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## On Letters of Reference as Frames of Reference

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*Requesting, writing and reading letters of reference are everyday features of academic life. Yet they are neglected as a matter of professorial training and their pedagogical importance is rarely acknowledged. This paper reviews various practical aspects of the reference process, with emphasis on its politics and ethics. It argues that letters of reference frame the lived experience of candidate, writer, reader and community—both for the present and the future.*

*Demander, rédiger et lire les lettres de recommandation sont des événements du quotidien académique. Pourtant, on porte peu d'attention à cette tâche, son importance pédagogique est rarement reconnue et les professeur(e)s ne reçoivent aucune formation à son sujet. Cet essai propose une analyse du processus de recommandation en mettant l'accent sur ses dimensions éthique et politique. Les auteur(e)s soutiennent que la lettre de recommandation encadre, pour le moment présent et à venir, l'expérience vécue du candidat, du rédacteur, du lecteur, voire de la communauté à laquelle ils appartiennent.*

*Introduction: ritual, rite of passage or random insanity?*

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*Introduction: ritual, rite of passage, or random insanity?*

For better or for worse, the obtaining, writing and reading of reference letters is an inescapable feature of the life of a law professor.<sup>1</sup> References are now required for almost every kind of law-related application, beginning with admission to first year, through to graduate studies, articling, hiring and promotion, career service awards and emeritus professorships. Because of its prominent place in academic life, we might describe the entire process as a *ritual*. Indeed, some professors will say that it is one of their most important non-classroom academic duties, even more meaningful than the handing out of diplomas or the reading of graduates' names at Convocation. At its best, the endeavour involves a continuation of pedagogical roles and duties—its participants being bound by the same ethical constraints and the same aspirations as are found in all other modes and sites of teaching.

Candidate, writer, and reader alike may also experience the letter of reference as one of the *rites of passage* that mark the stages of a career. Like all rites of passage, it can be viewed in both a pessimistic and an optimistic light. For the candidate, obtaining a reference may be dismissed simply as a hurdle to surmount on the way to achieving an objective; or it may be more—an opportunity to reflect with a respected other on one's strengths and weaknesses. For the writer, it may be welcomed as a chance to exert inappropriate power or domination over the candidate; or it may be an occasion to develop richer academic relationships with both candidates and receiving institutions. What of reference readers? As most letter-writers ruefully admit, their readers may only glance at the reference as a mere formality indicating "due diligence." However, when carefully considered, the letter of reference can reveal to the reader new dimensions and qualities of the candidate, while providing an implicit invitation for a more engaged professional relationship with the writer.

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1. In this essay we use the expression "letter of reference," even though the bulk of our comments are just as apposite for any type of reference—be it given through an in-person interview or telephone conversation, or by completing a printed form, filling in an electronic document, composing an individualized letter, or even in a casual conversation at an academic conference or meeting. On the use of online recommendation systems, see: Vincent Kiernan, "If You Like This Student, Click Here" *The Chronicle of Higher Education* (4 June 2004), online: *The Chronicle of Higher Education* <<http://chronicle.com/free/v50/i39/39a02301.htm>> [*Click Here*].

In choosing our title, we mean to signal that a reference is a frame of understanding.<sup>2</sup> A letter of reference frames not only its subject but its writer; it frames not only the position being applied for, but the recipient; it frames not only information, but judgment; it frames not only a momentary interaction, but a relationship through time.<sup>3</sup> The framing processes inherent in reference writing can thus have significant positive or negative effects on the careers and lives of all involved.

This paper began as a conference presentation intended as an instructional guide to giving references. Because reference-writing seldom appears as an item in professorial job descriptions, there is little written instruction (and even less debate) about how it should be undertaken. Indeed, it may not even occur to a first-year professor to ask colleagues for advice about the process—that is, until the first time he or she is asked for a letter by a student who is hardly known, who upon checking turns out to have written a B- examination, and who, by the way, needs it by the end of the day! Although we still perceive the need for such guidance, and have incorporated much of our conference draft into this paper, our focus has shifted.<sup>4</sup>

The contrast between the aspirational and the more jaded perspectives on reference writing has led many to characterize the practice itself as *random insanity*.<sup>5</sup> We see the matter differently. Even though letters themselves have been criticized as “[...] typically biased, unreliable and

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2. Two standard dictionary meanings given to the expression “frame of reference” confirm our understanding. See The Oxford English Dictionary, <[www.dictionary.oed.com](http://www.dictionary.oed.com)>, s.v. “frame,” usage 4d)(i). First, a frame of reference is: “a set of standards, beliefs, assumptions governing perceptual or logical evaluation of social behaviour; a set of ideas, as of philosophical or religious doctrine, in terms of which other ideas are interpreted or assigned meaning.” This usage reminds us that the specific contexts in which letters are generated influence how we write and how we read. Second, a frame of reference can be understood as “a system of co-ordinate axes to which position may be defined and motion conceived as taking place.” In this sense the expression reminds us that letters are not just episodic. Over time, letters of reference written for one person can chronicle an entire career; the reference letter *oeuvre* of one writer does the same. Noting how and understanding why they do so is a first step in becoming a sophisticated reference writer, and especially, reference reader.

3. The practice of “framing” as a means of understanding lived experience is analysed in Erving Goffman, *Frame Analysis: an Essay on the Organization of Experience* (Cambridge, Mass.: Harvard University Press, 1974).

4. The “instructional guide” elements of the paper that served as background to our conference presentation may be found in R.A. Macdonald, “Writing Better Letters of Reference” in *Manual for Course Instructors* (Montreal: Faculty of Law, McGill University, 2006) [Macdonald, “Writing Better Letters”]. See also Maura Ives, “Writing Letters of Recommendation for Academic Jobs” (2000) 125 ADE Bulletin, online: <[http://www.mla.org/resources/jil/job\\_counseling/bulletin\\_ade/bulletin\\_125044](http://www.mla.org/resources/jil/job_counseling/bulletin_ade/bulletin_125044)> [Writing Letters].

5. Deirdre McCloskey, “The Random Insanity of Letters of Recommendation” *The Chronicle of Higher Education* (1 March 2002), online: The Chronicle of Higher Education <<http://chronicle.com/free/v48/i25/25b01401.htm>> [Random Insanity]. For another characterization of the process, see James M. Lang, “The Academic Pyramid Club” (January 23, 2004) *The Chronicle of Higher Education*, online: <<http://chronicle.com/jobs/2004/01/2004011901c.htm>>.

marginally valid predictors of performance,”<sup>6</sup> we believe that there is a logic, discipline and integrity to letter writing and that references would be of a higher standard were more requesters, writers and readers willing to acknowledge these features of the process.<sup>7</sup> Moreover, references originate in and reflect relationships of power and hierarchy. From those relationships arise ethical obligations. It is only by openly confronting the politics of reference writing that we are able to think through what it means to write a “good” letter of reference and what it means to read a reference with integrity. And it is only by raising the diverse ethical dimensions of the reference process that discussion about how to address them can be engaged.<sup>8</sup>

We have organized our comments around four themes: collegiality, teaching, identity and loyalties. Between each section, as a coda and as a bridge to change the register, we insert a sample letter. The first, “The Young Student,” recommends a socially awkward but otherwise qualified candidate for a first articling job. The second, “The Beginning Professor,” chronicles the career to date of an aspiring (perhaps over-achieving) new law teacher. The third and final letter, “The Mature Scholar,” is an endorsement of the candidate for an award, based on a long and distinguished record of scholarship and teaching. We discuss each theme of this essay with all of the sample letters in mind. They demonstrate both the “good practices,” and the all-too-common pitfalls of reference writing which we consider below. For the reader inexperienced in writing references, we also hope

6. Stephen M. Colarelli, Regina Hechanova-Alampay and Kristophor G. Canali, *Letters of recommendation: An evolutionary psychological perspective*, (2002) 55 (3) *Human Relations* 315-344, online: Sage Publications <<http://hum.sagepub.com/cgi/reprint/55/3/315>> at 316 [*Letters of recommendation*].

7. To this end, we believe that law faculties should organize workshops on writing and reading references. Similarly, students and professors might also be given better information on how to request a letter. For one compendium directed to students see R.A. Macdonald, “Some Tips About Asking for Letters of Reference” in *McGill Careers Handbook* (Montreal: Faculty of Law, McGill University, Career Placement Office, 2005) [Macdonald, “Some Tips”].

8. The discussion of the ethics of letter writing that follows is inspired by the traditions of virtue ethics generally and narrative ethics particularly. For a recent account of virtue ethics and its applicability to the moral dimensions of professional roles, see S. van Hooft, *Understanding Virtue Ethics* (Montreal: McGill-Queens University Press, 2006) [*Virtue Ethics*]. See further A. MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984), and M. Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986). In the narrative account, ethical and legal reasoning is not an exclusively rational, discrete choice in relation to particular events. It rather involves an aesthetic element, as the narrator fits particular choices within an over-arching story about his or her moral life: the aesthetic values of symmetry and resemblance determine whether a particular fact situation is sufficiently similar to another to justify the discovery, application and justification of a rule of conduct or a particular action. See generally S. Hauerwas & L.G. Jones, eds., *Why Narrative?: Readings in Narrative Theology* (Grand Rapids, Mich.: W.B. Eerdmans, 1989) [*Why Narrative?*].

that the sample letters which intersperse the sections of this essay can help shed light on what is often an intensely private process.

Each sample letter is fictional: written by a different referee, for a different candidate, to a different recipient, at different stages in a career. Yet all three could have been written by the same referee for the same candidate. Read together, they demonstrate how our entire lives in law—perhaps our entire development as a person—can be chronicled through reference letters written by us, or on our behalf.<sup>9</sup>

### I. *Collegiality: writers and readers*

In her strongly-worded critique of the recommendation process, Deirdre McCloskey writes that the institutional choice to require reference letters for everything from admissions to tenure and promotion decisions is based on a myth: “The fiction is that other colleges’ professors are gentlemen [*sic*] of leisure who have scads of spare time each autumn to craft their single man-to-man letter this year.”<sup>10</sup> Aside from questions of implied but unfounded gender roles and the gross inaccuracy of the estimate of a professor’s available free time, what is interesting here is the image of the professional writing a “man-to-man” letter. The phrase presumes a friendly prior acquaintance between writer and reader. Although the picture of referee and recipient corresponding like old chums is largely inaccurate, it nevertheless persists in the minds of candidates and institutions alike.

