

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

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF IVIE IHENSEKHIEN-ERAGA  
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Louise Wasylenko – Chair  
Ronald Sorokin – Bencher  
Edith Kloberdanz – Adjudicator

**Appearances**

Karen Hansen and Miriam Staav – Counsel for the Law Society of Alberta (LSA)  
Mona Duckett, KC – Counsel for Ivie Ihensekhien-Eraga

**Hearing Dates**

August 29 – September 2, 2022

**Hearing Location**

Virtual Hearing / In-Person September 1, 2022 only

**HEARING COMMITTEE REPORT**

**Overview**

1. Ivie Ihensekhien-Eraga is a student-at-law in Alberta. She practiced law in Nigeria from 1995 to September 2013. Ms. Eraga immigrated to Canada with her family largely because of their need to find medical treatment. In April 2017 Ms. Eraga received her NCA designation and began the process of accreditation as a lawyer in Alberta. In May 2017, having begun the articling process, she applied to the LSA to abbreviate her term of articles. On May 10, 2019 Ms. Eraga was found guilty of failing to be candid with the LSA on six occasions between November 16, 2017 and February 2, 2018, regarding a factum submitted in support of her application. The related sanction was that Ms. Eraga's registration be suspended for a period of 12 months, beginning June 25, 2019.
2. On April 17, 2019 police responded to an incident at Ms. Eraga's home. On November 4, 2019 Ms. Eraga was charged with public mischief related to the April 17, 2019 incident.

3. On January 14, 2020 Ms. Eraga submitted an application for reinstatement to the LSA following the suspension (Reinstatement Application). On review of the Reinstatement Application the LSA noted it was incomplete and potentially inaccurate, so requested additional information and clarification of Ms. Eraga. This also led the LSA to investigate Ms. Eraga's conduct related to the April 17, 2019 incident and the public mischief charge. The investigation continued until April 6, 2021.
4. On March 25, 2020 proceedings regarding the public mischief charge were stayed (filed in court April 6, 2020). On September 22, 2020 Ms. Eraga reported her criminal charge to the LSA.
5. The following citations (Citations) were directed to hearing by the Conduct Committee Panel on October 25, 2021:
  1. It is alleged that Ivie Ihensekhien-Eraga failed to report or disclose to the Law Society her criminal charge and that such conduct is deserving of sanction;
  2. It is alleged that Ivie Ihensekhien-Eraga created a false eyewitness statement and provided such false statement to the police in the course of a criminal investigation and that such conduct is deserving of sanction;
  3. It is alleged that Ivie Ihensekhien-Eraga provided false photo evidence in response to a Law Society investigation and that such conduct is deserving of sanction;
  4. It is alleged that Ivie Ihensekhien-Eraga failed to be candid with the Law Society and that such conduct is deserving of sanction; and
  5. It is alleged that Ivie Ihensekhien-Eraga breached an undertaking to the Law Society to preserve electronic data on her cell phone and that such conduct is deserving of sanction.
6. On August 29, 2022, the Hearing Committee (Committee) convened a hearing based on the Citations (Hearing). None of the Citations were amended during the Hearing.
7. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Ms. Eraga, for the reasons set out below, the Committee finds Ms. Eraga guilty of conduct deserving sanction on citations 1, 2, 3, 4, and 5 pursuant to section 71 of the *Legal Profession Act (Act)*.
8. The appropriate sanction for this conduct, as well as any order for costs and any other matters, will be determined at the sanction phase of the hearing.

### **Jurisdiction and Preliminary Matters**

9. On June 16, 2022 Ms. Eraga made an application to the pre-hearing conference chair for the Hearing to be heard in person in Edmonton. In the decision dated July 20, 2022, the pre-hearing chair ordered "...a partial in-person hearing wherein the in-person portion of the hearing will be limited to Ms. Eraga's testimony, meaning her direct and cross-examination. The in-person portion of the hearing will take place at the LSA office in Calgary. The rest of the hearing will be held virtually."
10. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. The Hearing proceeded as a public hearing.
11. At the outset of the Hearing and by consent, six exhibits were entered into the record, including jurisdictional documents and a Statement of Admitted Facts and Exhibits (Statement). Over the course of the Hearing a further 17 exhibits were entered for a total of 23 exhibits entered. Counsel for Ms. Eraga made a motion to exclude all witnesses, other than Ms. Eraga, from the hearing room before those witnesses had testified. The Committee granted the motion.

## **Key Principles**

### ***Standard of Proof***

12. LSA counsel commenced argument by establishing that the standard of proof in LSA hearings is on a balance of probabilities as set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 (CanLII) (paragraph 40):

... there is only one civil standard of proof at law and that is proof on a balance of probabilities ... context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
13. LSA counsel also directed the Committee to paragraph 44 of *F.H. v. McDougall*, where the court states that the question is whether it is more likely than not that the event occurred. The court further elaborates that "... evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (paragraph 46).
14. Counsel for Ms. Eraga agreed that the standard of proof in LSA hearings is on a balance of probabilities, as set out by LSA counsel. She emphasized the words used in *F. H. v. McDougall* – "clear", "cogent", "convincing" and "compelling" and further directed the Committee to *Law Society of Alberta v. Watt*, [2000] L.S.D.D. no. 68, where the hearing committee states that it "was mindful that while the onus of proof on the Law Society was to prove its case on a balance of probabilities, the quality of the evidence to meet that balance of probabilities was to be most cogent and compelling." (paragraph 52)
15. Both LSA counsel and Ms. Eraga's counsel agree that the standard of proof in LSA hearings is on a balance of probabilities, and the Committee accepts that. In making its findings in this matter, the Committee has applied that test.

