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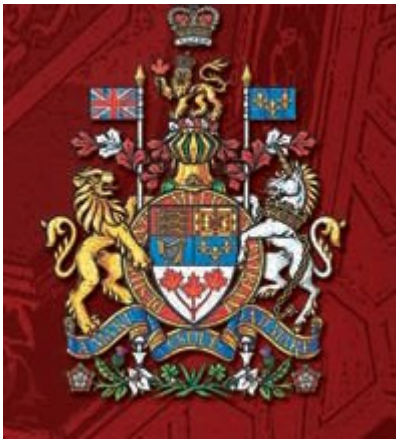

Inquiry Report

under the *Ethics and Conflict of Interest Code for Senators*

concerning Senator Lynn Beyak

March 19, 2019

March 19, 2019

REQUESTS FOR INQUIRY

This inquiry began as a result of four separate requests, under paragraph 47(2)(*b*) of the *Ethics and Conflict of Interest Code for Senators* (the "*Code*"), that I conduct an inquiry in order to determine whether Senator Lynn Beyak has complied with her obligations under the *Code*. These requests came from four Senators.

The first request, dated January 8, 2018, was made by Senator Frances Lankin, and was supplemented by an email, dated January 12, 2018, as a result of certain clarifications I sought from her. A second request, dated January 12, 2018, was received from Senator André Pratte. The third request, dated January 16, 2018, was made by Senator Raymonde Gagné. The fourth request was received from Senator Ratna Omidvar and was dated January 26, 2018, with a further letter from her, dated February 9, 2018, providing clarifications at my request.

The Senators who requested that an inquiry be conducted are referred to below as the "Complainants".

The Complainants alleged that certain items of correspondence[1] that were posted on Senator Lynn Beyak's website at the address http://lynnbeyak.sencanada.ca/ are racist and they cited four examples of such letters.[2] They argued that, in posting these allegedly racist letters on her website (referred to below as the "Letters"), Senator Beyak has acted contrary to sections 7.1 and 7.2 of the *Code*. One Senator went further and also described aspects of the Letters as "hateful" in her complaint.[3]

The letters express views about Canada's Indigenous people and Senator Beyak's speech in the Senate on March 7, 2017, in which she raised a number of issues, including, the 1969 White Paper prepared by the Trudeau Government, a national audit of dollars flowing in and out of reserves, and a national referendum for every child over 12 years of age concerning where they would like to reside. She also called into question the extent of the Indian Residential Schools' harmful impacts.

The website on which the letters were posted is administered by the Senate and maintained by using public resources. This website is intended to be related to Senator Beyak's parliamentary duties and functions, but its content is determined by Senator Beyak; the Senate has no control over it.

PROCESS

Under paragraph 47(2)(*b*) of the *Code*, I am required to conduct a preliminary review when I receive a request to conduct an inquiry from a Senator who has reasonable grounds to believe that another Senator has not complied with the *Code*. The purpose of a preliminary review is to decide

[1] For brevity, these items of correspondence are referred to in this report as "letters". In fact and as explained below, most were emails.
[2] These four letters have been reproduced in their entirety in Appendix A to this report.
[3] Letter from Senator Ratna Omidvar requesting an inquiry, January 26, 2018.

whether an inquiry is warranted under the circumstances in order to determine whether a Senator has breached the *Code*.[4]

In this case, I initiated a preliminary review on January 18, 2018 and notified Senator Beyak about it on that same day. On that date, I provided her with the first three requests for an inquiry. I received the fourth request after notifying Senator Beyak of the first three, and provided it to her on February 27, 2018.

In accordance with subsection 47(7) of the *Code*, Senator Beyak was afforded 15 days within which to respond to the allegations made by the Complainants.

By letters dated January 25, 2018 and March 13, 2018, Senator Beyak responded to the requests for an inquiry by the Complainants.

On March 21, 2018, I concluded my preliminary review. I determined that an inquiry was in fact warranted in this case and wrote to Senator Beyak to inform her of that fact. At that time, I decided to address all four complaints as part of a single inquiry, as the complaints all raised substantially the same issues.

In accordance with subsection 47(10) of the *Code*, my preliminary determination letter provided the reasons for my conclusion that an inquiry was warranted in order to determine whether Senator Beyak had complied with sections 7.1 and 7.2. That same day, I provided copies of my decision letter to Senators Lankin, Pratte, Gagné and Omidvar, pursuant to subsection 47(15) of the *Code*.

This inquiry then ensued.

During the inquiry, my office interviewed Senator Beyak twice under oath. These interviews were conducted in person at my office. The first interview took place on April 18, 2018.

Following Senator Beyak's first interview, Senator Beyak provided me with a letter dated May 3, 2018, with which she enclosed her speech in the Senate on March 7, 2017, as well as certain media articles.[5] Some of the media articles referred to her speech, and some also made comments concerning her then membership on the Senate Standing Committee on Aboriginal Peoples. Senator Beyak also provided me with a copy of an open letter she wrote on September 1, 2017, which was published on her Senate website, in which she referred to Indian Residential Schools but also commented on a number of other issues related to Indigenous affairs.

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[4] *Code*, subs. 47(1).

[5] Brett Popplewell, 'An Indian Industry has emerged amid the wreckage of many Canadian reserves', *Toronto Star*, October 30, 2010; John Paul Tasker, 'Conservative senator defends 'well-intentioned' residential school system', *CBC News*, March 8, 2017; Bruce Campion-Smith & Alex Ballingall, 'Senator's residential school comment is like downplaying the Holocaust, MP says', *Toronto Star*, March 9, 2017; John Paul Tasker, 'Senator Lynn Beyak says she has 'suffered' with residential school survivors', *CBC News*, March 27, 2017; John Paul Tasker, 'Senator Lynn Beyak says First Nations should give up status card', *CBC News*, September 13, 2017; John Paul Tasker, 'Sen. Lynn Beyak's position in question after latest remarks about First Nations', *CBC News*, September 14, 2017; Emma Paling, 'Sen. Lynn Beyak Doubles Down On Latest Comments About Indigenous People', *Huffington Post*, September 14, 2017; Andrew Russell, 'Sen. Lynn Beyak publishes 'outright racist' comments about Indigenous people on her Senate website', *Global News*, January 3, 2018.

I also interviewed two expert witnesses in order to gain a better understanding of the constitutional issues that are central to a determination in this case. The expert witnesses were not remunerated, nor were they required to be sworn or to affirm in the course of providing their opinions.

The first expert was Professor Richard Moon, a constitutional expert who teaches at the University of Windsor. Professor Moon focuses on, among other things, freedom of expression and the regulation of hate speech on the Internet. His testimony mainly addressed hate speech and freedom of expression in the context of the *Canadian Charter of Rights and Freedom*s ("the *Charter*"). Professor Moon was interviewed on June 4, 2018.

The second expert was Mr. Joseph Maingot, a former Law Clerk of the House of Commons who is an expert in parliamentary law and practice. Mr. Maingot wrote two editions of the text *Parliamentary Privilege in Canada*[6] and, more recently, the treatise *Parliamentary Immunity in Canada*.[7] His testimony focused mainly on parliamentary privileges and immunities. Mr. Maingot was interviewed on June 6, 2018.

In early December 2018, I requested that Senator Beyak attend a second interview in early January 2019. However, she indicated that she would not be available for this interview until early February 2019. As such, this second interview took place on February 5, 2019. This interview afforded Senator Beyak an opportunity to respond to the information we received from the two expert witnesses. During this interview, Senator Beyak told me that she did not understand why there was a focus on free speech and did not understand why the experts had been called. At that interview, she also asked if she could make further submissions. She followed up with emails on February 5 and 6, 2019 and informed me that she needed to seek further advice about this matter and that she felt her points had not been adequately made. Senator Beyak sought a brief pause in the inquiry process in order to give her an opportunity to read over the transcripts of her interviews with me. I was of the view that it was important to provide her with every opportunity to make representations to me concerning the relevant issues in this matter. As such, I agreed.

With respect to her additional submissions, on February 6, 2019, *via* email, I provided Senator Beyak with a deadline of February 15, 2019. On February 14, 2019, Senator Beyak provided me with her further written submissions. She also reviewed the transcripts of her interviews on February 19, 2019 and, at that time, she requested a further opportunity to make submissions, to which I again agreed and provided her with a deadline of February 22, 2019. She sent me an email on February 21st indicating that she did not have any further submissions. I should note that none of these submissions addressed the issues that were dealt with by the two expert witnesses.

The documentary evidence obtained during this inquiry was provided by Senator Beyak and the Senate Administration. We requested all the emails and letters Senator Beyak had received from the public concerning the letters she posted on her website, as well as all the letters she received concerning her speech in the Senate on March 7, 2017. I requested this evidence from Senator Beyak on March 29, 2018, and she provided it in portions on the following dates: May 4, 2018;

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[6] J. P. Joseph Maingot, *Parliamentary Privilege in Canada*, 2nd ed., (Montreal: House of Commons and McGill-Queen's University Press, 1997) ["Maingot, *Parliamentary Privilege*"].

[7] J. P. Joseph Maingot, *Parliamentary Immunity in Canada*, (Toronto: LexisNexis Canada, 2016) ["Maingot, *Parliamentary Immunity*"].

May 7, 2018; May 8, 2018; May 17, 2018; June 21, 2018; July 11, 2018; July 13, 2018; July 23, 2018; and July 30, 2018.

In order to ensure accuracy and completeness, on May 30, 2018, I also requested the Standing Senate Committee on Internal Economy, Budgets and Administration ("CIBA") to produce the emails and letters Senator Beyak and any members of her staff received from the public from March 1, 2017 to March 31, 2018. This information was requested pursuant to the authority provided to me under subsection 48(4) of the *Code*; that provision authorizes me to "send for persons, papers, and records, which powers may be enforced by the Senate acting on the recommendation of the [Standing Senate Committee on Ethics and Conflict of Interest for Senators]". On June 5, 2018, the CIBA's Subcommittee on Agenda and Procedure denied my request as of that time and requested more details. On June 12, 2018, I provided the Subcommittee with my response. On September 19, 2018, I was informed that the Subcommittee had approved my request. On September 20, 2018, the Senate provided me with the emails I had requested.

On March 27, 2018, I had also made a request to CIBA for a copy of Senator's Beyak website and any other data related to the website between March 1, 2017 and March 27, 2018 in order to be able to examine the content and structure of the information on the website. I received some of this information on April 3, 2018 and the last of it on April 10, 2018.

In accordance with the usual practice of my office, on February 27, 2019, Senator Beyak was also given an opportunity to review and comment on a partial draft of the inquiry report before it was finalized. Specifically, she was provided, in draft form, with the sections entitled "Requests for Inquiry", "Process", "Complainants' Positions", "Senator Beyak's Position" and "Findings of Facts". I provided Senator Beyak with this opportunity in order to ensure that she was made fully aware of the facts and allegations against her and the evidence obtained in the course of the inquiry, to give her a full opportunity to respond, and to ensure that I properly understood the evidence and submissions she put forward. At this time, she raised a concern that her views in this matter had not been properly addressed in the partial draft report. She delineated a series of issues which she felt should be properly reflected in the report, many of which related to the section entitled "Senator Beyak's position". She confirmed the list of these issues in writing to me, at my request, on March 1, 2019, which was the deadline I had established for any last submissions as a result of her review of the partial draft report.

I took this list of concerns into account in two ways. First, some of them have been incorporated directly in this final report. Second, those that have not been incorporated directly are attached in an appendix to this report: Appendix B. After March 1, 2019, Senator Beyak continued to send further emails concerning matters that she felt had not been addressed in the partial draft report. However, she was advised by email on March 4, 2019 that I would not be considering any further submissions beyond the deadline because she had already been given numerous opportunities to make submissions in this matter.

By letter dated January 24, 2019, I also invited Senator Beyak to make a formal proposal on remedial measures that I should consider in fulfilling my duties, were I to determine that she had breached her obligations under the *Code*.[8] At that time, I had not yet decided the outcome of this inquiry. By email, dated January 28, 2019, Senator Beyak responded that she found it difficult to provide suggestions on remedial measures since she expected a finding that she had not breached

[8] *Code*, subs. 48(14).

any provision of the *Code*. She went on to add that if I did find her in breach, she would have to read my reasons and then consider what steps I would advise her to take based on my decision. I had a discussion with her about this matter as part of her interview on February 5, 2019.

The *Code* includes a number of rules that must be followed concerning the inquiry process. Amongst them, subsection 48(9) of the *Code* provides, in part, that Senate Ethics Officer "shall give the Senator who is subject of an inquiry information concerning relevant facts, access to relevant documentation, such opportunity as the Senate Ethics Officer considers reasonable to make representations…".

Throughout the inquiry process, Senator Beyak was given numerous opportunities to make representations to me. She did make representations, both orally and in writing. Evidence that I deemed to be relevant or potentially relevant was put to Senator Beyak, either during her interviews or in the form of the partial draft report.

Subsection 48(6) of the *Code* provides that the Senate Ethics Officer "shall conduct an inquiry confidentially and as promptly as circumstances permit". The lack of availability in a timely fashion of both some of the evidence and the Senator who is the subject of the inquiry due, in part, to the Senate Parliamentary calendar contributed to the length of this inquiry.

COMPLAINANTS' POSITIONS

As I already noted earlier, although there were four separate requests that I conduct an inquiry into this matter, I decided to address these requests as part of a single inquiry, given that they raised substantially the same issues. These issues are as follows:

- *Limits to Freedom of Speech*

  The Complainants first expressed their support for a Senator's right to freedom of speech and parliamentary privilege. They recognized that while they may not agree with Senator's Beyak views on the benefits of Indian Residential Schools and find her comments in this regard offensive, Senator Beyak is entitled to her opinions and has a right to express them.

  Having said that, the Complainants argued that there is a limit to this right and that promoting racist beliefs is one such limit. They took the position that freedom of speech cannot be used to violate the fundamental rights of a group of Canadians. They added that a Senator's freedom of speech comes with "obligations such as those set out in the Code".

- *Some of the letters contain racist content*

  The Complainants alleged that some of the letters contain content that is "racist" and expresses "antagonism towards Indigenous peoples". In doing so, the Complainants referred to the definitions of "racism" found in the *Oxford Dictionary* and "*La grande encyclopédie Larousse"*. They argued that the "comments are not directed at individuals but at a whole race of people and distinguish them from other races of people in a negative way".

  In support of their arguments, the Complainants referred to the following excerpts from 4 of the letters:

> Aboriginals received better treatment and education than society gave, the Irish, the Scots, the Polish, the Jews.[9]
>
> They likely were envious of the pampered aboriginals that got free school, free food, free housing and that still wasn't enough.[10]
>
> I'm no anthropologist but it seems every opportunistic culture, subsistence hunter/gatherers seeks to get what they can for no effort. There is always a clash between an industrial/organized farming culture that values effort as opposed to a culture that will sit and wait until the government gives them stuff.[11]
>
> The Indians, First Nations or whatever they want to be called have milked this issue to their decided advantage and will if you let them.[12]
>
> I don't understand why politicians don't take a stand against the chronic whining and unreasonable levels of expectations that are exhibited by some Indigenous groups that seem to keep inventing new ways to achieve a cash grab.[13]
>
> There is an explosion of population, and why not. When all you need is to ask for an increase of benefits, why work? The residential schools are a crutch that is being leaned on. There are many who not only collect benefits but are also gainfully employed. There are not subjected to paying tax as the rest of us are.[14]

- *Senator Beyak gave credibility to the Letters' racist content*

  The Complainants alleged that by posting the Letters on her Senate website –albeit on her own personal page – Senator Beyak exposed their racist content to a much wider audience and gave enhanced credibility to the Letters' assertions. The Complainants pointed out that while Senator Beyak did not speak or write the racist words herself, she described these and other letters as "thoughtful" and referred to them as the "wisdom of the people", thus suggesting her support for their content.

