstatement has been met (*Evans HP*, at para 16).

112. The Committee agrees with the LSA's submission that no misconduct is so grave that a former lawyer should automatically be precluded from reinstatement if rehabilitation is indeed proven (LSA Supp. Submission at para 4; see also *Evans HP*, at paras 13-14).

113. The Committee also finds two of the principles enunciated by the Evans Hearing Panel particularly germane to the present case:

> (f) The privilege [to practice law] may be regained, no matter how egregious the misconduct that led to its loss, provided sufficiently compelling evidence of genuine and enduring rehabilitation is presented. This will be hard to do. (*Hiss* and *Manek*)
>
> . . .
>
> (h) The legal profession, of all professions, has a special responsibility to recognize cases of true rehabilitation; however, as rehabilitation will be claimed by virtually all applicants, independent corroborating evidence is required to establish that the rehabilitation is genuine and enduring. (*Weisman)*
>
> *Evans HP,* at para 18

114. On the issue of rehabilitation, the Committee had before it the transcripts of the evidence of the Experts from the CJC Inquiry and the evidence of Mr. Camp.

115. While a number of witnesses were called on behalf of Mr. Camp to testify at the reinstatement hearing, including judicial and legal colleagues, former employees, and friends, and letters from others were included in the agreed exhibits, the evidence of such individuals did not address rehabilitation. To the contrary, their evidence was largely to the effect that they could not understand how Mr. Camp could have exhibited the behaviour he did at the *Wagar* trial and that they had not seen any other demonstration of similar behaviour, beliefs, bias, or the like. Instead, they spoke to Mr. Camp's stellar character and integrity, including compassion, kindness, fairness, trustworthiness, and legal acumen. Most of their evidence was also focused on the period of time before Mr. Camp engaged in his rehabilitation efforts. As such, they did not provide evidence as to the "before" and "after" or any changes they observed in Mr. Camp during the course of or at conclusion of his rehabilitative efforts.

116. With respect to the evidence of the Experts, the parties agreed that the evidence of the Experts was admissible and reliable, which the Committee accepts.

117. The evidence of Professor [BC] was principally directed to the unique issues before the CJC, being the history of sexual assault laws and their reforms, the "gaps" in Mr. Camp's knowledge, and Mr. Camp's "teachability." With all due respect, the Committee did not find that Professor [BC] 's evidence particularly relevant to the issues before it.

118. However, the Committee did find it significant that Professor [BC] overcame her initial ambivalence about taking on Mr. Camp's course of study (given the nature of the complaint against him and the reports in the media). She did so because she found him

to be "very open and eager to learn" and "teachable" (Exhibit 8, at p 151, ll 1-19). On the issue of teachability, Professor [BC] testified as follows:

> Q. You describe someone today who came to you with a knowledge deficit, and then you worked with him. In your judgment, is he teachable?
> A. That was my major concern right at the beginning. In our first meeting, I wanted to make sure that he was in fact teachable. I didn't want to simply be a kind of window dressing. And what I assessed on that first day was a person who was open and sincere and remorseful and honestly committed to addressing his--the gaps in his knowledge.
>
> Again, he knew he had made some terrible mistakes, but my assessment was that he didn't understand how those mistakes were rooted in the history of the law of sexual assault, and so that's what he worked on, and he was absolutely open to that learning.
>
> Exhibit 8 at p 157, ll 5-19

119. During cross-examination, Professor [BC] elaborated as follows:

> Q. Did Justice Camp accept the rationale for why the law of sexual assault had changed in the manner it did?
> A. Yes.
> Q. How do you know that?
> A. So I can't --as an educator, I can't actually go inside of people's minds and find out whether they really, really have changed their minds. The best I have to go on is what they articulate and my best assessment of the sincerity of those views.
>
> In the exam that I gave him, he seemed to--he seemed to understand the history. He seemed to be able to identify the rape myths. He seemed to be able to identify the rape myths that may have arisen in the *Wagar* case. My sense was that he--he really understood the materials that we were doing.
>
> Now, you know, I believe in the power of education, and I may be--I may be overly optimistic about the power of education. I cannot give two- or five--year warranties on my education, but it does seem that he was successfully educated. He seemed open. He seemed remorseful. He seemed prepared to admit where he was wrong. He seemed to be prepared to admit the mistakes that he had made. He seemed to be prepared to admit where there was simply no reason to say what he had said.
>
> Exhibit 8, p 179, l 11 to p 180, l 9

120. Madam Justice [DM] described her role with Mr. Camp as that of colleague, now friend, but not counsellor and not coach. Much of her evidence was directed to Mr.