## ***Witness Credibility Assessment***

16. In assessing credibility of witnesses in the Hearing, the Committee refers to and is guided by the following proposition in *Faryna v. Chorny*, 1952 2 DLR 354 (at page 357):

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

### **Citation 1: Failure to Report**

#### ***Particulars***

17. This citation alleges that Ms. Eraga failed to report or disclose to the LSA her criminal charge and that such conduct is deserving of sanction. The particulars in the Statement are as follows:

1. In November 2019, [Ms. Eraga] was charged with the following criminal charge offence:

ON OR ABOUT THE 17TH DAY OF APRIL, 2019, AT OR NEAR EDMONTON, ALBERTA, DID WITH INTENT TO MISLEAD, UNLAWFULLY CAUSE A PEACE OFFICER TO ENTER ON OR CONTINUE AN INVESTIGATION BY MAKING A FALSE STATEMENT THAT ACCUSED [KMO] OF HAVING COMMITTED AN OFFENCE, THEREBY COMMITTING PUBLIC MISCHIEF, CONTRARY TO SECTION 140(1)(A) OF THE CRIMINAL CODE OF CANADA.

2. On January 14, 2020, Ms. Eraga submitted to the [LSA] her application for reinstatement to student-at-law status following a 12-month suspension imposed by a Hearing Committee. On that application, Ms. Eraga answered “no” to Question 17(b) which asked whether she was currently charged with an offence under and Act of the Parliament of Canada where the offence was prosecutable either as an indictable offence or as a summary conviction offence.
3. On August 19, 2020 Ms. Eraga submitted a letter to the Reinstatement Committee appointed to hear her application for reinstatement to student-at-law status. In that letter, she stated: “[d]uring this one year of my suspension I have read ALL the Rules of the Law Society, the Legal Profession Act and the Alberta Law Society Code of Conduct, they are now my guiding principles for a better practice.”

4. On March 25, 2020, the Public Mischief charge against Ms. Eraga was stayed.
5. On September 22, 2020, Ms. Eraga notified the LSA in writing regarding her public mischief charge.

### **Evidence**

#### *Evidence of SB*

18. SB, an LSA investigator, was assigned responsibility for the investigation of Ms. Eraga's failure to report her criminal charge. During the investigation, SB interviewed Ms. Eraga several times, the transcripts of which were entered as evidence in Exhibits 6.10, 6.12, 6.13, 6.14 and 6.15.
19. On January 13, 2020, Ms. Eraga completed her Reinstatement Application for student-at-law status. The Reinstatement Application included a declaration that she made the "... solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath." The Reinstatement Application was submitted to the LSA on January 14, 2020 (Exhibit 6.2).
20. Exhibit 6.2 also included correspondence between Ms. Eraga and LSA Membership department in late January 2020. This correspondence was exchanged after she had submitted her initial Reinstatement Application on January 14, 2020. The correspondence between Ms. Eraga and LSA Membership Department (LSA Membership) discussed and attempted to clarify some of her other responses to the initial Reinstatement Application she had submitted. For example, Ms. Eraga had initially responded "no" to question 17(f) about whether she was "currently charged to a disciplinary offence in any jurisdiction in which I am subject to the regulation of the governing body of the legal profession." She subsequently changed her response to question 17(f) to "yes" and submitted an updated Reinstatement Application.
21. In the correspondence from late January 2020 there was no discussion regarding the Reinstatement Application and Ms. Eraga did not raise or seek to clarify why she responded "no" to question 17(b).
22. In early September 2020, KO, a practicing lawyer who was retained by Ms. Eraga as legal counsel in the public mischief matter, advised the LSA of the public mischief charge and also advised Ms. Eraga that she must report such charge to the LSA in accordance with Rule 105(1) of the Rules of the LSA (Rules).
23. On September 22, 2020, in response to SB's questions regarding alleged legal research work she had been doing while under suspension, Ms. Eraga acknowledged her responsibility to notify the LSA under Rule 105(1) of any criminal charge against her. The following is an excerpt from her September 22, 2020 letter (Exhibit 6.5) to SB:

Pursuant to Section 105(1) of the law society [sic] of Alberta, I am required to notify the LSA of any Criminal charge against me. I honestly did not

think that this was applicable in my situation, because I was the complainant for attempted assault on me. I was however, made aware of my obligation to report this to the Law Society when it came up this morning, after [KO] reported it to you.

...

I am sorry for not reporting this earlier, like I said, I erroneously assumed that since I was the victim of the Assault, I did not have to report the incident. Kindly accept this as my notification of the incident & its discharge to the Law Society of Alberta. Section 105(1)(f) also, stated that even when it has been discharged I ought to notify the Law Society.

24. In the same letter, Ms. Eraga wrote: "I hired [K Law] to handle the matter in January 2020, when as a complainant I suddenly became the Accused in a charge of Public Mischief."
25. Ms. Eraga added that she never went to court with her lawyer and that her lawyer "had an early resolution with the Crown prosecutor..."
26. During SB's interview with Ms. Eraga on October 30, 2020, Ms. Eraga acknowledged that she failed to report the criminal charge in accordance with Rule 105(1) because she was not "...aware of it – of that particular rule." (Exhibit 6.10, page 24).
27. In the same interview, Ms. Eraga acknowledged the false declaration of "No" at question 17(b) of her January 19, 2020 Reinstatement Application. In an email to the LSA Membership on October 31, 2020, the day after the interview, Ms. Eraga confirmed her response to question 17(b) as "No" (Exhibit 6.11).