  The Complainants referred to the fact that Senator Beyak posted the Letters under the heading "letters of support" and contended that by posting the Letters in that way, Senator Beyak endorsed the writers' positions as similar to and supportive of her own. They argued that Senator Beyak could have published most of the other supportive letters and emails and made the point she wished to make about Indian Residential Schools without posting the Letters (i.e. those that contain allegedly racist content).

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[9] Paul, 'Respect for you', March 10, 2017.
[10] *Ibid*.
[11] *Ibid*.
[12] Bill, 'Contact Us Comment', March 30, 2017.
[13] Joanne, 'Residential Schools', March 30, 2017.
[14] Caroline, 'Residential Schools', March 30, 2017.

The Complainants also claimed that although Senator Beyak asserted that her purpose in posting these and other letters was to open a dialogue and/or give voice to Canadians, her website provides no means for others to participate in a dialogue and the letters are one-sided. The Complainants argue that the call for a dialogue is an excuse to publish controversial and racist opinions.

- *Senator Beyak has undermined the credibility of the Senate and of Senators*

The Complainants contended that expressing or associating oneself with prejudice against specific groups is fundamentally incompatible with the expectation that Senators carry out their responsibilities with the highest standards of dignity inherent to the position of Senator, as mandated by subsection 7.1(1) of the *Code*.

They submitted that by circulating and approving racist comments that are aimed at Indigenous people on her website and in her official capacity, Senator Beyak associated the Senate with these comments. This conduct reflects adversely on each Senator, as well as on the Senate as an institution, tarnishing its reputation and credibility, and is contrary to subsection 7.1(2) of the *Code*.

The Complainants took the position that the fact that these comments were posted on a website that is related to her work as a Senator and the fact that Senator Beyak used public resources to do so leaves many Canadians with the impression that these comments are in some measure sanctioned by the Senate as an institution.

They argued that this is even more egregious in light of the fact that the Senate has, as the Supreme Court of Canada noted in its 2014 decision *Reference re Senate Reform*,[15] served "as a forum for ethnic, gender, religious and Aboriginal groups that did not always have a meaningful opportunity to present their views through the popular democratic process."[16] The Complainants asked: "How can these groups have confidence in the Senate to defend their rights if it allows one of its members to publish and to praise racist commentary?" It undermines the credibility of the Senate as a place to harbour, listen to and defend members of minority groups,including Indigenous people.

The Complainants' concerns also relate to section 7.2 of the *Code*, which requires that Senators "perform [their] parliamentary duties and functions with dignity, honour and integrity". They argue that in posting the Letters, Senator Beyak has failed to do so.

Finally, one Senator – Senator Omidvar – not only referred to the term "racist" in describing the Letters, she also used the word "hateful" in this respect. This is a separate allegation since "racism" and "hate speech" are two different concepts that must each be addressed in turn.

SENATOR BEYAK'S POSITION

Senator Beyak's response to the issues raised by the Complaints can be summarized as follows:

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[15] *Reference re Senate Reform*, 2014 SCC 32, [2014] 1 SCR 704 ["*Senate Reference"*].
[16] *Ibid*., para. 16.

- *Giving balance and Support for her speech*

Senator Beyak took the position that these postings concern matters of national and public importance. In her written submissions dated January 25, 2018, she argued the following:

> [M]any people, Indigenous and non-Indigenous alike, began to speak up [after her speech in the Senate on March 7, 2017] and acknowledge that along with the abuses [in Indian Residential Schools] there was, indeed, an abundance of good. Some indicated that they incorporated that good with their indigenous traditions which have helped them move forward to success and prosperity. Their courage gave voice to others and after the initial barrage of negativity, our office was flooded with thoughtful, compassionate letters, from across Canada telling of positive experiences in residential schools. The atrocities in the schools have been well-documented and debated in the Truth and Reconciliation Commission Report and in the media for some time. The good that has resulted in happy and productive lives is just coming to the fore and deserves to be told as well. That doesn't excuse or diminish the abuse in any way. It just gives a balance.

In that same letter, she submitted that "[a] free and open dialogue is essential to chart a better path forward.

In her first interview, she explained that she chose not to post any of the letters that expressed negative views concerning Indian Residential Schools because she wanted her website to provide a positive way forward for Indigenous people by recounting the success stories. She added that the negative stories had already been well addressed for some years. She wanted to initiate a dialogue in Canada, in a broader context - not through her website. Senator Beyak admitted that her website told one side of the story only and did not invite Canadians to tell the other side. She explained that the other side had already been told through the Truth and Reconciliation Commission Report.[17] She testified:

> There is nothing on my website that says I want a dialogue about this. I am posting the positive side of the residential schools story. The dialogue is the Truth and Reconciliation Commission report, which is public and has been for three years, and that side of the story is well-known. My website is the positive story of the good in the residential schools, and to open a dialogue on that. The open dialogue is to get the positive side of the story out there.

She also told me that the letters she posted demonstrated support in some way for her speech on March 7th, not just her comments on Indian Residential Schools. In her first interview, she stated: "All the letters of support aren't just for residential schools, good or bad, but for all of the items in my March 7th, 2017 speech. We had to have a cross-section of what each one supported. Some supported the staff, some supported the audit, some supported the referendum..." She referred to five items in her speech to which the letters

[17] Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada. Volume One : Honouring the Truth, Reconciling for the Future* (Toronto: James Lorimer & Company Ltd., Publishers, 2015) ["Truth and Reconciliation Commission Report"].

relate: "the wise use of tax dollars, renaming buildings when there is no clean water and no housing, the Trudeau white paper, a national audit, and a national referendum of every child 12 and older, to see where they wanted to live and if we were doing the best we could for them."

In terms of why she selected those that she did, she said that she chose a cross-section of letters that represented the views of Canadians from coast to coast to post on her website.

- *The Letters are not racist*

In her first and second interviews, Senator Beyak took the position that the excerpts from the Letters identified by the Complainants are not racist and/or hateful when they are read in the context of the entire Letter of which they form a part. She argued that none of the Letters can properly be characterized as racist or hateful when each is read in its entirety and expressed the view that a reasonable person would not conclude that the Letters are racist or hateful, although in both her first and second interviews, she testified that when read on their own, the excerpts identified by the Complainants are racist and hateful. But when read in their entirety, she characterized the Letters as thoughtful and compassionate. In her first interview, she described the letters as "edgy and opinionated, but the voice of Canadians" although she also stated that she did not agree with all aspects of them. However, on February 20, 2019, following her review of the transcripts of her two interviews, Senator Beyak sought to retract her statement that, on their own, the excerpts cited by the Complainants are racist and hateful. At that time, she took a different position: that even when read outside the context of the entire letter in question, the excerpts are not racist or hateful.

In her written submissions of February 14, 2019, Senator Beyak also noted that the letters identified by the Complainants only refer to some Indigenous groups, not all.

In both her interviews, she assured me that, if any of the letters were racist or hateful, she would not have posted them. In her testimony, Senator Beyak disclaimed an intention to promote anything that could be misconstrued as racist or promoting hatred in any way and reiterated that her objective was to restate the positive stories regarding Indian Residential Schools in order to help find solutions for some of the problems Indigenous people are facing. In her view this was necessary because the current approach is not working.

In her first interview, Senator Beyak also expressed the view that racism does not exist in Canada. She testified that those who say racism exists in our society are seeking to divide Canadians. In this respect Senator Beyak testified:

> In my view, there is no racism in Canada. Right now there are groups putting people into silos, trying to divide us, by saying that we have racism against violence, we have racism against indigenous people, Ukrainian, white privilege ---
>
> I find those people racist. Those who seek to divide us are the racists. The rest of us are Canadians. We all bleed the same colour, we all live together in peace and harmony. That's the way Canada is supposed to be.

> By constantly calling people names and trying to define them on racism is dividing us. Get it all on the table and let people argue it out.

Senator Beyak took the position that the racists are those who wish to keep Indigenous people "in ghettos, in abuse, in addiction, in situations of rape and molestation". She takes the position that "[t]hose people are the racists, who are accepting this standard of living, which we see in newspapers every single week".

However, in her second interview, she conceded that there is in fact racism in Canada but that the overwhelming majority of Canadians are not racist.

Senator Beyak also argued that the term "racism" is a subjective term and that what one person thinks is racism is not what another thinks. She maintains the position that, for the *Code* to be effective, it must be prescriptive; i.e., without a definition of the term "racism", there can be no finding under either s. 7.1 or s. 7.2.

- *Censoring speech undermines democracy*

In both her written submissions, dated January 25, 2018 and March 13, 2018, Senator Beyak argued that "when we try to censor what is said, or define the words of others to suit our own agendas … we put democracy in peril". The fact that some Senators may disagree with another's opinion should not give them a right, in her view, to censor that other person's thoughts or views. She argued that doing so challenges democracy.

However, in her second interview, Senator Beyak also contended that this case is not about freedom of speech. She took the position that, although the Complainants raised this issue, the real question is whether the Letters are racist or hateful and she is of the view that the Complainants did not explain why they think the Letters can be described as either of these terms. She also argued that a central question in this case is whether she acted with integrity, honour and dignity and she is of the view that she did act in this manner.

In her written submissions of February 14, 2019, Senator Beyak went further and clarified that this case, in her view, is not about her right as a Senator to freedom of speech but rather the right of Canadians to freely express their views. She argued that, in posting the letters, she was speaking for "many of the grassroots people, Indigenous or non-Indigenous who have no forum to make their views known in what they think is best for their future".

FINDINGS OF FACT

On March 7, 2017, Senator Beyak delivered a speech in the Senate concerning a number of issues pertaining to Indigenous affairs, including the 1969 Trudeau White Paper, a national audit of monies flowing in and out of reserves, and other matters. In that speech, she also sought to make the point that there were some positive aspects related to the Indian Residential Schools.

Based on her testimony of April 18, 2018, for the first two weeks following her speech, Senator Beyak received only letters criticising what she had said. But, she testified, shortly after those two weeks passed, she began to receive a number of letters of support for what she had said in her speech. She told me that in all, thousands of items of correspondence came in, primarily by email. Senator Beyak indicated that she was initially surprised to receive letters from some former

students at the schools who agreed with her position that some students had positive experiences there and succeeded and thrived because of those experiences. Senator Beyak testified that when she heard about these more positive accounts regarding the schools, she decided to tell that less well told side of the story in order to initiate a dialogue in Canada in a broader context, not through her website. As such, she posted on her Senate website a number of letters illustrating these positive aspects. The negative stories had already been well addressed for some years *via* the Truth and Reconciliation Commission Report.

Senator Beyak testified that she selected a cross-section of letters that represented Canadians from coast to coast to post on this website. She told me that the letters she posted addressed different matters that she had referenced in her speech. In her first interview, she stated that while some of the letters' authors just "ranted", they did so in a manner that demonstrated to Senator Beyak that there was concern. As noted earlier in this report, she characterized the Letters as thoughtful and compassionate, edgy and opinionated. She explained that she chose not to post any of the letters that were negative concerning the Indian Residential Schools because she wanted her website to provide a positive way forward for Indigenous people; doing so would be inconsistent with her desire to recount the success stories.

Having carefully examined all the letters on Senator Beyak's website, I believe that Senator Beyak's objective in posting all the letters she did post was to illustrate support (including support from some Indigenous people) for the comments that she made in her March 7, 2017 speech, including her comments on Indian Residential Schools. Senator Beyak confirmed a number of times in her testimony that this was also one of her purposes. This is also borne out by an examination of the manner in which her website is organized and presented. The letters, including those with allegedly racist and/or hateful content, were identified under the heading "Letters of Support", clearly suggesting that they were supportive of the positions she took in her speech, including the comments she made concerning Indian Residential Schools. Moreover, below the heading "Letters of Support" and preceding the letters that she posted, was the following paragraph:

> After my Speech of March 7, 2017 I received overwhelming support. Many people wrote me telling their personal stories and how going to a Residential School was a positive experience for them. Those people feel that they acquired useful skills and benefited from recreational activities and sports. I've discovered that numerous people, who actually read my remarks, sent an avalanche of support from across our great nation. Below, I have included some of those letters of support. [*Emphasis added*]

Senator Beyak testified that she read all the letters that were sent to her regarding this matter and she took full responsibility for the content of the letters that she chose to post, despite the fact that she had not authored them. She told me that, while she did not agree with all of them, she respected the authors' right to have the views they expressed therein. I accept her testimony in this respect.

Senator Beyak also testified that she did not solicit any of these letters of support. I also accept her testimony in this regard.

Senator Beyak claimed that she did not receive a single letter that was critical of the letters posted on her website (as opposed to letters critical of her speech in the Senate, which she testified that

she did receive). The facts do not support this. Rather, some of the letters that Senator Beyak herself provided to me were in fact objected to and were critical of certain letters posted on her website, claiming that they were racist. Some of these were also copied to my office.

Overall, I found that Senator Beyak's testimony demonstrated a lack of awareness about racism in Canadian society. I also found that there were a number of inconsistencies in both her oral testimony as well as in her written submissions and that she altered her positions at different points in time or sought to retract them.

Based on my review of all the letters with which I was provided, I also found the following:

- Senator Beyak received 6,766 letters in total (that she submitted to us).[18] Most of the letters were, in fact, emails. Of these, 2,389 were in support of her speech in the Senate on March 7, 2017 (25 of these could be offensive towards Indigenous people) and 4,282 were critical of her speech, and 95 were neutral. Some of the letters that were critical of her speech were copied directly to the Office of the Senate Ethics Officer.
- Senator Beyak selected and posted 129 letters on her website. All those that she chose to post were in support of her speech. None of the posted letters were critical of her speech.
- Of the 6,766 letters, 87 decried the posting of the alleged racist letters.
- Senator Beyak did not post all letters whose content could be construed as offensive in relation to Indigenous people. I found others that used stronger, more offensive language.
- The 129 letters on Senator Beyak's website are grouped under the title "Letters of Support". This support refers to the views as expressed in her Senate speech in March 2017.

RELEVANT PROVISIONS OF THE *CODE*

The following provisions of the *Code* are relevant to this matter:

> **7.1.** (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.
>
> (2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the Senate.
>
> **7.2** A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.
>
> **48.** (14) Where the Senate Ethics Officer makes a finding that the Senator breached his or her obligations under the Code, the Senate Ethics Officer shall also indicate whether remedial measures to the satisfaction of the Senate Ethics Officer have been agreed to by the Senator, whether the Senator did not agree to remedial measures that would have been to the satisfaction of the Senate Ethics Officer and what those measures were, or whether remedial measures were either not necessary or not available.

[18] This number excludes duplicates of letters received by my office.

ANALYSIS

The grounds expressed by the Complainants and the views expressed by Senator Beyak raise fundamental issues about the role of Senators, their right to freedom of expression under the *Charter* and its limitations, their privileges, rights and immunities (including their right to freedom of speech as part of these privileges, rights and immunities), the *Code*, its status, and the interrelation between these matters.

This case is unusual in that relatively few facts are in dispute but it raises serious issues concerning broader constitutional and legal principles affecting all Senators.

I preface my analysis with the following four preliminary comments.

First, my decision on whether Senator Beyak has breached the *Code* is made on the balance of probabilities.[19]

Second, Senators should be entitled to have the broadest possible free speech within the confines of the law and the rules that Senators have chosen to impose upon themselves under the *Code* and under other rules and policies of the Senate. This is something that I will address again later on in this report.

Third, sections 7.1 and 7.2 do not invite a free-standing analysis of whether certain conduct merits moral condemnation. Rather, they require an evaluation of whether alleged conduct

> (a) undermines the standards of dignity inherent to the position of Senator, such that, for example, it impacts a Senator's professional reputation, integrity or trustworthiness (subsection 7.1(1)),
>
> (b) may have an adverse impact on the reputation of the office of Senator or the Senate as an institution (subsection 7.1(2)); or
>
> (c) fails to uphold the standard required of a Senator to perform his or her parliamentary duties and functions with dignity, honour and integrity (section 7.2).