Letters of recommendation have their origins in an ancient tradition which depended on the ability of friends of relatively high social status to support each other.<sup>11</sup> Among the well-off, the line between professional acquaintance and personal friendship was ambiguous. Reference providers were called upon to write on behalf of students and clients, to help secure positions in households or assistance when travelling.<sup>12</sup> Delivered face-to-face by the candidate himself, the early letter of recommendation served as a vouchsafe. Our present-day idealized picture of the reference

9. Most of the examples and illustrations that follow imagine the reference-writing process as involving professors and their students. Nonetheless, as the last fictional letter reveals, the same considerations apply to all references—whether given for students, colleagues, and even one’s academic superiors (such as deans). A lighthearted example of letters of reference as a chronicle of the writer’s life can be found in Gene C. Fant Jr, “Worth a Recommendation” (December 10, 2004) *The Chronicle of Higher Education*, online: <<http://chronicle.com/jobs/2004/12/2004120801c.htm>> [Worth].

10. *Random Insanity*, *supra* note 5.

11. For a discussion of the various forms that the letter of recommendation could take in ancient times, see Stanley K. Stowers, “Letters of Mediation” in *Letter Writing in Greco-Roman Antiquity* (Philadelphia: Westminster Press, 1986) at 153-165.

12. Hannah M. Cotton, “*Mirificum Genus Commendationis: Cicero and the Latin Letter of Recommendation*” (1985) 106 *American J. Philology* 328, online: <<http://gateway.ut.ovid.com/gw2/ovidweb.cgi>> [Cicero].

writing process is influenced by this ancient tradition, one built on trusting relationships, both familial and professional.<sup>13</sup> While the vouchsafe tradition is perhaps a source of pride within the Academy and possibly also an indication of the privileged place of professors (and their opinions) in society today, it should also be a reminder of the perils of reference writing—and of the trouble that can arise when writers and readers do not properly attend to the ethical demands of their roles.

*The writer as a stranger*

The introductory paragraphs of each of the fictitious letters in this essay all have a similar function: they introduce the letter-writer, not the candidate. For a reference letter to be credible, it must tell the reader why the writer's views merit consideration. The fact that the writer knows the candidate well is only part of the justification.

In a professional sphere such as law where pedigree and credentials play a substantial role in the search for employment and funding, recommending oneself as a referee by emphasizing qualifications rooted in status and privilege may be unavoidable. Of course, this biographical recitation can also have a downside. Because a reference continues to function in part as a vouchsafe, the relative positions of its author and his or her home institution in the academic hierarchy play an important role in the way the letter is read.

Depending on the reader, a letter from a first-year instructor may carry less weight than a letter written by a tenured professor with a long list of well-received publications, even in cases where the instructor has a much closer professional relationship with the candidate. In some circles, there is a tendency to read letters (especially very positive letters) from junior colleagues and sessional lecturers with undue skepticism. This is unfair and unfortunate. Still, the less a writer is known to the reader, the more she or he should explain the basis upon which the reference is offered in the body of the letter. Both credentials and the specific context of one's knowledge of the candidate should be mentioned. Nonetheless, the reference is given for the candidate, and the writer's credentializing must not become self-indulgent or otherwise distract from the achievements of the candidate.

Candidates must also consider the impact of credentials when choosing their referees. It is not enough for the writer to be in a credible position relative to the candidate. The position of the letter-writer relative

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13. The vouchsafe view of references also persisted in practice well into the twentieth century. In the grade eight curriculum of the late 1950s in Ontario, for example, students were taught the importance of obtaining a written reference from a minister, priest or rabbi that could be presented as an introduction to his homologue in a new city.

to colleagues, to others in the legal academy, and to the profession can be just as important. Candidates seeking references must achieve a balance between those potential referees who know them best, and those who may be best known by the readers. Helping candidates to understand why balance is important and to achieve it in their choice of reference writers is a task referees necessarily take on in accepting to write.<sup>14</sup>

A further complication arises when the letter is to be sent to an institution in another country, to a university department of a different discipline from one's own, or to a multi-disciplinary committee. A letter sent to the United Kingdom that concludes that you "warmly recommend" a candidate will be read entirely differently (and much more positively) from one in identical language sent to the United States. Complicating matters is the fact that every institution has its own language—its own code-words and manner of expression. Different institutions routinely use different language to describe the same things. Whatever the writer wishes to say in support of a candidate must be tailored to the institutional language of the receiver.<sup>15</sup>

Similarly, as readers we must be careful when judging how much weight to give a letter of either the phlegmatic or overflowing variety. We have all had the experience of receiving references written by professors from Oxford or Paris in which the highest form of praise appears to be a two paragraph letter affirming that the candidate is a "fine chap." Conversely, we have also read hyperbole from U.S. referees that expound upon a candidate in a manner that would have you think an applicant for a first year teaching position had already won a Nobel Prize. It is all too easy to jokingly put down the comments of an unfamiliar writer

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14. In some cases, such as Supreme Court of Canada clerkships, candidates have no choice as to at least one referee. An essential requirement for the application is a letter from the Dean of the Law Faculty—whether or not she or he has ever taught (or even knows) the candidate. Increasingly, competitive scholarships also require that the Dean (or institutional delegate) provide a comparative ranking of all applicants from her or his law faculty. These developments raise a whole series of other issues about the integrity of the reference writing process that we will not pursue here. See also Richard M. Reis, "Getting Great Letters of Recommendation" (February 2, 2001) *The Chronicle of Higher Education*, online: <<http://chronicle.com/jobs/2001/02/2001020202c.htm>> and Mary Morris Heiberger & Julia Miller Vick, "How Important Are Letters of Recommendation?" (18 September 1998) *The Chronicle of Higher Education*, online: <<http://chronicle.com/jobs/v45/i05/4505talk.htm>>.

15. See Cynthia Verba, *CSAS Guide for Teaching Fellows on Writing Letters of Recommendation* (2002), online: <<http://isites.harvard.edu/fs/html/icb.topic58474/Verba-recs.html>> [*Harvard Guide*]. Institutions may also have policies about the relative credence to be given letters from other universities based on varying criteria: Cary Nelson and Stephen Watt, "Tenure and Promotion Goes Crazy" *Inside Higher Ed* (11 May 2005), online: *Inside Higher Ed* <<http://www.insidehighered.com/views/2005/05/11/nelson>>.



without considering their true merit.<sup>16</sup> Recipients who are unfamiliar with the academic community from which a previously unknown referee has written have an obligation to follow up with the referee on seemingly “understated” or “exaggerated” letters.

### *The reader as acquaintance*

While negotiating one’s own introduction to new readers can be touchy, where one has a prior relationship to the other party, the ethics of letter writing are just as complex. As is the case today, the ancient letter of recommendation was a request by a referee on behalf of a candidate, based in part on that candidate’s own character and achievements. However, early letters of recommendation also made explicit reference to the existing friendship between correspondents.<sup>17</sup> The general tone of the letter would be as follows: “X is a fine person and besides, you would be doing me a favour, old friend, by hiring this candidate.” There are many reasons why this approach is almost always inappropriate today, yet in some cases it may be necessary, as we explain further below.

Candidates generally think it advantageous to select a referee who is a professional acquaintance of the letter recipient. This will not always be the case. Sometimes the referee has a bad reputation, or is someone with whom the reader has had a negative dealing in the past. Moreover, sometimes less-than-glowing comments in a reference letter from an acquaintance will be given more weight than they deserve or the author actually intends. The referee is in a most delicate position when the prior acquaintance with the reader of the letter is both lengthy and intense. It is important to manage this relationship appropriately, writing the letter with the specific reader in mind, while keeping the focus of the text on the candidate and not the friendship (or its opposite). If asked to write to a colleague with whom one is on truly bad terms, one should discreetly encourage the candidate to find additional referees to submit letters, or perhaps decline to write at all.<sup>18</sup>

16. That said, a lighthearted look at the hyperbole of letters of reference, and how to translate it, is offered by Robert J. Thornton, in *L.I.A.R.: Lexicon of Intentionally Ambiguous Recommendations* (Almus Publications, 1998), cited in Alison Schneider, “Why You Can’t Trust Letters of Recommendation” *Chronicle of Higher Education* (30 June 2000) at A14, online: The Chronicle of Higher Education <<http://chronicle.com/free/v46/i43/43a01401.htm>> [*Can’t Trust*].

17. *Cicero*, *supra* note 12 at 331.

18. The problems raised by unfriendly relationships are most acute in cases where one is the institutional delegate for providing comparative rankings of candidates (for example, as coordinator of judicial clerkship applications, or applications for scholarships to private foundations). Imagine that a receiving institution changes its institutional delegate mid-process and that one does not have a good relationship with the new delegate. In such cases, where personal factors may affect an entire cohort, one must appeal to one’s dean to find a substitute—at least in connection with the particular receiving institution where the apprehended bad relationship is newly discovered to exist.

Where relations are friendly, a happier concern arises. If asked to write a letter of reference destined for a person with whom one has a prior relationship—for example, a former student or colleague—it may feel artificial to ignore this relationship in the text of the letter. At the same time, a reference letter is not a personal message. The emphasis must remain on the qualities of the candidate. For example, one may refer to a course taken by the candidate, with which both reader and writer are familiar. This has the dual effect of acknowledging the relationship between them and providing a context for the candidate's achievements.

Are there any occasions when a personal appeal—"you would be doing me a favour, old friend, by hiring this candidate"—is appropriate? One comes to mind. In a situation where the hiring process is a probationary step, as in an articling or summer position, and where a candidate you feel is genuinely meritorious needs an extra boost, a personal appeal to a former student, colleague, friend or acquaintance may be in order. The danger, admittedly, is that access to referees who can make such appeals is not equally distributed among deserving candidates. For example, a student from an already excluded minority group might benefit from a personal appeal, yet may well be among the least likely to ask for, or (what is most damning) receive it. Referees who are in a position to make a personal appeal should reflect carefully when deciding whether to do so, and make clear to all students their willingness to do so—attempting especially to reach those students who may have difficulty requesting such a letter. This can be done in a variety of ways, for example, by including information about asking for letters on a course web-page, by mentioning in class one's availability to write letters, and by reading thank-you notes from similarly situated former students for whom a successful letter had been written in a previous year.

