

In the Matter of Complaints Against Judge Alanna Murphy  
made pursuant to the *Provincial Court Act*, R.S.N.S. 1989, c. 238

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**DECISION OF THE REVIEW COMMITTEE**

**March 30<sup>st</sup>, 2022**

Members of the Review Committee:

Judge Warren K. Zimmer

Darlene M. Lamey

David Merrigan, Public Representative

## OVERVIEW

1. By letter dated June 3, 2020, and directed to the Chief Judge of the Provincial Court, Mr. Lyle D. Howe, formerly a member of the Nova Scotia Barristers' Society, filed a complaint against Judge Alanna Murphy who is a Judge of the Provincial Court of Nova Scotia presently sitting in Dartmouth, Nova Scotia.

2. In his letter of complaint Mr. Howe states, in part:

I feel I was racially discriminated against by Judge Murphy and I believe the bias that she demonstrated is detrimental to her judgment and her role on the bench.

One such occasion was during a pretrial conference held on February 13, 2014 wherein I was singled out by Judge Murphy along racial lines...

3. Mr. Howe then proceeded to describe the events that occurred during a pretrial conference in Judge Murphy's court and provided a transcript of the exchange that took place before the court on that date.

4. In the same letter of complaint, Mr. Howe went on to describe additional actions on the part of Judge Murphy as follows:

Judge Murphy also went out of her way to compile more than 30 transcripts/audio CDs to the Nova Scotia Barristers' Society wherein I appeared on the record without articulating what I was doing wrong. Many of these transcripts were found to have no improper behaviour. This use of discretion to forward hundreds of pages of transcripts involving matters for which I was appearing was a directed attack on me. In one of her pieces of correspondence to the Nova Scotia Barrister's Society, I was described as creating havoc. This serious allegation without direction prompted a widespread investigation into my legal practice and was premised and driven by racial prejudice and hypervigilance.

Judge Murphy's conduct toward me was inappropriate for a Judge of the Provincial Court and calls into question the public's interest in having a judiciary that is not racially discriminatory, bias or prejudice.

5. On July 7, 2020, Chief Judge Pamela S. Williams of the Provincial and Family Courts of Nova Scotia wrote to the Honourable Michael Wood, Chief Justice of Nova Scotia, in his capacity as Chair of the Judicial Council. Chief Judge Williams referred Mr. Howe's aforementioned complaints pursuant to Section 17B(1)(c) of the *Provincial Court Act* ("the Act"). The Section reads in part:

**17B (1)** The Chief Judge to whom a complaint is made pursuant to Section 17A may

- (a) dismiss the complaint and provide written reasons to the complainant if
  - (i) the complaint is not within the jurisdiction of the Judicial Council,
  - (ii) the Chief Judge considers the complaint to be frivolous or vexatious, or
  - (iii) there is no evidence to support the complaint;
- (b) attempt to resolve the complaint;
- (c) refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint
  - (i) be dismissed,
  - (ii) be resolved with the agreement of the judge, or
  - (iii) be referred to a review committee for further investigation.

6. Chief Judge Williams stated:

On June 10, 2020, I received a letter from Lyle Howe setting out two complaints against Judge Murphy. The first relates to conduct of racial discrimination during the pretrial conference held on February 13, 2014. The second refers to 'direct attack on him' when Judge Murphy compiled numerous transcripts and audio CDs and forwarded them to the Nova Scotia Barristers' Society.

Conduct During the Pre-Trial Conference on February 13, 2014

I have reviewed a transcript of the proceeding which was held on the record. There is nothing on the record to suggest bias along racial lines. I do not know if there were other exchanges which led to Mr. Howe to conclude that Judge Murphy was discriminating against him based on race.

7. Chief Judge Williams later wrote to Chief Justice Wood to clarify that:

I was able to deal with the first part of the complaint as it related to a pretrial conference on the record. After having reviewed the hearing and the transcript, I decided the complaint was without merit and dismissed it. There was no need to receive a written response from Judge Murphy given the complaint was without merit.

8. In relation to the second aspect of Mr. Howe's complaint to Chief Judge Williams, she wrote to Chief Justice Wood:

Although I am aware that there were complaints lodged against Mr. Howe in hearings before the Bar Society, I am unable to assess the merits of this complaint as I was not involved in the process. For this reason, I refer the matter to you as Chair of the Judicial Council suggesting that it be referred to a review committee for further investigation pursuant to section 17B(1)(c)(iii).

9. Chief Justice Wood, in correspondence dated October 7, 2020, to Chief Judge Williams indicated that at that time he had received further submissions from Mr. Howe as well as Mr. Dennis James, QC on behalf of Judge Murphy. Regarding the July 7, 2020, letter, he continued:

Your letter indicates that you have exercised your authority under section 17B(1) of the Provincial Court Act and dismissed the complaint in relation to the pretrial conference held on February 13, 2014, but recommended that the allegations relating to materials forwarded to the Nova Scotia Barristers' Society be referred to a review committee for further investigation.

I have reviewed your letter, the complaint of Mr. Howe, and the submissions of Mr. Howe and Mr. James. My authority under section 17C of the Provincial Court Act is either to accept your recommendation or in panel a review committee. I wish to advise that I have decided to accept your recommendation, which means that the complaint related to the materials forwarded by Judge Murphy to the Nova Scotia Barristers' Society will be referred to a review panel.

I will begin the process to appoint the three-person panel so that they can begin their investigation.

10. Section 17C of *the Act* provides:

17C Upon receipt of a recommendation made pursuant to clause (c) of subsection (1) of Section 17B, the Chair of the Judicial Council may either accept the recommendation of the Chief Judge, and advise the complainant and the Judge in writing, or empanel a review committee.

11. Section 17F of *the Act* sets out the composition of the review committee and Section 17G directs the duties and powers of the committee:

17G The review committee shall investigate the complaint and may

- (a) dismiss the complaint;
- (b) resolve the complaint with the agreement of the judge; or
- (c) refer the complaint to a hearing before the Judicial Council.

12. Should the review committee refer the complaint to a hearing, it would take place before a quorum of the Judicial Council as described in Section 17H of *the Act*. At the conclusion of the hearing, the quorum of the Judicial Council may exercise any of the powers set out in Section 17K of *the Act*.