Fourth, this inquiry does not concern Senator Beyak's speech of March 7, 2017, including her comments on Indian Residential Schools. None of the requests for an inquiry was based on the contents of that speech. In fact, in their letters to me, the Complainants admitted that Senator Beyak was entitled to make the comments she made in that speech notwithstanding that they disagreed with them. This inquiry does not concern the Truth and Reconciliation Report either. Instead, the narrow basis for the complaints, and therefore of this inquiry, is that by posting what the Complainants view as racist and/or hateful letters on her website, Senator Beyak breached sections 7.1 and 7.2 of the *Code*.

In order to make determinations on whether the *Code* was breached, a number of questions must first be addressed.

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[19] *Code*, subs. 48(11).

(1) ***Is Senator Beyak accountable for the letters she posted on her website even though she did not write them?***

As noted earlier, Senator Beyak has control over the content of her Senate website and this includes what is posted on it. In light of this, is she accountable for posting the letters on her Senate website, despite the fact that she did not write them?

In her testimony of April 18, 2018, Senator Beyak told me that she personally made the selection as to which letters were to be posted out of the thousands that were sent to her concerning this matter and she also told me that she read each of these letters. By making a selection as to which letters to post and which not to post, Senator Beyak has taken responsibility for those that she did decide to post. Those facts alone are sufficient to ground a conclusion that Senator Beyak is accountable for the content of what came to be posted on her website. However, my inquiry resulted in more evidence on which to reach that conclusion.

Professor Moon testified to this point:

> I think that as soon as you venture into the realm of "I am going to select some over others", you can be seen, in some way, as endorsing what is posted.

Moreover, again in her testimony, Senator Beyak told me that she accepted full responsibility for the letters that were posted on her Senate website. She testified as follows:

> I, personally take responsibility for every one and thought that some of them were edgy and opinionated, but the voice of Canadians, and until everyone can be heard, how can we find a better way forward?
>
> I didn't agree with them all, but respected their right to have those views.

In addressing this question, guidance can be derived from the principles in Canadian defamation law. It is well-established that a person who publishes injurious or defamatory material is as responsible as the originator. The media is regularly sued for defamatory speech in light of the principle that "every repetition or republication of a defamatory statement constitutes a new publication."[20] As such, every individual publication of a defamatory statement, whether by the originator of the statement or by a third party, creates a separate cause of action.[21]

In *Crookes v. Newton*[22], the Supreme Court of Canada reviewed the defence of "innocent dissemination" (which in certain circumstances affords a "publisher" a defence). The majority drew the following important distinction:

> Communicating something is very different from merely communicating that something exists or where it exists. The former involves dissemination of the

[20] *Breeden v. Black*, 2012 SCC 19, [2012] 1 SCR 666, para. 20.
[21] *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, [1995] SCJ No. 64, para. 176: "If one person writes a libel, another repeats it, and a third approves what is written, they all have made the defamatory libel. Both the person who originally utters the defamatory statement, and the individual who expresses agreement with it, are liable for the injury."
[22] 2011 SCC 47, [2011] 3 SCR 269.

> content, and suggests control over both the content and whether the content will reach an audience at all, while the latter does not.[23]

In concurring reasons, McLachlin C.J. and Fish J. proposed that the publisher of a defamatory statement made accessible by hyperlink should be found liable for damages if the text indicates adoption or endorsement of the content of the hyperlinked text.[24] However, they also noted that the traditional publication rule does not require the publisher to approve of the material published; in order to be held liable for defamation the publisher need merely communicate that material to a third party.[25]

Applying these principles to the case at hand, and considering Senator Beyak's testimony in this respect, I conclude that Senator Beyak is responsible for the content of the letters, including those with allegedly racist and/or hateful content, notwithstanding that she did not author them.

(2) ***Do the privileges and immunities which Senator Beyak enjoys as a parliamentarian protect her from posting letters on her website notwithstanding that they may contain racist and/or hateful content?***

I now address the issue of whether the privileges, rights and immunities that Senator Beyak enjoys in her capacity as a Senator serve to protect her from a finding that in posting the Letters, she breached sections 7.1 and 7.2 of the *Code* if I find that the Letters are racist and/or hateful. In particular, does her right of free speech as a parliamentarian serve to protect Senator Beyak from the allegations that she posted letters containing racist and/or hateful content on her Senate website?

In her written submissions to me as well as in her first interview, Senator Beyak took the position that censoring speech undermines democracy. This is essentially a free speech argument, though in her second interview, she argued that this case is not about freedom of speech. In any event, all of the Complainants stated that Senator Beyak's right to free speech permitted her to deliver the speech in the Senate on March 7, 2017, notwithstanding that they found it offensive. However, they argued that there is no right to post commentary that is racist and/or hateful.

As such, I must examine the extent of Senator Beyak's right to free speech as a legislator under parliamentary privilege, as well as her constitutional right to freedom of expression under paragraph 2(*b*) of the *Charter*.

As a Senator, Senator Beyak is entitled to free speech as part of the rights and privileges granted to members of a legislative body, the source of which for Senators and Members of the House of Commons is found in section 18 of the *Constitution Act, 1867*.[26] That provision maintains the

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[23] *Ibid*., para. 26.
[24] *Ibid*., para. 50.
[25] *Ibid*., para. 51.
[26] This provision reads as follows:

> 18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act

right to free speech for legislators by reference to those historically "held, enjoyed and exercised" by parliamentarians in the United Kingdom, which include those conferred by Article 9 of the English *Bill of Rights* of 1689. This provision provides for parliamentarians' right to free speech in the following terms:

> The freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.[27]

This provides an absolute protection in law when speaking or engaged in a proceeding in Parliament and entails that a Member of either House of Parliament is immune from civil or criminal prosecution.[28]

In *Parliamentary Immunity in Canada*, Mr. Maingot discusses the privilege of freedom of speech in the context of the work of a member of a legislature. He explains that this freedom is related to the role parliamentarians perform in representing others:

> The privilege of freedom of speech, though of a personal nature, is not so much intended to protect the Members against prosecutions for their own individual advantage, but to support the rights of the people by enabling their representatives to execute the functions of their office without fear of either civil or criminal prosecutions.
>
> One of the first and greatest of its privileges is free speech and one of the advantages of legislative bodies is the right of exposing and denouncing abuses by means of free speech.[29]

There can be no doubt that a Senator's right to free speech applies to speeches in the Senate Chamber and in committees of the Senate.[30] Mr. Maingot writes at page 42:

> […] Thus, a Member could not come to Parliament for protection if he was sued for having published to the world. One could not question what the Member said in the House, but publication outside the House was another matter. The protection afforded the Member speaking in the House is, in law, spoken on an occasion of absolute legal privilege, that is to say, spoken with impunity to the outside world, but he publishes outside the House at his peril. Parliament protects him when he

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held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

Section 4 of the *Parliament of Canada Act*, RSC, c.S-8, also refers to the privileges, immunities and powers of the Senate and the House of Commons. It reads as follows:

> 4. The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise
> (*a*) such and the like privileges, immunities and powers as, at the time of the passing of the Constitution Act, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and
> (*b*) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

[27] (UK), 1 Will & Mar Sess. 2, c. 2.

[28] Maingot, *Parliamentary Immunity*, p. 6.

[29] *Ibid*., p. 26.

[30] *Ibid*., pp. 30, 31.

> speaks in Parliament, but when he speaks outside, or publishes outside what he says inside Parliament, Parliament offers no protection; only the common law does, if it is offered at all.[31] [*Emphasis added*]

In this case, however, the "speech" in question was in the form of letters, which were posted on Senator Beyak's website. It was not spoken in the Senate or in a committee of the Senate. As such, the question is whether this same privilege of free speech also applies to protect Senator Beyak from posting letters on her Senate website that may contain racist and/or hateful content. Put differently, are the letters posted on her website unprotected by parliamentarians' right to free speech?

I note that on February 15, 2018, Senator Kim Pate moved a motion requiring that the Senate Administration be instructed to remove Senator Beyak's website from any Senate server and cease to support any website for the Senator pending the outcome of the Senate Ethics Officer's process relating to this site.[32] On February 26, 2018, Senator Beyak raised a question of privilege in response to Senator Pate's motion arguing her right to freedom of speech in this context.[33] On March 22, 2018, and in response to Senator Beyak's question of privilege, the Speaker issued a ruling in which he stated, in part: "[L]et me be clear; I am not determining whether a Senator's website is protected by privilege or not."[34] In other words, the Speaker declined to answer the question.

As such, relying on the Speaker's ruling to answer this question is not an option that is available to me. In resolving this issue, I have relied on pertinent law and doctrine, and I have also considered Mr. Maingot's testimony.

Mr. Maingot was categorical that parliamentary privilege, and therefore the privilege of free speech, does not apply to a Senator's website. Instead, the absolute protection accorded to parliamentarians under the English *Bill of Rights* would only apply to what is closely and directly connected with a proceeding in Parliament.[35] Moreover, section 7 of the *Parliament of Canada Act*[36] provides that any "report, paper, notes and proceedings" the publication of which is ordered by the Senate (or by the House of Commons) has absolute legal privilege. Therefore, while a speech delivered in the Senate or comments made in a Senate committee would receive this full protection,[37] comments published on a website would not. Mr. Maingot makes this point in relation to householder mailings in his book *Parliamentary Immunity in Canada*.[38] He writes that when the House orders the publication of any report, paper, votes and proceedings, that publication is covered by absolute legal privilege. But in the case of a householder mailing, it is the Member who publishes it to his or her constituents, rather than the House, notwithstanding that the staff of the House prints it.[39]

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[31] *Ibid*., p. 42.
[32] *Debates of the Senate,* February 15, 2018, pp. 4855-4857.
[33] *Debates of the Senate,* February 26, 2018, pp. 4876-4877.
[34] *Debates of the Senate,* March 22, 2018, p. 5054.
[35] *Pankiw v. Canada (Human Rights Commission),* 2006 FC 1544, [2007] 4 FCR 578 ["*Pankiw*"].
[36] RSC, 1985, c. P-1.
[37] Maingot, *Parliamentary Immunity*, p. 31.
[38] *Ibid.*, p. 8.
[39] *Pankiw*.

Similarly, Senator Beyak's website is technically administered by the Senate administration but it is Senator Beyak who is responsible for its content. She chose the letters and "published" them on her website. The letters were certainly not published by order or under the authority of the Senate.

Moreover, even if the privilege of free speech attached (which it does not), this right does not entail that Senators have an unlimited or unrestrained right to speak on every issue. The Senate itself can constrain the extent of the privilege. As Maingot writes, this privilege is subject to the rules, customs and practices of the legislative body.[40] The *Rules of the Senate* already limit the participation of Senators[41] and it is the duty of the Speaker to restrain Senators who abuse those rules. Similarly, the *Code* as adopted by the Senate, contains rules that restrict their freedom of speech, for example, where a Senator has a private interest in a matter before the Senate or a committee of the Senate, he or she must refrain from participating in the debates on the matter and recuse himself or herself. This point was made by Mr. Maingot in his testimony.

Indeed, the *Code*'s provisions in general, and sections 7.1 and 7.2 in particular, constitute an expression of the Senate's collective privileges to regulate its own internal affairs and to discipline its own members free from interference from the courts. In his testimony Mr. Maingot made this point. He testified that the Senate is free to adopt whatever internal rules it sees fit, including a code of conduct, and the courts cannot interfere with those rules.

Moreover, a Senator could not invoke the right to freedom of speech in order to circumvent a rule adopted by the Senate as part of its privilege to regulate its own internal affairs or to regulate the conduct of its members. Parliamentary privilege is defined as the sum of the privileges, immunities, and powers enjoyed by the Senate, the House of Commons, and the provincial legislative assemblies, and by each member individually, without which they could not discharge their functions.[42] Based on this definition, while there is a distinction between the corporate privileges of the House and members' individual privileges, the privileges are those of the assembly or House as a collective.[43] In other words, individual members can only claim privilege insofar as "any denial of their rights, or threat made to them, would impede the functioning of the House."[44]

The corporate privileges are the collective privileges of the Senate to punish for contempt, to legislate its own constitution, to regulate its internal affairs free from interference, to institute inquiries and call witnesses, and to settle its own code of procedure.[45] The Senate's right to control its internal affairs, including disciplinary authority over Senators, is recognized as one of the most

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[40] Maingot, *Parliamentary Immunity*, p. 26. See also, Senate Speaker's ruling, *Debates of the Senate,* March 22, 2018, p. 5054.

[41] For example, see Senate of Canada, *Rules of the Senate*, 2017, rules 6-13(1) to 6-13(3): rules on objectionable speech and unparliamentary language.

[42] *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 SCR 667, para. 29 ["*Vaid*"].

[43] Senate of Canada, *Senate Procedure in Practice*, 2015, p. 224. See also, Speaker's Ruling, *Debates of the Senate,* March 22, 2018, p. 5054: the Senate Speaker makes clear that the privileges exercised by the Senate take precedence over those of individual Senators.

[44] John Aneurin Gray Griffith, et al., *Griffith & Ryle on Parliament : Functions, Practice and Procedures*, 2nd ed. (London: Sweet & Maxwell, 2003), p. 124, par. 3-003. See also, Thomas Erskine May, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament,* 24th ed., ed. Sir M. Jack. (London: LexisNexis, 2011), p. 203; U.K., *Report of the U.K. Select Committee on Parliamentary Privilege*, London, p. vii, para. 12; Senate Speaker's Ruling, *Debates of the Senate* (March 22, 2018) p. 5054.

[45] *Knopf v. Canada (Speaker of the House of Commons),* 2006 FC 808, 295 FTR 198, para. 22.

significant privileges of an independent legislative body.[46] As Mr. Maingot testified, sections 7.1 and 7.2 of the *Code* are a proper expression of the Senate's corporate privileges to regulate its own internal affairs and to discipline its own members free from court interference.

The fact that freedom of speech could not be invoked in order to circumvent a rule adopted by the Senate under its privilege to regulate its own internal affairs or to regulate the conduct of its members is also consistent with a recent decision of the Alberta Court of Queen's Bench in *McIver v Alberta (Ethics Commissioner)*.[47] It held that the right of free speech under the English *Bill of Rights* does not prevent the Alberta Legislative Assembly from applying constraints on members' speech through its own internal rules under its privilege to regulate its own internal affairs and to discipline its members.[48]

Moreover, even in the context of parliamentary privilege, past Speakers of the Senate have ruled that there is a need to use the right to free speech in a responsible manner to avoid the damaging effects it might have for others outside the Chamber who have no means to defend themselves.[49]

I conclude that the protection afforded by the right to free speech under parliamentary privilege does not extend to the letters posted on Senator Beyak's website.

(3) ***Does Senator Beyak's right to freedom of expression under paragraph 2(b) of the Charter protect the posting of the letters on her website notwithstanding that they may contain racist and/or hateful content?***

I have found that Senator Beyak's right to free speech in her capacity as a legislator does not protect her from any consequences that may flow from posting letters on her Senate website that contain racist and/or hateful content. The next issue concerns her free speech rights under paragraph 2(*b*) of the *Charter* and whether there are any limits to those rights.

As Professor Moon has testified, the courts have given paragraph 2(*b*) of the *Charter* a very broad scope.[50] He stated that any act that conveys a message or a meaning will constitute expression within the meaning ascribed to that term for the purposes of paragraph 2(*b*). In Professor Moon's view, there is no doubt that Senator Beyak's actions in posting the letters qualifies as conveying a message or meaning and so would be considered expression under paragraph 2(*b*).

But are there limits to this right?