Camp's social context education as a judge and, again, with all due respect, was not particularly relevant to the issues before this Committee.

121. The Committee did, however, similarly find it significant that Madam Justice [DM] came to a similar conclusion as had Professor [BC] regarding Mr. Camp's motivation and teachability. He similarly overcame her initial hesitance in working with him. Justice [DM] described Mr. Camp and his growth during their time together as follows:

> Q. Did he appear to develop any qualities while you were mentoring him in that area over the past nine months?
>
> A. He did. Justice Camp was brutally honest with himself. He's probably the hardest critic he could have been, and he was motivated to learn because--and I think this is one of the reasons that I agreed to work with him initially, because I was struck by the fact that his motivation was very much concern for the pain and the embarrassment he had caused the complainant in this case, the pain he had brought to his colleagues and his court, and the damage he felt he had done to the administration of justice. And what was going to happen to him personally seemed to me to be almost secondary, and I was quite surprised by that because that was not what I had expected.
>
> And that motivation never changed. I think it grew, the more he learned about the law and the application of it. He was engaged in counselling. I had recommended he do that in addition to the academic programs I had recommended. The more he grew in all of the areas, the more I realized he had the capacity to--to do the job and do it well. He's a very compassionate, empathetic person.
>
> Exhibit 8, p 109, ll 3-26

122. During cross-examination, Justice [DM] described Mr. Camp at the end of her time with him as "the genuine article," "very sincere and committed," and someone who "really wanted to learn for all the right reasons" (Exhibit 8, p 115, ll 13-23). Like the witnesses called to testify on behalf of Mr. Camp before the Committee, Justice [DM] also had difficulty reconciling the person before her with his conduct during the Wagar trial. However, she was clear with respect to the changes she saw in him through the course of their time together:

> Q. Did he suggest to you what he would do to counter any perception of gender bias in those kinds of cases?
>
> A. I think our whole discussion over the last ten months has been about doing things differently. I think his world view is certainly different. His understanding of women and violence against

women is different. He's not the same person that he was when I first met him last December.

Q. Did Justice Camp recognize that through his conduct and comments and the media reporting of them that there had been reputational harm not only to himself but to the judiciary?

A. Yes, he did.

. . .

…he was deeply remorseful and full of regret because he realized that his words had wounded a number of people as well as the institution I think he loves.

…

So what he has learned is the importance of learning and practicing, getting advice, and knowing that that's the best preparation he can have for not making mistakes.

Exhibit 8, p 130, l 13 to p 131, l 21

123. Dr. [LH] is a clinical psychologist. While the evidence before the Committee is unclear as to whether Mr. Camp may have seen others for counselling, it is clear that Dr. [LH] did in fact provide him with gender sensitivity training, education around trauma responses, and psychotherapy. Details of that treatment were not before the CJC Inquiry Committee for reasons of confidentiality and none were offered to this Committee. While we therefore do not have detailed background against which to assess Dr. [LH] 's views, the parties have agreed that we may treat her evidence as credible and reliable. We do so and, given her area of expertise and clinical treatment, place significant weight on her overall conclusions.

124. Dr. [LH] 's evidence was that Mr. Camp was initially defensive and protective, having been humiliated, but nonetheless curious and willing to engage in her process. She concluded that he understood her teachings and the gaps in his knowledge. She too concluded that he was teachable:

Q. Is he teachable, Justice Camp?

A. Yes, definitely.

Q. Why is that?

A. I--he's very motivated, and I think people learn best when they're motivated. He really wanted to understand his errors. He wanted to be able to do things better. He's, I think, besides that, intellectually curious and really wanted to have an in-depth understanding. But I was also wanting him to be able to mentalize, which is the process of reflecting on your own biases and assumptions, your own thinking moment to moment, while you take into consideration someone else's thoughts and thinking and what would shape their behaviour.

Exhibit 8, at p 203, ll 12 to 24

125. Dr. [LH] was of the view that Mr. Camp was not resistant to or contemptuous of her treatment, but was self-protective. Based on his conduct in the *Wagar* trial, she thought that he would be a misogynist and have a generalized contempt for women, assume a male-entitled dominant position, and see women in diminished capacities. To the contrary, she testified that that wasn't her experience. While Mr. Camp had some sexist assumptions that were misinformed, he did not have a pervasive, demeaning attitude toward women. He did, though, also have bias issues regarding social location and class, such as regarding someone who was disempowered or impoverished (Exhibit 8 at pp 213-214). In her view, those who are motivated to understand what caused their misconceptions and change can do so, and she thought that Mr. Camp was "highly motivated" in that regard (p 215).