#### *Evidence of Ms. Eraga*

28. Ms. Eraga retained KO, a practicing lawyer and former classmate, regarding her promise to appear in court on December 5, 2019, pursuant to the public mischief charge. In early January 2020, based on discussions with KO she understood that the public mischief charge would be stayed and a peace bond may be offered as a possible resolution. She admitted that the formal stay of the charge would be delayed pending instructions from the Attorney General.
29. Evidence of correspondence between KO, Ms. Eraga's counsel, and Crown counsel about the public mischief charge and the stay that was ultimately granted on March 25, 2020 was tendered and entered as Exhibit A for identification. Excerpts from this correspondence included:
  - a) January 2, 2020 correspondence that refers to "...a possible resolution of the matter".
  - b) January 17, 2020 correspondence that discussed proposed conditions.

- c) March 24, 2020 discussion that further discussed proposed conditions.
30. In her October 31, 2020 email to SB Ms. Eraga admitted that in September 2020, after reading Rule 105, she realized that she did have an obligation to report her charge to the LSA, and she did so that same day (Exhibit 6.11).
31. Ms. Eraga testified as follows:
- a) She did not answer “Yes” to question 17(b) because she believed that the question did not apply to suspended students.
  - b) She believed she was not “currently charged” based on her discussions with her lawyer that the charge would be stayed.
  - c) “No” was the best option to that question as there was no provision for further explanation.
32. Ms. Eraga testified that she practiced as a lawyer from 1995-2013 in Nigeria in various settings, including as a criminal prosecutor and that she had completed her articles and the CPLED program as a student-at-law in Alberta.

***Arguments, Analysis and Decision***

33. This citation relates to both Ms. Eraga’s answer to 17(b) of her Reinstatement Application and a duty to report the charge of public mischief under Rule 105(1).
34. Rule 105 stipulates:
- 105 (1) A member, student-at-law, applicant for admission or re-admission, or a visiting lawyer who is charged with any of the following:
    - (a) an indictable offence under any Act of the Parliament of Canada;
    - (b) an offence under any Act of the Parliament of Canada where the offence was prosecutable either as an indictable offence or as a summary conviction offence;
    - (c) a summary conviction offence under the Income Tax Act, the Criminal Code, the Narcotic Control Act or the Controlled Drugs and Substances Act, the Food and Drugs Act of Canada or the personal or corporate tax legislation of any province or territory in Canada, including any regulation or regulatory instrument made pursuant to such legislation;
    - (d) a summary conviction offence under any other law in force in Canada punishable by a fine, if the maximum fine for the offence was then at least \$25,000;
    - (d.1) contravening any provision of the Securities Act (Alberta) or analogous legislation in any province or territory in Canada, including any regulation or regulatory instrument made pursuant to such legislation;

- (e) an offence committed outside Canada and similar to any of the kinds of offences described in clauses (a) to (d.1);
- (f) a regulatory offence in any jurisdiction in which the individual is subject to the regulation of any regulatory body, including the legal profession;

shall

within a reasonable time after the charge is laid or the investigation commences, give a written notice to the Executive Director containing the particulars of the charge or investigation, and

forthwith notify the Executive Director of the disposition of the charge or investigation and any agreement arising out of the charge or investigation.

35. The following summarizes Ms. Eraga's position regarding Citation 1:

- a) Ms. Eraga had an honest belief that she did not need to report the charge of public mischief because:
  - (i) she believed that the Rules did not apply to her as a student-at-law,
  - (ii) she believed that, as a complainant of the alleged assault, she would not need to report the public mischief charge, and
  - (iii) she believed that the public mischief charge would be stayed based on and in reliance on her discussions with her counsel in early January 2020.
- b) Ms. Eraga reported the matter to the LSA on September 22, 2020, promptly after she was notified by KO that she should do so.

36. LSA counsel set out the following with relation to citation 1 in argument:

- a) There is no dispute that Ms. Eraga was charged with public mischief pursuant to the *Criminal Code* on November 4, 2019.
- b) There is no dispute that the charge was stayed on March 25, 2020.
- c) Public mischief is a hybrid offence – it can be prosecutable as either an indictable offence or a summary conviction offence.
- d) There is no dispute that Ms. Eraga answered “no” to question 17(b) of her reinstatement application which reads:  
I am currently charged with any of the following:  
...
  - b) an offence under an Act of the Parliament of Canada where the offence was prosecutable either as an indictable offence or as a summary conviction offence
- e) As of January 13, 2020 when she swore a declaration which she submitted to the LSA the day after, she was indeed charged.