Section 1 of the *Charter* provides that the *Charter's* guarantees of rights and freedoms are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In *Saskatchewan (Human Rights Commission) v. Whatcott,*[51] the Supreme Court of Canada accepted that:

> Freedom of expression is central to our democracy. Nonetheless, this Court has consistently found that the right to freedom of expression is not absolute and

[46] *R. v. Duffy*, 2015 ONCJ 694, [2015] OJ No 6481, para. 89, citing Maingot, *Parliamentary Privilege*, p. 183.
[47] 2018 ABQB 240, [2018] AJ No. 398.
[48] *Ibid*., paras. 51, 52.
[49] See, for example, Senate Speaker's ruling, *Debates of the Senate*, October 5, 2010, pp. 1127-1128.
[50] See also, *R. v. Keegstra,* [1990] 3 SCR 697, [1990] SCJ No. 131.
[51] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 SCR 467 ["*Whatcott*"].

> limitations of freedom of expression may be justified under s.1. Section 1 both "guarantees and limits Charter rights and freedoms by reference to principles fundamental in a free and democratic society".[52]

Many such limitations are imposed on free expression rights, including the hate speech and perjury provisions of the *Criminal Code* as well as the hate speech restrictions set out in provincial human rights codes. In his testimony, Professor Moon referred to other limitations on freedom of expression under the *Charter*. He pointed to such examples as defamation laws and confidentiality obligations imposed on certain parties in certain circumstances. In her second interview, Senator Beyak conceded that there are certain limitations on the right to free expression. She testified that the law relating to defamation and promoting hatred and violence are all limitations to this right.

More directly relevant to this inquiry is Canadian law's acceptance that a self-regulating body may impose rules on its own members that restrict freedom of expression under the *Charter*. This is the case, for example, for teachers, lawyers, judges and other professionals as well.

For example, paragraph 122(1)(*a*) of the British Columbia *Schools Act* is aimed at maintaining a proper standard of conduct for teachers. A teacher may be suspended with or without pay from the performance of his or her duties for misconduct. In *Shewan* v. *Abbotsford School District*,[53] the Court noted that the standard of conduct applicable to teachers may differ from what is expected of an ordinary citizen, given the role that teachers perform in our society. Teachers are not only expected to be competent. They are also expected to lead by example.

Specifically in relation to free expression under the *Charter*, the Supreme Court of Canada, in *Ross v. New Brunswick School District No. 15*[54] considered the case of a teacher (Ross) who, for several years, made racist comments about Jews. These comments were made outside of the classroom. His writing and statements included four books and pamphlets, letters to a local newspaper and a local television interview. A student's parent filed a complaint with the New Brunswick Human Rights Commission, alleging that Ross's employer, the School Board, violated subsection 5(1) of the New Brunswick *Human Rights Act* by discriminating against him and his children. A Board of Inquiry directed the School Board to take remedial action, including placing Ross on a leave of absence without pay, appointing him to a non-teaching position, if one became available during that period and terminating his employment at the end of that period if, in the interim, he had not been offered and accepted a non-teaching position.

The Court held that "the employment context is relevant to the extent that the state, as employer, has a duty to ensure that the fulfilment of public functions is undertaken in a manner that does not undermine public trust and confidence."[55]

The Court accepted that Ross's right to freedom of expression was violated by the Board of Inquiry's order:"[o]n its face, the purpose of the order is to restrict [Ross's] expression; it has a direct effect on [Ross's] freedom of expression, and so violates [paragraph] 2(*b*) of the *Charter*.[56] But that did not end the analysis. Applying the test set out in section 1, the Court

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[52] *Ibid*., para. 64.
[53] *Shewan v. Board of School Trustees of School District No. 34 (Abbotsford),* 1987 CanLII 159 (BCCA), 47 DLR (4th) 106.
[54] *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825, [1996] SCJ No. 40.
[55] *Ibid*., para. 84.
[56] *Ibid*., para. 66.

held the infringement was justified. The educational context had to be taken into account when balancing the nature of the infringed right (i.e., the right to make discriminatory statements) and the specific values the state relies on (i.e., the right of children to be educated in a school system free from bias, prejudice and intolerance).[57]

The Court concluded that a teacher's freedom of speech must be balanced against the school board's right to operate according to its own mandate. The Court found that the Board of Inquiry balanced Ross's freedom of speech against the ability of the School Board to provide a discrimination-free environment and also against the interests of Jewish students. Upon leaving the teaching profession, Ross would be free to exercise his fundamental freedoms in an unrestricted manner.[58]

Section 59.2 of the Quebec's *Code des Professions* also governs the conduct of professionals by imposing a general rule of conduct that is aimed at ensuring that "no professional may engage in an act derogatory to the honour or dignity of his profession." The *Code* is a broad piece of legislation that applies to all regulated professions in Quebec, including law, medicine, and fifty-two other professions. It is supplemented by the specific ethics rules provided in each profession's code and regulations, which in some cases include similar language.

This provision of the Quebec Code was interpreted by the Quebec Professional Tribunal in relation to a professional's freedom of expression in the case of *Mailloux c. Médecins (Ordre professionnel des)*.[59] In that case, a member of the *Collège des médecins du Québec* appeared on the popular Quebec talk show "*Tout le monde en parle*", and stated that the average IQ of Black and Indigenous people is lower than other groups, and falsely suggested that he was in possession of unpublished studies given to him by the Université de Montréal that supported his comments. At a later date, he also appeared on a popular radio program and made inappropriate, offensive and contemptuous remarks concerning people of colour.

An ethics complaint filed against Dr. Mailloux, alleged that he had acted in a manner that was "derogatory to the honour or dignity of his profession". In the resulting disciplinary proceedings, the disciplinary council noted that he had "lacked rigour" when expressing his opinion about Black and Indigenous people, had to be aware of the impact of his comments, and had "relied on half-truths about a subject that … is very delicate and complex". As a result, Dr. Mailloux was found to have committed professional misconduct.

On appeal, Dr. Mailloux argued the council had failed to strike the appropriate balance between Dr. Mailloux's freedom of expression and his ethical duties. The Professional Tribunal cited the decision of the Supreme Court in *Doré v. Barreau du Quebec*, wherein Abella J. noted that lawyers "not only have a right to speak their minds freely, they arguably have a duty to do so … but they are constrained by their profession to do so with dignified restraint".[60] The Tribunal found this accurately illustrates the limits on freedom of expression

[57] *Ibid*., para. 83
[58] *Ibid*., para. 108.
[59] 2014 QCTP 113 (CanLII) ["*Mailloux*"].
[60] 2012 SCC 12, [2012] 1 SCR 395, para. 68.

in the context of a professional's duties under the *Code des Professions*, and concluded that the council had not committed a palpable and overriding error.

I refer to the *Mailloux* case as another example of the courts' acceptance of the principle that freedom of expression is not absolute, particularly in the context of professionals. In fact, statutes and regulations applicable to professionals in jurisdictions across the country prohibit conduct unbecoming members of professions, and the courts have recognized that these rules may limit professionals' right of freedom of expression in certain contexts.

In summary, the right to freedom of expression under the *Charter* enjoyed by Senator Beyak is not absolute and unlimited. As discussed above, rules relating to the regulation of professions, particularly those that engage a public trust, may constitute one such limitation.

Much like the rules of conduct concerning professionals, the *Code* is a self-imposed set of rules. It serves a two-fold purpose: to provide for Senators to govern themselves and to protect the public, given the profile, credibility and public trust attaching to the office of Senator. Therefore, as in the case of other self-regulating bodies, the *Code* may serve as a limit on the right to freedom of expression under the *Charter*.

Moreover, Mr. Maingot opined that a Senator could not successfully invoke the right of freedom of expression under the *Charter* in order to circumvent a rule adopted by the Senate as part of its corporate privilege to regulate its own internal affairs or to regulate the conduct of its members. Once a valid claim to privilege is made out, the courts will not inquire into the merits of its exercise in any particular circumstance.[61]

It is important to note that, as already mentioned above, the source of parliamentary privilege for federal legislators is section 18 of the *Constitution Act, 1867*, and while freedom of expression under paragraph 2(*b*) of the *Charter* is also part of our constitution, one part of the constitution does not abrogate another part. In other words, they are of equal standing; neither trumps the other.[62]

Given that the adoption of the *Code*, including sections 7.1 and 7.2, is a valid exercise of the Senate's privilege to regulate its own internal affairs and to regulate the conduct of its members, and that Senator Beyak's right to freedom of expression under the *Charter* does not supersede the collective right of the Senate to adopt the *Code*, the *Code* may in some circumstances impact on her freedom of expression rights.

(4) ***Are any of the letters posted by Senator Beyak on her Senate website racist and/or hateful towards Indigenous people?***

Allegations of racist content in the letters are central to the complaints against Senator Beyak. All four Complainants argued that some of letters contain racist content and the fact that she posted these letters on a website that is administered by the Senate constitutes a breach of sections 7.1 and 7.2 of the *Code*.

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[61] *Vaid*, paras. 47-48.

[62] *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319, 1993 CanLII 153 (SCC), *per* McLachlin J.

In addition to alleging that these postings are racist, one of the four Complainants also alleged that the Letters are hateful.[63]

Though often used together, these two terms – "racist speech" and "hate speech" (when directed at a particular race) – are not interchangeable; each has a distinct meaning. They are nonetheless related in that hate speech directed at a particular race is an extreme form of racism.

Professor Moon explained the difference:

> […] We live in a society where people think very much in racial terms, and make certain assumptions about racial differences, or gender differences, or whatever it might be. Think of stereotypes that exist all over the place.
> […]
> So, in the end, you are kind of drawing a line between the kind of – what is the word – quotidian forms of racist thinking … from what is extreme that we think that if the audience were to take it seriously … they would have to think that extreme action was necessary towards this particular group.

Professor Moon elaborated that, even on a civil standard rather than a criminal standard, the speech must be extreme in order to meet the test for hate speech.

(a) Racism and Racial Discrimination

Racism is central to the allegations in this case. Given that fact and that, in her interviews, Senator Beyak expressed uncertainty as to what racism is, a discussion on what constitutes racism is useful.

(i) Dictionary definitions

I examined definitions of "racism" from different sources.

The *Canadian Oxford Dictionary* defines "racism" as:

> (noun) 1. a belief in the superiority of a particular race; 2. a prejudice based on this; 3. antagonism toward other races, esp. as a result of this prejudice; 4. the theory that human abilities etc. are determined by race.[64]

The *Larousse* dictionary defines "racism" as:

- (noun) Ideology based on a belief that there is a hierarchy between human groups, or "races"; behaviour based this ideology.
- Systematic hostility to a set category of people: *anti-youth racism* [TRANSLATION].[65]

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[63] Letter from Senator Ratna Omidvar requesting an inquiry, January 26, 2018.
[64] Katherine Barber, ed., *Canadian Oxford Dictionary*, 2nd ed. (Don Mills, Ont.: Oxford University Press, 2004), "racism".
[65] Larousse, *Dictionnaire de français* (online), "racisme", available at: <https://www.larousse.fr/dictionnaires/francais/racisme/65932?q=racisme#65185>.

In her second interview on February 5, 2019, the *Canadian Oxford Dictionary* definition of racism was read to Senator Beyak for her consideration and comments. She testified that she entirely agreed with this definition.

According to *Black's Law Dictionary*, at its core, racism is the belief that one (or some) races are inherently superior to others.[66] It may be both a belief and action(s). Put into action, it is or results in the unfair treatment of people, often [though not always], including acts of violence against them, because they belong to a different race from one's own.[67] Anyone, regardless of skin colour, is capable of exhibiting racism if, for example, they believe their own race is superior to another. Racism may be implicit or explicit.[68] It can be widespread across a larger community or a significant number of individuals.[69]

(ii) Case law

Canadian court decisions have acknowledged that racism has deep roots in our society, and in fact appellate courts have taken judicial notice that:

> Racism ... is a part of [Canada's] psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes.[70]

The case law also acknowledges that racism can take place in subtle and covert ways that may not be apparent or obvious to the person engaging in the racist behavior. In *R. v. Parks*,[71] the Ontario Court of Appeal noted that racism may be manifested in multiple ways, including on a subconscious level where negative attitudes are held based on stereotypical assumptions.

Racism may also be manifested at various levels within institutions.[72] This is systemic racism.

In *Mcdougall (Re)*, a 2016 decision of the Manitoba Provincial Court,[73] Associate Chief Justice Krahn was asked to expand the scope of an inquest to include systemic racism. The inquest was convened under the *Fatalities Inquiry Act (*Manitoba) and involved a police service. In agreeing to increasing the scope of the inquest to include systemic racism, Justice Kahn accepted that systemic racism is "subtle, sometimes hidden and not obvious".[74] In doing so, the court accepted the evidence of Dr. Elizabeth Comack, a sociologist, who said:

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[66] Bryan A. Garner & Henry Campbell Black, eds., *Black's Law Dictionary,* 10th ed. (St. Paul, MN: Thomson Reuters, 2014), "racism".
[67] *Ibid*.
[68] Ontario Human Rights Commission, 'Policy and Guidelines on Racism and Racial Discrimination' (2005), available at:<http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf >, [OHRC, 'Policy and Guidelines on Racism and Racial Discrimination'], p. 12.
[69] *R. v. Byrnes*, 2018 ONCJ 278 (CanLII), para. 53 ["*R. v. Byrnes*"], citing *R. v. S. (R.D.)*, para. 38.
[70] *R. v. S. (R.D.),* 1997 CanLII 324 (SCC), para. 46, per L'Heureux-Dubé and McLachlin JJ, citing *R. v. Parks*, 1993 CanLII 3383 (ON CA) ["*R. v. Parks*"].
[71] *R. v. Parks*.
[72] *Ibid*.
[73] 2016 MBPC 77 (CanLII) ["*Mcdougall (Re)*"].
[74] *Ibid*., para. 23.

> [R]acism is often so muted in appearance that its presence is not obvious or self-evident. This is especially the case with "everyday racism", whereby racist beliefs and actions infiltrate everyday life to become part of our common sense and taken-for-granted ways of acting in the world … one dimension of racism is "its ability to be so subtly expressed or indirectly applied that its targets are not even aware of it. Conversely, racism is sometimes visible only to its victims. It remains indiscernible to others, who therefore deny its existence".[75]

The Supreme Court of Canada defined racial prejudice as follows:

> … making distinctions on the basis of race or class or category without regard to individual merit. It rests on preconceptions and unchallenged assumptions that unconsciously shape the daily behaviour of individuals. Buried deep in the human psyche, the preconceptions cannot be easily and effectively identified and set aside, even if one wishes to do so.[76]

(iii) Other Sources

The term "racism" is not defined in human rights legislation in Canada. However, the concept of discrimination based on race is used in provincial and federal human rights legislation. Moreover, both the terms "racism" and "racial discrimination" have been defined by the Ontario Human Rights Commission in the policy it developed under the *Ontario Human Rights Code*.[77] It is important to note, however, that the terms "racism" and "racial discrimination" are not synonymous and, in fact, this case does not involve racial discrimination. It is useful, though, to also consider the definition of "racial discrimination" in order to better understand the concept of "racism". Moreover, while the definitions provided by the Ontario Human Rights Commission are not directly applicable to the *Code*, they nonetheless provide a useful guide when considering what standards should be applicable to Senators.

With respect to the term "racism", which is the concept that is at issue in this case, the policy provides as follows:[78]

> Definitions of racism all agree that it is an ideology that either explicitly or implicitly asserts that one racialized group is inherently superior to others. Racist ideology can be openly manifested in racial slurs, jokes or hate crimes. However, it can be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases these beliefs are unconsciously maintained by individuals and have become deeply embedded in systems and institutions that have evolved over time. (…)
>
> This is often described as "everyday racism" and is often very subtle in nature. Despite being plain to the person experiencing it, everyday racism by itself may be

[75] *Ibid*., para 22.
[76] *R. v. Williams*, [1998] 1 SCR 1128, 1998 CanLII 782 (SCC), para. 21.
[77] Ontario, *Human Rights Code*, RSO 1990, c. H 19; OHRC, 'Policy and Guidelines on Racism and Racial Discrimination', pp. 4-17. The Canadian Human Rights Commission does not appear to have provided a definition of either the term "racism" or the term "racial discrimination", as the Ontario Human Rights Commission has done.
[78] OHRC, 'Policy and Guidelines on Racism and Racial Discrimination', pp. 12-13.