### *Genus et differentium*

Over time, recipients of letters often come to know a writer better, and writers likewise come to know recipients better. Typical examples of close knowledge include the director of a popular graduate programme, or a judge recruiting law clerks, or the dean of a law faculty in the professorial appointments process. Such familiarity is no excuse for laziness. No letter should ever be simply a "trust me" affirmation or a repetitive form letter.<sup>19</sup> We have all heard the tale of the professor who recommended a student as the best he had taught in the last twenty years, only to pay

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19. Madeleine Schachter, *The Law Professor's Handbook: A Practical Guide to Teaching Law* (Durham: Carolina Academic Press, 2004) [*Handbook*] at 247.

the same compliment to another student applying for the very same job.<sup>20</sup> Every letter must go beyond boiler-plate and attend to the individuality of the candidate being recommended, as well as to the individuality of the position or award being sought. This is an onerous burden, especially when one has multiple students applying for a single position, or a student applying for multiple, but slightly different, scholarship and graduate programmes. But if a letter is to serve its purpose, nothing else will do.

At the opposite pole to generic boiler-plate letters and meaningless abstract comparative assessments such as “best student ever,” are letters that involve comparisons with specific individuals. Any such named comparison must be used with caution to ensure that the person identified is both known to, and well thought-of by, the recipient of the letter. To ensure the desired effect, it may be necessary to include further information about the person to whom the candidate is being compared (awards or publications, for example).

The dangers of comparisons are so great that many readers (and writers) consider their use always to be invidious. We disagree. True, there are invidious comparisons—the most common form being when a letter seeks to praise a candidate by denigrating another person, institution or programme. These negative comparisons should never be made. But comparative assessments can also be phrased positively and respectfully, and when cast in such a manner they can provide important contextual information to the reader.<sup>21</sup>

The reader of references also must be on guard not to make generic judgments. It may be that the referee is known to write nothing but over the top references. Here one has to be careful to factor out these extraneous considerations and attend to what the referee actually says, including the specific justifications given for the conclusion reached. In no case should a writer’s general reputation prejudice the assessment of a specific candidate. The same is true when reading references from those who have previously given strong recommendations for candidates who turned out to be somewhat weaker. The correlation of prior letters with actual student

20. *Can't Trust*, *supra* note 16. See also James S. Malek, “Caveat Emptor: or, How Not to Get Hired at DePaul” (1989) 92 ADE Bulletin. 33-36, online: <<http://www.mla.org/ade/bulletin/n092/092033.htm>>.

21. Where one has written to an institution previously a further complication arises. One is known to the reader and whether or not one says so, one’s letter will implicitly be read in comparison with other letters previously written. In such cases special attention must be paid to avoid giving unintended comparative signals. If one does not wish to make explicit comparisons, one should at least read previous letters to ensure that unwanted implicit comparisons will not be drawn through the use of qualifying words like unreservedly, strongly, warmly, *etc.* See Macdonald, “Writing Better Letters,” *supra* note 4. See also Ives, *Writing Letters*, *supra* note 4.

performance ought not to be held against a later candidate who receives a positive reference that contains detailed reasons for the assessment given.

*Coda: the young student (to reconsider a 'nerd')*

In the next section, we discuss some general issues concerning the relationship of writer to candidate, especially in regard to references for students. We have already stated our belief that the recommendation process can be a unique pedagogical opportunity. Immediately below is a letter of reference that suggests this potential.

*June 20, 1989*

*Ms. Naomi McMillan,  
Chair, Student Committee,  
Duff, Mignault LLP,*

**Re: Kevin Crai**

*Dear Ms. McMillan,*

*I have been asked by Mr. Kevin Crai to write a letter in support of his application for an articling position. I am most pleased to do so, as I believe that Mr. Crai would make a significant (although perhaps not the usual) contribution to your firm as an articling student and thereafter as an Associate.*

*I have come to know Mr. Crai in two contexts: he was a student in my Commercial Law class this past academic year; and he is presently one of my summer research assistants, working particularly on Bank Act security.*

*Mr. Crai was a pleasure to have in the Commercial Law course. He was a well-prepared and enthusiastic participant in classroom discussions— not at all jaded by three years of law study and the fatigue of his classmates. He showed a deep historical knowledge of common law doctrine and was able to reason through difficult problems from first principles. His final grade in the course, like his overall class standing, was an A-. I believe this to be an accurate measure both of his knowledge and understanding of the course and of his general legal capacities.*

*Because Mr. Crai was such an able and thoughtful student I offered him a position as a research assistant. He has been performing admirably in this role. He is dedicated, industrious and a self-starter. His memos are*

*thorough, well-researched and always delivered on time.*

*Kevin does, nonetheless, have two traits which do him a disservice in his quest for an articling position. I should like to comment on these since they seem to have had an unfortunate impact during his interviews last year.*

*First of all, in his personal appearance, manner and mode of expression he does not display the qualities that one associates with "client care." He is bookish and reserved, lacking the gregarious self-confidence one associates with students of his academic accomplishment. He is, moreover, somewhat unpolished in presenting himself in public and in interview settings. His friends in the faculty teasingly call him a "nerd." And yet, he is very popular and well regarded by his classmates—being warm, thoughtful, supportive, respectful and generous with his time and insights. In other words, I think it fair to say that right now he is more of a lawyer's lawyer than a client's lawyer.*

*Second, Kevin has a keen interest in the intellectual side of law, but does not possess a business background. This lack of experience means he has, to this point in his career, an underdeveloped sense of the value of a file and of his time. He becomes very interested puzzling through the historical and conceptual origins of everything he studies. In short, he has not yet acquired a hard-nosed practical streak, although I am certain that over the course of an articling experience he will learn to be quite efficient in investing time and energy on files.*

*I have mentioned these two facets of Mr. Crai's dossier because you will quickly perceive them in any interview. Because Mr. Crai has such a fine record, those who interview him anticipate that his personality will match up with his intellectual ability. The distance between the two can reinforce the disappointment one might feel after an interview. He is, I believe, a victim of high expectations generated by his academic accomplishments.*

*This is unfortunate, for I do not feel that these traits of personality should be treated as fatal weaknesses. Indeed, in my conversations with him about these aspects of his dossier, Kevin has come to recognize the problem and he is taking concrete steps to address them. I would be pleased to review these with you should you wish to follow up on this point.*

*Right now I have no doubt that Kevin would excel in a research position. I*

*am, moreover, confident that given his passion and desire to succeed, with nurturing he would develop the capacity to handle the “client care” side of a legal practice.*

*It follows that I am certain that Kevin would be a fine articling student, and that you will be as impressed as I at his dedication and his love of the law. The legal profession would be much impoverished if people like Kevin were unable to find a place.*

*Should you require any further information about this reference or about Mr. Crai please do not hesitate to contact me by mail at the address indicated on the letterhead, by telephone at (888) 222-3434, or by FAX at (888) 222-4343.*

*Yours sincerely,*

*Guillaume Bergeron  
Dean of Law*

## II. *Teaching: candidates and writers*

Law teachers often describe their vocation in one of two liminal ways: either as so enjoyable as to not really be work at all; or as a relentless, thankless grind. Both of these descriptions can be true—sometimes on the same day during periods of heavy reference writing. Professors get little recognition for the letters they provide. Few, if any, students remark on a course evaluation form that a professor gave them one or several letters of reference. There is typically no place on a professor’s annual report form to recount either the number or character of references that have been composed over the previous year. The only immediate recompense is pleasure in knowing that a student or colleague has been helped along his or her path.

Although it is easy to become frustrated with the increasing number of requests, the lack of preparation by students and their assumption that we live in our offices, only coming out to give lectures, most of us still realize that the first request for a letter of reference from each student is an important marker in her or his career. It is at once an opportunity to teach on a level that cannot be experienced in a lecture or seminar, and the occasion for open-ended career advice, for exploring options, fears and frustrations, and for discovering the human dimension of a life in the law.

*Collaborative writing*

The potential for a reference letter to be a moment of high pedagogy can be demonstrated if we first think about situations when we are the candidate, not the writer. We all have a self-image, and some idea of how others perceive us. A reference letter written on our behalf, when created in a manner that involves us in the process, is one of the few chances we have to see how our self-image measures up against other people's perceptions. The result can sometimes be a surprise, and not always a pleasant one. Taken the right way though, iterative and interactive reference-writing provides us the chance to learn about ourselves, to assess our strengths and weaknesses, and to consider the direction of our career, our life, or both. A similar process of self-discovery is engaged when we write letters for others. The reference is an opportunity for a referee to begin, or to continue, a conversation with a candidate about lacunae in his or her file, aptitudes that are not well-developed, or attitudes that could be re-oriented.

One of the elements of the process that leads some to declare the practice ludicrous is the last-minute, often ill-prepared, request. The sheepish-looking student who approaches one's office door at 3:00 p.m. the day a letter is due, curriculum vitae but little else in hand, and the embarrassed law Dean who phones a week before a tenure deadline, equally illustrate a central feature of the reference-creation process—its unpredictability.<sup>22</sup> You never know when you are going to be asked for a reference, by whom, for what application, and under what time constraint. Hence a key point about collaborative writing, especially where students are involved: anticipate being asked for a letter of reference.<sup>23</sup>

Ideally, collaborative reference-writing begins before the student has even requested a letter. Some professors lay out a procedure for letter requests right at the beginning of term. They inform students of the best

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22. Not all last-minute requests result from a candidate's unpreparedness. Sometimes students are asked for a reference in an unanticipated circumstance, for example, in the middle of an interview process for a summer job with a law firm. In response, they reflexively blurt out the name of a professor—typically a professor whose class they liked, or who seems friendly, or who taught a course in which they obtained a high grade—and that professor is contacted even before the student can inform him or her of the fact. For discussion of how to handle such situations, see Macdonald, "Writing Better Letters," *supra* note 4.

23. Most of the discussion of collaborative writing that follows imagines the relationship between professor-referee and student-requester. But the lessons are general. Of course, there are some references involving professors or peers that focus on artifacts or achievements more than persons and character: peer review of research grant applications; peer review of law review and manuscript submissions; peer review of scholarship for tenure and promotion decisions. While the ethics of reference writing is similar in such cases, the opportunity for and utility of collaborative writing is limited. Moreover, in many cases, the nature of the process itself specifically precludes this type of referee-requester interaction (at least until well after the reference has been given). See further, Macdonald, "Writing Better Letters," *supra* note 4.

and worst times of the year to ask for a letter and explain the necessity of including a resumé and other materials along with their request for a letter. Posting detailed guidelines on a course web-site is a good way of conveying this information, while enabling a classroom presentation of your conception of the reference process to be relatively informal and inviting.<sup>24</sup> This pro-active approach not only helps shy students feel comfortable asking for a reference letter, but furthers pedagogy by broadening the student-teacher dynamic.<sup>25</sup> Moreover, setting out detailed instructions from the start shows students that, for you, writing a letter of reference is not simply a matter of scribbling a quick note at the last minute. It signals that a student should only ask for a letter if he or she is willing to do the necessary preparation, including providing a detailed statement of what the reference is meant to address. Finally, such an approach reminds students that asking for references is a normal part of their experience at the law faculty and that they should be thinking about references right from the outset of their studies. Requesting letters of reference is an important life skill. Students (along with their future professors, colleagues and employers) are grateful for you having taught them how to do this.