37. LSA counsel argued that Ms. Eraga's belief, which she expressed in her testimony, that the charge was not valid and would be withdrawn and so she did not need to report the charge – is not reasonable or logical. LSA counsel pointed out that Ms. Eraga practiced criminal law in Nigeria for many years, completed CPLED and articles in Alberta, and possessed knowledge to know that whatever resolution discussions may have been underway, a charge remained in existence until a formal stay of proceedings was entered.
38. LSA counsel also stated that Ms. Eraga had several opportunities, in communications with LSA Membership staff following submission of her application, to review and reconsider her answer to 17(b) and did not do so. (Exhibit 6.2) Reporting the charge, eventually, on September 22, 2020 did not comply with Rule 105(1) because it was not provided within a reasonable amount of time.
39. LSA counsel also argued that the level of intent required for citation is a strict liability offence. LSA counsel relies on *Law Society of Alberta v. Thom*, 2019 ABLS 27, holding that the degree of intent required to be proven in LSA proceedings depends on the wording of the citation (paragraph 21). In this case, the wording of the citation is an allegation of failing to report or disclose and LSA counsel's position is that there is then no requirement to establish that Ms. Eraga failed to report or disclose with deliberate intent.
40. When there has been a finding of strict liability, the onus is on the member to establish due diligence, on a balance of probabilities (*Thom*, paragraph 21). The due diligence defence is available if the member reasonably believed in a mistaken set of facts that, if true, would have rendered her act or omission innocent. For the due diligence defence to be successful, the member must show that he or she took all reasonable steps to avoid the particular event. LSA counsel referred the Committee to *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, [2013] 3 SCR 756, wherein the Supreme Court of Canada makes the following statements:

A court inquiring into the nature of an offence must interpret the relevant statutory presumption. In doing so, it must take account of the presumption established by the Court that regulatory offences are generally strict liability offences. [paragraph 31]

....

Those who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards... [paragraph 49]

...

A defendant can also avoid liability by showing that he or she took all reasonable steps to avoid the particular event ... The defence of due diligence is based on an objective standard: it requires consideration of

what a reasonable person would have done in similar circumstances.  
[paragraph 56]

...

However, this defence will not be available if the defendant relies solely on a mistake of law to explain the commission of the offence. [paragraph 57]

41. The LSA argues that in the absence of a reporting requirement, the LSA may not necessarily know about a criminal charge, however, it is imperative that the LSA be advised in order to allow it to determine if there is any risk to the public or to the reputation of the profession.
42. Ms. Eraga was charged with public mischief, therefore the Committee finds that she had a duty to report the November 4, 2019 public mischief charge to the LSA.
43. Part 3 of the *Act* governs the conduct of members of the LSA. Section 49(4), in the same Part, specifically stipulates:

Except as otherwise provided, this Part and the rules under this Part apply to students-at-law.
44. It is not otherwise provided, so this Part of the *Act* and the Rules under this Part apply to Ms. Eraga, a student-at-law.
45. The Code of Conduct of the LSA (Code) specifies that “lawyer” includes a student-at-law.
46. Counsel for Ms. Eraga noted that the LSA learned of the public mischief charge incidentally. There had been no complaint to the LSA from the public, the police or from anyone. However, the *Act* imposes a statutory obligation upon the LSA to investigate a matter that comes to the attention of the LSA. Section 53(1) stipulates:

Any conduct of a member that comes to the attention of the Society, whether by way of a complaint or otherwise, shall first be reviewed by the Executive Director.
47. The Committee finds that SB was a candid, credible and reliable witness who provided clear and consistent testimony, supported by the transcripts of interviews with Ms. Eraga and other exhibits that were submitted at the Hearing.
48. Ms. Eraga admitted that she incorrectly responded “no” to question 17(b) on the application for reinstatement and further admitted that she did not report the charge until September 22, 2020.

49. The Committee, in rejecting Ms. Eraga’s explanations for failing to report, finds the following:
- a) The Rules apply to her as a student-at-law.
  - b) Her explanation that she believed that, as a complainant of the alleged assault, she would not need to report the public mischief charge is unreasonable. She practiced as a lawyer from 1995-2013 in Nigeria in various settings, including as a criminal prosecutor. She then completed her articles and CPLED, as a student-at-law in Alberta. She knew or ought to have known that she was not only a complainant in the alleged charge but also charged as a defendant with the public mischief charge.
  - c) Her explanation that she believed that the public mischief charge would be stayed, based on and in reliance on her discussions with her counsel in early January 2020 is unreasonable and illogical. The evidence is clear that on January 14, 2020, when she filled out the application for reinstatement and answered “no” to question 17(b), she knew that the public mischief charge was still pending. Crown counsel and Ms. Eraga’s lawyer did not agree on the terms of the stay until March 2020 and the stay was not ultimately granted until March 25, 2020.
  - d) She had discussions with LSA to clarify some of her other questions and responses in late January 2020 but she did not seek to clarify or explain her response to 17(b).
  - e) She did not report the charge until September 22, 2020, which was not within a reasonable time after the charge was laid.

### *Decision*

50. The Committee finds that it is proven that Ms. Eraga failed to report or disclose her public mischief charge to the LSA. Further, Ms. Eraga has not established a due diligence defence with respect to failing to report the public mischief charge. The Committee rejects the proposition that she reasonably believed in a mistaken set of facts that, if true, would have rendered her act or omission innocent. This conduct is incompatible with the best interests of the public and harms the reputation of the profession. Accordingly, the Committee finds Ms. Eraga guilty of citation 1, and that such conduct is deserving of sanction.

### **Citation 2: False Witness Statement**

#### ***Particulars***

51. This citation alleges that Ms. Eraga created a false eyewitness statement and provided such false statement to the police in the course of a criminal investigation and that such conduct is deserving of sanction. The particulars in the Statement are as follows:
- 6. On April 17, 2019, Ms. Eraga reported to the Edmonton Police Service (“EPS”) that she had been assaulted by one of two males who had entered her home that morning (the “alleged assault”).