> so subtle as to be difficult to address through human rights complaints. However, at other times, where it falls within a social area covered by the Code [Ontario Human Rights Code], there may be circumstances where everyday racism, as part of a broader context, may be sufficient to be considered racial discrimination. Either way, the cumulative effect of these everyday experiences is profound.

The latter portion of the discussion set out above echoes what Dr. Comack was quoted as saying in *Mcdougall (Re)* about "everyday racism".[79]

More specifically with respect to Canada's Indigenous people, the literature suggests that racism against Indigenous people in this country is intrinsically linked with long-standing and still ongoing colonial assertions of superiority.[80]

The Ontario Human Rights Commission defines "racism" as a broader experience and practice than "racial discrimination". According to the Commission, the stereotypical beliefs in which racism is rooted are associated with the dominant group's power and privilege.[81]

Whereas the Commission defines "racial discrimination" as including *any action, intentional or not, that has the effect* of singling out persons based on their race and imposing burdens on them and not on others, *or withholding or limiting access to benefits* available to other members of society, in areas covered by the Ontario *Human Rights Code.*

Certain principles applied in the context of the Ontario Human Rights Tribunal's analysis of racial discrimination cases are noteworthy here. These were reviewed and approved by the Divisional Court (a branch of the Ontario Superior Court of Justice) in *Shaw v. Phipps*,[82] and include the following: [83]

> (a) …
>
> (b) There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is the effect of the respondent's actions on the complainant;
>
> (c) There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and
>
> (d) Racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices.

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[79] *Mcdougall (Re)*, para. 22.

[80] See Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999); Sherene Razack, ed., *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002).

[81] OHRC, 'Policy and Guidelines on Racism and Racial Discrimination', pp. 12-13. See also, Ontario Human Rights Commission, 'Racial Discrimination' (Queen's Printer for Ontario, 2012), Brochure, available at: <http://www.ohrc.on.ca/sites/default/files/Racial%20discrimination_English_accessible.pdf>.

[82] 2010 ONSC 3884, [2010] OJ No 4283, paras. 75-79, aff'd. 2012 ONCA 155 ["*Shaw v. Phipps*"].

[83] *Ibid*., para. 76. See also *Radek v. Henderson Development (Canada) Ltd. and Securiguard Services* (No. 3), 2005 BCHRT 302, para. 482, as cited in *Shaw v. Phipps*, para. 76; *Pritchard v. Ziedler*, 61 CHRR 233, CHRR Doc. 07-527 (Sask. HRT), as cited in *Shaw v. Phipps*, para. 76.

(iv) The letters

Turning now to the letters, the Complainants provided four examples of letters that they argued contain racist content. They specifically cited the following excerpts in support of their position:

> *Letter 1: "Respect for you" (March 10, 2017)*
>
> Aboriginals received better treatment and education than society gave, the Irish, the Scots, the Polish, the Jews.[84]
>
> They likely were envious of the pampered aboriginals that got free school, free food, free housing and that still wasn't enough.[85]
>
> I'm no anthropologist but it seems every opportunistic culture, subsistence hunter/gatherers seeks to get what they can for no effort. There is always a clash between an industrial/ organized farming culture that values effort as opposed to a culture that will sit and wait until the government gives them stuff.[86]
>
> *Letter 2: "Contact Us Comment" (March 30, 2017)*
>
> The Indians, First Nations or whatever they want to be called have milked this issue to their decided advantage and will if you let them.[87]
>
> *Letter 3: "Residential Schools" (March 30, 2017)*
>
> I don't understand why politicians don't take a stand against the chronic whining and unreasonable levels of expectations that are exhibited by some Indigenous groups that seem to keep inventing new ways to achieve a cash grab.[88]
>
> *Letter 4: "Residential Schools" (March 30, 2017)*
>
> There is an explosion of population, and why not. When all you need is to ask for an increase of benefits, why work? The residential schools are a crutch that is being leaned on. There are many who not only collect benefits but are also gainfully employed. There are not subjected to paying tax as the rest of us are.[89]

The above excerpts refer to Indigenous people as opportunistic, pampered whiners who are milking the government and exploiting the taxpayer. The Letters are rife with stereotypical negative beliefs, assumptions and prejudices directed at this group. Each of the above statements

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[84] Paul, 'Respect for you', March 10, 2017.
[85] *Ibid.*
[86] *Ibid.*
[87] Bill, 'Contact Us Comment', March 30, 2017.
[88] Joanne, 'Residential Schools', March 30, 2017.
[89] Caroline, 'Residential Schools', March 30, 2017.

suggests a belief that Indigenous people are lazy, opportunistic, inept, incompetent, greedy and/or worthless and, therefore, must be an inferior race.

In some cases, the belief that Indigenous people are inferior is implicit within the statement – for example, the writer of "Respect for you" (Letter 1) who claims that Indigenous people have received better treatment and education, "free school, free food, and free housing", suggesting that they have enjoyed beneficial treatment but yet continue to ask for more.

In other cases, the belief is quite explicit and direct – for example, again the writer of "Respect for you" (Letter 1) also makes a distinction between, on the one hand, hunter gatherers who seek "to get what they can for no effort" and that will "sit and wait until the government gives them stuff", and on the other hand, an "industrial/organized farming culture that values effort".

In a passage that was not referred to by any of the Complainants, the writer of "Respect for you" (Letter 1) also contended:

> If you took a bunch of Amish farmers from Southern Ontario and banished them to a reserve in Northern Ontario, within a year they would have built all of their members a new home, a new church and barns for every homestead. Within a year they would have dug wells and built a water treatment plant even if it was a simple sand, gravel and charcoal facility. Within 2 years they would be exporting lumber and furniture to Southern Ontario. At the same time the aboriginals relocated to Amish country near Kitchener would have burned down the house and left the fields to gully and rot.
>
> I'm not saying all of them are like that but right now the Canadian society guilt trip route to more money and power is golden and being opportunist they're grabbing all the hotel room towels and silver ware they can.

This letter demonstrates the point that racism may be explicit or implicit. While she did not accept that Letter 1 is racist, Senator Beyak nonetheless admitted in her testimony that it was of some concern. However, she also pointed out that the author writes that not all Indigenous people are like this and she stated, in reference to this letter, that "[I]t isn't racist, it isn't hateful, it's misinformed". She also testified that she thought the author was "edgy, he is opinionated, but his letter was funny, too…".

One letter ("Contact Us Comment", Letter 2) demeans the contemporary name (i.e. First Nations) for an enormous segment of Canada's Indigenous population: "the Indians, First Nations or whatever they want to be called". In her testimony, Senator Beyak addressed this specific excerpt and argued that the writer was only trying to point out that "nobody knows what the right word is anymore to not be politically incorrect, to not offend someone, to not say something hurtful, because we don't know what the right term is. If you call an Inuit a Métis, they are offended because they are different."

In both her interviews, Senator Beyak also insisted that all the letters must be read in their entirety and that it is not fair to single out any one part of a letter. Taking into account Senator Beyak's assertions that contextualization is an important element of fairness in this matter, when taken in its entirety, Letter 2 further emphasizes the writer's negative assumptions about Indigenous people. Its author asserted that Indigenous people "have milked this issue to their decided advantage and will if you let them", suggesting that they are opportunistic and greedy and will continue to be that way unless stopped. Contextualization does not dispel the letter's racist message.

Similarly, the author of "Residential Schools" (Letter 3) offered both implicitly racist statements (by referring, for example, to "chronic whining and unreasonable levels of expectations that are exhibited by some Indigenous groups") and explicitly racist statements, as evidenced by the following excerpt:

> To expect the Canadian government to continue to subsidize a culture which is often damaging to new generations of indigenous youth, is just bizarre. To keep handing over cash that allows them to destroy themselves while stamping their feet for more is a gross analogy of doing the same thing over and over and expecting a different result. I am all for accountable assistance that would educate new generations to fit into Canadian society. I just don't think that many, not all, indigenous people want what they really need to improve their position … They need to grow up and take on some accountability for their future generations to survive.

The above excerpt explicitly suggests that Indigenous people are not able to take care of themselves ("[T]hey need to grow up", "I just don't think many, not all, indigenous people want what they really need…"), while non-Indigenous Canadians keep providing funding that is used irresponsibly. The expression "stamping their feet" is also denigrating to Indigenous people and their culture.

The writer of "Residential Schools" (Letter 4) commented that "[t]here is an explosion of population, and why not. When all you need is to ask for an increase of benefits, why work?", suggesting that Indigenous people are lazy and do not feel the need to work because they are looking for handouts from others. The writer also distinguished this group from other cultures by stating that they are not required to pay taxes ("They are not subjected to paying tax as the rest of us are").[90]

Another letter posted on Senator Beyak's website, but not specifically identified by any of the Complainants (Letter 5), also implied that Indigenous people are lazy, opportunistic and have an inferior mindset. It has been reproduced in full in Appendix A. A portion of it reads as follows:

> The endless funding pit of reserves has to stop. These people need to join the commerce world and work for money. The handouts have taken their people nowhere, and their constant backward-looking mentality serves no useful purpose.[91]

As noted above, in her interviews, Senator Beyak was asked whether, in her view, the Letters are racist. She testified that Canadians are well-informed, which is why the Letters were included on her website with her personal approval. Senator Beyak confirmed the Letters are reflective of her views, although in both her interviews she indicated that she does not agree with of all the comments made in them.

When asked in her second interview whether Letter 5, for example, is racist in suggesting that Indigenous people are an inferior race because of what the author perceives to be a "backward-looking mentality", Senator Beyak argued that it is not. She said that she read this letter as referring

[90] Caroline, 'Residential Schools', March 30, 2017.
[91] Doug, 'Contact Us Comment', March 30, 2017.

to the Chiefs who are dwelling in the past in order to maintain the status quo whereby funding does not reach those in need. She told me that she is of the view that this letter was referring to the notion that living in the past is wrong. She testified that, while she does not agree with this letter, the author is entitled to his opinion.

Moreover, in her letter to me, dated March 13, 2018 by way of response to Senator Omidvar's initial complaint, Senator Beyak stated that "the letters on [her] website, each taken in its entirety and not just selected passages, are not racist or hateful in any way." And as already noted above, she also made that argument in her oral testimony.

I have examined the letters in full as well as all the other letters Senator Beyak received in relation to this matter, although not all of the letters received were posted on her website. I have considered whether each of the letters referred to by the Complainants, when read in its entirety, conveys a meaning that is different from what is conveyed by the passages referenced by the Complainants. Having done so, I find that a broader context does not change the plain meaning of the passages to which the Complainants have objected.

In addition, Senator Beyak's statements in her oral testimony that, when read in their entirety, the Letters are not racist in any way illustrates that she fails to understand that racism can exist within a passage or form part of a statement. Racism can be found in a single word. Neither context nor complete passages are required to appreciate that the Letters possess racist content. In any event, racism does not have to be taken in context. The racist content of a letter, thesis, dissertation or speech cannot be subsequently justified by a more complete passage that might provide context – unless perhaps a racist statement was offered as example within an anti-racist letter, which was not the case with any of the Letters.

In her letter to me of March 13, 2018, Senator Beyak also stated that other academics and journalists did not find the content of the letters to be racist. Senator Beyak made this statement without offering either a definition of racism or any explanation as to why the Letters are not racist in their content. This is not a persuasive argument.

In her first interview on April 18, Senator Beyak questioned the definition of racism – which she argues may be personal in nature. Throughout this interview, I provided multiple opportunities for her to consider the elements of the Letters and the complaints against her. Rather than engage in discussion as to whether the Letters may be harmful and promote racist sentiments, Senator Beyak asserted that she is not certain what racism is while at the same time insisted that the Letters are not racist. In doing so, Senator Beyak has taken an inconsistent position. In her second interview, she argued that the term "racism" is not defined in the *Code*. During this same interview, I provided her with a definition of "racism" from the *English Oxford Dictionary*, with which she agreed. However, she continued to inquire about who should define the term. She made the point that the term is very subjective and different people will have a different view about whether something qualifies as racism. Yet, she again maintained that the content of the Letters was not racist.

Senator Beyak also argued that she did not intend to be racist and that if she had thought the Letters were racist, she would not have posted them. It is important to recall that for racism to exist, it need not be explicit, nor need it be intended or believed to be racist in nature. As explained above, an individual exhibiting racist behavior may not be consciously aware of it, but this does not alter

its impact on others. In fact, it is the effect on the targeted group that is relevant to a determination as to whether behaviour or language is racist. On this point, I note that, in its 2013 decision in *Saskatchewan (Human Rights Commission) v. Whatcott*, the Supreme Court of Canada cited with approval the point made in *Canada (Human Rights Commission) v. Taylor* that whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant.[92] The key is to determine the likely effect of the expression on its audience.[93] And while that decision concerned the hate speech provision in the *Canadian Human Rights Act*, the rationale outlined by the Court is a useful guide in the present case.

In her first interview, Senator Beyak took the position that one of her reasons for posting the letters was to initiate a free and open dialogue in a broad sense, not through her website, in order to chart a better path forward and that the letters concern matters of national and public importance. However, I am of the view that whether or not the content of the Letters forms part of a public policy debate does not change their character or the effect that they have on the targeted group. I am again guided by the *Whatcott* decision in which the Court noted that framing speech "within a public policy debate" does not cleanse it of its harmful effect.[94] In fact, the Court said that "as argued by some interveners, history demonstrates that some of the most damaging hate rhetoric can be characterized as 'moral', 'political' or 'public policy' discourse."[95] Having said that, it is important to note that Senators have a key role to play in debating and deliberating about issues of national importance and in the exercise of this function, not all discourse that may be offensive and insulting to some will cross the line so as to qualify as racism.

In both her interviews, Senator Beyak steadfastly refused to acknowledge even the potential that the Letters conveyed racist messages. The Senator also confirmed that she personally made decisions about inclusion on her Senate website of all of the letters, including those she thought contained inappropriate content.

In her submissions of February 14, 2019, she argued that each of the letters identified by the Complainants makes the point that the comments made only refer to some Indigenous groups, not all. First, this is not true. Letter 2 does not make this point at all, nor does Letter 5. And in any event, even if this had been true, I do not find this argument convincing. The attempt to suggest that some members of the group are excluded from the scope of the comments does not, in my view, diminish or alter the racist tone and nature of the comments if they otherwise meet the definition of "racism". To conclude otherwise would mean that racism could always be disseminated and promoted with impunity provided the author took care to exclude some of the members of the targeted group.

In light of all of the above, and having carefully examined each letter in its entirety, I am the opinion that the views expressed in some of them include racist content. To be clear, in so concluding, I am referring to the four letters that were posted on Senator Beyak's website to which the four Complainants explicitly referred, as well as a fifth that was on her website, which I have also found contains racist content but that was not explicitly identified by any of the four

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[92] *Whatcott*, paras. 126-127, citing with approval *Canada (Human Rights Commission) v. Taylor*, [1990] 3 SCR 892, [1990] SCJ No. 129 ["*Taylor*"].
[93] *Ibid*.
[94] *Whatcott*, para. 116.
[95] *Ibid*.

Complainants.[96] And though not all of the 5 Letters exhibit racism in an explicit manner, as already noted above, racism can be implicit and subtle, rather than direct. It is important to note, however, that most of the letters that Senator Beyak posted on her website, though they may be offensive to some, do not contain racist content.