13. Judge Murphy retained Mr. Dennis James, QC to act as her counsel in relation to this matter. Mr. James responded to Mr. Howe's complaint and the recommendation of Chief Judge Williams in his letter of July 29, 2020. By letter dated July 30, 2020, Chief Judge Williams responded to some of the comments in Mr. James' letter.
14. By letter dated September 10, 2020, Mr. Howe wrote to Chief Justice Wood with additional submissions concerning his allegations. By letter dated October 2, 2020, Mr. James provided further submissions with respect to Mr. Howe's letter of September 10th.
15. By letter dated October 7, 2020, Chief Justice Wood advised Chief Judge Williams that he was accepting her recommendation to dismiss Mr. Howe's complaint in relation to the pretrial conference held on February 13, 2014, and further referring the allegations with respect to forwarding materials to the Nova Scotia Barristers' Society to a review committee for further investigation.
16. All of the aforementioned correspondence and submissions were made available to the review committee. In addition, Mr. Howe filed an un-solicited "Supplement", dated May 9, 2021, to his previous submissions. A copy was provided to counsel for Judge Murphy. No further material was requested of either Mr. Howe or Judge Murphy by the review committee.
17. It was the responsibility of this review committee to investigate the complaint relating to Judge Murphy's interaction with the Nova Scotia Barristers' Society. The procedure to be followed was to be decided by the committee. At the end of the review, the committee was required to either dismiss the complaint, resolve the complaint with the agreement

of Judge Murphy or refer the complaint to a hearing before the Judicial Council, pursuant to Section 17G of *the Act*.

18. It was not the function of the review committee to reach any final conclusion with respect to the merits of the complaint by Mr. Howe. Any such determination was the responsibility of the Judicial Council in the event that the complaint was referred to them for a hearing. The committee's role in the broadest sense is to investigate the complaint to determine whether the allegations could objectively amount to findings of judicial misconduct that warrant a formal hearing.
19. Mr. Howe initiated the complaint against Judge Murphy by writing to Chief Judge Williams. A person who makes a complaint against a judge does not control the process. They are not a formal party to the process that is set out in *the Act* and that is in accordance with the principles relating to judicial independence.
20. As the review committee that investigated the complaints against Judge Lenehan noted at para. 6-11 of their decision:

6. Judicial independence is "one of the pillars upon which our constitutional democracy rests." As set out in the Canadian Judicial Council's publication, *Ethical Principles for Judges*:

An independent judiciary is the right of every Canadian. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone.

7. The importance of judicial independence was underscored by the Supreme Court of Canada in its decision concerning the Provincial Court Judges' Association of New Brunswick:

Judicial independence has been called "the lifeblood of constitutionalism in democratic societies" (*Beauregard*, at p. 70), and has been said to exist "for the benefit of the judged, not the judges" (*Ell*, at para. 29). Independence is necessary because of the judiciary's role as protector of the Constitution and the fundamental values embodied in it, including the rule of law, fundamental justice, equality and preservation of the democratic process.

8. While the judiciary is not accountable to any electorate or government for its decisions, lapses or questionable conduct by judges can erode public confidence. The judicial conduct processes in place in each Canadian jurisdiction are designed to be responsive to concerns about the conduct of judges, while at the same time being acutely sensitive to the requirements of judicial independence.

9. The Supreme Court of Canada articulated this tension in the following passage from *Moreau-Bérubé v New Brunswick* (Judicial Council):

...The Judicial Council has been charged by statute to guard the integrity of the provincial judicial system in New Brunswick. In discharging its function, the Council must be acutely sensitive to the requirements of judicial independence, and it must ensure never to chill the expression of unpopular, honestly held views in the context of court proceedings. It must also be equally sensitive to the reasonable expectations of an informed dispassionate public that holders of judicial office will remain at all times worthy of trust, confidence and respect.

10. This passage highlights that the ultimate goal of a judicial conduct process is to guard the integrity of the judicial system or, to put it another way, to ensure public confidence in the judiciary.



11. As noted in *Moreau-Bérubé*, the test for determining the maintenance of public confidence is an objective one, and not one determined through the eyes of an individual complainant. The embodiment of the “public” whose confidence must be maintained is the “informed dispassionate public”, often referenced as a “reasonably informed person” or a “reasonable member of the public”. The Supreme Court of Canada has further defined the reasonable member of the public, albeit in a different context, as follows:

...Thus, a reasonable member of the public is familiar with the basics of the rule of law in our country and with the fundamental values of our criminal law, including those that are protected by the Charter. Such a person is undoubtedly aware of the importance of the presumption of innocence and the right to liberty in our society and knows that these are fundamental rights guaranteed by our Constitution. (citations omitted)

#### **DISPOSITION OF THE COMPLAINT**

21. In Nova Scotia, judicial accountability is given effect through the processes established by the *Provincial Court Act*. A review committee constituted under the terms of *the Act* has authority to dismiss a complaint, resolve a complaint with the agreement of the judge or refer the complaint to a hearing before the Judicial Council.
22. The review committee established to investigate the complaint of Mr. Lyle D Howe has conducted a detailed examination of all material relevant to the complaint and taken guidance from the legal principles laid out in the Review Decision relating to Judge Lenehan. At paragraph 45 of that decision, the Review Committee determined that its role was to answer the question:

**Whether the impugned conduct, if proven or admitted, could support a finding of judicial misconduct. That is, from the point of view of a reasonable, dispassionate, and informed public could it be found to be so seriously**

**contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally, and that it warrants a disposition other than dismissal of the complaints in order to restore that confidence?**

23. And at para 48:

48. In assessing whether the conduct is seriously contrary to the impartiality, integrity, and independence of the judiciary, the Review Committee must consider the presumption of judicial integrity and impartiality that underlies the concept of judicial independence. As explained by the Supreme Court, albeit in a different context:

The threshold for rebutting the presumption of judicial integrity and impartiality is high. The presumption carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption.<sup>25</sup>

<sup>25</sup> *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, para 20

24. And further at para 184:

184. Public confidence is maintained by having an impartial, independent judiciary that is nonetheless accountable to the public through processes that permit a review of a judge's actions to determine if the high threshold for judicial misconduct has been met. The test will only be met where in the eyes of a reasonable, dispassionate and informed public the judge's comments or actions could be found to be so seriously contrary to the impartiality, integrity and independence of the judiciary that they have undermined the public's confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally, and that it warrants a disposition other than dismissal of the complaints in order to restore that confidence. It is a high test to meet.

25. The review committee has determined that the test for judicial misconduct has not been met and dismisses the complaint of Mr. Lyle D. Howe.

## DISCUSSION

26. The test that this review committee has applied is as stated in the decision of the Review Committee relating to the complaints against Judge Lenehan, that is:

Whether the impugned conduct, if proven or admitted, could support a finding of judicial misconduct. That is, from the point of view of a reasonable, dispassionate, and informed public could it be found to be so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally, and that it warrants a disposition other than dismissal of the complaints in order to restore that confidence?"