7. On April 18, 2019, Ms. Eraga handed Constable K of the EPS a handwritten statement (the “eyewitness statement”).
8. On April 18, 2019, Ms. Eraga also emailed a copy of the eyewitness statement to Detective H of the EPS.

## **Evidence**

### *Evidence of SB*

52. SB received a copy of the eyewitness statement from the police disclosure file.
53. SB questioned Ms. Eraga regarding the eyewitness statement during their interview of October 30, 2020. SB observed a number of similarities in the handwriting style of the eyewitness statement to various documents handwritten by Ms. Eraga that were in the LSA’s possession. SB presented 15 examples of handwriting similarities between the eyewitness statement and the documents written by Ms. Eraga. Ms. Eraga repeatedly acknowledged similar, and in some cases, identical writing in the eyewitness statement but also denied authorship of the statement. At one point she stated, “That was why they – they – they – they said they were going to charge me for – for mischief” (Exhibit 6.10, page 177).
54. In the interview of October 30, 2020 (Exhibit 6.10), Ms. Eraga provided various explanations regarding finding the eyewitness statement in her mailbox, including the following:
  - a) Her husband gave it to her (page 130). When asked if her husband would give a statement to that effect, she said “They didn’t ask him” (page 142).
  - b) The eyewitness would not know her mailbox number was #5 but the post office staff could put it in the parcel box in the community mailbox. (page139).
  - c) She didn’t see it in the mailbox; she saw it on the mailbox (page140).
  - d) She denied having told the police that she saw the eyewitness statement in her mailbox and said that her words were “Look at what we saw in our mailbox” (page 141).
  - e) The eyewitness statement was folded, marked with the word “Attention” and stuck to the outside of the mailbox with a sticky substance like gum (page 144).
  - f) She denied that she had told the police that her husband or anyone had seen the eyewitness statement in the mailbox (Exhibit 6.10, pages 123-150).
55. On January 25, 2021, SB acknowledged receipt of the following original documents, on loan from EPS:
  - Ivie Ihensekhien-Eraga Witness Statement Form dated April 17, 2019.
  - Ivie Ihensekhien-Eraga Witness Statement Form dated April 18, 2019.
  - Anonymous Eye-witness Statement dated 2019/04/17 dated April 17, 2019 (Exhibit 10).

The original documents obtained from the EPS were to be part of a forensic analysis of the handwriting by an expert and were ultimately returned to the EPS.

56. During an interview on March 26, 2021, SB questioned Ms. Eraga regarding the eyewitness statement, who the author was and how Ms. Eraga ultimately received it. Ms. Eraga offered the following responses:
- a) She did not know who the author was (page 212).
  - b) She said she didn't know who gave her the statement, that she had received it, at her house, with other pieces of mail and added that her husband should not be brought into this matter (pages 234-237).
  - c) The author could not have put the statement in the mailbox because the mailbox was closed (page 239).
57. The responses to questions were different than those Ms. Eraga had provided in the October 30, 2020 interview and different than her statement to the police (Exhibit 6.12, pages 210-241).

#### *Evidence of KK*

58. KK was a Constable with the EPS on April 17, 2019, at the time responding with her partner Constable F, to a break and enter complaint at Ms. Eraga's home. KK is now a Detective in the Child Protection branch of the EPS. During her testimony at the Hearing, KK referred to her notes and narrative that she had made on April 17 and 18, 2019.
59. KK testified that she returned to Ms. Eraga's home on April 18, 2019 to return her cell phone which had been taken by police on April 17, 2019. KK said that, while at the home on April 18, 2019, Ms. Eraga gave her the eyewitness statement which she said had been found in her mailbox. KK seized the note as evidence.
60. KK testified that she asked Ms. Eraga for an explanation regarding how the eyewitness would know which mailbox was Ms. Eraga's and how they could place the note inside. KK said Ms. Eraga could not explain how the eyewitness would know which mailbox to put the statement in. Ms. Eraga suggested that the note could have been folded and slipped into the mailbox through a narrow gap in the mailbox door. After leaving Ms. Eraga's house, KK and Constable F examined the mailbox and attempted to insert the eyewitness statement as described by Ms. Eraga, without success. They took photos of the mailbox at that time (Exhibit 8).
61. Although the Committee is not aware of the outcome, KK testified that on April 18, 2019 she contacted Canada Post to follow-up the possibility that the eyewitness statement had been found by Canada Post staff and inserted into Ms. Eraga's mailbox by them (Exhibit 16).

#### *Evidence of IB*

62. IB is now an LSA investigator. She was an LSA investigations assistant at the time of the events in question. She assisted SB in the investigation of Ms. Eraga's conduct by attending meetings with Ms. Eraga, summarizing documentation, and preparing information for analysis. IB provided evidence regarding the conduct of that investigation.
63. The LSA questioned the authorship of the anonymous eye-witness statement. On January 28, 2021 IB advised, via email, that the LSA wished LP, a Forensic Document Examiner, to proceed with further analysis of the handwriting on the eyewitness statement, comparison of same to samples of Ms. Eraga's handwriting and provision of a Formal Forensic Examination Report (Forensic Report) (Exhibit 11, page 383).
64. On February 1, 2021, IB emailed copies of the following documents to LP in support of the Forensic Report:
- a) Original anonymous Eye-witness Statement dated April 17, 2019.
  - b) Original Police Witness Statement Form by Ms. Eraga dated April 17, 2019.
  - c) Original Police Witness Statement Form by Ms. Eraga dated April 18, 2019.
  - d) Copies of additional writing samples (Exhibit 11, page 442).
    - i) Sample 3 – (Factum Notes Draft 1).
    - ii) Sample 4 – (Factum Notes Draft 2).
    - iii) Sample 5 – (signed Declaration).
    - iv) Sample 6 – (Student Forms/Agreements).
65. On February 2, 2021, IB advised LP via email of a package of documents that would be delivered that day. The package included the original documents, copies of which were emailed February 1, 2021, including additional writing samples in their original PDF format, copies of which were attached to the February 1, 2021 email as Samples 3-6 (Exhibit 11, page 382).
66. IB was in attendance at the October 30, 2020 meeting when SB discussed the handwriting on the eyewitness statement with Ms. Eraga. IB recalled that Ms. Eraga generally acknowledged that her handwriting and that of the eyewitness statement were similar and at times identical but stated that she did not write the note.