(b) Hate Speech

In describing the contents of the Letters, one of the Complainants also used the term "hateful".[97]

In the *English Oxford Dictionary*, this term is defined as: "arousing, deserving of, or filled with "hatred".[98]

Hate speech is referred to in section 319 of the *Criminal Code*.[99] The dissemination of hate is also prohibited in some provincial human rights codes.[100] The question to be resolved here is not whether the publication of these Letters would attract criminality or liability as a human rights violation. The question before me is whether the publication of these Letters by Senator Beyak falls below the standards of the *Code* as non-discrimination is a core value of today's Senate. A finding that these Letters might be characterized as hate speech however, may assist in determining whether the posting of the Letters is a violation of the *Code*.

Jurisprudence related to the provisions found in some of the human rights codes provides a helpful guide as to what the courts consider to be hate speech and has been examined for the purposes of this report.

For example, the *Whatcott* case, already referred to above, concerned the prohibition on hate speech in the Saskatchewan *Human Rights Code*.[101] In that case, the Supreme Court considered the approach in *Canada (Human Rights Commission) v. Taylor* (a case concerning the now repealed prohibition on hate speech in section 13 of the *Canadian Human Rights Act*) and held that that case provided a workable approach to interpreting "hatred" as it is used in legislative provisions prohibiting hate speech.[102]

Three prescriptions were defined by the Supreme Court in *Whatcott* where the term "hatred" is used in the context of a prohibition of expression in human rights legislation: [103]

> First, courts are directed to apply the hate speech prohibitions objectively. In my view, the reference in *Taylor* to "unusually strong and deep-felt emotions" (at p. 928) should not be interpreted as imposing a subjective test or limiting the analysis to the intensity with which the author of the expression feels the emotion. The question courts must ask is whether a reasonable person, aware of the context and

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[96] This fifth letter is the following: Doug, 'Contact Us Comment', March 30, 2017.
[97] Letter from Senator Ratna Omidvar requesting an inquiry, January 26, 2018.
[98] Oxford, *English Oxford Dictionary* (online), "hateful", available at: <https://en.oxforddictionaries.com/definition/hateful>.
[99] *Criminal Code*, RSC 1985, c. C-46.
[100] See, for example, Saskatchewan, *Saskatchewan Human Rights Code*, SS 1979, c. S-24.1, para. 14(1)(*b*) ["*Saskatchewan Human Rights Code*"]; British Columbia, *Human Rights Code*, RSBC 1996, c. 210, para. 7(1)(*b*).
[101] *Saskatchewan Human Rights Code*, para. 14(1)(*b*).
[102] *Whatcott*, para. 55.
[103] *Ibid.*, paras. 56-58.

> circumstances surrounding the expression, would view it as exposing the protected group to hatred.
>
> Second, the legislative term "hatred" or "hatred or contempt" is to be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.
>
> Third, tribunals must focus their analysis on the effect of the expression at issue. Is the expression likely to expose the targeted person or group to hatred by others? The repugnancy of the ideas being expressed is not, in itself, sufficient to justify restricting the expression. The prohibition of hate speech is not designed to censor ideas or to compel anyone to think "correctly". Similarly, it is irrelevant whether the author of the expression intended to incite hatred or discriminatory treatment or other harmful conduct towards the protected group. The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.

Justice Rothstein elaborated as follows on the nature of hatred in hate speech, which is characterized as language that has the effect of subjecting a person to detestation, vilification, and contempt:

> In my view, "detestation" and "vilification" aptly describe the harmful effect that the Code [the Saskatchewan Human Rights Code] seeks to eliminate. Representations that expose a target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.[104]
>
> [...] in my view the term "hatred" in the context of human rights legislation includes a component of looking down on or denying the worth of another. The act of vilifying a person or group connotes accusing them of disgusting characteristics, inherent deficiencies or immoral propensities which are too vile in nature to be shared by the person who vilifies. Even without the word "contempt" in the legislative prohibition, delegitimizing a group as unworthy, useless or inferior can be a component of exposing them to hatred. Such delegitimization reduces the target group's credibility, social standing and acceptance within society and is a key aspect of the social harm caused by hate speech.[105]

The Supreme Court of Canada offered examples of the delegitimization effected by hate speech, whereby this speech will attack a group by suggesting its members are illegal or unlawful, such

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[104] *Ibid*., para. 41.
[105] *Ibid*., para. 43.

as by labeling them "liars, cheats, criminals and thugs", a "parasitic race" or "pure evil".[106]

The Supreme Court explained that exposure to hatred can also result from expression that equates the targeted group with groups traditionally reviled in society, such as child abusers pedophiles,[107] or "deviant criminals who prey on children".[108] One of the most extreme forms of vilification is to dehumanize a protected group by describing its members as animals or as subhuman. References to a group as "horrible creatures who ought not to be allowed to live",[109] "incognizant primates", "genetically inferior" and "lesser beasts"[110] or "sub-human filth"[111] are examples of dehumanizing expression that calls into question whether group members qualify as human beings.

As these examples illustrate, courts have been guided by the *Taylor* definition of hatred and have generally identified only extreme and egregious examples of delegitimizing expression as hate speech. This approach excludes merely offensive or hurtful expression from the ambit of the provision and respects the legislature's choice of a prohibition predicated on "hatred".

Professor Moon discussed hate speech in his testimony. He explained that for speech to be hate speech, it has to be very serious. He testified as follows:

> [It must vilify] a targeted group by blaming its members for the current ills of society, alleging that they are a powerful menace, carrying out conspiracies to gain global control, for example, or plotting to destroy western civilization.
>
> Hate speech delegitimizes the target group by suggesting that its members are illegal, unlawful, labelling them as liars, cheats, criminals, thugs, a parasitic race, or pure evil, describing or treating them as subhuman, as lesser beings in some very deep and significant way.

And later on, Professor Moon testified:

> In hate speech law, generally speaking, we are talking about the idea that this may spread hateful attitudes in the community, with the consequence of physical or other forms of dangerous or damaging activity being directed at the members of that group.

Importantly, political speech, public discourse, or speech about matters of public interest and debate is not immune from an inquiry as to whether it constitutes hate speech. While political expression contributes to democracy by encouraging the exchange of opposing views, hate speech crosses a line and is antithetical to reasoned discourse because it marginalizes and sidelines the targeted group and makes it difficult or impossible for its members to respond. As a result, hate speech stifles, and does not contribute to, civil discourse. Justice Rothstein made this point in speaking for the Supreme Court of Canada in *Whatcott*:

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[106] *Ibid.*, para. 44.
[107] *Ibid.*, para. 45, citing *Payzant v. McAleer* (1994), 26 CHRR D/271 (CHRT), aff'd (1996), 26 CHRR D/280 (FCTD).
[108] *Whatcott*, para. 45, citing *Warman v. Northern Alliance*, 2009 CHRT 10, 009 CHRT 10 (CanLII), para. 43.
[109] *Ibid.*
[110] *Whatcott*, para. 45, citing *Center for Research-Action on Race Relations v. www.bcwhitepride.com*, 2008 CHRT 1, para. 53.
[111] *Whatcott*, para. 45, citing *Warman v. Winnicki (No. 2)*, 2006 CHRT 20, 56 CHRR D/381, para. 101.

> The polemicist may still participate on controversial topics that may be characterized as "moral" or "political". However, words matter. In the context of this case, Mr. Whatcott can express disapproval of homosexual conduct and advocate that it should not be discussed in public schools or at university conferences. Section 14(1)(b) only prohibits his use of hate-inspiring representations against homosexuals in the course of expressing those views. As stated by Alito J. in dissent in *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), at p. 1227. . . "I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected.[112]

The Court held that the distinction between the expression of repugnant ideas and expression which exposes groups to hatred is crucial to understanding the proper application of hate speech prohibitions. Hate speech legislation is not aimed at discouraging repugnant or offensive ideas. It does not, for example, prohibit expression which debates the merits of reducing the rights of vulnerable groups in society. It only restricts the use of expression exposing them to hatred as a part of that debate. It does not target the ideas, but their mode of expression in public and the effect that this mode of expression may have. An assessment of whether expression exposes a protected group to hatred must therefore include an evaluation of the likely effects of the expression on its audience. Would a reasonable person consider that the expression vilifying a protected group has the potential to lead to discrimination and other harmful effects? This assessment will depend largely on the context and circumstances of each case.

Moreover, the truth of an expression does not make it immune from an inquiry as to whether it expressed hatred. Justice Rothstein noted that even truthful statements may be expressed in language or context that exposes a vulnerable group to hatred.[113] The prohibition against hate speech involves balancing between freedom of expression and equality rights. People are free to debate or speak out against the rights or characteristics of vulnerable groups, but not in a manner which is objectively seen to expose them to hatred and its harmful effects.[114]

The Supreme Court's decision in *Whatcott* recognized the harm caused by hate speech, not only to the targeted group, but also to society at large. According to Justice Rothstein,

> Hate speech is, at its core, an effort to marginalize individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. When people are vilified as blameworthy or undeserving, it is easier to justify discriminatory treatment.[115]

Further,

> Hate speech, therefore, rises beyond causing emotional distress to individual group members. It can have a societal impact. If a group of people are considered inferior, sub-human, or lawless, it is easier to justify denying the group and its members

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[112] *Whatcott*, para. 119.
[113] *Ibid*., para. 141.
[114] *Ibid*., para. 145.
[115] *Ibid*., para. 71.

> equal rights or status […] As the majority becomes desensitized by the effects of hate speech, the concern is that some members of society will demonstrate their rejection of the vulnerable group through conduct. Hate speech lays the groundwork for later, broad attacks on vulnerable groups. These attacks can range from discrimination, to ostracism, segregation, deportation, violence and in the most extreme cases, to genocide.[116]

In *Hudspeth v. Whatcott*, Justice Perell of the Ontario Superior Court of Justice synthesized these ideas into five defining principles for the assessment of hate speech:

> (i) hate speech has a definition and the law has principles that allow hate speech to be identified;
> (ii) hate speech is much more intense than insensitive or repugnant words;
> (iii) hate speech causes significant harm to its victims but also to society;
> (iv) limitations on hate speech, including limitations on political speech, do not offend the Charter; and
> (v) it is the suppression of the harm caused to society, not the harm to individual members of the vulnerable group, that justifies an infringement on freedom of expression.[117]

In light of all of the above, can the Letters be considered hate speech? To paraphrase Justice Rothstein, would a reasonable person, aware of the context and circumstances, view the Letters as exposing Indigenous people to hatred? Is the effect likely to expose Indigenous people to hatred by others? Do the statements expose Indigenous people to detestation and vilification, which goes far beyond merely discrediting, humiliating or offending them? To use the words of the Supreme Court in describing the act of vilifying a person or group, do the Letters accuse Indigenous people of "disgusting characteristics, inherent deficiencies or immoral propensities which are too vile in nature to be shared" by the writers of these Letters?

While some of the content of the Letters is offensive, hurtful and racist, I am of the view that it is not so extreme in character as to meet the test for hate speech as articulated by the Supreme Court of Canada. I do not believe that the reasonable person, aware of the context and circumstances surrounding these Letters, would view them as exposing Indigenous people to detestation and vilification, as defined by the Supreme Court in relation to hate speech laws. While repugnant and offensive, they do not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects. None of them accuse Indigenous people of "disgusting characteristics, inherent deficiencies or immoral propensities which are too vile in nature to be shared".

Based on all the evidence before me, I conclude that, while 5 of the letters posted by Senator Beyak on her website contain racist content, they do not meet the definition of hate speech that has been established by the courts.

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[116] *Ibid*., para. 74.
[117] *Hudspeth v. Whatcott*, 2017 ONSC 1708, para. 136.

(5) ***In posting racist letters on her website did Senator Beyak :***

- ***a. fail to uphold the highest standards of dignity inherent to the position of Senator contrary to subsection 7.1(1) of the Code?***
- ***b. act in a way that could reflect adversely on the position of Senator or on the Senate contrary to subsection 7.1(2) of the Code?***
- ***c. fail to perform her parliamentary duties and functions with dignity, honour and integrity contrary to section 7.2?***

Before answering these questions, it may be useful to provide some background information concerning sections 7.1 and 7.2 of the *Code*.

- *Sections 7.1 and 7.2 – general discussion*

Although sections 7.1 and 7.2 of the *Code* have been set out earlier in this report, for convenient reference they are set out again here:

> **7.1.** (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.
>
> (2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the Senate.
>
> **7.2** A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.

Since these are relatively new provisions, they have been little tested. As such, it is appropriate to provide some comments on their interpretation.

The *Code* does not set out any definitions for the terms that are used in sections 7.1 and 7.2, though some of the same concepts are found in paragraph 2(2)(*b*) of the *Code* – one of the *Code*'s principles. In the absence of any definitions in the *Code*, it is useful to consider other sources in order to provide some guidance as to how to interpret these provisions.

Section 7.1 establishes a broad obligation for Senators to act with dignity, and to avoid conduct that could reflect adversely on the position of Senator or the Senate. It is an expression of parliamentary privilege, of the Senate's right to regulate its conduct and discipline its members. The scope of section 7.1 includes but extends beyond the duties and functions of the office of a Senator and encompasses all conduct of a Senator and establishes not just a high standard, but the "highest standards" of dignity inherent in the position of Senator. This was, in fact, the intent of the Senate in adopting section 7.1 as is clear from a directive of the Standing Committee on Ethics and Conflict of Interest for Senators ("the Committee"), dated July 27, 2015, and made pursuant to subsection 38(2) of the *Code*, which instructs the Senate Ethics Officer to interpret, apply and administer the *Code* in accordance with the directive.[118] The directive states:

[118] Directive 2015-02, Standing Senate Committee on Ethics and Conflict of Interest for Senators, issued July 27, 2015.

> These rules of general conduct are applicable to all conduct of a Senator, whether directly related to parliamentary duties and functions or not, which would be contrary to the highest standards of dignity inherent to the position of Senator and/or would reflect adversely on the position of Senator or the institution of the Senate.

Section 7.1 puts Senators on notice that they will be held to account for their conduct – whether in the performance of their parliamentary duties and functions or otherwise – that (a) undermines the standards of dignity inherent to the position of Senator, such that, for example it impacts a Senator's professional reputation, integrity or trustworthiness, or (b) may have an adverse impact on the reputation of the office of Senator or the Senate as an institution.

Though still relatively new in its application to Senators, obligations of this kind are not unusual. They commonly arise in the context of rules relating to the regulation of professions, particularly those that engage a public trust. For example, statutes and regulations pertaining to lawyers and physicians in jurisdictions across the country prohibit conduct unbecoming a licensee, as already referred to earlier in this report.[119]

These rules, as well as the cases interpreting and applying them[120], generally establish that "conduct unbecoming" is not a freestanding label to be affixed to behaviour bearing absolutely no connection to the licencee's professional duties or the profession to which she or he belongs. Rather, a finding of conduct unbecoming will result where the conduct has some connection to the individual's continued suitability to perform his or her professional duties or to the maintenance of public confidence in the profession to which she or he belongs.

Given the similarities between the "conduct unbecoming" standard and the standards of conduct set out in sections 7.1 and 7.2 of the *Code*, the guidance provided by the law relating to professional regulation is useful in informing an assessment about whether the standards set out in sections 7.1 and 7.2 have been met.

It is not uncommon for codes of professional conduct to contain one provision targeted toward regulating conduct in the course of one's professional duties and another that captures conduct that occurs outside the scope of those duties. For example, Ontario's *Law Society Act* provides that "[a] licensee shall not engage in professional misconduct or conduct unbecoming a licensee."[121] [*Emphasis added*]. The terms "professional misconduct"[122] and "conduct unbecoming a barrister

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[119] See, for example, *Law Society Act*, RSO, 1990, c. L-8, s. 33; Law Society of Ontario, *Rules of Professional Conduct*; *Health Professions Procedural Code*, para. 51(1)(c); Schedule 2 of the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, and O. Reg. 856/93: Professional Misconduct.