27. That same Review Committee noted that in assessing whether the conduct is seriously contrary to the impartiality, integrity and independence of the judiciary, the review committee must consider the presumption of judicial integrity and impartiality that underlines the concept of judicial independence. As explained by the Supreme Court of Canada, albeit in a different context:

The threshold for rebutting the presumption of judicial integrity and impartiality is high. The presumption carries considerable weight, and the law should not carelessly invoke the possibility of bias in a Judge, whose authority depends upon that presumption." [*Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, para 20]

28. This review committee is also guided by the following comments of that Committee at paragraph 119 of their decision:

119. The Committee also recognized that judicial misconduct in the form of bias or stereotyping can be exhibited in less direct ways, sometimes unknown to the judge, and more difficult to detect. This was addressed directly in the *Marshall Inquiry Report* as follows:

Everyone holds views, but to hold them may, or may not, lead to their biased application. There is, in short, a crucial difference between an empty mind and an open one. True impartiality is not so much not holding views and having opinions, but the capacity to prevent them from interfering with a willingness to entertain and act on different points of view. Whether or not a judge was biased, in our view, thus becomes less instructive an exercise than whether or not the judge's decision or conduct reflected an incapacity to hear and decide a case with an open mind.

29. Or, to put it another way:

Is the conduct so manifestly and profoundly destructive of the concept of the impartiality, integrity and independence of that judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office? [para 37]

30. By correspondence dated June 3, 2020, addressed to the Chief Judge of the Provincial Court, Mr. Lyle Howe made a complaint regarding the conduct of Judge Alanna Murphy, a Judge of the Provincial Court of Nova Scotia sitting in Dartmouth, Nova Scotia. The first part of his complaint (as determined by Chief Judge Williams and Chief Justice Wood) related to a pretrial conference held on February 13, 2014, and presided over by Judge Murphy, in which he complained that he was singled out by the judge along racial lines.

31. By correspondence dated July 30, 2020, from Chief Judge Williams to Chief Justice Wood, it appears that Chief Judge Williams after reviewing the transcript from the pretrial conference, decided that the complaint was without merit and dismissed it. The second aspect of the letter of complaint was referred to the Chief Justice as the Chief Judge did not feel that she could properly assess the complaint.

32. By letter dated October 7, 2020, Chief Justice Wood advised Chief Judge Williams that he was accepting her recommendation to dismiss Mr. Howe's complaint in relation to the pretrial conference held on February 13, 2014, and was referring the allegations with respect to forwarding materials to the Nova Scotia Barristers' Society to a review committee for further investigation.
33. It is also important to keep in mind the role of the Professional Responsibility Department of the Nova Scotia Barristers' Society. In correspondence to Mr. Howe, dated September 9, 2013, found at tab (i) [tab 7] of Mr. Howe's authorities, attached to his September 10, 2020, letter, I note:

The Professional Responsibility Department is focused on protection of the public and excellence in regulation. Our role is also to enhance the competence of members and assist them in adhering to the rules of professional conduct. A foundational principle for this department is to identify opportunities to educate, assist, monitor and guide members where problems have been found or reported, and to only use 'disciplinary' measures where required in the public interest.

34. Victoria Rees was, at the relevant time, in charge of investigations for the Barristers' Society.
35. The Society's role and interest in regulation is broad and inclusive of many aspects of professional practise.
36. The letter continued:

Over the past year, concerns have again come to the Society's attention with regard to your continuing to practice before the courts in a manner which is

disruptive, contrary to the interests of the proper and effective administration of justice, and contrary to the interests of some of your clients.

37. Ms. Rees went on to advise Mr. Howe that the Society had retained Elizabeth Buckle, QC to assist with an investigation as determined by the Executive Director. Mr. Howe was advised of a proposed interview the purpose of which was for the gathering of information regarding the concerns that had arisen with respect to his practice of law and to give him an opportunity to respond on the record in furtherance of the ongoing investigation.

38. The portion of Mr. Howe's letter dealing with this second aspect of his complaint reads:

Judge Murphy also went out of her way to compile more than 20 transcripts/audio CDs to the Nova Scotia Barrister's Society wherein I appeared on the record without articulating what I was doing wrong. Many of these transcripts were found to have no improper behaviour. This use of discretion to forward hundreds of pages of transcripts involving matters for which I was appearing was a directed attack on me. In one of her pieces of correspondence with the Nova Scotia Barrister's Society, I was described as creating havoc. This serious allegation without direction prompted a widespread investigation into my legal practice and was premised and driven by racial prejudice and hypervigilance.

Judge Murphy's conduct toward me was inappropriate for a Judge of the Provincial Court and calls into question the public's interest in having a judiciary that is not racially discriminatory, biased or prejudice.

39. Mr. Howe's complaint before this Committee is specific to the actions of Judge Murphy in relation to the Nova Scotia Barristers Society's investigation process. A process that he had previously argued, both before the Panel and the NSCA, was racially motivated. He alleges that the actions of Judge Murphy were driven by racial prejudice and hypervigilance. The Panel, in particular, found that [83] there was no violation of s.15 of

the Charter relating to equality and concluded that the Society's investigation was not racially motivated. The NSCA did not identify any errors in this conclusion [114].

40. In other words, race and background were not factors that lead to or permeated the disciplinary proceedings [Panel 77-78].
41. Upon review of Mr. Howe's complaint and submissions, in their entirety, it appears that much of his argument is rooted in a re-litigation of the Society's decision against him. The Panel's decision was reviewed by the NSCA and dismissed except for a consent to vary the costs portion of the penalty.
42. This Committee is limited to the allegations against Judge Murphy, that is, that her actions were driven by racial bias and prejudice.
43. This is the complaint that this Review Committee was directed to consider.
44. At tab 3 of the material filed by Dennis James QC, on behalf of Judge Murphy, there is email correspondence dated February 9, 2013, from Judge Murphy to Victoria Rees, Director of Professional Responsibility, Nova Scotia Barristers' Society. The email explains the reason for the outreach (actually at the suggestion of Judge Tax) and the request for some information relating to the processes that might be followed given concerns about an un-named lawyer.
45. The remaining correspondence seems to indicate that they spoke on February 12, as referenced in the email of February 13 wherein Judge Murphy states that she will discuss

matters with her colleagues and get back to her. Furthermore, in that email, Ms. Rees makes the following comment:

... while the court may have concerns based on anecdotal information about such things as client retention, it seems to me that from the court's perspective, the most significant concerns relate to integrity, honesty, candour and upholding the administration of justice and this might be the appropriate focus for any information you might provide. In other words, it would be helpful for the court to express any concerns about which you have direct knowledge and information relating to the lawyer's duties of integrity and to the administration of justice.