Before agreeing to compose a letter of reference, it is important to think carefully about what you are able to offer.<sup>26</sup> The significance of your contribution to an applicant's file will be weighed according to how well you are known, as well as how well you know the candidate, for how long, in what capacity, and whether you are writing letters for other candidates for the same position.<sup>27</sup> These issues must be raised with the candidate at the outset so that he or she can decide if you would be an appropriate referee in the circumstances.

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24. Macdonald, "Some Tips," *supra* note 7.

25. Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact* (1999) 49 J. Legal Educ. 371, online: Hein Online <<http://heinonline.org/HOL/Page?handle=hein.journals/jled49&id=390&size=2&collection=journals>> [Good Practice].

26. Discussing with candidates what you are able to say in a reference letter is the first step in a longer collaborative process. For this reason you should not accept to write a letter during a hallway conversation. Better to ask the requester to send you an e-mail. This enables you to involve the requester in the process as early as possible by asking them to provide you with detailed information about themselves, the position applied for, and their various interactions with you. This does not mean, we emphasize, asking the candidate to simply provide you with a "draft letter" that you will tweak as required. Rather, it means asking candidates (especially student candidates) for information, and by doing so assisting them in learning the strengths and weaknesses of their dossiers. For a detailed review of what to ask for, how to do it, and why, see Macdonald, "Some Tips," *supra* note 7.

27. This last point is especially important in those cases where receiving institutions ask for a ranking when a referee writes for several candidates. Without revealing either the number or the name of other candidates for whom you are writing, you must tell the requester (in cases where some sort of ranking is required) both that others have requested and, in general terms, where you would place them comparatively.



Students sometimes find themselves in need of a letter of reference, without actually knowing any professors. When approached in cases such as this it is crucial to be candid with the student. Candidates should know when a referee can do little more than repeat a transcript, affirm that a student took a course with them, and seems to have a pleasant demeanour. If the student has given you sufficient lead time, you might attempt to get to know him or her better by asking for a writing sample, engaging in a discussion of his or her resumé and activities (if any) within the faculty, and exploring the requester's long-term goals and aspirations. In all events, one should never dismiss the request out of hand since there will often be times when even general affirmations from you are more than the student can get from anyone else.

There is another reason for always informing a student about what you are able to say. It opens the door to a discussion about the choice of other referees. Typically students do not see the importance of obtaining references from people who can speak to the different features of their dossier, rather than three referees who are likely to say the same things on the basis of the same data set.<sup>28</sup>

### *Difficult letters*

Some letters of reference are harder to write than others. Occasionally, you will be approached by a student for whom you find it difficult to say anything positive at all.<sup>29</sup> There are several possible responses, each with its own ethical implications.<sup>30</sup> In some cases where the candidate is simply weak, you may be tempted to write a positive letter out of affection or sympathy. For reasons given in the section on loyalties, we believe this to be inappropriate. It is better to write as supportive a letter as you can but make it clear to the reader that you have chosen to focus *entirely* on the

28. Many candidates do not appreciate that one of the purposes of letters of reference is to provide a rounded portrait. Perhaps the worst example of where a candidate does not understand this point would be an application for a teaching position to a faculty of law that the applicant attended, accompanied by a list of three referees who were each professors at that very institution. This would not provide a very broad portrait of the candidate. In general, it is helpful in discussing letters with candidates to ask them what they expect other referees to comment upon, and to mention that in an application letter they should indicate the specific items about which each referee is best able to speak. On this point see R.A. Macdonald, "Applying for an Academic Position" in *Graduate Student Handbook* (McGill University: Faculty of Law, 2006) [Macdonald, "Applying"].

29. This can arise for two quite different reasons. It may be that the candidate is a notorious cheater, uncooperative with peers, openly prejudiced against certain persons or groups, or simply possessed of severe flaws of character. Alternatively, it may be that the candidate does not have any character flaws, but has a mediocre academic record, no other items on the curriculum vitae and apparently no justifying circumstances to account for either.

30. These issues are directly addressed in University of Delaware, "Guidelines for writing letters of recommendation" in *Faculty Handbook*, online: University of Delaware <<http://www.udel.edu/provost/fachb/IV-B-10-recommendations.html>> [Delaware Guidelines].

candidate's good qualities. Another possibility is to inform the candidate that you cannot give a positive reference. In this situation, especially where the requester has a significant character flaw, many advise against serving as a referee at all.<sup>31</sup> We are not so categorical. What is important, if you agree to write a letter, is that the candidate understands the reservations that you must include, and that you give the candidate an opportunity to speak to these reservations or withdraw the request for a letter. In this way the letter request can be an occasion for the candidate to learn of, and begin to address, those shortcomings (if she or he wishes).

When students have access to their letters of recommendation, as in Quebec, professors may feel uncomfortable writing accurate, yet uncomplimentary, evaluations.<sup>32</sup> Where a professor does not wish to discuss the content of the letter at all, complex textual acrobatics may result, as in the case of an American professor who wrote his entire reference letter in the signature block of the form, ensuring that it would be withheld from the candidate.<sup>33</sup> Given the practice in many American law faculties of significantly discounting the value of a reference when a student has not waived the right to obtain access, it is also important to raise this matter with candidates. Explaining the reason for the "discount" helps the candidate to understand the value of collaborative letter-writing, even when negative comments must be included.

### *Hyperbole, caveats and candour*

The use of hyperbole in descriptions of candidates has been likened to a "nuclear arms race."<sup>34</sup> There is a sense that because all the other referees will write letters that proclaim the total superiority of their students, one must do the same. We disagree with this approach. Exclusively positive letters of reference couched in general terms are a dime-a-dozen.<sup>35</sup> For this reason, in addition to providing specific details to support your positive comments, it is essential to mention a candidate's weaknesses, while avoiding overstating them. Doing so in the form of caveats, or as

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31. See, for example, *Handbook*, *supra* note 19 at 247.

32. In theory, prior to their release, letters are meant to be edited so that the student cannot determine who the referee in question is. But, as we argue in this paper, any reference that is genuinely helpful to a candidate and to the recipient will predominantly contain information and observations that clearly identify the writer. If all of this information was edited out, there would be little left of the letter to show the candidate requesting access. This is one more reason why it is important to discuss at least the general contents of the letter with the candidate in advance.

33. *Can't Trust*, *supra* note 16. The letter was returned to the writer.

34. *Ibid.*

35. Moreover, recipients of such letters typically dismiss them as betraying the writer's inability to situate the natural tendency of loyalty to the candidate within a larger context. See *Letters of recommendation*, *supra* note 6 at 316. See also Ives, *Writing Letters*, *supra* note 4.

issues that might be pursued in an interview, conveys your integrity and invariably improves the applicant's chances.

There are three main situations in which reference letter caveats may appear. One is where the candidate is truly outstanding. Because candidates like this are so rare, to be credible the reference must not express totally unreserved praise. No candidate is perfect. Presenting a rounded picture (even when the reservations are quite minor) and crafting the letter as a recitation of information and achievement without adding evaluative editorial comment enhances the impact of your reference for really exceptional candidates.

The second situation is where the candidate has a major flaw. Sometimes this will be a flaw of character, a point we have already addressed. On other occasions, it may be simply a trait that (wrongly) might be seen by others as a fatal defect. Take for example the letter written for Mr. Crai, above. An exclusively positive letter in such a case can raise a reader's expectations, only to have them dashed in an interview as first impressions eclipse the candidate's actual achievements. Because you are trying to highlight the candidate's strengths, follow the caveat with a description of the candidate's efforts to improve in that area. Instead of being a "kiss of death," potentially negative information of this type can provide you with a chance to demonstrate the candidate's potential for growth.

Finally, the caveat can sometimes point in a positive direction: we often want to say that a candidate's grade fails to reflect their true capacities. Excusing a bad or weak record is delicate. Stock phrases (writes better essays than exams, bad exam schedule, *etc.*) are usually ignored by readers. In a helpful letter, the referee not only says why the candidate's grade was low, but gives the reader enough information about the evaluation procedure to judge for herself how much weight to give the grade in question when considering the file.

The opportunity opened up by an iterative and collaborative process can be used to assist candidates about whom you feel you must mention a significant caveat. Sending a draft letter expressing one or even a number of reservations, with an invitation for the student to "correct any errors of fact or interpretation" presents an occasion to engage in a more detailed discussion about areas where the candidate could improve her or his dossier and how this might be done. In addition, you will then be in a position to mention the reservation, but note that the candidate

recognizes the weakness and is working on overcoming it.<sup>36</sup> Of course for this type of iteration to be effective as a teaching tool, it is vital that students be informed of your intentions and purposes ahead of time so that they will take up the offer to discuss the draft. This is especially important for students who already find asking for letters difficult and who may, in consequence, feel that a letter of reference is a take-it-or-leave-it affair in which they have (or should have) no say.<sup>37</sup>

### *Dealing with the numbers*

Frequent requests for letters of reference are usually a sign that students respond well to a teacher. But in September and October, when we have dozens of letters to write for scholarships, graduate school and clerkships, and we are trying to get our courses off to a good start and complete our own grant applications, or in April and May, when we have a stack of papers to mark, few of us probably feel that way. In a single year some law professors are asked to write upwards of 150 letters of reference. Still, even in such moments, most of us remember the successes of those for whom we have previously written, and our contributions to those successes.<sup>38</sup>

Beyond the effect of volume on potential referees, it is important to mention the impact of institutional letter demands on the candidates themselves, students in particular. For example, some law firms now ask all summer applicants to provide letters of reference. This represents a gross externalization of effort, made all the more offensive by the fact that these letters may function as little more than a cipher for many requesting firms: if the student can get a letter from Professor “X” reporting that he or she is not an axe-murderer, that is sufficient. The relentless demand for letters leads to a greater use of formulaic, “what’s the bottom line?” references,

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36. As part of this collaborative process, you should also encourage students who are unsuccessful to see you afterwards. Students can often be embarrassed to report a failure. By indicating that you expect to hear the outcome in your instructions, you can begin to overcome this. Moreover, a candid discussion about a failure is often the first step to learning how to make a stronger application next time.