[120] See, for example, *Law Society of Upper Canada v. Peter Brian Budd*, 2011 ONLSAP 2, para. 37, aff'd 2012 ONSC 412 (Div. Ct.): In upholding the revocation of a licence (…), the Appeal Panel noted that "one of the purposes of disciplining a lawyer for 'conduct unbecoming' is to maintain the public's confidence in the integrity and trustworthiness of the profession."; *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 177: The Court noted that the inclusion of, for example, "conduct unbecoming a physician", in the scope of "professional misconduct" indicated "the aim of this broad definition is to ensure that members are, and remain, fit to carry out their practice according to the standards the profession sets for itself. Fitness in this context includes conduct in the physician's private life that reflects on his or her integrity." (emphasis added)

[121] *Law Society Act*, RSO 1990, c. L.8, s. 33.

[122] Law Society of Ontario, *Rules of Professional Conduct*, s. 1.1-1: "'**professional misconduct**' means conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including (…)".

or solicitor"[123] have distinctive definitions under the Law Society of Ontario's *Rules of Professional Conduct*, which are created pursuant to the *Law Society Act*. Examples of similar provisions abound in other jurisdictions and professions.

In my view, the structure of the *Code* is similar: section 7.2 may be considered a functional equivalent to "professional misconduct" provisions in other contexts, in that it is geared towards Senators' conduct in the course of their parliamentary functions and duties, while section 7.1 is functionally equivalent to "conduct unbecoming" provisions, in that it is broad enough to capture Senators' conduct outside the scope of parliamentary functions and duties. There is some potential overlap between the conduct captured by sections 7.1 and 7.2: conduct in which a Senator engages in carrying out his or her parliamentary duties or functions could violate both section 7.2 *and* section 7.1.

There is, however, one important difference. The distinction between at least some "conduct unbecoming" and "professional misconduct" standards is that the former arises out of acts performed in one's personal or private capacity, while the latter arises out of acts performed in a professional capacity or in connection with a professional status.[124] The *Code* does not create this type of bright-line distinction between sections 7.1 and 7.2. The Committee has directed the Senate Ethics Officer to hold that "the scope of s. 7.1 extends beyond the duties and functions of the office of a Senator and encompasses all conduct of a Senator." As such, it will fall to be determined on the facts of each case whether the conduct at issue is capable of constituting a violation of both sections 7.1 and 7.2.

- *The meaning of "dignity, honour and integrity"*

Subsection 7.1(1) refers to "highest standards of dignity". Section 7.2 refers to "dignity", "honour" and "integrity". The use of these three broad and amorphous words – words that have some commonality of meaning – is common within codes of professional conduct in Canada. The words "dignity, honour and integrity" mirror certain standards applicable to judges in the province of Québec.[125] Certain of these words (particularly "integrity" and "honour") also appear in codes of conduct governing other professions. For example, the *Rules of Professional Conduct* of the Law Society of Ontario provide that "[a] lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably

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[123] Law Society of Ontario, *Rules of Professional Conduct*, s. 1.1-1: "'**conduct unbecoming a barrister or solicitor**' means conduct, including conduct in a lawyer's personal or private capacity, that tends to bring discredit upon the legal profession including, (…)".

[124] Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Thomson Reuters, 2017), p. 26.8 (loose-leaf). This distinction is made explicit in the legislation and regulations governing Nova Scotia Registered Nurses, where "'conduct unbecoming' means conduct in a member's personal or private capacity that tends to bring discredit upon the nursing profession." [emphasis added] (*Registered Nurses Regulations* made under s. 8 of the *Registered Nurses Act*, SNS 2006, c. 21 OIC 2009-133 (March 17, 2009), N.S. Reg. 65/2009, ss. 2(2)(a), 81 (Nova Scotia). In contrast, the Law Society of Ontario's *Rules of Professional Conduct* define "conduct unbecoming" as "conduct, including conduct in a lawyer's personal or private capacity, that tends to bring discredit upon the legal profession…" [emphasis added]. MacKenzie adds at p. 26.8 "In some cases it is not entirely clear whether a particular activity should be classified as professional misconduct or conduct unbecoming, or both."

[125] Quebec, *Judicial Code of Ethics*, CQLR, c. T-16, r. 1, s. 2: "The judge should perform the duties of his office with integrity, dignity and honour."

and with integrity."[126] [*Emphasis added*] While these words are often used in setting standards of professional conduct, their precise meaning is the subject of less consideration.

Given the identical use of the words "dignity, honour and integrity" under Quebec's *Judicial Code of Ethics*, as well as the public trust that is engaged in the execution of both a judge's duties and a Senator's duties, it is valuable to consider what the *Conseil de la magistrature du Québec* (the "Conseil") has said of them in its conduct decisions.[127]

The Conseil has defined "integrity" as "the quality of a person whose probity is absolute and who is honest and incorruptible."[128] The Quebec Court of Appeal has cited with approval guidance on this value provided by the Canadian Judicial Council: "As for integrity, judges are urged to behave in a manner that is above reproach in the view of a reasonable, fair-minded and informed person."[129] Judges have been found to breach this standard in the course of their judicial functions when failing to disclose a friendship with an expert witness;[130] meeting with an expert witness in private during a trial over which the judge was presiding;[131] and modifying minutes of a hearing.[132]

With respect to the standard of "dignity", the *Oxford Dictionary* refers to "dignity" as "[t]he state or quality of being worthy of honour or respect." The Conseil, on the other hand, has referred to a dictionary definition from *Le petit Robert*: "the word 'dignity' is synonymous with 'reserve and restraint' and is the opposite of 'disgracefulness, casualness and vulgarity'."[133] Judges have been found to breach this standard while carrying out their judicial duties by insinuating, without justification, that a defendant's lawyer was getting his witness to perjure himself[134]; and altering a judgment following a conversation with one of the parties after the judge's decision had been delivered.[135]

The Conseil's decisions appear to have dealt less with the standard of "honour" within the meaning of the *Judicial Code of Ethics*. Nonetheless, one judge (then of the Ontario Court of Justice and presently of the Court of Appeal for Ontario), writing extra-judicially, has adopted the following definition: "high respect or public regard; adherence to what is right or an accepted standard of conduct; nobleness of mind."[136]

Though it does not appear to have grappled with the definition of "honour", the Conseil has found the standard of "honour" to have been breached in the course of judicial duties by a judge making

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[126] Law Society of Ontario, *Rules of Professional Conduct*, r. 2.1-1. The same or similar language is found in Prince Edward Island, British Columbia and Quebec.
[127] For a thorough review of the Conseil's decisions and commentary on these standards, see Pierre Noreau & Emmanuelle Bernheim, *Applied Judicial Ethics – Third Edition* (Montreal: Wilson & Lafleur Ltée, 2013).
[128] Quebec, Conseil de la magistrature, *Rapport préliminaire sur la recevabilité et l'examen de la plainte*, CM-8-85, CM-8-86-11 (December 11, 1986).
[129] *Ruffo (Re)*, 2005 QCCA 1197 (CanLII), [2006] RJQ 26, para. 52 ["*Ruffo*"], citing Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: Canadian Judicial Council, 1998).
[130] *Ruffo*.
[131] *Ibid.*
[132] Quebec, Conseil de la magistrature, *Rapport du comité d'enquête*, 2000 CMQC-48, January 31, 2003.
[133] Quebec, Conseil de la magistrature, *Rapport d'enquête*, 2007 CMQC 22, April 30, 2008.
[134] Quebec, Conseil de la magistrature, *Rapport d'enquête*, CM-8-61, October 29, 1985.
[135] Quebec, Conseil de la magistrature, *Décision du comité d'enquête*, CM-8-88-32, February 21, 1990.
[136] Hon. Gary Trotter, "Integrity and Honour in Criminal Litigation: Hollow Aspirations or Enforceable Standards?" (Presented at the Law Society of Upper Canada's 6th Colloquium, March 2006), p. 1, citing *The Oxford Dictionary of Current English* (Oxford: University Press, 1990).

a remark to the effect of "rules, like women, are made to be violated" in order to demonstrate the irrationality of an argument and express impatience toward a lawyer;[137] and by a judge altering a judgment after meeting with a party following the release of the judgment.[138]

The above describes how these terms have been interpreted and applied in the context of judges – a position of public trust that involves certain functions and responsibilities towards individuals and society at large. In this respect, the position of judges can be analogized to that of Senators. However, it is important to reiterate that one of the main functions of Senators is to deliberate and debate important public policy issues. Judges, on the other hand, are required to exercise restraint and refrain from publicly speaking out on such issues. This dissimilarity in roles must be considered here as well as the unique role Senators play in the parliamentary process.

More generally, the minimum standard of conduct tolerated in the community is not necessarily the same standard of behaviour that a Senator must adhere to under the *Code*. In adopting sections 7.1 and 7.2, Senators have set a higher standard of conduct for themselves in order to protect the reputation of the office of Senator and of the Senate as a whole. A loss of confidence or respect in the office of Senator or the Senate will have an adverse effect on the Senate's credibility, which in turn will have an impact on the ability of all Senators to carry out their functions effectively, particularly their representative function given that Senators represent the provinces and regions of Canada.

It is the public responsibilities inherent to the role of Senator that give rise to a standard of conduct beyond that expected of an ordinary citizen. As such, conduct that does not rise to the standard of behaviour expected of Senators may be a breach of sections 7.1 and/or 7.2 notwithstanding that it may not be illegal and may even be acceptable conduct by other members of the community.[139]

In respect of the unique position that Senators hold in society, the Complainants have referred to the Supreme Court of Canada's decision in *Reference re Senate Reform*, where the Court noted that the role of Senators has evolved over time and that the Senate has become a body that serves to represent the underrepresented and to defend the rights of minorities:

> The upper legislative chamber, which the framers named the Senate, was modeled on the British House of Lords, but adapted to Canadian realities. As in the United Kingdom, it was intended to provide "sober second thought" on the legislation adopted by the popular representatives in the House of Commons …[140]
>
> Over time, the Senate also came to represent various groups that were under-represented in the House of Commons. It served as a forum for ethnic, gender, religious, linguistic, and Aboriginal groups that did not always have a meaningful opportunity to present their views through the popular democratic process: B. Pelletier, "Réponses suggérées aux questions soulevées par le renvoi à la Cour

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[137] Quebec, Conseil de la magistrature, *Rapport du comité d'enquête*, CM-8-89-24, June 29, 1990.
[138] Quebec, Conseil de la magistrature, *Décision du comité d'enquête*, CM-8-88-32, February 21, 1990.
[139] See for example, *Shewan v. Abbotsford School District No. 34* (1987), 1987 CanLII 159 (BCCA) in which the BCCA made the distinction between the behaviour expected of a teacher versus the behaviour expected of an ordinary member of society. The Court found that paragraph 122(1)(*a*) of the *Schools Act* imposed a higher standard of conduct for teachers in light of their public responsibilities and the leadership role they play in society.
[140] *Senate Reference*, para. 15.

> suprême du Canada concernant la réforme du Sénat" (2013), 43 *R.G.D.* 445 (« Réponses suggérées »), at pp. 485-86.[141]

Sections 7.1 and 7.2 of the *Code* prohibit "conduct unbecoming" of a Senator. Prohibiting conduct unbecoming serves an important purpose: to maintain the public's confidence in the integrity and trustworthiness of a profession, a position, and/or an office. By adopting sections 7.1 and 7.2 of the *Code*, the Senate has seen fit to prohibit conduct that could undermine the public's confidence in the office of Senator and in the Senate as an institution. It is important to bear this in mind when considering whether these provisions have been breached in this case.

- *My answers to the questions*

Turning first to subsection 7.1(1), by posting the letters that I have determined contain racist content, has Senator Beyak upheld the "highest standards of dignity inherent to the position of Senator"? I have concluded that Senator Beyak has failed to uphold those standards.

Senator Beyak testified that one of her reasons for posting the letters on her website was to demonstrate support for her Senate speech of March 7, 2017, which included her comments on Indian Residential Schools. She also argued that her purpose in posting the letters was to give Canadians, Indigenous and non-Indigenous, a voice. She did this despite the fact that some of the content of some of the letters was racist. There were 2,364 letters supporting the positions she took in her speech in the Senate on March 7th that were not racist (2,389 letters of support minus 25 letters that could be considered offensive towards Indigenous people).

In fact, Senator Beyak has denied that any of the letters posted on her website were racist. And despite the fact that there is only a small number of letters that Senator Beyak posted that were racist, there is a casualness to the choices that she made about which letters to post and a lack of sensitivity about the effect that posting the letters that I have determined contain racist content might have on Indigenous people. She testified that:

> In their entirety, they [the letters at issue] are not harmful in any way.
>
> The letters are kind and compassionate. The website is kind and compassionate, and shows a fresh start and a better way forward for the Aboriginal people of Canada, that don't deserve to live in Third World country conditions.

When asked about how she selected certain letters over others, she stated:

> I tried to do letters that addressed each part of my speech on March 7th … The letters all addressed different things. A lot of them said how proud they were that I was a senator… Some of them supported the audit, some supported the referendum, some supported just a wiser use of tax dollars. Some just ranted, but in a way that showed me concern. They stressed their concern, their compassion, their thoughtfulness, what they had read.

[141] *Ibid.*, para. 16.

Senator Beyak received 87 letters expressing concern about the racist content of the letters that are the subject of this inquiry. This demonstrates that they certainly did have an effect on the public, something which she failed to consider when she decided to post them.

The case of *Mailloux c. Médecins (Ordre professionel des)*, already referred to above, is relevant here. It is useful in considering the limits of Senator Beyak's right to freedom of expression in relation to her ethical obligations under the *Code*. There is an underlying expectation that a Senator, commenting on delicate and complex issues, will consider the impact of their statements. Likewise, the requirement to exercise dignified restraint involves the obligation to refrain from certain types of expression – such as, in this case, the publication of racist letters – in favour of maintaining the honour and dignity expected of the office of Senator and of the Senate as a whole.

Posting racist letters is incompatible with upholding the highest standards of dignity inherent in the position of Senator. Senators are expected to protect Canada's values and to represent the underrepresented, not to publish material on their Senate websites that denigrate them.

Turning second to subsection 7.1(2), by posting the letters that I have determined contain racist content, has Senator Beyak acted "in a way that could reflect adversely on the position of Senator or the Senate"? In my opinion, in doing so, Senator Beyak has acted in a way that could reflect adversely on the position of Senator or the Senate, contrary to subsection 7.1(2) of the *Code*.

In fact, by posting these letters on a website that concerns the official duties and functions of her office, Senator Beyak used the weight and prestige of that office to widely disseminate comments that were offensive and racist towards Indigenous people, giving the comments more weight and more authority than they would have otherwise received had she not been a Senator and had she not used a website that concerned her official duties.

When asked whether she gave the letters she posted on her website, including those that I have determined contain racist content, credibility by posting them on her Senate website, Senate Beyak testified:

> In their entirety, yes, they were compassionate, thoughtful, and gave a better way forward for Aboriginal people.

And while she argued that the letters did not reflect on the Senate as an institution, she testified that:

> I had a lot of compliments on the Senate, and that it does have a useful purpose, it opens dialogues on other issues.

And again:

> A lot of them said how proud they were that I was a senator. They had never written to a senator in their life. They thought the Senate was a useless institution, but it was nice to hear somebody speaking the truth and having the courage to say that there is another side of the story.

These comments suggest that Canadians did in fact associate the letters that I have determined contain racist content with Senator Beyak's position as a Senator, and with the Senate itself. It follows that the racist views expressed in the Letters were given credibility due to the weight and prestige that comes with the office of Senator. I find that Senator Beyak's actions in posting these letters on her Senate website reflected adversely on her position as Senator and on the Senate. The inescapable conclusion is that, in doing so, Senator Beyak "[acted] in a way that could reflect adversely on the position of Senator or the institution of the Senate", contrary to subsection 7.1(2).