46. "Direct knowledge" is captured in the recorded proceedings of the court and is available through transcripts and CDs of those recordings. The forwarding of the record, of a court proceeding, for review by the Society's investigation committee without more is not in any way inappropriate given the context in which it was sent.
47. Whatever material came from other judges to Judge Murphy to be forwarded to the investigation committee is no less inappropriate, even without further explanation. The transcripts speak for themselves and reflect the words of the speaker, whether Mr. Howe or the court. It is the function of the Society's Complaints Investigation Committee (CIC) to decide, based on the information they review, whether there are issues requiring attention or discipline.
48. It should be kept in mind that neither Judge Murphy nor any of the judges who forwarded information were complainants in this matter. The information that was forwarded was apparently reviewed by the CIC in accordance with the Society's established processes. Whether that information, alone or in conjunction with other material information



obtained by the CIC, provided the basis for a complaint directed by the Executive Director of the Society was for the Director to decide.

49. At the Society's disciplinary hearing, Mr. Howe questioned Victoria Rees on why the transcripts that they had received were not forwarded to him prior to the investigatory interview. Her reply was to the effect that they were still gathering information and trying to assess what was of relevance and what was not and what was an ethical violation. This is what they did in the course of most investigations. (tab L, transcript page 517)

50. As Ms. Rees explained at page 518 of the same transcript; (and I will paraphrase ... And so with the complaint of James Baker as well as the complaint of the Executive Director based on the concerns of the court, and the Public Prosecution Service's complaint, all of this information went to the Complaints Investigation Committee who ordered a practice review. It was determined that this course of action would be one way, an interim way, for the Society to have a look at how he was doing in terms of managing his practice since the previous practice review and at the same time continuing their investigation.

51. Mr. Howe questioned Ms. Rees extensively on the issue of not receiving any transcripts before the interview and at page 522 suggested:

...if I said to you that the contents of those files are useless, because what really matters... what the allegation pertains to is the transcripts, would you agree with that?

52. At page 523:

Q. would you agree that if you wanted me to respond to issues that arise regarding proceedings before the court...

A. Yes

Q. ... it would have been fair to say, here's a copy of the transcript before you come in because that's really what we're going to interview you about.

53. And further at page 524:

Q. Okay. If we're talking about proceedings before the court, what we're really talking about here, and correct me if I'm wrong, is comments that I made on the record and whether or not I was double booked.

A. My recollection is it was much more than double booking that we were...

Q. Okay

A. ...concerned with.

54. From a review of the NSCA decision as well as the decision of the Panel, it is notable that the matters that engaged the various Judges were almost exclusively related to a lack of condor and/or integrity before the court in question. The transcripts were the "evidence" for the CIC to consider. No more was required from the courts. It was for the regulator to determine, upon review, what if any action was necessary.

55. The Panel did not ignore systemic racism and its impact on Mr. Howe. The Nova Scotia Court of Appeal in *Howe v. Nova Scotia Barristers' Society*, 2019 NSCA 81 noted (NSCA), at para 180, referenced the Panel's acknowledgement that the impact of systemic, actual and historic racism were mitigating factors to be considered by it when sentencing Mr. Howe. And further stated:

**181.** The Panel devoted an entire section of its decision titled "Impact of Systemic, Actual and Historical Racism" to this issue. In doing so it recognized Mr. Howe's circumstances:

66. There can be no question that Mr. Howe grew up in circumstances that place him squarely in line to feel the impacts of systemic and historical racism. He talked eloquently about this during the sanction hearing, and about how it led him to distrust the system which he viewed as designed to prevent his success. That led to him reacting aggressively to challenge.

**182.** The Panel went on to find a connection between Mr. Howe's perception and his reaction to what he faced:

67. We accept this explanation to a great extent because his reactions were so consistent: when challenged, he often relied on conjecture and falsehood to get out from under that pressure. And that is the problem: while the injustice seems to have been real in Mr. Howe's mind, there is little evidence of actual discriminatory attack. This is why the Society says there is no connection. But the Panel says there is a connection. Historical and systemic racism explain Mr. Howe's perception and reaction to what he faced.

**56.** The NSCA at para 183 provides an outline of the Panel's findings:

**183.** The Panel, correctly, noted that this conclusion did not end the discussion. It needed to consider whether there was a causal connection between Mr. Howe's conduct and systemic or actual racial discrimination. I will set out the Panel's findings on this issue in their entirety:

69. In addition, and **very importantly**, the situations where Mr. Howe's lack of integrity and dishonesty came to the fore did not arise out of circumstances of discrimination. Rather, they arose out of rather routine situations that can face any lawyer, and that did face Mr. Howe.

70. For example, when Mr. Howe was dishonest with the court about JB's absence, that was to cover up his own lack of diligence.

71. When Mr. Howe was dishonest with Judge Tax and Judge Hoskins on March 15, 2013, that was to cover up his decisions that led him to be double booked.

72. When Mr. Howe lied to the court about the timing of the therapist's report on March 26, 2013, that was to cover up his own lack of proper preparation.

73. When Mr. Howe deceived the court about the advice he received from the Society regarding conflict on April 9, 2013, and lied about having signed waivers from clients, that was to assist him in keeping both clients.

74. When Mr. Howe, on April 16, 2013, lied to Judge Gabriel about what happened in Judge Murphy's court, that was to cover up his own actions to delay a matter he was not adequately prepared for.

75. When Mr. Howe, in June of 2016, falsely told Judge Derrick he could be available when he was already booked, and then engaged in a series of dishonest and devious behaviours in relation to Judge Cacchione, this was all in an effort to allow him to avoid two sentence hearings he was either not prepared for or that he wished to adjourn for other reasons.

76. None of these situations arose out of discriminatory actions toward Mr. Howe. Nor were they situations where he was under attack because of historical or systemic racism. Rather, they were created by his own actions. In every case, even if he was in a bind, he had an option: tell the truth. Instead, he chose the option of being untruthful and self-serving.

77. The even more unfortunate reality is if Mr. Howe showed contrition to the courts, not only would he have been forgiven, he may well have earned respect, and also would have been less likely to make the mistake again. One can only learn from their mistakes if they admit them, particularly to themselves.

78. Therefore, while we acknowledge the role Mr. Howe's background must play in this case, in the end it [cannot] play a role to mitigate or reduce the ongoing and serious lack of integrity shown by Mr. Howe.