126. Dr. [LH] concluded that Mr. Camp had satisfactorily addressed the issues and was unlikely to revert to his prior misconceptions and beliefs, although self-refection had to be an ongoing process:

> Q. …how did you satisfy yourself that these issues were being addressed?
> A. I--I satisfied myself by looking at does he have a different understanding of why he was--what he was thinking, what his assumptions were, what his beliefs, his attitudes, were there shifts. And, again, after looking at the level of the domains I've talked about in terms of neurobiology or trauma responses or gender socialization, many of them then went into his personal life experiences, his personal psychology of, you know, what shaped his thinking, what shaped his assumptions, what shaped his attitudes about his life. And so that did go into more of a personal realm. And I felt that that deepened the process and made it much more relevant, and I was--I was satisfied with the level of self-reflection in that process.
> …
> Q. Can the type of beliefs that you've described that led to Justice Camp making the comments he did resurface when the person is no longer in counselling?
> A. I would--I would be very surprised if these particular beliefs which he worked through deeply and which, you know, he--and at the same time he was also coming in and having trainings with [DM] and [BC] , so he was--he had other influences and things he was reading….It would be--I think sometimes when we know something differently, it's pretty hard to turn around and, you know, make that same error.
>
> Exhibit 8 at p 230, ll 3 to 19 and p 232, ll 1-15

127. And, further:

> Q. You were asked a question by presenting counsel about what level of understanding did he have when you first met him with respect to gender assumptions and bias…. What level of understanding does he have now?
> A. The level question is hard for me. I think he has--I think he has an extremely strong critical framework and expansive knowledge now.
>
> Exhibit 8, p 234, ll 10-19

128. In the present case, based on the evidence of the Experts, the Committee finds that there is independent corroborating evidence that establishes that Mr. Camp has undergone an extensive course of rehabilitation and that, as it relates to the issues relevant to this reinstatement application, he has been rehabilitated and such is genuine and enduring.

129. Unlike other cases, such as those involving misconduct due to substance abuse, there is no objective test that is available to measure success. We are nonetheless satisfied on the evidence before us that the likelihood of recurrence is as minor as one can reasonably predict. In this regard, we have also paid particular attention to Mr. Camp's evidence and demeanor before us. While it is certainly not "independent" evidence, it is consistent with the description and views of the man before Professor [BC] , Madam Justice [DM] , and Dr. [LH] .

130. Mr. Camp is clearly a proud person, not wanting to, as he described it, "end in failure". There is nothing in his testimony or demeanour from which the Committee has any basis to find that his learnings are other than as described by the Experts. The evidence before us, which differs in some respects from that before the CJC, is that Mr. Camp has learned from his mistakes.

131. Mr. Camp appeared to us as sufficiently self-aware of the issues and clearly still motivated to continue his self-reflection. According to Dr. [LH] , those are the keys to continued success.

132. The Committee understands, and accepts, that rehabilitation cannot be the paramount factor at the expense of the standing of the legal profession and that, as emphasized in *Bolton*, the fortunes and reputation of any individual member must cede to that of the profession as a whole (see also, *Sychuk* at para 42). Accordingly, we turn to consider the effect of the fact that Mr. Camp was a judge at the time that the conduct in question was committed and whether, even though rehabilitation was insufficient for the majority of the CJC to conclude that he could remain as a judge, it is sufficient for the purpose of readmitting him as a lawyer.

The Role of a Judge and the Role of a Lawyer

133. While the Committee recognizes that the public may have difficulty understanding how a judge recommended for removal following findings of judicial misconduct of the type found against Mr. Camp could nonetheless still be suitable to be reinstated to practice law, we are of the view that that difficulty can be overcome in the present case. There are differences between the role of a lawyer and that of a judge and those differences are significant to the outcome of this application, particularly when considered in light of the evidence of Mr. Camp's rehabilitation.