Finally, turning to section 7.2, by posting the letters that I have determined contain racist content, has Senator Beyak performed her parliamentary duties and functions with dignity, honour and integrity? In addition to concluding that posting these letters was both incompatible with the highest standards of dignity inherent to the position of Senator and amounted to conduct that could reflect adversely on the position of Senator or the institution of the Senate, I have found that Senator Beyak's conduct in posting the Letters was in the performance of her parliamentary functions and that it was both undignified and dishonourable.

It is useful to contrast section 7.1 and section 7.2, and to recall that a failure to "uphold the highest standards of dignity inherent to the position of Senator" (subsection 7.1(1)) or "acting in a way that could reflect adversely on the position of Senator or the institution of the Senate" (subsection 7.1(2)) differs from a failure to "perform [one's] parliamentary duties and functions with dignity, honour and integrity" (section 7.2). It does so in two ways. First, section 7.1 applies to the conduct of Senators generally, while section 7.2 only applies to the performance of their parliamentary duties and functions. Second, the standard of conduct established by section 7.1 is higher than what is required by section 7.2. Subsection 7.1(1) expressly refers to "the *highest standards of dignity* inherent to the position of Senator" and subsection 7.1(2) refers to "acting in a way that *could* reflect adversely on the position of Senator or the institution of the Senate". Section 7.2, on the other hand, requires "dignity, honour and integrity". To conclude that Senator Beyak has violated section 7.2 requires me to find that, in discharging a parliamentary duty or function, Senator Beyak acted in an undignified or dishonourable manner, or in a manner that lacked integrity.

If I had found that Senator Beyak posted the letters that I have determined contain racist content knowing that they do so, or that her purpose in posting these letters was to promote racism or to disseminate racist content in relation to Indigenous people, a finding that she acted without *integrity* would have been available to me. However, the evidence does not permit that conclusion. Senator Beyak's testimony demonstrated that she fails to understand what racism is. At one point in her first interview, she had professed ignorance of the fact that racism exists in Canada (though she acknowledged its existence in her second interview) and that the Letters contained racist content. Moreover, Senator Beyak has assured me that she did not intend to be racist and that if she thought the Letters were racist, she would not have posted them. The fact that that she chose not to post other letters that were more strongly worded and more objectionable than those that are at issue in this case tended to confirm what Senator Beyak told me. Moreover, only 5 of the 129 letters that were posted on her website were racist. I have found that she posted letters on her website, including those that I have determined contain racist content, in an effort to demonstrate support for the positions she took in her speech in the Senate on March 7, 2017, including her comments about Indian Residential Schools, and not to promote racist beliefs toward Indigenous people. In posting the letters that I have found to contain racist content, Senator Beyak did not

exercise the care expected of a Senator, but I do not believe that her purpose in posting these five letters was to widely disseminate or promote racist content *via* her Senate website.

Similarly, a finding that Senator Beyak acted without integrity would have been available to me if I had found that any of the Letters constituted hate speech. However, I have concluded that the Letters do not constitute hate speech.

That, however, is not the end of the matter insofar as section 7.2 is concerned, because, and as noted above, in making her decisions as to which letters to post on her website, Senator Beyak's guiding consideration was whether the letters were supportive in some way of her speech in the Senate on March 7, 2017. She failed to consider the effect that the letters which I have determined contain racist content could have on Indigenous people. Moreover, her testimony demonstrated that she was not even willing to entertain the notion that the letters in question could have had a detrimental effect on this minority group.

The website on which Senator Beyak posted these letters is used in the course of her parliamentary functions. In light of the office she holds, and in light of the role the Senate plays in defending the underrepresented and the rights of minorities, Senator Beyak's carelessness and lack of consideration in deciding which letters to post is of particular concern. These were significant failures on her part. Moreover, given that the website related to her official functions, the Letters were given more credibility and visibility than they would have otherwise been given had they been posted on an entirely personal website.

In posting the Letters to her Senate website without considering their detrimental effect on Indigenous people, Senator Beyak performed a parliamentary function in a manner that was both undignified and dishonourable, in violation of section 7.2.

It is important to make it clear that this ruling addresses the particular situation of a Senator who posted racist letters to her Senate website and associated herself with the content of those letters in an attempt to demonstrate support for a speech she delivered in the Senate.

I have found that Senator Beyak's conduct constitutes violations of both sections 7.1 and 7.2 of the *Code*. However, that conclusion was not based on Senator Beyak's speech in the Senate Chamber on March 7, 2017, including her remarks respecting Residential Schools. Senator Beyak's right to speak freely in the Senate Chamber on matters of concern to her is governed by parliamentary privilege, and no challenge was made to that right in this case.

CONCLUSION

As set out above, I have concluded that Senator Beyak breached sections 7.1 and 7.2 of the *Code* in posting 5 letters on her Senate website that contained racist content.

Where I have made a finding that a Senator has breached his or her obligations under the *Code*, as I have here, subsection 48(14) of the *Code* requires me to indicate whether remedial measures to my satisfaction have been agreed to by the Senator, whether the Senator did not agree to remedial measures that would have been to my satisfaction and what those measures were, or whether remedial measures were either not necessary or not available.

As noted earlier, the issue of remedial measures was raised with Senator Beyak both by letter dated January 24, 2019, as well as in my second interview with her on February 5, 2019. I identified three remedial measures that, if all three were carried out, would be acceptable to me:

1. that she remove any letters from her website that I found the posting of which to be in breach of the *Code*;

2. that she make a formal apology for posting any such letters and post the apology on her website; and

3. that she successfully complete a course that would be acceptable to me in cultural sensitivity with an emphasis on Indigenous issues.

During her second interview on February 5, 2019, Senator Beyak agreed to comply with the first of the three remedial measures but refused to agree to the second and third of these. However, in her submissions dated on Saturday, March 2, 2019, Senator Beyak sought to retract her acceptance of the first of the three remedial measures proposed to her.

I find that the fact that she refused to agree to remove the Letters in the event that I found she had breached the *Code*, even to the point of retracting her agreement to remove them, is an aggravating factor in this case. This is not germane to the issues raised by the Complainants *per se*, but is relevant to the consideration of remedial measures under subsection 48(14) of the *Code* and the recommendations that may be made by the Committee to the Senate, pursuant to subsection 49(4) of the *Code*.

Pierre Legault
Senate Ethics Officer

March 19, 2019

APPENDIX A

Senator Lynn Beyak
Ontario

Respect for you

March 10, 2017

Ms. Beyak,

I very much respect your accurate comments regarding the residential schools. Thank you for your courage in standing up for the rest of the truth in the face of the NEWSPEAK being spouted by the aboriginal groups.

By the standard of that time, the government expended millions of dollars and recruited the best people they could find that would agree to live in remote regions far from the civilization they knew. Far from their homes, families, churches and other social supports they knew. That some of them may have been zealots, molesters or whatever is a problem we still face even with the societal safeguards we put in place to protect members of our society.

From the history I have read, it is likely that the aboriginals received better treatment and education than society gave, the Irish, the Scots, the Polish, the Jews and other minority or out of power groups, like the poor. The Welland Canal in St. Catharines was dug by these low power groups and if they died on the job as many did, it was just another bloody Irishman or what have you. They likely were envious of the pampered aboriginals that got free school, free food, free housing and that still wasn't enough.

I'm no anthropolgist but it seems every opportunistic culture, subsistance hunter/gatherers seeks to get what they can for no effort. There is always a clash between an industrial/ organized farming culture that values effort as opposed to a culture that will sit and wail until the government gives them stuff. Until that happens it appears they will let everyone around them die. It's brutal way to live but that's how it looks to me. If you took a bunch of Amish farmers from Southern Ontario and banished them to a reserve in Northern Ontario, within a year they would have built all of their members a new home, a new church and barns for every homestead. Within a year they would have dug wells and built a water treatment plant even if it was a simple sand, gravel and charcoal facility. Within 2 years they would be exporting lumber and furniture to Southern Ontario. At the same time the aboriginals relocated to Amish country near Kitchener would have burned down the house and left the fields to gully and rot.

I'm not saying all of them are like that but right now the Canadian society guilt trip route to more

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money and power is golden and being opportunist they're grabbing all the hotel room towels and silver ware they can.

This is 1984 tactics. Media pity, aboriginals seem to be well schooled in getting media pity and they have become very good at getting media coverage. Well read your history general Canadian Society, the government of the day didn't recruit for sadists they recruited for the best teachers, etc. in an effort to bring aboriginals into a society they increasingly chose to set themselves apart from. Don't resign for speaking truth

Warm regards,

Paul

Senator Lynn Beyak
Ontario

Contact Us Comment

March 30, 2017

I have been and still a New Democrat, but I do agree with your statements about the schools. Do not back down, the Indians, First Nations or whatever they want to be called have milked this issue to their decided advantage and will if you let them.

Keep it up

Bill

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Senator Lynn Beyak
Ontario

Residential Schools

March 30, 2017

Hello Senator Beyak ,

Finally someone has enough of a backbone to say what needs to be said. Thank you!!!

I don't understand why politicians don't take a stand against the chronic whining and unreasonable levels of expectations that are exhibited by some Indigenous groups that seem to keep inventing new ways to achieve a cash grab.

I too am familiar with indigenous people that have made a choice to assimilate into Canadian culture and are hardworking, proud, people. We as Canadians are all required to make hard choices through our lifetime as to where we need to live so we can work and support our families. To expect the Canadian government to continue to subsidize a culture which is often damaging to new generations of indigenous youth, is just bizarre. To keep handing over cash that allows them to destroy themselves while stamping their feet for more is a gross analogy of doing the same thing over and over and expecting a different result. I am all for accountable assistance that would educate new generations to fit into Canadian society. I just don't think that many, not all, indigenous people want what they really need to improve their position. Education is key in my opinion – which may have been the reasoning behind the schools in the past. They need to grow up and take on some accountability for their own future generations to survive.

I could write a book but won't. You are a breath of fresh air and I hope you are strong enough to withstand the barrage of negativity your receiving.

Sincerely,

Joanne

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Senator Lynn Beyak
Ontario

Residential Schools

March 30, 2017

Hello senator;

Not all residential schools were places of abuse. there were many dedicated educator s that really cared. I would like to see a accounting g of Indian affairs I mean a thorough audit, from office clerks to ministers to chiefs and staff on reserves. This will cause a horrific outcry, but when the public learns the real truth, then will see about how vocal groups are.

There is an explosion of population, and why not. When all you need is to ask for an increase of benefits, why work? The residential school s are a crutch that is being leaned on. there are many who not only collect benefits but are also gainfully employed. They are not subjected to paying tax as the rest of us are.

I ask, why are reserves not run as municipalities, and why not allow reserve residents to own land and their own home on the reserve.

These are challenging times. The best ever story teller is an aboriginal, and there are many well educate d member s speaking . The pendulum can not be allowed to swing too far, but must stay in the middle.

Thank you for your courage

Caroline

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Senator Lynn Beyak
Ontario

Contact Us Comment

March 30, 2017

Wanted to take my hat off and thank you for having the courage to be on the track with the Native question. The endless funding pit of reserves has to stop. These people need to join the commerce world and work for money. The handouts have taken their people nowhere, and their constant backward-looking mentality serves no useful purpose.

Thank you for having the courage to take this on!

Doug

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APPENDIX B

SENATOR BEYAK'S ADDITIONAL SUBMISSIONS FOLLOWING REVIEW OF PARTIAL DRAFT INQUIRY REPORT ON FEBRUARY 27, 2019

Note: Following her review on February 27, 2019 of the partial draft inquiry report in this matter, namely the sections entitled "Requests for Inquiry", "Process", "Complainants' Positions", "Senator Beyak's Position" and "Findings of Fact", Senator Beyak raised a number of points which she asked to be included in the report. By letter dated March 1, 2019, I asked her to confirm these points, which she did that same day.

I took this list of concerns into account in two ways. First, some of them have been incorporated directly in the final report. Second, those that have not been incorporated directly are outlined in this appendix.

The points from the letter of March 1, 2019 that were not included directly in the final report are the following:

1. You take issue with the word "rant" that you used in your first interview to describe some of the letters. You indicated that you also used words like "compassionate", "thoughtful" and "edgy". You clarified that some of the letters may be offensive, but they are not racist and that these two adjectives convey quite different meanings.

2. You are of the view that your testimony that some members of your family are of Aboriginal background should have been included in the report. You also noted that you have many friends who are Aboriginal and that in the area in which you live Indigenous and Non-Indigenous people are integrated and intermarried. You stated that, though there are racists everywhere, you have not observed racism where you reside.

3. You told me that you thought that the introduction of the Truth and Reconciliation Report is racist in relation to white people. You indicated that this should be reflected in the inquiry report.

4. In the draft report, reference was made to the 4,282 letters that you received that were critical of your March 7, 2017 speech. You sought to clarify that these letters were not critical of your speech because the authors had not read your speech in its entirety. Rather, they reiterated what you referred to as the "media spin".

5. You also mentioned that the tone of a letter can make a difference and affect its characterization as "racist" or otherwise.

6. You made reference to the part of the draft report in which I stated that your testimony demonstrated a "lack of awareness about racism in Canadian society". You took issue with this sentence and inquired into the reason for it. You stated that everyone has read all the history in this area and seen examples of racism first hand but that people simply disagree on whether racism is a problem in our country. The

statistics, you say, do not support the notion that it is a problem. You say that it is a "two way street, and needs further debate". You add that "[E]ven Trudeau's own Ministers asked him to cancel a tour last year across Canada, because it was too controversial and a majority of Canadians found the accusation of racism offensive."

7. You argued that people have to be permitted to speak out in order to work at improving a situation.

8. You argued that an expert in the field of racism and race relations should have been interviewed in the context of this inquiry.

On March 1, 2019, Senator Beyak also added the following points, which are taken directly from her email of that date:

> 1. The letters of support showed that no one has ever apologized to the thousands of well intentioned hard working men and women, whose stellar reputations were besmirched and broad brushed by the now well documented, patent falsehoods in the TRC report, the two most obvious being that all children were not ripped from their parents' arms. There were waiting lists and loving parents who were away hunting and trapping, enrolled their children. The second is their loss of culture. The administrators were Aboriginal, Indigenous language is clearly shown on the blackboards and the children were taught how to bead and quill. These dedicated people gave up there comfortable lifestyles, to go hundreds of miles from their families and friends, to teach Indigenous children. In the letters of support and in historical fact, only one in three Indigenous children ever attended a residential school. Most attended on reserve with Aboriginal teachers and staff. The commissioners of the report should apologize to all they offended with their bias.
>
> Pointing out these facts in an opinionated or clumsy letter will lead to the truth. It is offensive to those who disagree, but it is not racist.
>
> 2. The letters of support, not the negative, biased ones that speak to the spin rather than the facts, clearly document that the Truth and Reconciliation Commission Report is biased, and contains patent falsehoods. Do we need sensitivity training for the three commissioners of the report whose reverse racism is appalling, so they more fully understand racism in Canada, and how hurtful their remarks are to Canadians who acknowledge the abuse, have apologized and compensated with their tax dollars ? 60% of those compassionate Canadians say that what government is doing is simply not working....filthy water, inadequate housing, suicides, disease and squalor. We must put all sides on the table if we ever want a better future for our Indigenous people.
>
> The media spin doesn't tell you any of this, but the letters on my website do. The status quo want nothing to change so they do not want a national audit or a national referendum. The letters from Indigenous Canadians living off reserve, show the

need for a fresh path forward. It is essential to the Indian Industry (not my term but theirs) that they shut down any dissenting voice, and the balanced debate that is emerging from the letters of support.