[Bold in Original]

[Emphasis added]

57. At para 184 the Court noted that the Panel had properly considered systemic and actual racism as mitigating factors and examined whether there was a connection between the systemic or individual racism and the findings of misconduct and found there was not. As the Panel stated:

83. Regardless of Mr. Howe's racial and cultural background, regardless of his core views as to the functioning of the criminal justice system, and regardless of his aspirations to have an effect on the criminal justice system for the benefit of the system and his community and his clients, as a professional he is not permitted to pursue those objectives by employing dishonesty when he decides it would be convenient or effective. Nor can the profession as a whole allow a member of the Nova Scotia Barristers' Society to offer services to the public where it is known that the member may choose to be dishonest when representing clients. That would not only serve to encourage public distrust of the legal profession as a whole, but could also encourage suspicion about the ability of our Courts to function properly. Convenient dishonesty by lawyers would directly undermine the value of our justice system. Our justice system can produce independent, rational judgments that are based on evidence, and which result from open, persuasive, and entirely candid advocacy. Mr. Howe's choices to attempt to tip the scales of justice in his favour, or in favour of his clients, through the tool of occasional dishonesty is the antithesis of how a legal professional must act. Effective counsel can be disruptive without being dishonest.

58. Mr. Howe's lack of integrity and honesty did not arise out of circumstances of discrimination (para 69 above). Rather, they arose out of rather routine situations that can face any lawyer. It was how Mr. Howe responded, selecting his own words and his own strategy, in dealing with the various situations before the courts. In every case, even if he was in a bind, he had an option to either tell the truth or try and invent an explanation that was untruthful and self-serving.

59. Providing transcripts to the professional regulator, without accompanying narrative, for the Society's Complaints Investigation Committee to determine what if any action should be taken, is entirely within the discretionary behaviour and decision-making of the judges. This includes whether or not they provide any additional context. The record speaks for itself and Mr. Howe could provide any explanation he deemed fit to advance.
60. There can be no justification for a lack of integrity or honesty before the courts.
61. Judge Murphy did not go out of her way to compile the record material forwarded to the regulator for their review. Nor was it necessary to attach an explanation for the CIC to explain what they were reading. The records were clear enough for the CIC to determine if professional standards were or were not met by Mr. Howe's conduct before the court or Judge in question.
62. Mr. Howe says, in part; "This use of discretion to forward...transcripts...was a directed attack on me." Mr. Howe was the subject of a CIC investigation in which possible misconduct before a number of judges was part of the review. His own words and conduct had led to that course of action and although he may have been disappointed that the judges were paying attention to his misleading representations that does not mean that they were not entitled to take some course of action.
63. In fact, consideration of what action to take, if any, appears to be the reason for the original outreach by Judge Murphy to Ms. Rees and the Judge's words that she would, "Let me discuss this with my colleagues and get back to you soon. There have been further

incidents since we spoke” seem to reflect an understanding that some action was required by the courts.

64. The NSCA also noted, at para 54, the findings of lack of integrity relating to various courts:

54. The Panel found that, in several distinct factual circumstances over a number of years, Mr. Howe breached his duty to act with integrity in his communication to the Courts, the Society and his clients. In its factum, the Society has provided a helpful summary of the Panel's findings regarding Mr. Howe's lack of integrity. The summary correctly outlines the Panel's findings and I repeat them here with some modifications:

(a) January 16, 2013 -- Mr. Howe was not candid with the Court about Mr. [B.]'s absence from Court. The Panel found that Mr. Howe misled Judge Sherar because telling him the truth "would have meant admitting to the court that Mr. Howe had not been diligent enough in ensuring his client knew he was supposed to be in court that day" so "his version given to the court was a massaging of the facts to place blame on [Mr. [B.]]". The Panel found that Mr. Howe "fudged" the facts to avoid responsibility (Decision para 124-125) ;

(b) March 15, 2013 -- in the DF/MS and RM matters, Mr. Howe was inaccurate in his comments to Judge Tax and Judge Hoskins. After providing a thorough analysis of the facts of this case, the Panel found: "the nature of the occasion on which Mr. Howe's comments were made, the importance of the occasion with respect to his client's timely trial interests, and his ineffective effort to deflect responsibility, combine to persuade us to conclude -- regretfully -- that Mr. Howe's comments to Judge Tax and Judge Hoskins on March 15 were purposely false" (Decision para 523);

(c) March 26, 2013 -- Mr. Howe was dishonest with the Court and Mr. [B.] about the timing of the receipt of the therapist's report. Mr. Howe negligently provided an unhelpful report to the Court without reviewing it with Mr. [B.]. The Panel found that the "only rational explanation for doing so is that Mr. Howe was scrambling to save face with the court and to gain a further adjournment, and thus he pulled the letter from the file and tendered it to the court" (Decision para 140);

(d) April 9, 2013 -- in the KS & KW and JC conflict matter, Mr. Howe misled the Court by stating that he had "waivers" and insinuating that the Society was in support of his position to stay on the file as counsel. The Panel found that "it was deceptive and misleading on the part of Mr. Howe to tell that he had spoken with the Society and could assure the Court that no issues were going to arise, given that he clearly knew the Society's actual, and contrary, position" (Decision para 496);

(e) April 16, 2013 -- Mr. Howe deliberately lied to Judge Gabriel about what happened in Court that morning before Judge Murphy. After reviewing the facts behind this incident, the Panel found that, in an attempt to minimize his liability for not being prepared before Judge Murphy, Mr. Howe lied and was deliberately untruthful to Judge Gabriel. The Panel then noted: "What happened here is something we saw similar evidence of throughout the proceedings before us" (Decision para 197);

(f) March 4, 2014 -- Mr. Howe failed to act with integrity in his response to the Society regarding his receipt of the therapist's report in the Mr. [B.] matter, and that he reviewed the matter with his client (Decision para 147);

(g) June 5 -- July 21, 2014 -- the Panel considered three matters and found that following his suspension, "Mr. Howe deliberately and repeatedly violated the [Society's Guidelines Respecting Lawyers' Voluntary or Involuntary Cessation of Practice]" (Decision para 374-380);

(h) June 10, 2016 -- Mr. Howe was dishonest with Judge Derrick when he indicated that he was available to attend court on June 17, 2016. The Panel found that Mr. Howe made a calculated decision and "intentionally created a conflict to give him a reason to avoid either one or both sentencings the following week. This is significant misconduct" (Decision para 235);

(i) June 12, 2016 -- Mr. Howe inaccurately advised Justice Cacchione in a letter that he was "newly retained" in the Mr. [D.] and Mr. [K.] matters. Mr. Howe failed to advise Justice Cacchione that he was no longer available to attend the scheduled Court appearance for the afternoon of June 17, 2016. The Panel held that "this material non-disclosure in the



correspondence to the Supreme Court on June 12 demonstrates a singular lack of candour." (Decision para 228);