134. Both the Appeal Panel and the Ontario Court in *Evans* underscored the point that unfitness to be a judge does not inevitably equate to unfitness to be a member of the bar:

> We believe that an informed member of the public will appreciate that the fact by his conduct the appellant showed himself unfit to be a judge does not inevitably signal that he is unfit to earn his livelihood again as a member of the bar, especially having regard to this two-year transition period to which we are subjecting him.
>
> *Evans AP*, at para 39

135. The Ontario Court expanded upon the point as follows:

> In my view, in considering restoration under s. 31(3) it is reasonable to apply a test that is similar to the test for readmission of a disbarred lawyer, with appropriate adjustments. It is also reasonable to take into account the seriousness of the conduct involved. In a readmission case, the seriousness of the conduct is already known to be sufficient to warrant disbarment. However, removal from office as a judge may cover a greater spectrum warranting a separate consideration of seriousness. In this context, it is not inappropriate to take into account how the conduct would have been treated if engaged in by a lawyer, as long as that is done while also bearing in mind the significance of a judge engaging in the conduct. Certain types of conduct could result in a judge being removed from office that would not be inappropriate at all for a lawyer (e.g., publicly calling for the repeal of legislation or speaking out publicly in support or against the position taken by a political party). Other conduct, while also wrong for a lawyer, is even more egregious when committed by a judge. An example would be a conviction for a minor criminal offence or conduct which would be an abuse of the power vested in the judge. The fact that similar conduct might not be grounds for disbarring a lawyer may simply be a reflection that it is the nature of being a judge that made the conduct particularly blameworthy. That does not

> necessarily make it more excusable when it comes to a consideration of restoration to the practice of law.
>
> *Evans Court,* at para 55

136. Similarly, the Panel in *Barreau du Quebec* stated as follows:

> Not all lawyers have the qualities, and some lawyers may have lost them, that purport to be needed to be a judge; this does not automatically mean that those people cannot exercise the profession of law so along as the fault committed, once analyzed in context, does not prevent the candidate from exercising with competence and honesty the profession in the future such that the image of the profession and the protection of the public are assured.
>
> *Barreau du Quebec*, at para 18

137. In the present case, the LSA submitted that both the nature and gravity of Mr. Camp's misconduct is contextual and role-specific and that "the seriousness of the misconduct in this case is inextricably linked to Mr. Camp's judicial role" (LSA Supplemental Submissions, paras 10 and 12). The Committee agrees.

138. Parties before the Court do not choose their judge. Judges must be impartial and unbiased in adjudicating upon the rights of the parties before them and deciding the outcome of their case. In contrast, parties typically have the ability to choose their own counsel. Moreover, the lawyer's role is to advocate his or her client's position to the fullest extent of the law and to advance his or her best interests.

139. The Committee does not condone Mr. Camp's conduct in the *Wagar* trial or that carried through to his written decision--far from it. The Committee also does not condone conduct among lawyers which demonstrates--or perpetuates--inequality or gender bias or treats marginalized or vulnerable members of society with disrespect. All of those were issues before the CJC when considering the conduct of Mr. Camp--as a judge--and the effect of his conduct as such on the reputation of the judiciary and administration of justice at large.

140. Mr. Hepner submitted at first instance that Mr. Camp's comments at the *Wagar* trial would not, had they been made as a lawyer rather than a judge, have invited much more than objection by the Crown. He submitted that Mr. Camp's conduct would not be inappropriate for a lawyer as lawyers are not, for example, required to unburden themselves of any belief in rape myths. As such, even though Mr. Hepner submitted that Mr. Camp had been fully rehabilitated, he submitted that such should not factor into this Committee's decision given the differences between the roles of judge and lawyer.

141. The Committee disagrees. What Mr. Hepner's submission does not address is the effect of Mr. Camp's reputation--as a judge found guilty of serious misconduct and asked to be removed from office--on the overall reputation of the legal profession, which includes the administration of justice as a whole. It also does not account for the fact that, notwithstanding differences in the roles of lawyers and judges, both roles must respect both the rule of law and society's fundamental values--including equality and the avoidance of gender bias. The Committee therefore does not find Mr. Hepner's argument a compelling basis on which it can, or should, ignore the importance of rehabilitation in the present case notwithstanding differences in the roles of judges and lawyers.

142. The Committee has thus carefully considered what issues Mr. Camp addressed through his rehabilitation and the effect thereof on the expectations which the reasonable person is entitled to have with respect to lawyers. In the result, the Committee is satisfied that Mr. Camp's rehabilitation has addressed those issues--with apparent success.

143. The Committee is therefore of the view that reinstating Mr. Camp to the LSA would not only be compatible with the best interests of the public, but better serve those interests, taking into account the importance of rehabilitation both to our system of justice and to society's fundamental values. The Committee is also of the view that reinstating Mr. Camp would not, when viewed through the eyes of the reasonable person, harm the standing of the legal profession generally.

