

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

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

Hearing Committee

Kent Teskey, QC – Chair
Glen Buick – Adjudicator
Sandra Petersson – Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
M. Naeem Rauf – Self-Represented

Hearing Dates

July 12, 13, 15, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Mr. Rauf is a criminal lawyer practicing in Edmonton. On December 28, 2018, he attended the Fort Saskatchewan Correctional Centre (the Centre). As a result, his interaction with three staff members and an independent adjudicator became the subject of concern to the LSA.
2. As a result, on July 12, 2021 the Hearing Committee (Committee) convened a hearing into the conduct of M. Naeem Rauf, based on one citation:
 1. It is alleged that, while attending at a correctional centre on December 28, 2018, M. Naeem Rauf failed to act in a courteous and civil manner by communicating in a manner that was abusive, offensive, and inconsistent with the proper tone of a professional communication from a lawyer, and that such conduct is deserving of sanction.

Preliminary Matters

3. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested.

The Evidence

4. M.Y. was a Correctional Officer who was on duty at the Centre on December 28, 2018. He was working at central control which coordinates contact between various units. Around noon, he received an intercom call from the Front Door. Usually, the lobby is manned by staff but because of staff shortages, there was no one present. The intercom call was from Mr. Rauf who was wanting to see some clients. M.Y. was explaining to Mr. Rauf that he would not be able to meet with his clients until 1:00 pm due to the staffing issues. Mr. Rauf asked to speak to a supervisor. M.Y. initially described Mr. Rauf as very polite.
5. G.N. was an independent adjudicator contracted to conduct inmate disciplinary hearings. He had been outside taking a break and was returning into the Centre. As he approached the door, he testified that he heard the sound of yelling and walked into the vestibule. He came into contact with Mr. Rauf as he was in the midst of a discussion with M.Y. on the intercom. He was unclear as to who Mr. Rauf was and what his business was at the Centre. He stood in the background and at some point the electronic door was released. G.N. went to walk in and Mr. Rauf attempted to follow behind him. G.N. turned around and blocked Mr. Rauf's access to the Centre.
6. An argument then occurred between Mr. Rauf and G.N. where Mr. Rauf attempted to explain to G.N. that he was a lawyer and he had been told to wait for a supervisor and to have a seat in the lobby. Mr. Rauf also tried to explain that he had been in the lobby previously and that his personal belongings were on the counter. G.N. refused to let Mr. Rauf in. At this point, Mr. Rauf can be seen in the video pointing to his ear emphatically. G.N. stated that Mr. Rauf then told him to "Get [his] fucking hearing checked". M.Y. testified that he also heard this statement made by Mr. Rauf over the intercom. The video shows a lengthy conversation between G.N. and Mr. Rauf. G.N. testified that spit was coming out of Mr. Rauf's mouth and it landed on his face and clothes. However, he regarded this as accidental. G.N. and M.Y. were not certain as to whether this statement was made once or more than once. Mr. Rauf disputes this and says that he only told G.N. to get his hearing checked and did not use profanity. The video does not show G.N. attempting to wipe or block his face during this discussion.
7. Ultimately, G.N. was satisfied that he could let Mr. Rauf into the Centre. In his evidence, G.N. stated that Mr. Rauf pushed by him to get in. M.Y., who was watching through CCTV, also thought there might have been physical contact. It is clear from the video that there was no physical confrontation and that Mr. Rauf simply walked in behind G.N.
8. Mr. Rauf then took a seat in the lobby and after a number of minutes, M.Y. and his supervisor L.F. came to speak to him. They happened to be followed into the lobby by another Correctional Officer, J.S., who was on his way to a lunch break.