(j) June 17, 2016 -- Mr. Howe failed to attend Mr. [K.]'s sentencing hearing in the afternoon and failed to advise Justice Cacchione that he was unable to attend that afternoon even though he was before him in the morning. The Panel found that Mr. Howe "made a strategic decision not to raise the status of [K.]'s sentencing with either Ms. Driscoll or Justice Cacchione while they were assembled on the morning of June 17." (Decision para 226);

The Panel found that Mr. Howe was "manipulating the Supreme Court through a lack of candour. He was, frankly, attempting to play the Court." (Decision para 229);

The Panel held that it was "regrettably plain and evident that Mr. Howe saw nothing wrong on June 17 with abusing the Supreme Court...Mr. Howe engaged in a cost-benefit analysis as to how candid to be with the Court..." (Decision para 231);

(k) June 17, 2016 -- Regarding Mr. Howe's letter to Justice Cacchione, the Panel found that Mr. Howe gave a "deliberate falsehood" when he informed Justice Cacchione in a letter that he was "compelled" to testify by Judge Derrick. The Panel found that: "Even as he pretended an apology, he was endeavouring to escape responsibility for his own calculated behaviour." (Decision para 234); and

(i) July 8, 2016 -- in the *R. v. Domoslai* matter, Mr. Howe told the Court that he was not "...up to speed with exactly why the discharge (of Ms. McCarthy) took place..." while he testified to the Panel that he was aware of the reason. This comment demonstrated that Mr. Howe was not honest and accurate with the court and thus again in breach of clause 17 of the practice conditions to be honest and accurate with the Court. (Decision para 426).

65. Judge Derrick, now Justice Derrick, wrote to Judge Murphy (June 11, 2014) following a discussion with Victoria Rees concerning Mr. Howe. The email is found at tab 7 of Mr. James' brief and says, in part:

I spoke with Victoria Rees late today. The discussion gave me a clearer understanding of what the NSBS can do in its regulatory role, how judges can raise concerns with the NSBS, and what, in general terms, the NSBS has been doing in this case. Victoria mentioned the possibility of the NSBS providing information to the Chiefs for all the courts for dissemination to judges about what options are available to judges where lawyer's conduct is a concern. This experience does indicate to me that we judges should be comparing notes more when we are seeing conduct that concerns us. Knowing what to do with our concerns would be very helpful. I note the NSBS will follow-up with this. I have mentioned it to Pam just now in an email as I had originally written to her while trying to decide what to do in the wake of Mr. Howe's suspension.

I was reassured from my discussion with Victoria that the NSBS has been looking in Mr. Howe's practice for some time and alive to the issues his conduct and practice raised. Now that I have spoken to Victoria, the letter I am going to send her will be a letter focused on transcripts relating to three matters I had with Mr. Howe. I will send you a copy of that letter when I have completed and sent it.

It was really helpful to me to see your email exchanges with Victoria. Many thanks for providing them to me.

66. Although this email was written June 11, 2014, it appears that Justice Derrick and Justice Cacchione also brought to the Society's attention to incidents from June and July 2016 that occurred while the Panel hearing was underway. At para 46-48 the NSCA outlines the amended charges arising therefrom:

**46.** As noted earlier, the hearing into the complaints against Mr. Howe started on December 10, 2015. However, in June and July 2016, while the hearing was in progress, the Society investigated three other complaints against Mr. Howe.

**47.** The CIC approved new charges against Mr. Howe arising from these complaints. The panel hearing the original charges allowed a motion to add the new charges to the ongoing hearing and on August 10, 2016 the Society amended the charges against Mr. Howe.

**48.** The amended charges related to Mr. Howe's conduct in June and July 2016. The charges stated that Mr. Howe:

- failed to be honest and/or candid;
- misled and/or made misrepresentations to the court in misrepresentations he made to Judge Derrick and Justice Cacchione about his ability to attend court appearances, in two different courts on June 17, 2016;
- was unprepared to testify at a hearing where a former client was seeking to set aside guilty pleas on the basis of Mr. Howe's ineffective counsel;
- failed to be honest and/or candid, misled the CIC and/or made misrepresentations with respect to a file he was involved in;
- failed to ensure clients were appropriately served;
- failed to follow the CIC's order in relation to practice restriction;
- used disparaging language toward and about lawyers and judges;
- made unsupported or false allegations or representations;
- failed to respond to communications from a representative of the Society; and entered incomplete documents as exhibits.

67. A complete chronology of events is found in the NSCA decision starting at paragraph 8 through to 49.

68. During the Panel hearing, Mr. Howe alleged a violation of s. 15 of the *Charter* and raised it again in the Court of Appeal [para 71]. It is outlined at para 69:

69. Mr. Howe's allegation that s. 15(1) was breached was intertwined with his allegations of bias, discrimination and differential treatment. The Panel summarized his complaints as follows:

22. Mr. Howe eventually consolidated his complaints in relation to race, racial bias, differential treatment, and lack of cultural sensitivity or awareness, into a specific position with his *Notice of Charter Motion*, dated February 27, 2017. That *Notice* has since gone through some proposed amendments, upon which we have ruled. Those allegations that remain to be adjudicated are that:

1. The Society "acted in a conflict of interest in the investigation and in the conduct of the proceeding and acted in a discriminatory manner towards Lyle Howe from September 2011 to the present";

2. The Society "acted in a conflict of interest, and acted in a discriminatory manner and without transparency in the investigation of the PPS Complaint, interactions with Crown Attorneys providing information to" the Society, "and the information provided by Dartmouth Provincial Court Judges", and furthermore,

(a) relied upon double standards compared to other members of the Bar;

(b) used an unfair standard to justify the unprecedented scope of its investigation and perception of Mr. Howe's conduct;

(c) failed to apply practice standards and norms present in the Halifax criminal defence context, which amounted to adverse impact discrimination;

3. The Society failed to disclose the retention of Elizabeth Buckle "and the reasons thereof, in a reasonable time";

4. The Society "retained and instructed Agents, in particular Malcolm Jeffcock, practice supervisor, for an ulterior purpose";

5. The Society "failed to investigate Lyle Howe in an [sic] manner that is objective and consistent with the *Legal Profession Act* and Charter Values";

6. The Society "failed to act in the public interest in the investigation. . . and in the conduct of the proceedings against Lyle Howe".

69. The NSCA was satisfied that the Panel applied the correct test in coming to their findings which included that there was not any failure by the Society to accommodate Mr. Howe's race, colour or ethnic background, and that the Society had made numerous attempts to help Mr. Howe with the management of his practice with limited success.