#### *Evidence of LP*

67. LP was qualified at the Hearing as an expert Forensic Document Examiner. LP was engaged by the LSA to conduct an examination of an exhibit and determine whether it was written by the author of other sample documents. The LSA confirmed that they required written results in the form of a Forensic Report, which LP described as a "litigation style report with methodology, CV, detailed observations, charts and basis of opinion" (Exhibit 11, page 443).

68. LP submitted the Forensic Report to SB on March 3, 2021. The report was captioned “Law Society of Alberta – Investigation of Student Ivie Ihensekhien-Eraga - Examination / Comparison of Anonymous Witness Letter” (Exhibit 28, page 516).
69. LP confirmed the objective of the examination as: “To determine whether or not the questioned handwritten witness notation on Exhibit A was written by the person who produced the various examples of specimen writing in Exhibits B, C, D, E, F, G, and H, purportedly [Ms. Eraga].” LP also confirmed that Exhibit A was the original eyewitness statement, and that Exhibits B-H were the original and pdf samples of Ms. Eraga’s handwriting that were sent to him by IB (Exhibit 28, page 519).
70. LP used a comparative analysis methodology referred to as the “A – C – E” (Analyze – Compare – Evaluate) process. This involved a microscopic inspection of the eyewitness statement, inspection of the sample documents to assure all specimen documents used for comparison purposes are attributed to one person, then side-by-side comparison of the handwriting samples to the eyewitness statement (Exhibit 28, page 520).
71. The Forensic Report included a narrative of the relevant data and observations that was supported by a comparison chart depicting enlarged digital images of selected words and letters extracted from the questioned and specimen notations and which serves to demonstrate “the relatively unique pattern of similarities that exist between these two groups of notations.” In testimony, LP reviewed a number of observations and features in the handwriting samples that support their use as meaningful comparisons. (Exhibit 28, page 523).
72. LP noted that the effective scope of the comparison was limited by one or more of the following factors (Exhibit 28, page 521):
  - a) The eyewitness statement contains a number of features which indicate that the notation was more slowly and deliberately written, likely as a form of intentional disguise.
  - b) The specimen writing does not include many of the words or letter combinations that are observed in the questioned anonymous notation.
  - c) Many of the specimen documents are reproductions.
73. LP went on to describe how those limitations impacted the analysis and reviewed specific examples of the limitations. LP testified that, despite the limitations, there were considerable unique similarities in the observations that were not coincidental, and in LP’s experience, the evidence provides strong support for a qualified opinion of identification.
74. The conclusion of the Forensic Report in Paragraph 7(1) reads as follows (Exhibit 28, page 523):

Based on the features and characteristics disclosed during the comparative analysis described in Paragraph 6(5), there is a high probability the questioned anonymous notation on Exhibit A was written by the person who produced the various sample writings on Exhibits B, C, D, E, F, G, and H, purportedly [Ms. Eraga].

75. The Forensic Report goes on to say (Exhibit 28, page 524):

Further to the above-noted Conclusions / Opinions, Paragraph 7(1), this opinion is intended to convey a high degree of reliability and certainty with regards to the authorship of the questioned notation, but to also allow, in the interests of objectivity, a minor degree of doubt regarding the complete and total exclusion of all other writers. To summarize these observations and comments in lay terms, it is highly likely that the questioned notation on Exhibit A was written by the writer of Exhibits B through H (i.e. purportedly Ms. Eraga), and the likelihood that it was produced by somebody else is considered to be extremely remote.

76. On March 16, 2022, LP provided the LSA with an Addendum to the Forensic Report of March 3, 2021 which provided additional visual explanations regarding the scope and basis of the comparative analysis outlined in the in the Forensic Report (Exhibit 29, page 536).

#### *Evidence of Ms. Eraga*

77. On April 18, 2019, Ms. Eraga emailed a copy of the eyewitness statement to Detective H of the EPS, noting, "...I got this press to my post office box. The police just came in to return my phone and took the original after I scanned thi to U."[sic] (Exhibit 6.8).

78. In her March 7, 2021 email to SB Ms. Eraga wrote (Exhibit 6.9, page 48):

... I returned home at 8.55pm from the police station on the 17<sup>th</sup> April, 2019. At that same moment, I was given some letters including the eye witness letter paste with a light gum on the general mailbox, I never told police it was kept inside my locked and seal inbox. I was not home when the police came into the crime scene, and I was not the one who picked our letters on that day.

79. Ms. Eraga testified that her husband gave her the eyewitness statement and further, she denied authorship of the eyewitness statement.