37. Some institutions require that referees attest to the confidentiality of their reference. In such circumstances, the iterative process must stop prior to the final drafting of the letter. Nonetheless, even here it is permissible, once the application has been processed by the receiving institution, to send the letter to the candidate along with an invitation to discuss its contents.

38. One of us recently had an e-mail from a former student in his first year of teaching who confronted, for the first time, a request for multiple letters of reference (unaccompanied by a curriculum vitae, information about the position, or any other supporting material) to be delivered by the end of the day. Of course, the letters were written, but the writer lamented not having the chance to convene the student for a discussion about the ethics and etiquette of requesting a reference before drafting the letters. In response to a request for advice as to how to proceed, all that could be said was that sometimes the pedagogy of reference writing has to wait for another day.

often in electronic format.<sup>39</sup> At this point the reference becomes little more than a barrier to market entry, one more hurdle the student must clear in order to obtain the position. Unfortunately, there seems to be no way to reverse this trend, especially since employers are becoming increasingly sceptical about the value of what they perceive as “inflated grades” as a measure of an applicant’s abilities. But even setting aside the externalization of effort that this represents, it can also lead to unfairness and inequity for meritorious students who are not in as good a position to obtain a reference from a professor.

*Strategic behaviour and exclusion*

The above-mentioned evolution in employment references appears to be encouraging inappropriate strategic behaviour on the part of career-minded students, who “network” with certain professors in an insincere effort to obtain a “good” name on their list of referees. Occasionally, this strategic behaviour reaches pathological proportions. Some students will crassly demand of a professor before even formally requesting a reference whether the letter will say more than “this candidate has good penmanship” and whether it will conclude with an unqualified vouchsafe. Worse, there has recently developed a practice where students will request letters from more professors than needed for any given application, and will seek from each professor letters to several different employers, graduate programmes, scholarship funds, etc. including at least one to which they do not intend to apply. When they receive the sealed letters signed across the flap to be included with their applications, they open the letter meant for the organization to which they are not intending to apply in order to determine if they will include the other letters from that referee in their *bona fide* applications.<sup>40</sup>

These cases aside, most of us are willing to write letters for any student or colleague worthy of our recommendation. But here lies another ethical problem. In the case of students especially, obtaining a good, substantive

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39. Many on-line reference templates are of this character, as are forms that ask simply for numerical scores in relation to particular key words, with no opportunity to elaborate. Some law firms have also now taken to requiring student applicants to have professors complete similar forms. See *Click Here*, *supra* note 1.

40. Collaborative letter writing is one way to forestall or at least combat such strategic behaviour. A draft letter that expressly refers to the candidate’s behaviour and indicates the referee’s discomfort with it can be an important pedagogical moment in the relationship between professor and student.

reference can often be difficult.<sup>41</sup> Most law teachers have little time to actively seek out and encourage students who otherwise would not try to catch their attention, and many students do not feel comfortable approaching professors. This is true even when a professor takes the trouble to mention his or her willingness to write letters at the outset of a course. Students who are introverted, whose cultural experience does not include informal discussions with teachers outside the classroom, who perform well but for whatever reason lack the confidence to approach a professor for a letter, who feel alienated from their experience of legal study (a more common occurrence than we may realize) are at a disadvantage when it comes to seeking out letters of reference.

The effect of this disadvantage is real and lasting. We can only guess at how many qualified students have failed to even apply for employment openings, awards and scholarships, because to do so would mean having to find three, even four, professors to write letters. Here, the unequal distribution of access to good references directly hinders the efforts of committed (often minority in terms of class and race) students who could contribute much to the profession and to the study of law. As teachers, we have a responsibility to actively promote our willingness to write references, and to make a special effort to reinforce the message among students who might otherwise be disinclined to ask.

*Coda: the beginning professor (framing the over-achiever)*

In the following letter, a longer and more detailed description of a former student is offered. If read as a second letter in a single person's career, it demonstrates the newfound confidence of a student who has found a path in life for now, and has developed an intellectual framework through which to pursue that engagement.

*October 18, 1997*

*Professor Jennifer Jenson,  
Chair, Recruitment Committee*

**Re: Sandra Czernicki**

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41. *Handbook*, *supra* note 19 at 246; Robert H. Miller, *Law School Confidential: A complete guide to the law school experience* (New York: Thomas Dunne Books, 2000) at 164. There are simply not enough hours in a day for a professor to develop close relationships with even half of her or his students. In addition, there are not enough summer research assistantships to give each and every interested student the opportunity to work closely with a professor—an experience that, of course, has value far beyond the possibility of receiving a positive letter of reference.

*Dear Professor Jenson,*

*I have your letter of October 12 in which you request a letter in support of the application of Sandra Czernicki for a tenure-track position in the Faculty of Law. I note that you seek my views on her "scholarly potential, teaching ability, and collegiality as well as other signal talents or attributes." At the outset let me say that this is one of the most enjoyable letters I have had the occasion to write in more than 20 years of recommending former students for academic appointments. Sandra is, in two words, simply outstanding. Let me explain why I am of this view.*

### ***Knowledge of the Candidate***

*While I am now on leave from McGill University at the Institute for Social Research, my knowledge of Ms. Czernicki is as a professor. I first encountered Sandra in the fall of 1991, when she registered in my course, Secured Transactions. As you know, this was the first attempt at a trans-systemic course in upper years and had to be built from the ground up on the fly. We covered a wide range of topics: security on both land and personalty, in both the common law and civil law traditions, with additional material drawn from maritime law, international conventions and aboriginal customs. It was a course that demanded much investment of time and intellectual energy from students.*

*Sandra was the star of the class, obtaining top marks in the mid-term assignments and on the final examination in April. She was always well prepared. Both in terms of detailed questioning of legal technique, and the more difficult issues of policy and organization that she posed, she showed herself to be fully engaged with the course. She is well spoken and can state her thoughts persuasively with an economy of style that, no doubt, reflects her undergraduate studies in English Literature. Outside the classroom she would send me (on average about once a week) e-mail inquiries that clearly demonstrated how much supplementary reading she was doing. Indeed, I have no doubt that she now understands more about this field than many who are experienced practitioners.*

*The following summer, shortly after her election as French-language Editor of the McGill Law Journal, she approached me about strategies for increasing the participation of francophone students on the Editorial Board. Over the next few weeks we had several conversations on this topic. Ms. Czernicki impressed me as a thoughtful, sensitive, energetic*

*and diplomatic individual who was very much aware of the responsibilities to the Journal that her editorial role entailed. In my experience, such maturity of judgement and commitment are rare among students.*

*During the fall term of 1992 Sandra was an exchange student in Copenhagen, returning to the Faculty only at the end of January. This initiative, for an anglophone from small-town Alberta, gives a fair sense of her willingness to take on new challenges. Because of her absence from the Faculty I did not have the occasion to teach her in another class. I did, however, serve as the supervisor for an essay she wrote in the Department of Justice legal essay competition—an essay that has just been published in the National Law Journal.*

*I first wrote a letter of reference on her behalf in December 1994, when she was applying for a clerkship at the Supreme Court—a clerkship she undertook with the Chief Justice. At that time I signalled her fine academic standing and her diffidence towards marks. While it is no surprise that she was in the top three of the class, what bears note is her modesty and understated personal demeanour, her unfailing politeness, promptness, and reliability.*

### **Scholarship**

*Let me now speak directly to her scholarship. Over the past three years Sandra has written three articles that explore the nature of identity in law: “Is there an ‘id’ in Identity?” published last year in our own law journal; “Why can’t I be a male, Spanish, forty-year, flamenco dancer if that’s how I see myself?” published in the 1996 National Review of Law and Post-modernism; and “What Same-sex Marriage? Whose conjugality?” which will be forthcoming next spring as a research paper published by the Institute. In each of these she has sought to puzzle through how the law imagines the “legal subject”—over time, through different relationships, and across space. Her doctoral project pushes this research further. She has already accumulated an impressive data set in several areas and plans to develop a hermeneutics of “legal identity,” building on the work of Joseph Vining, Chris Stone, Pierre Schlag and Jack Balkin. I have not yet seen any of the chapters of this dissertation although I have discussed it with her on several occasions. I have no doubt that she will produce a thesis and subsequent monograph of the same order as that submitted by your colleague Arnold Stewart, who received the Governor-General’s medal for the Humanities at McGill two years ago.*



*Here is another significant point about Ms. Czernicki's scholarship and intellectual capacities. Sandra quickly assimilates doctrinal material. She figured out the logic of secured transactions within a month, and was able to get on top of "rules and concepts" part of the course faster than anyone. She also has relatively well developed political views on a number of issues of identity, membership and distributive justice. Until recently, however, she kept these two facets of knowledge in separate intellectual compartments. Over the past year of graduate study, however, I have noted two things. First, she is now developing her own conception of law and legal knowledge that integrates doctrine and critique. I am pleased to note that this is no mere mimicking of others. She was always sceptical about my own views of law and now that she is finding her own voice she continues to hold them up to even sharper critical scrutiny. Second, I think it is fair to say that Sandra has already made the transition from "consumer" of legal knowledge, through "reporter and synthesizer" of legal knowledge to "producer" of new legal knowledge—the last of which transitions I don't believe I began to make until my mid-thirties.*

### **Teaching**

*I turn now to teaching ability. I have never seen Ms. Czernicki in a formal classroom setting, but twice have watched her at academic conferences where she has played the roles of (1) "commentator" on someone else's paper, and (2) synthesizer of a workshop. In both settings her comments were well-organized, acute, challenging, friendly, open-ended and inviting of dialogue. Moreover, in the first, unlike some other commentators, she had a prepared text and an outline that specifically related to the paper being discussed. I have every reason to expect that in a regular classroom setting she would display the same talents.*

*Again, let me complete this reflection with another point. Despite her success and intellect, she is actually shy and uncertain of herself. Surprisingly for someone who loves to act, Sandra's mode of expression tends to be stiff—leading some to conclude that either (1) she was arrogant, or (2) she did not have a warm and generous personality.*

*Substantively, both conclusions are false. I am happy to report a change over this past year. She is now much more comfortable smiling, laughing, and being ironic about herself. In conversations today she is ready to ask questions about, and be interested in, the non-academic life of those with*

*whom she engages. Finally, I think Sandra has developed a maturity that only comes to those who are truly gifted when they confront the fact that they can't win all the prizes and all the baubles. Once one comes to accept that the measure of oneself is not the total length, breadth or depth of formal accomplishments, but the quality of the life one lives, one's shyness and uncertainty gives way to reconciliation with who one is, and who one truly aspires to be.*