70. The Panel also found that Mr. Howe resisted offers of professional guidance and support with respect to a number of practice areas. The Panel directly addressed Mr. Howe's argument that the society and individuals acting on its behalf were racially biased.
71. The Panel was of the view that each of the various actors or institutional players from time to time made decisions or gave advice or made reports which disappointed Mr. Howe. Each was performing a legitimate statutory task or service and disappointment and disagreement by Mr. Howe with the conclusions of those persons or bodies was not the test for determining whether something violated the aspirational value of the quality in Section 15 of the Charter. The NSCA concluded that the panel committed no errors in coming to its conclusions. [para 78-80]
72. The NSCA makes an interesting observation at paragraph 82, relating to Mr. Howe's submissions before the Panel and the Court of Appeal by which he "repeatedly portrayed Ms. Rees as being the chief architect of what he perceived to be a racially-driven vendetta to drive him from the profession". The Panel had concluded that race was not a factor in the Society's oversight of Mr. Howe, that is, that the Society's investigation was not racially motivated. The Court did not identify any error in the Panel's consideration of the evidence in coming to this conclusion.
73. Mr. Howe further asserts in his complaint against Judge Murphy that, "This serious allegation without direction prompted a widespread investigation into my legal practice and was premised and driven by racial prejudice and hypervigilance".

74. Mr. Howe's practise was under review long before any Judge decided to forward any of the recordings or other material under consideration to the CIC.
75. As previously noted, a chronology of events is found at NSCA para 8 – 49. It shows that Mr. Howe's issues with the Society began in 2010 (Mr. Howe was called to the Bar in June 2010) and in particular, that five complaints were received between June 2010 and October 2011. A practise review was ordered by the CIC September 23, 2011.
76. The practice review was conducted by John Rafferty QC with his report being filed on November 21, 2011.
77. The CIC finished its investigation of the outstanding complaints by July 2012. The CIC dismissed all but one which resulted in Mr. Howe being counselled "for not taking sufficient care to avoid misleading the Court".
78. Judge Murphy did not correspond with Ms. Rees until February 26, 2013. There is no evidence that any action by Judge Murphy "prompted a widespread investigation" into Mr. Howe's legal practise.
79. Allegations of "hypervigilance" were also raised before the Panel and the NSCA. There is simply no evidence to support this allegation against Judge Murphy, just as there was no evidence to support the companion complaint before the Panel and the NSCA.
80. From the NSCA decision:

**Hypervigilance**

99. The Society's alleged hypervigilance towards Mr. Howe was front and

centre before the Panel and before us. The Panel described his argument as follows:

(64) Mr. Howe argues that complaints about deficiencies in his practice are the result of specific and increased focus on him, and demonstrate that he is being held to a different standard than similarly situated lawyers. We understand that unless someone goes looking, or a client makes a specific complaint, the kind of things spoken about by Mark Bailey are unlikely to be noticed by the Society in anyone's practice. The fact that those kinds of things were noticed in relation to some of Mr. Howe's clients does reflect the heightened level of scrutiny that was given to him.

**100.** Again, the Panel recognized Mr. Howe's point regarding the Society's alleged hypervigilance:

(73) We certainly appreciate that from Mr. Howe's point of view, the practice agreements were restrictive and likely felt paternalistic. They imposed obligations which, he believed, were unique to him. They demonstrated, in his view, an institutional hyper-vigilance towards his practice that was not applied to other lawyers of similar vintage at the Bar. He attributes the hyper-vigilance to his race, colour, and cultural location.

**101.** The Panel disagreed with Mr. Howe's attribution of the alleged hypervigilance to his race. It pointed out the flaw in Mr. Howe's perspective and his complaint that the practice agreements he was required to enter into were restrictive and paternalistic:

(74) The flaw in Mr. Howe's perspective about hyper-vigilance and the practice agreements is that the kind of expectations and obligations that they imposed are not substantially different than the obligations that any lawyer of less than 5 years at the Bar would expect if working within a firm under the supervision of more senior members of the Bar. Because Mr. Howe was operating his own firm at most of the relevant times, and was the senior lawyer in his firm at most of the relevant times, he did not have a more senior lawyer "in house" to do the supervising.

**102.** Mr. Howe refers to unprecedented scrutiny and over-supervision from the Society. He states: "All of the dishonesty charges were investigated by the NSBS without a formal complaint of dishonesty from an outside source". However, the matters before the Panel were the result of complaints or concerns expressed from a variety of sources: former clients ([J.B.], [K.S.], [B.H.] through his counsel Peter Mancini), the Public Prosecution Service, and two Provincial Court Judges).

**103.** The Panel found that by 2014, there were clear problems with how Mr. Howe was managing his practice and they were too pervasive for the Society to ignore:

(70) Regardless of how the information came to light, and regardless of their scope or volume, by 2014 there clearly were problems with how Mr. Howe was managing his practice. These problems were acknowledged by Mr. Howe, they were obvious on external observation, and they were too pervasive for the Society to ignore. Mr. Howe's choice of how to behave was affecting the orderly functioning of the courts, other counsel, and the public.

**104.** The Society's investigation of Mr. Howe's actions in June 2016 during the hearing only arose after the publication of media reports, including reports that Justice Cacchione was "furious" that Mr. Howe did not appear for a sentencing hearing.

**105.** There was significant scrutiny of Mr. Howe. However, the Society did not initiate its investigations without reason. The Society was responding to numerous complaints and concerns about Mr. Howe's practice -- concerns regarding behaviours that Mr. Howe earlier acknowledged and agreed to change but did not."

**81.** Additionally, at para 2 of the Panel decision, it was noted:

2. The reason that Mr. Howe is alleged to have violated both the 'Code' and the 'Handbook' is because the behaviors in issue span the time between 2011 and 2016.



82. Mr. Howe was not invisible and his continued behavior and practise management, as outlined, required the Society to take some action in response. As the Panel stated [para 70]; “Mr. Howe’s choice of how to behave was affecting the orderly functioning of the courts, other counsel, and the public.”
83. No authority is needed for the proposition that, “It creates ‘havoc’ in the courts when Judges cannot rely on the word of counsel”.
84. Mr. Howe complains that Judge Murphy’s comments about his behavior “prompted” a widespread investigation that was premised and driven by racial prejudice. There is simply no evidence to support this complaint. The various Courts’ concerns, where his lack of integrity and honesty was evident, were the result of his own decisions. Those failures were his own choice, his own words and his own calculations in each set of circumstances. Had he chosen to not mislead the various courts, he would have had nothing to face regarding his conduct before the courts.
85. As the Panel stated at para 84:
- Finally, the kinds of things that Ms. Buckle, and Mr. Jeffcock, and the institutional players, focused on were not things which are tolerated from white lawyers. They concentrated on issues which are generally characterized as issues of honesty, candour and respect. There are no different standards for legal professionals in terms of honesty. Professional honesty in dealing with the courts has nothing to do with one’s race, colour or ethnic origin. Nor does its examination in a professional responsibility context.
86. In the context of Mr. Howe’s s .15 *Charter* argument the Panel noted at para 87 that:
- Mr. Howe’s race, colour and ethnic status does not and cannot insulate him from having to answer as to whether his professional behavior met the ethical requirements of the Handbook and the Code.