#### ***Arguments, Analysis and Decision***

80. The following summarizes Ms. Eraga's position regarding citation 2:



- a) On April 17, 2019, she reported to EPS that she had been assaulted by one of two males who had entered her home that morning.
- b) On April 18, 2019, she handed Constable KK of the EPS a handwritten eyewitness statement.
- c) On April 18, 2019, she emailed a copy of the eyewitness statement to Detective H of the EPS.
- d) She denies authorship of the eyewitness statement.

81. LSA counsel submitted the following in argument:

- a) It is an admitted fact that Ms. Eraga gave the original eyewitness statement to KK and emailed a copy to Detective H on April 18, 2019.
- b) The eyewitness statement on its face is questionable. There is highly detailed information, time, description of a man, a license plate number but no contact information for the witness.
- c) Circumstances by which the eyewitness statement was supposedly found and the explanation given to KK regarding how the witness would know which mailbox was the correct one (since the mailboxes were not identified by addresses) is improbable.
- d) KK and her partner tested whether a note could be inserted into a sealed mailbox – and it could not be inserted.
- e) Expert evidence of LP is reliable. He engaged in comprehensive forensic analysis comparing the eyewitness statement to several samples of Ms. Eraga's handwriting.
- f) The totality of the evidence establishes that Ms. Eraga wrote the eyewitness statement and submitted it to the police.

82. SB questioned Ms. Eraga regarding the eyewitness statement during their interview of October 30, 2020. On review of specific examples of the handwriting therein to samples of Ms. Eraga's handwriting, Ms. Eraga repeatedly acknowledged similar, and in some cases, identical writing in the eyewitness statement but also denied authorship of the statement. Her response raised concerns in the minds of both SB and IB, such that SB felt compelled to continue the investigation by seeking an expert's opinion regarding the handwriting (Exhibit 6.10). The Committee did not give weight to SB's review of the handwriting similarities, as a non-expert, but acknowledged the suspicions raised by Ms. Eraga's responses and the LSA's decision to further investigate by retaining an expert in forensic document analysis.

83. Ms. Eraga's counsel challenged the LSA's continued investigation as no complaint regarding Ms. Eraga's conduct had been made to the LSA.

84. Section 53(1) of the *Act* stipulates:

Any conduct of a member that comes to the attention of the Society, whether by way of a complaint or otherwise, shall first be reviewed by the Executive Director.

85. The LSA became aware of this matter through LSA Membership's interactions with Ms. Eraga. LSA Conduct Counsel, as a delegate of the Executive Director reviewed the circumstances and ordered the investigation pursuant to section 53(3)(b). The Committee finds that SB's continued investigation was warranted and necessary.
86. The Committee finds LP to be a candid, credible witness and relies on his impartial and objective expert opinion that "...there is a high probability the questioned anonymous notation...was written by the person who produced the various sample writings..., purportedly Ivie Ihensekhien-Eraga." The Committee also relies on LP's further statement, in lay terms, "... it is highly likely that the questioned notation ... was written by ... Ivie Ihensekhien-Eraga, and the likelihood that it was produced by somebody else is considered to be extremely remote."
87. Counsel for Ms. Eraga:
  - a) submitted that KK's inquiries regarding Ms. Eraga's state of mind at the time of the incident reflected bias and "coloured her investigation".
  - b) submitted that KK's notes were inadequate and biased, and her investigation was not complete and thorough.
  - c) submitted that discrepancies, such as the level of detail between KK's contemporaneous "short-hand" notes and her written report, submitted the following day, reduce the weight of KK's evidence.
  - d) referred the Committee to *Wood v. Schaeffer*, 2013 3 SCR 1053 regarding an officer's responsibility to make accurate, detailed, and comprehensive notes as soon as possible after an investigation. In *Wood*, at paragraph 67, the court concluded that "police officers do have a duty to prepare accurate, detailed, and comprehensive notes as soon as practicable after an investigation."
88. The allegations of bias toward Ms. Eraga were attributed to KK's notes regarding contact with the Police and Crisis Team (PACT) on April 17, 2019. KK's written incident report indicates that the watch commander requested that KK contact PACT and the Sexual Assault Section. On cross-examination KK testified that initially, Ms. Eraga was not forthcoming regarding details of the incident and did not want to file a report with the CPS. Ms. Eraga eventually described details of a sexual assault. The Committee views KK's actions as a reasonable response to the incident in question and an appropriate and unbiased method of seeking support for the victim, Ms. Eraga.
89. The Committee finds KK to be a candid, credible and reliable witness and rejects the allegation that KK was biased in her investigation. KK made notes at the scene, prepared a more detailed summary on a timely basis, took photos for evidence, asked questions of Ms. Eraga and her husband to clarify details and her testimony was

consistent with her notes. Her actions also demonstrated respect and concern for Ms. Eraga.

90. The Committee finds that KK's investigation was thorough, examples of which follow in the next two paragraphs.
91. On April 17, 2019, the date of the alleged assault, KK attended at the Eraga premises and took photos of the scene. The following day, April 18, 2019, KK met with Ms. Eraga and discussed the details Ms. Eraga provided regarding the eyewitness statement. She followed up and investigated Ms. Eraga's explanation to try to validate Ms. Eraga's theory that the eyewitness statement was left at the mailbox by attending and photographing the mailbox to try to determine how and if the eyewitness statement may have been left at Ms. Eraga's mailbox and how the eyewitness could have known that mailbox 5 was Ms. Eraga's mailbox. KK then followed up with Canada Post.
92. KK took handwritten notes immediately after her interview with Ms. Eraga and prepared a detailed report the next day. The Committee is satisfied that KK's notes and report are accurate, detailed, and comprehensive and were made as soon as possible after her investigation
93. KK's testimony and responses to examination and cross-examination were logical and consistent. The Committee finds the more detailed description of suspects in KK's written report than in her contemporaneous notes are minor in nature.
94. Ms. Eraga's evidence and testimony regarding how the eyewitness statement was discovered, where it had been found, and how she received it were inconsistent. The explanations she provided were evasive, illogical, and unreasonable. Ms. Eraga was not present at her home when the eyewitness statement was found, and no explanations of the circumstances were provided by anyone who may have found it or otherwise seen it.