### **Collegiality**

*I should like to continue the reflections of the previous paragraph by commenting specifically on Ms. Czernicki's collegiality. I begin with character. In my view, Sandra has all those intellectual and moral qualities (including candour, discretion and judgement) that would commend her to any institution, and that are of particular importance in a university. She has, moreover, traits of personality (initiative, industry, perseverance) that make her a quiet, but effective leader. Her undergraduate record in law attests to this. She participated in the Gale Cup moot one year, and served as a coach the following year; she was a constitutional law tutorial leader; and as indicated above, was an Editor of the McGill Law Journal. In addition, she was involved in extra-curricular activities—as co-Chair of Environmental Law McGill and as a lead in the Faculty's Annual Skit Night.*

*There is more. Sandra has an enormous capacity for work. She meets deadlines; she accepts responsibility; she doesn't off-load her work onto others. She is known among her peers as a thoughtful and generous reader of manuscripts. Many other McGill students I know well have mentioned how Sandra has assisted them with their own graduate projects. She believes in institutions and the need to maintain healthy environments where people can work collegially in pursuit of a common project, while nonetheless retaining their individuality. Ms. Czernicki avoids speaking ill of others and, while setting very high standards for herself, does not go about holding others to those standards in a censorious way.*

### **Issues Particular to Your Faculty**

*Your letter raises a number of issues about the kinds of candidates you seek. I need not repeat Ms. Czernicki's C.V. here, and I believe I have covered most of them. Nonetheless I should signal two of points. You say that you are looking for candidates who are capable of teaching a comparative law course; Sandra obtained both B.C.L. and LL.B. degrees*

*from McGill and I believe would be well-suited to such responsibilities. She is, moreover, bilingual and can actually write and teach in French as well as English.*

*What of your interest in law and society approaches? Sandra has shown a capacity for multi-disciplinary research and writing, as her publications attest. Her interests are wide-ranging but include administrative law, family law (her dissertation field), and I am certain (on the basis of her work in my secured transactions course) could easily embrace diverse subjects in the corporate-commercial domain. One thing you need not worry about in respect of Ms. Czernicki's intellectual interests is narrowness. Give her a challenge and watch her run with it.*

### **Conclusion**

*I appreciate that I have written a very strong letter for Ms. Czernicki. I don't mean to imply that she is without fault. Indeed, I tire of reading reference letters that are unreservedly and disingenuously positive. I have pointed out some areas for improvement, especially in the way she initially presents herself to others, throughout this letter. But in doing so I also want to signal that Ms. Czernicki is aware of these weaknesses and is working hard to overcome them. What more could one ask?*

*Before I close this letter I should add that I have had several conversations with Sandra about pursuing a law teaching career. Her decisions to join the Law Journal, and later to apply for a Supreme Court Clerkship were taken with the objective in mind. Her interest in pursuing graduate studies at the doctoral level was sparked by the same ambition. I have keenly anticipated this day—when she formally puts her name into the ring for a law teaching position—for many years.*

*It follows from the above that I commend Sandra to you and your committee (as I have commended her to our own Faculty Recruitment Committee) without hesitation or qualification. In my mind, Ms. Czernicki is as good as it gets. Even an excellent paper record and good letters of reference simply do not do her justice. I believe that she would be an outstanding scholar, teacher and colleague.*

*Should you wish any further elaboration of points raised in this reference, please do not hesitate to contact me at the Institute for Social Research—Telephone: (888) 222-3434; FAX: (888) 222-4343; e-mail: moakes@isr.on.ca*

*Yours sincerely,*

*Mae Oakes  
President, Institute for Social Research*

### III. *Identity: readers and candidates*

Institutions talk about people using particular language. By extension, so do letters of reference. When preparing a letter, the writer must (1) decide what institutional roles he wishes to emphasize in referring to the candidate, (2) fit the candidate into the receiving institution by using that institution's preferred vocabulary, (3) ensure that nothing gets lost in translation, yet—and this is key—(4) still manage to transcend institutional language to show the candidate as a human being.

James Boyd White has famously distinguished between character and caricature in legal writing:

Character is the successful rendition of the personality: believable, full, complex, living and breathing and so on. Caricature is the reverse: it is a way of talking about people that reduces them to single exaggerated aspects, to labels, roles, moments from their lives; it is narrow, two-dimensional, unconvincing...<sup>42</sup>

A reference letter that speaks of the candidate and writer in purely institutional terms is an example of the caricature that White criticizes. The challenge is to use institutional language conscientiously, while rendering a description of the human being whom the writer knows. The writer must help the reader imagine the candidate as a potential member of the institution to which he or she has applied. So, in the letter for the beginning professor above, "Sandra" cannot just be Sandra. Nor is she described as a sister, a future mother, or a hockey coach. Sandra is an applicant for a professorship, and must be understood as such.

While a referee must write meaningfully about a candidate, it is also necessary to manage institutional identity and to speak in a language and style that is responsive to the representations that an institution may have

42. James Boyd White, *The Legal Imagination*, Abridged Edition (Chicago: University of Chicago Press, 1985) at 113-114 [*Legal Imagination*].

of itself. This is especially important when the letter is intended for a foreign institution or a reader unfamiliar with the traditions and protocols of the legal academy. Whatever the writer wishes to say in support of a candidate must be tailored to the institutional language of the receiver.<sup>43</sup>

*Describing candidate identities*

Deciding what to include and exclude from a reference is a complex and sometimes controversial matter, even when the referee barely knows the candidate in question. Many institutions have guidelines that discourage referees from describing aspects of the candidate which would be out of place in a job interview or application form.<sup>44</sup> This kind of rule is understandable. Some referees use the occasion to make utterly inappropriate remarks about the subject of their reference. Yet some of us might protest that were all of the personal characteristics—personal appearance, professional ambition, traits of character—to be excluded from letters of reference, the letters would simply be banal restatements of a curriculum vitae.<sup>45</sup>

In addition, identity traits related to character, motivation and even personal history are often relevant to whom one is as a professional, and the barriers one has overcome on the way to applying for an opportunity. Sometimes it is precisely information of a personal nature that permits a forewarned hiring committee to look beyond the surface. Still, it is important to be careful in mentioning identity traits. Consider the candidate who has been an abused spouse and later a single parent, and who has had to work full-time while studying at the faculty. Or the student who has learned to manage a mental illness in order to be able to undertake full-time legal study. Or the law student who identifies herself as a recovering alcoholic to her peers, and has abstained from alcohol during the past three years. These facts quite obviously speak to a candidate's strength of character and motivation, traits which most people seek in a potential colleague

43. See *Harvard Guide*, *supra* note 15.

44. An example of such guidelines is the online handbook offered to professors at the University of Delaware: "Letters should address only the relevance of the person's qualifications for the position about which commentary is sought; reference to an individual's personal appearance, professional ambition, traits of character, marital status, number of children, *etc.* should be assiduously avoided." *Delaware Guidelines*, *supra* note 30. On the line between too much information and not enough, see also Ives, *Writing Letters*, *supra* note 4.

45. Two frequent letter-readers observe: "If reference letters carefully documented the writer's assessment of the individual's integrity, motivation, capacity, and understanding, and only briefly alluded to an individual's knowledge and experience (which may be gleaned by reviewing a curriculum vitae), the added value of these letters would be substantially augmented." Scott M. Wright, MD, Roy C. Ziegelstein, MD, *Writing More Informative Letters of Reference* (2004) 19 J. Gen. Internal Medicine 588, online: Blackwell Synergy <<http://www.blackwell-synergy.com/links/doi/10.1111/j.1525-1497.2004.30142.x/full/>> at 590 [*More Informative Letters*].

or employee. But the social stigma that even today surrounds domestic violence, mental illness and alcoholism would probably lead most of us to hesitate before making mention of such matters in a letter.

How does the letter-writer navigate between too much information about a candidate and not enough? When is it helpful to affectionately identify a candidate as a “nerd,” and when is this completely inappropriate? The solution may lie in remembering the social nature of the reference letter itself. A referee cannot abdicate responsibility for giving an honest assessment. However, even where the final text is not shown to the candidate, it is important that the process leading up to it be as open as possible. Such counsel is particularly important where the referee has knowledge of a potentially relevant personal nature that does not originate with the candidate himself or herself. Indeed, even raising the fact of this knowledge can be delicate and embarrassing. If, when asked if there are other personal matters that might be noted in the reference, the candidate does not mention any of these items, it is inappropriate to refer to them. While the decision about which of the candidate’s identities to include in the letter should be taken together, especially in situations involving deeply personal identities, one must be careful not to inadvertently abuse the power differential between candidate and writer. The candidate must have, and must be given the confidence by the referee to know that he or she has, the final say.

*Which person are you really framing?*

Almost every aspect of law teaching requires recognition of our complexity as human beings. Designing a course, writing for publication and answering questions during a lecture are all opportunities for us to pause and reflect on how our own identities shape the way we perceive and describe a legal issue or idea. Writing a letter of reference requires a similar kind of reflection because, as much as it is a portrait of the candidate, each letter contains a self-portrait of its writer. Examined cumulatively, letters of reference tell the story of the author, and of his or her changing identity, beliefs and perception of others.

When also seen as a narrative of the writer, a reference letter operates simultaneously on several dimensions. While formally, the conclusion advocates for a successful application by the candidate, informally (and often implicitly) a letter advocates for a view of law, of knowledge, and of education by speaking to what the referee considers to be evidence of good scholarship and good teaching. This is shown in the sample letters above. Reading the letter for “The Young Student,” we can see the intensity and candour of the relationship between student and professor and a view of what legal practice comprises. Similarly, the reference for

"The Beginning Professor" reveals some of the characteristics that the writer most appreciates in his students: willingness to discuss material outside class over email, evidence of maturity when dealing with peers, and an extroverted nature.

Often, especially where the standard indicia of accomplishment do not reveal the full measure of a candidate (when form does not reveal substance, when diffidence in a candidate understates achievement, when judgment and maturity surpass a GPA, when integrity prevents self-promotion) the referee must make explicit these otherwise implicit articles of faith. So, for example, if the criteria for a career achievement award speak to "citation indexes" and you believe these to be inappropriate measures, it is important to say so, to prevent your assessment of the candidate from being interpreted prejudicially according to a standard with which you disagree.