144. Were the Committee to ignore or discount the nature and effect of rehabilitation in this case, such would be inconsistent with the LSA's goals and objectives as to how to best protect the public. The Committee understands, based on its general knowledge of the LSA and its expertise developed over time, that the LSA and its various Committees devote a significant portion of their time to educating lawyers, remediating issues, assisting lawyers in their rehabilitation efforts, and recognizing those efforts when they are genuine and successful.

145. For example, the Committee notes that the LSA’s Strategic Plan for 2017-2019 has, as one of its Strategic Goals, being a model regulator. According to the Strategic Plan, this goal involves setting standards for the behaviour expected of lawyers, assisting lawyers to achieve those standards and, in cases of non-compliance, working with lawyers to address issues and remediate issues. The Committee also notes the significant time and resources spent by various portions of the LSA, such as the Early Intervention group and the Practice Management Department, working with lawyers to improve conduct and practices. Further, rehabilitation is a key factor considered by hearing committees when deliberating on the appropriate sanction for professional misconduct (as indicated in the LSA’s *Hearing Guide*, April 2016).

146. While this is not the forum to delve further into the rationale for the LSA's focus on rehabilitation, the Committee is of the view that such efforts support the Committee's findings in the present case given its view as to the importance of rehabilitation as one of society's fundamental values.

Conclusions

147. The Committee has carefully considered both the evidence and the submissions of counsel for the parties. Mindful of the warning in the applicable case law that the more serious and recent the original misconduct, the more careful the Committee must be with respect to whether the test for reinstatement has been met, the Committee is of the view that Mr. Camp's reinstatement as a member of the LSA would, when viewed from the perspective of a reasonable person:

    a) be "compatible with the best interests of the public and of the members of the LSA;" and

    b) "not tend to harm the standing of the legal profession generally,"

    and that Mr. Camp's rehabilitation efforts and outcomes are not only relevant with respect to the Committee's determination of (a) and (b), above, but key to its conclusions in that regard.

148. The Committee is nonetheless of the view that it would be beneficial if Mr. Camp engaged with the LSA's Practice Management Department should he wish to practice after reinstatement. This direction is meant to be pro-active and to set Mr. Camp up for success, not as reflection of any concern of the Committee regarding his behaviour as counsel.

149. Mr. Camp's evidence was that, if reinstated, his intention was to practice, perhaps as a sole practitioner or in-house. He does not intend to practice criminal law and, without the approval of the Benchers in a separate application pursuant to Rule 117, cannot appear in chambers or in any court in Alberta as a barrister and solicitor.

150. Given that Mr. Camp has not been in active practice since March 2012, when he was appointed as a Provincial Court Judge, should he decide to practice following reinstatement to active status (insured or exempt), the Committee directs that, prior to and as a pre-condition of engaging in practice, Mr. Camp shall:

    a) Engage and cooperate with the LSA's Practice Management Department;

    b) Promptly answer any requests for information, records and updates as to the location, type, and nature of his intended practice from Practice Management,

including providing regular update reports if and as directed by Practice Management; and

c) Comply with these conditions and any others imposed by the Manager, Practice Management until relieved of this obligation by the Manager, Practice Management.

Disposition

151. The Committee has determined that Mr. Camp should be reinstated, subject to the condition set out in paragraph 150, above. Accordingly, the Committee approves the application.

152. Pursuant to Rule 118(2.1), the Committee has the discretion to order Mr. Camp to pay the costs of the proceedings in whole or in part. Neither party made submissions related to costs at the hearing or in written submissions. Prior to exercising its discretion related to costs, the Committee would like to hear from the parties. Accordingly, the LSA is directed to provide Mr. Camp's counsel and this Committee with a Statement of Costs and its written submission in relation to a costs order within 30 days of the issuance of this Decision. Mr. Camp has 15 days to provide his response to the LSA and this Committee after receiving the LSA's submissions. Costs submissions should not exceed 5 pages, excluding the Statement of Costs.

153. The exhibits tendered at the hearing, as well as the written submissions of the parties, will be available for inspection and copying by members of the public for a fee and will be subject to redaction of personal identifying information. Further redactions will be made to preserve the privacy of the parties and to preserve client confidentiality and solicitor-client privilege.

Dated at Calgary, Alberta, May 22, 2018

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Calvin Johnson, QC

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Glen Buick

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Tamela Coates