9. The officers again explained to Mr. Rauf that they could not accommodate a visit until 1:00 pm due to staff shortages. Both M.Y. and L.F. stated that while Mr. Rauf was initially polite, he quickly became upset. Mr. Rauf expressed his dissatisfaction that the profession was not notified about the fact that visits could not be accommodated between 11:00 am and 1:00 pm. M.Y. then asked Mr. Rauf what had happened with G.N. at the door to which Mr. Rauf replied, "Mind your fucking business." Mr. Rauf denies this exchange took place.
10. L.F. and M.Y. also said that Mr. Rauf at one point uttered words to the effect that they were public servants and they worked for him or that they should "do their fucking jobs." Mr. Rauf denies that this was said.
11. At this point, J.S. had been standing at the door about 15 feet away observing the situation. As he viewed it getting more escalated, he told Mr. Rauf to calm down. He then stated that Mr. Rauf told him to "mind his fucking business" and stormed towards him. Mr. Rauf denies this statement but says that he viewed J.S.'s comment as being meddlesome and disrespectful. He agrees that words were exchanged. The CCTV video of the lobby shows Mr Rauf coming towards J.S. and speaking to him. From the video it is clear that Mr. Rauf is speaking in an animated fashion. He is roughly within a foot or so of J.S.'s face and is pointing and gesturing at him. There is no audio with the video, but Mr. Rauf is speaking to him and the video shows this occurring for roughly 90 seconds, at which point J.S. leaves and Mr. Rauf goes to sit down.
12. J.S. stated that during this time, Mr. Rauf was yelling and was so emotional that spit was coming out of his mouth and hit him in the face a number of times. Mr. Rauf agreed that it was possible that he may have accidentally spit on J.S. once because he does not have front bottom teeth and this causes spit to come out on occasion. J.S. does not suggest that it was intentional. Due to a reflection in a window it is not possible to see from the video whether J.S. wiped or blocked his face at any point.
13. After this, another supervisor came down to speak to Mr. Rauf. Mr. Rauf was satisfied with this discussion. It is not alleged that he was rude or abusive to this staff member.
14. All of the witnesses called by the LSA testified that they were surprised and shocked by this behaviour. In various ways, they expressed the opinion that Mr. Rauf's behaviour was unlike any experience they had had with a lawyer or in the justice system generally.
15. Mr. Rauf testified and denied any uncivil behaviour. He expressly denied the use of profanity. He asserted that he had a legitimate concern with the denial of access to his client and was appropriately seeking redress by speaking to supervisors and staff.

The Law of Credibility

16. In assessing whether the LSA has met its burden of proof on a balance of probabilities, we must be mindful to ensure that we do not allow our deliberations to become a credibility contest. It is not sufficient to find that we prefer one version of events over another. Rather, our question is whether the evidence establishes Mr. Rauf's conduct on a balance of probabilities. If we were to simply choose one version over another, we risk ignoring the possibility that we are unable to determine whom to believe and that as a result the LSA has not met its burden.
17. Nor is an assessment of credibility simply a product of the number of witnesses who assert to a particular version of events. Credibility is an assessment of the logic of witness' testimony and its harmony with common sense and reason. In a well-known passage, the British Columbia Court of Appeal stated the following in *Faryna v. Chorny*, 1951 CanLII 252 (BCCA):

The credibility of interested witness[es], particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”

Analysis and Decision

18. Mr. Rauf argues that the witnesses called by the LSA were not credible and their evidence should not be accepted. To this end, he made a number of arguments as to the improbabilities and illogical nature of their evidence.
19. Mr. Rauf suggests that the witnesses called by the LSA were inconsistent with each other and with prior statements that they had provided. In the view of the Committee, the inconsistencies raised by Mr. Rauf are minor and do not relate to the core evidence of the allegation. He points to discrepancies as to how many times the witnesses believe that profane statements were made. He points to inconsistencies as to the physical distances between the witnesses and whether they were sitting or standing. We do not find that these issues diminish the witnesses' credibility and we find that all of the witnesses were largely unshaken in their evidence as to the tone and language used by Mr. Rauf.
20. We do note that G.N. testified that Mr. Rauf was yelling and screaming so loudly that he could be heard through a closed door 10 feet away. This is contradicted by M.Y. who noted that Mr. Rauf was initially polite and calm. G.N. also did not provide a statement to LSA investigators until almost two months later and as a result there may be issues as to

the reliability of some parts of his memory. That said, his evidence that Mr. Rauf told him to “get his fucking hearing checked” is confirmed by M.Y., who testified he heard the statement over the intercom.