There are few forms of writing that are more autobiographical (short of autobiography) than the letter of reference. Even at the outset of our careers, the letters we write for others tell us much about the letter we would write about ourselves. When compiled at the end of an academic career, they are a record of how our self-understanding has evolved over time and how we look back upon and assess the kind of professor we have been.

The potential impact of the writer's personal identity on the framing of a letter is particularly obvious in situations that call class privilege into question. Imagine a middle-class professor writing for a student with no extra-curricular activities to report. Without further inquiry, this could be interpreted by the writer (and by the reader) as a sign of disengagement. Should conversation with the student reveal that it was necessary to hold down two part-time jobs throughout his or her studies, an entirely different interpretation of the absence would result. But it is not enough for the writer to know this. Given that other applicants may well have many such activities to report, unless the reference explicitly explains their absence, the candidate is likely to be judged by standards of extra-curricular involvement common to middle-class students.

It is one thing to be aware of how one's own sense of self shapes the style and content of one's letters and how one reads letters written by others. But this awareness must, for the most part, remain personal. Indeed, convention demands that the writer's self-critique of his or her partiality of perspective be left out of the final draft of a letter. This self-critique should, nonetheless, remain central to the process by which

a referee converses with candidates, prepares drafts and edits letters of reference.<sup>46</sup>

*Coda: the mature scholar (a tribute to being happy in one's own skin)*

The final fictional letter of reference in this paper is for an established scholar. It is at once more biographical and, paradoxically, more focused on *who* the subject of the reference is than on *what* the candidate has achieved. The way in which the detailed descriptions of her accomplishments are organized and recounted is perhaps the most revelatory in this paper—revelatory of its writer, that is.

*June 1, 2005*

*Professor David Hurtubise,  
Vice-Principal, Research,  
University of the North*

***Re: Emily Thibodeau***

***Re: Outstanding Research Achievement Award***

*Dear Vice-Principal Hurtubise,*

*I am pleased to forward this letter in support of the nomination of Professor Emily Thibodeau for the Research Achievement Award at the University of the North. I do so with real enthusiasm.*

*I am mindful of your request that I provide a context for the Committee that will read this letter. Let me begin, therefore, with a brief biographical note. I am currently the R.W Lee Professor of Roman and Comparative Law at McGill University, to which position I returned in 2000 after spending three years in Ottawa on secondment to the Privy Council Office. I have been a full-time professor since 1975. From 1984 through 1989 I was Dean of Law and from 1989 through 1994 I was the Director of the Law in Society Programme of the Canadian Institute for Advanced Research. I have also taught in France and Australia, and have lectured*

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46. Of course the recognition of one's identity is not a unidirectional process. Though we are all capable of defining our own identities, we are influenced in this definition by people outside ourselves. More than this, even if the impact others have on our own self-definition is highly attenuated, their perceptions of us will influence how they conceive who we are. So even if we do not specifically allude to our identities and perspectives in a letter, already our name and, to the extent this is known, our reputation shape the manner in which our letters will be read. On these points see R. A. Macdonald, "Academic Questions" (1992) 3 Legal Educ. Rev. 61. See also Fant, Worth, *supra* note 9.



*in the United States, Hungary, Scotland, Israel and New Zealand. I trust that this background gives you sufficient information about the circumstances in which I have come to know Professor Thibodeau's work and the comparative basis upon which I make the assessment I offer in this letter.*

*There is another point I should like to make by way of introduction. I begin this letter by attempting to state clearly my views on two central questions about which there are varying opinions within law faculties and universities, namely: What is a scholar? And what is excellence in scholarship? I believe strongly that excellence in scholarship in law is not measured either by volume of work produced or by the controversy that publications generate.*

*Let me speak to volume first. Many very fine professors have produced a great amount of published research. Only a few have produced work of scholarly significance. And almost none have produced a great volume of work that is uniformly of scholarly significance. Professor Thibodeau is one of these, having published eight monographs or collections of essays, and over fifty articles in peer reviewed journals. In law, this is a substantial corpus of scholarly work. Few can match it. But there is more. May I note that three of her major works (including two monographs) have won prizes? Two of these awards have been from prestigious scholarly organisations (one in Canada and one in the United Kingdom). In addition, several of her essays have been picked up for reproduction and reprinting in readers or in thematic collections. So while volume should not be a determining criterion, where great productivity is combined with scholarly accomplishment and peer recognition, one knows that one is in the presence of a true scholar.*

*Turning now to controversy, let me frankly state my position. I know that many universities have a tendency to use the idea of being controversial as a mark of scholarly impact—especially in the humanities and social sciences. I think this is unfortunate. Being controversial is a highly-over-rated trait. Anyone with half a brain can be controversial. Often "controversial" in law simply means stating the opposite of received wisdom—and even more often, stating such opinions polemically, with ad personam gratuitous commentary thrown in. Where polemics are not involved, controversy usually arises because a debate is engaged. An article produces a rebuttal; a book generates a sharp review. This, in itself, proves nothing about scholarship. It merely demonstrates that the*

*conventional wisdom accepts the critique being presented as implicitly confirming its own view of the intellectual enterprise in the field.*

*True creative scholarship changes the questions. Sometimes, but not often, it is controversial and generates polemical responses; sometimes it is so powerful that it reforms the scholarly activities of others; often, however, truly path-breaking scholarship is initially ignored. Ignored because it either is so far ahead of current thinking or because it threatens established patterns of thought and action. Many of Professor Thibodeau's works are of this nature. While several of her publications have made an immediate impact on the field, at least five were so challenging and so far ahead of current orthodoxy that they only became recognized as classics about half a dozen years after their publication.*

*What about citation indexes? If one rejects "controversy" as a measure of impact, what about frequency of citation? Here also the same concern applies. In law, often authors only get cited once the world has caught up with them. Citation indexes are also a problem given the contexts in which much legal scholarship is generated. They do not typically canvass monographs, festschrifts, collections of essays, judicial decisions, Parliamentary debates and so on. Moreover, much of the best legal writing is done for invited lectureships at less-well-known faculties where the lecture is to be published in that faculty's own law review—a law review that may not be rated highly enough to be included in an index. Or, which is more often the case, the text is denigrated because it is not published in a "leading review."*

*Why have I gone on at such length? It is because in multidisciplinary and university-wide committees there can (for very good reason) be a lack of appreciation of the specific contexts of legal scholarship. This said, in the conception of the scholarly endeavour just traced, I have no hesitation in affirming that Professor Thibodeau is one of the very few legal scholars active in Canada today who have made a contribution to the field that is recognized nationally and internationally. Her theoretical work on gender and race discrimination in law has become the canon in this domain. As a legal theorist working essentially in the post-structuralist vein, she is recognized as having broadened the scope of this discipline and enlarged the objects of study to include social statistics, diaries, field-notes, interviews from shelters and NGOs, and other materials besides cases, statutes and lawyers' files. Because of Professor Thibodeau the standard of scholarship in critical feminist and critical race theory has been raised and the impact of research in this field on lawyers, judges, administrative*

*officials and law reformers has been significantly enhanced. There are few people in any sub-field who can claim to have effected a reorientation in research. Professor Thibodeau can.*

*There is another dimension of scholarship that is often overlooked—the modelling-mentoring role of the true scholar. Professor Thibodeau has such a reputation in her fields that she is solicited to sit on editorial boards, is bombarded with manuscripts from colleagues across the country seeking her advice and counsel, and is routinely invited to give the leading “distinguished lectures” in Canadian law faculties. Her reputation extends beyond Canada and the United Kingdom to the U.S., Australia, New Zealand, South Africa, France and Israel, where she also has been a frequent distinguished lecturer. Put briefly, because Professor Thibodeau combines the highest level of intellectual achievement with a truly outstanding communicational capacity (notice that she has routinely won teaching awards) the impact of her research has been profound. In other words, Professor Thibodeau has achieved excellence not only in her published scholarship, but in oral scholarship (conference presentations, distinguished lectureships and keynote addresses) and in the role of improving the quality of the scholarship of others through editorial and manuscript review tasks. I can think of perhaps three other people in Canada who have had such an outstanding record of achievement in all the scholarly dimensions.*

*I imagine that others might craft their letters of support by focusing on the particulars of Professor Thibodeau's signal contributions. To me, this is a redundancy. My views about the quality, volume, character and impact of her scholarship are obvious from what I have written. I would prefer to make the more general point. Even though I find comparisons invidious, I shall nonetheless state my conclusion in comparative terms. When I was with the Privy Council Office, whenever we thought about bringing a dozen or so people from different academic disciplines together to assist us in considering a major policy question, I would typically seek to invite no more than 2 with a legal training. Professor Thibodeau would always be one of them. When I returned to full-time teaching and was asked by our Principal for the name of a single Canadian legal academic who I would recruit for a Distinguished Research Professorship (a project she had in mind to replicate the Sterling Professorships at Yale) I unhesitatingly said – Professor Thibodeau. Whenever I am invited to speak in the United States I find that Professor Thibodeau is one of the few (perhaps no more than six) Canadian law professors whose academic reputation is well-*

*known there. And when I travel to Australia, New Zealand and France, it is always Professor Thibodeau's name that is raised in connection with the top rank of Canadian legal scholars.*

*It would be hard to overstate the scholarly leadership that Professor Thibodeau has shown over more than two decades, and impossible to conceive of a legal scholar in Canada more deserving of recognition for Outstanding Research Achievement. By acknowledging the accomplishments of Professor Thibodeau in this manner, the University of the North would be sending a clear signal to the legal academic community across Canada (and beyond) of the high standards it embraces in celebrating scholarly achievement.*

*Yours sincerely,*

*Samuel Sigman, F.R.S.C.*

#### IV. *Loyalties: candidates, writers, readers*

Law professors usually do not realize the difficulty that people in other disciplines experience when called upon to write a letter of reference. Medical professionals are said to have trouble writing helpful references because letter-writing is not an integral part of their daily work.<sup>47</sup> The same is true to a lesser degree for teachers in social science or humanities fields: few are called upon to teach techniques for "writing to win" as part of a curriculum.<sup>48</sup> By contrast, persuasive writing is one of the primary skills law professors seek to impart to students.<sup>49</sup>

A reference is an act of persuasion, of rhetoric. The expert letter-writer knows how to use language to get through to busy, cautious reference readers and help them decide in favour of the candidate being recommended. That said, reference writers must not subordinate their integrity to the cause being advocated. However much one desires a candidate to be successful, an exaggerated, dishonest, hyperbolic and disingenuous letter should never be sent. Similarly, a reference writer cannot use a candidate as a means to further personal or institutional ends. Ethical letter-writing demands

47. *More Informative Letters*, *supra* note 45.