87. The Panel concluded that he had not proven a material violation of s. 15 of the *Charter* in either the investigation or prosecution of the charges and he was therefore not entitled to a remedy.

88. The Panel also stated:

88. ... Honesty should be the bedrock character trait of any lawyer, so much so that a lawyer's word must always be above reproach. Trying your best, or being close, is not good enough. If a lawyer says anything to a client, the court, another lawyer, or to the public in their capacity as a lawyer, it must be true. The duty to be honest does not take second place to anything. It is a primary duty.

89. All counsel, regardless of their situation in life or the community at large, have a duty of candor and honesty particularly when appearing before a judge. When Judges "notice" behaviors that are contrary to that duty, they can act to protect the integrity of the court and the public's confidence in the administration of justice. Judge Murphy and others did just that and not for a purpose driven by or related to racial prejudice or hypervigilance. There was no evidence before the Panel nor is there any evidence presented to this Review Committee to even hint at the contrary.

90. The Panel sat on 66 hearing days. The transcript contains 12,035 pages. The Panel received over 100 exhibits comprising thousands of pages. At paras 6(e) and (f) of the Panel decision are the following statements:

6. e) This hearing involved the Society seeking formal discipline against a member of the African Nova Scotian community. In this case, Mr. Howe contended this impacted the case in a variety of ways. The position of the

Panel on this point was summed up in our decision *The Nova Scotia Barristers' Society v. Lyle Howe*, 2016 NSBS 4 (CanLII). That decision dealt with Mr. Howe's attempts to subpoena witnesses on issues not directly related to the charges. The Panel stated:

The Panel is well aware the case before us offers issues that are not directly related to the facts necessary to prove the charges in a narrow sense: Mr. Howe has raised additional issues related to racial bias, differential treatment, and discrimination in how these matters were reported, investigated, and decided upon by the Society.

These matters are not those that are necessarily easily observable or ones that present obvious sources of evidence. But one only need consider the Nova Scotia experience discussed in the cases of *R v S (RD)*, 1997 CanLII 324 (SCC), and *Campbell v Jones*, 2002 NSCA 128 (CanLII), and during the *Marshall Inquiry*, to understand that racism and systemic racism form part of the reality of Nova Scotian society.

The Panel accepts the existence of systemic racism in our province. This results in a system that may cause discriminatory treatment of persons from a minority group. It therefore makes good sense to allow Mr. Howe to explore this area. We must allow for the possibility of racial bias playing a role in this hearing. It is necessary for a full consideration of the matter. We must also remember that such evidence is not always plain or obvious. People do not usually admit such biases. Sometimes people do not recognize their biases. Thus, we must be prepared to allow a broad examination of the question, which means comprehensive inquiries and possibly additional witnesses.”

f) Simply put, the Panel found that Mr. Howe must have the opportunity to show whether bias and discrimination impacted him. In our view, it would have been wrong to simply assume that if no evidence of discrimination was evident from evidence directly relevant to the charges that discrimination did not play a role in the matter. For these reasons,

Mr. Howe was given the ability to call evidence, ask questions, and make arguments on these areas. While it is true this added to the length of the hearing, the Panel is of the view that it was a critical part of this hearing and necessary.


91. Mr. Howe was given what might be described as evidentiary leeway to present all the evidence that he believed supported his position that the proceedings were premised on and driven by racial prejudice. The Panel found there was no connection between systemic or individual racism and the findings of misconduct. This was clearly stated at para [184] of the NSCA decision and para [83] of the Panel decision.

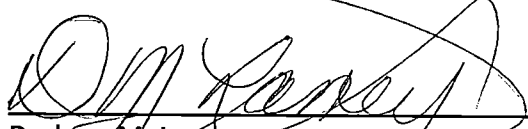
92. To repeat that passage to make it perfectly clear:

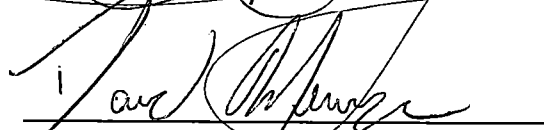
83. Regardless of Mr. Howe's racial and cultural background, regardless of his core views as to the functioning of the criminal justice system, and regardless of his aspirations to have an effect on the criminal justice system for the benefit of the system and his community and his clients, as a professional he is not permitted to pursue those objectives by employing dishonesty when he decides it would be convenient or effective. Nor can the profession as a whole allow a member of the Nova Scotia Barristers' Society to offer services to the public where it is known that the member may choose to be dishonest when representing clients. That would not only serve to encourage public distrust of the legal profession as a whole, but could also encourage suspicion about the ability of our Courts to function properly. Convenient dishonesty by lawyers would directly undermine the value of our justice system. Our justice system can produce independent, rational judgments that are based on evidence, and which result from open, persuasive, and entirely candid advocacy. Mr. Howe's choices to attempt to tip the scales of justice in his favour, or in favour of his clients, through the tool of occasional dishonesty is the antithesis of how a legal professional must act. Effective counsel can be disruptive without being dishonest.

93. Evidence that was before the Panel was reproduced, in some measure, by Mr. Howe in his original brief to Chief Justice Wood in support of his complaint and, also, in his latest document dated May 10, 2021.
94. This same evidence was before the Panel and the NSCA when they heard the appeal of Mr. Howe from the Panel's decision. With all due respect, this evidence is no more persuasive or compelling now in establishing or even hinting at hypervigilance, racial prejudice or motivation in the conduct of Judge Murphy than it was previously when it was used to argue racially motivated intent on the part of the Society or the others that would have included Judge Murphy, at least inferentially.
95. This Review Committee finds no evidence that Judge Murphy acted in the manner complained of by Mr. Howe. There is no evidence that Judge Murphy's conduct was inappropriate toward Mr. Howe or that her actions were racially discriminatory, bias or prejudice. The test for misconduct has not been met.
96. The Review Committee having investigated the complaint of Mr. Lyle D. Howe, as referred by Chief Justice Wood, pursuant to s. 17G of *the Act* hereby dismisses the complaint.

Dated at Halifax, Nova Scotia this 30<sup>st</sup> day of March, 2022.

  
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Judge Warren K. Zimmer, a Judge of the  
Provincial Court of Nova Scotia

  
\_\_\_\_\_  
Darlene M. Lamey

  
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David Merrigan, Public Representative