21. Mr. Rauf argues that the witnesses had colluded with each other. He referred to the witnesses in his testimony as “a cabal covering each other’s asses”. He argues that they colluded to preempt the complaint he threatened he would be making. We have considered these arguments and find that they are not established by the evidence. While we recognize that it may not be possible for a party to establish the reason that a witness may be dishonest, we find that there would have been little reason for staff to have fabricated their evidence before this Committee.
22. There is little evidence on the record to suggest that the statements were made in concert. While the three Correctional Officers wrote their statements on the same day, no questions were asked as to whether they wrote them together or when they wrote them relative to each other. In fact, none of the witnesses were asked whether they had seen the statements of the other witnesses. Mr. Rauf suggests that we could also make this finding due to the similarities between the written statements. We disagree. We have carefully reviewed the statements and do not view them as being the product of collusion or coordination. Any similarities are minor and the product of people recounting the same events.
23. Mr. Rauf argues that the LSA’s evidence is illogical because if he had conducted himself in the fashion alleged, he would have been ejected from the facility. All of the Correctional Officers were asked about this. They commented that in their view they did not have the authority to eject a lawyer because that was a serious step that was above their authority. We find that this reaction is reasonable in light of the special position that lawyers occupy in the justice system. To remove a lawyer from a correctional facility is a serious step that a single correctional officer would be understandably reluctant to take. Moreover, the actions they took were reasonable under the circumstances. They wrote statements on the day of their incident and provided them to their manager.
24. We have carefully considered Mr. Rauf’s evidence. He is forceful and adamant in his denial that he used profanity and acted uncivilly. As noted in *Faryna v. Chorny*, the veracity of a witness’ evidence cannot be determined by the force of the testimony, but rather how it accords with the logic and common sense of the surrounding circumstances. For the reasons, that follow we find that cannot accept his denial as being reliable and credible.
25. First, Mr. Rauf’s evidence is internally inconsistent. He states that he was not bothered by the delay in seeing his client until he was told to calm down by J.S. But, he testified to this Committee that when he was driving to the Centre with his wife, he commented to her that he wondered what way the staff would find to prevent him from seeing his clients. When he wrote to the Justice Minister on the next day, he commented that some

correctional guards intentionally obstruct lawyers from seeing their clients. He also made a similar complaint in 2016 about delays in seeing clients. We find that Mr. Rauf was particularly sensitive to a potential delay at the Centre that day.

26. Second, we find that Mr. Rauf's reaction on his own evidence was disproportionate to the inconvenience of the situation. Mr. Rauf repeatedly referred to the LSA witnesses as meddlesome, interventionist or power-hungry. This does not accord with a reasonable and objective view of the evidence. He criticizes G.N. for initially barring him from following him into a secured facility. The Committee viewed this as a misunderstanding, but in response Mr. Rauf's own evidence suggests that he told G.N. to get his hearing checked. He was offended by J.S. simply asking him to calm down and the video shows Mr. Rauf aggressively speaking to him for 90 seconds.
27. It is undoubtedly frustrating to have to your schedule interrupted for delay. The Committee accepts that the delay that Mr. Rauf was subjected was also frustrating. Mr. Rauf's response seen on the video and in his testimony demonstrate being affronted at a level well beyond what would be reasonable and rational. As a result, we have concerns about the credibility of his denial.
28. Third, Mr. Rauf draws our attention to his correspondence with the Justice Minister where he suggested that he hoped there was an audio recording of his interaction. He suggests that this is evidence of the fact that at the time of the events he believed his actions to be justified and appropriate. While we consider this as a factor, we note that at various points in his testimony Mr. Rauf had substantial memory issues about what was said in his interactions and we find that it is more likely that Mr. Rauf has a poor memory of what he said in his highly emotionally charged state, rather than providing exculpatory evidence we can rely on.
29. Lastly, Mr. Rauf asks the Committee to find it exculpatory that in a letter of January 2018, the director of the Centre wrote, "I accept your contention that you did not swear". First, we view the words that were used as equivocal. There is a difference between accepting that someone is asserting a version of events as opposed to accepting that version of events as accurate. Even if we were to accept Mr. Rauf's interpretation of the letter, we find that the evidence of another person's assessment of credibility is irrelevant and inadmissible. See *R. v. Cahill*, 2006 ABCA 119.
30. We find that the LSA has proven on a balance of probabilities that Mr. Rauf acted uncivilly by repeatedly swearing at staff. In particular, we find that he was aggressive and abusive using the language testified to by the witnesses. The Committee determines that Mr. Rauf is guilty of the conduct specified in Citation 1 and that such conduct is deserving of sanction.

Concluding Matters

31. A determination on sanction will be the subject of separate submissions by Mr. Rauf and LSA counsel at another hearing to be set for that purpose, and at which time the issue of costs will be addressed.
32. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Rauf will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, August 3, 2021.

Kent Teskey, QC

Glen Buick

Sandra Petersson