48. Steven D. Stark, *Writing to Win: The Legal Writer* (New York: Broadway Books, 1999) [*Writing to Win*].

49. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy and Style*, 4th ed. (Gaithersburg: Aspen Law & Business, 2001) at 51 [*Legal Reasoning*].

careful consideration of the extent to which the different loyalties of the referee are engaged and can come into conflict.

*Reference writing as a narrative tradition*

Beyond preserving one's own reputation with outside institutions, there are several reasons for exercising restraint when writing a letter of reference. One of these, discussed above, is that teachers have an ethical duty to students to be candid about their shortcomings as well as their strong points. Even when the candidate is a colleague or a peer this duty to write with integrity remains. Teaching and learning are life-long processes.

While the letter of reference is, from one perspective, a discrete event that captures a moment of interaction between the referee and the person being referred, its importance is much greater than this. A reference is a marker in a relationship that is necessarily greater than the occasion for the letter. To write dishonestly at a particular moment would betray the larger relationship that brought the letter into being in the first place.

A letter also imposes duties upon letter writers to maintain and further the values of the academic tradition. Just as one can be unfaithful to the person about whom one is writing, one can be unfaithful to the reference-writing process itself. This thought raises a key point about references. To whom does the writer owe his or her primary duty? In many discussions of reference writing, the focus is on balancing duties to the candidate, to the recipient and to the community of writers and readers.<sup>50</sup>

Without minimizing these duties to others, we nonetheless take a slightly different position. Recall the earlier mention of virtue ethics.<sup>51</sup> Virtue ethics differs from both utilitarian and Kantian traditions in that the ethical act is not seen as simply an individualized, deductive moral choice (whether grounded in consequentialist or deontological reasoning). Rather, it requires a person to justify particular choices by reference to a general consideration of the qualities of a virtuous person occupying that particular role. Moreover, the narrative account obliges the narrator to fit the decision within an overarching story about his or her moral life. Following this line of thinking, we believe that the reference writer must be faithful, above all else, to himself or herself. So, for example, the decision about whether to write a "greatest thing since night baseball" letter for a candidate who may not merit such praise—independently of whether it ultimately damages the candidate (consider the case of Mr. Crai) and the tradition of reference writing—has to be taken in full recognition of how

50. See, for example, *Harvard Guide*, *supra* note 15; *Delaware Guidelines*, *supra* note 30; *Handbook*, *supra* note 19; *Good Practice*, *supra* note 25; *Letters of recommendation*, *supra* note 6; *More Informative Letters*, *supra* note 45.

51. See *Virtue Ethics*, *supra* note 8, and *Why Narrative?*, *supra* note 8.

this ethical decision will be located within one's own understanding of life's moral choices. Is it coherent with the way in which one wishes to tell one's life story?

*Resisting institutional pressure*

It is no secret that Canadian universities are under increasing pressure to become leaner and more competitive.<sup>52</sup> The ability of graduates to obtain top honours and employment opportunities enhances the perceived value of a degree from one's law faculty. Moreover, it improves or maintains the reputation of an institution nationally and worldwide. For this reason, it is understandable that even when a referee feels confident telling a student or colleague what she or he really thinks about a candidacy, there may be further impediments to writing a truly accurate letter of reference.

Where a student is interested in a Supreme Court clerkship or a placement with the United Nations, institutional pressure may tempt the referee to embellish achievements beyond even the hyperbole of the "nuclear arms race" referred to earlier. The interest of a law faculty in having students *all* receive the same high honours may conflict with the demands of honesty on the part of the writer, and fairness toward applicants who are truly more qualified than their peers.

This situation is not merely hypothetical. One source of anxiety for first-time letter writers is how to deal with writing letters for more than one candidate, destined to the same recipient. Is it appropriate to rank the candidates among themselves? Do candidates have a right to know that their referees may have divided loyalties? Or do these facts go without saying? We believe that a less-than-stellar candidate should not be given an unfair advantage by a letter writer, even if this means that the referee will have to give unequal assessments of his or her own students. Each letter must have its own distinct tone, structure and choice of words. In cases where candidates are virtually indistinguishable in terms of achievement and suitability to the job an even greater onus lies on referees. They must write a true narrative of every candidate and of their particular relationship to every candidate.

*Telling an individual's story over time*

Even the first letter of reference written for a candidate is situated in biographical time. Certainly, each letter tells a discrete tale; each paints a momentary portrait of a person. But each letter also recounts a larger human story. So, for example, it is not difficult to imagine that the sample

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52. Paul Axelrod, *Values in Conflict: The University, the Marketplace, and the Trials of Liberal Education* (Montreal: McGill-Queens University Press, 2002).

letters of reference in this paper could have been written for the same person (and by the same person) at different stages of a career.

The accumulation of an individual's reference letters spanning a career chronicles a story of that person's life. Perhaps the insecure and awkward student in the first sample letter is more confident and sociable by the time he applies for a teaching or director of research position. His next reference letter might well reflect newfound social skills. Perhaps the applicant for a teaching position in the second letter, who is just a little too enamoured of her abilities and accomplishments, has confronted her first set of teaching evaluations or her first rejection letter from a law journal and has become more forgiving of the failings of others by the time she asks for a letter in support of an application for a deanship. Perhaps the established academic in the third letter who is widely recognized as a trailblazer in her field, as a warm-hearted and supportive mentor, and who is blessed with a nurturing personality may yet discover her own partiality of perspective and find the grace of doubt by the time she is being nominated for a lifetime achievement award.

To see references as biographical suggests why it is important to learn as much as one can about the candidate. A biography is about the whole person, and about what in that person's life makes them worthy for consideration for the position being sought. Indeed, some of the most powerful letters are those that consciously make reference to earlier letters—especially earlier letters that raise caveats—written on behalf of the candidate. For in this case the reference reveals that person's life trajectory and makes the affirmations about his or her character all the more persuasive.

### *Reading "bad" references*

Another kind of loyalty conflict can arise when one is the recipient of a "bad" reference written on behalf of an applicant to one's own institution. Here we are distinguishing between a negative reference written in good faith, and a "bad" reference. Assuming that every critical comment is substantively justified, assuming that the tone is moderate and balanced, and assuming that the letter genuinely addresses issues important to the application, one has to read a negative reference as one would read positive letters. Sometimes, the candidate is not the best person for the job or award and the honest referee will say why. A "bad" reference is something else, and it can take many forms. Sometimes the letter is a dashed-off three-line "this is a fine candidate" missive. Sometimes the letter is snarky

and mean, littered with snide comments and back-handed compliments.<sup>53</sup> Sometimes the letter looks like a genuine, luke-warm letter, but has clues that reveal an *animus* against the applicant.

Receiving such letters puts the recipient in a delicate position. Should the candidate be judged poorly for having selected a bad referee? Experience suggests not, since we all have heard stories of referees who are pleasant and supportive in person but who are vicious in private or in a written reference. What of our duties to others? We believe that we owe it to candidates whose referees write “bad” references to let them know. Finding a way to do so without breaching confidence is tricky, but it can be done. If the candidate is successful, there will be many occasions to broach the topic, for instance when that candidate asks advice about what to do when faced with a comparable “bad” reference written about someone else. Where the candidate is not successful, the letter informing the candidate that they did not get the position may hint at the need to seek out an alternative referee.

Finally, we believe that we have an obligation to our colleagues and peers who we know to write such letters to tell them that we disapprove of their behaviour. If the writer is from another faculty, the acknowledgement letter from the recipient of the reference should expressly make mention of the referee’s questionable ethics. If the writer is from one’s own faculty the matter can be raised generically at a faculty meeting or, depending on one’s relationship with the offending colleague, in person. To sit passively in the face of offensive behaviour is to condone it, and to implicate ourselves in someone else’s unethical conduct.

The responsibility lies upon us not just as readers, but as writers. If the process of soliciting, writing and considering reference letters is to retain any integrity, we must each take responsibility for setting examples for our peers and students through our own conduct. This necessitates a degree of openness about the way in which we prepare and write our own letters, as well as willingness on our part to accept and respond to criticism of those methods by our colleagues.

### *Conclusion: the reference as an act of justice*

Letters of reference do more than merely reflect the identity traits and character of the candidate. Each letter also contains a self-portrait of its writer. Just as, examined cumulatively, letters can chronicle the life of their subject, so too, examined cumulatively, letters of reference tell the

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53. The letter written by Isaiah Berlin for H.L.A. Hart, as reported in Nicola Lacey’s biography, is a classic of the “back-handed compliment” genre. See N. Lacey, *A Life of H.L.A. Hart: the nightmare and the noble dream* (Oxford: Oxford University Press, 2004) at 117-118. For a humorous, fictional take on the same genre, see Andrew J. McClurg, “Dear Employer...” (1997) 47 J. Legal Educ. 269.



story of the author and his or her changing identity. Most obviously, the author's description of himself or herself alters over the years. However, examining a person's reference letter *oeuvre* also reveals changes in the writer through the changes in how he or she describes others. A collection of one author's letters may chart a broadening over time of his or her analysis and understanding of character. The collection may show a shift from focusing on superficial characteristics or specific capacities relevant to the position the candidate seeks, to a perspective which reflects greater recognition of the candidate as a whole person.

Every letter is also a chronicle of the relationship between writer and candidate. Letters written by one person for another over the latter's career chart their relationship (for example, from professor-student to peers), while highlighting how the author's view of the individual has changed. In writing for students, who may later become colleagues, who in turn may become superiors such as deans, throughout his or her life the reference letter author comes to appreciate previously unseen qualities of others, and previously unseen qualities and defects in himself or herself. Referees also learn to value familiar characteristics in new ways. Over time, changes in the characteristics identified and discussed in reference letters reflect the writer's own changing perception and valuing of these qualities.

In the end, a reference is an act of justice. In what we say throughout our careers as law teachers, in what we write as part of our research, in what we accomplish in the classroom, and in what we stand for when we compose letters of reference for students and colleagues, we are making a statement about who we are and what we believe. Seen in this light, a good test for assessing any letter one encounters—as candidate, as writer, as reader—is to ask, “What kind of person would have written that kind of letter?” More pointedly, we should be especially attuned to this query in our specific role as referee. If we don't think the tone and content of the letter we have composed matches up to the person we believe we are, we have a duty to re-write the reference. And in the process of doing so, we also have a duty to undertake a re-assessment of our own character and the reasons we may have had for writing what we did.