### *Decision*

95. Given the above, the Committee finds that it is proven on a balance of probabilities that Ms. Eraga created a false eyewitness statement and then provided it to the police in the course of a criminal investigation. These actions are incompatible with the best interests of the public and harms the reputation of the profession. Accordingly, the Committee finds Ms. Eraga guilty of citation 2 and that such conduct is deserving of sanction.

### **Citation 3: False Photo Evidence Particulars**

96. This citation alleges that Ms. Eraga provided false photo evidence in response to an LSA investigation and that such conduct is deserving of sanction. The particulars in the Statement are as follows:

- a) On March 7, 2021, Ms. Eraga emailed LSA Investigator B and others to provide further details as to the alleged assault and attached to her email a number of photographs purporting to show the disarray in her house on April 17, 2019 caused by the alleged assault.

## **Evidence**

### *Evidence of SB*

97. SB received an email from Ms. Eraga on March 7, 2021, wherein Ms. Eraga indicated that police had not taken photographs of the disarray in her home on April 17, 2019. She attached 9 photographs of the scene, which had been taken by her son (Exhibit 6.9, page 48).
98. On March 30, 2021, SB received copies of the two photos that KK took in Ms. Eraga's home, complete with their metadata, indicating the date and time the photos were taken (Exhibit 9 and 16).
99. SB noted differences between the photos provided by Ms. Eraga on March 7, 2021 and the photos taken by KK on April 17, 2019.
100. The two photos of the scene, taken by KK on the date of the incident (Exhibit 9), depicted the following:
  - a) Part of a sofa with an accent cushion on it.
  - b) A small china cabinet, topped by a cloth and various knick-knacks.
  - c) Two framed photos on the floor near the leg of the china cabinet.
  - d) A brown, beige, and rust coloured carpet on the floor.
  - e) Two cushions and a broken air freshener on the bare wood floor near the other end of the sofa.
101. Ms. Eraga's photos included the following examples of disarray and inconsistencies (Exhibit 6.9):
  - a) A black and grey geometrical rug in the living room.
  - b) An accent cushion and large pink blanket on floor beside the sofa.
  - c) A small china cabinet, items on top knocked over.
  - d) Flipped area rug(s) in stairwell and front door entry flipped.
  - e) A kettle knocked over on the kitchen counter.
  - f) A thermal mug and telephone on the floor in the kitchen.
  - g) Overturned kitchen chairs.
  - h) Additional items on cabinet, floor, and sofa in living room.
  - i) Numerous other items knocked over and/or missing or added (papers on couch, doll feet protruding into corner of picture).
102. Ms. Eraga's photos also revealed inconsistencies such as two photos of the same area, with differing items on the sofa or the floor, or items in a different orientation.

103. SB questioned Ms. Eraga regarding the discrepancies in the photos during the March 26, 2021 interview. Ms. Eraga insisted that the police could not have taken the photos on the day of the incident and that her home had been cleaned and rearranged after her son had taken his photos (Exhibit 6.12, page 289).
104. During the March 26, 2021 interview with SB, Ms. Eraga was unable to clearly answer questions regarding who took the photos that were on her phone and when they were taken. Her responses included the following (Exhibit 6.12, pages 286 – 296):
- a) The police officer took the photos on the morning of the day following the incident, after the house had been rearranged.
  - b) The carpet was different because the original had been given to her son.
  - c) The house appeared in disarray on April 17, 2019, after the incident, but that she had cleaned it up later that day.
  - d) She told the police officer that her house phone fell to the floor with the battery open.
  - e) She said that her son had taken the pictures and also noted that her son was 16.
  - f) Her husband was prepared to testify that the police did not take pictures on April 17, 2019.
105. After the April 6, 2021 meeting with Ms. Eraga, SB received a file from KO, counsel whom Ms. Eraga had retained to represent her regarding her public mischief charge. The file included copies of emails of November 18, 2019 from Ms. Eraga to KO which included images purportedly taken on April 17, 2019. (Exhibit 27)

*Evidence of KK*

106. KK testified that on April 17, 2019, which was the date of the alleged assault, Ms. Eraga's husband came to the neighbor's home then entered the Eraga home, with KK, via the garage. KK walked through the front entrance, hall, kitchen, living room, but not upstairs, and noted no signs of struggle and that Mr. Eraga did not see anything missing.
107. KK took three photos on April 17, 2019. One was of the front doorknob, which was sent to EPS for forensic examination of the fingerprints. The other two photos were of the living room area where KK had noted two framed pictures on the floor and an air freshener on the floor as the only things that seemed out of place (Exhibit 9).

*Evidence of Ms. Eraga*

108. On March 7, 2021, Ms. Eraga sent an email to SB ("Subject: RE: EXHIBITS PICTURES NOT INCLUDED IN THE POLICE DISCLOSURE ABOUT 17 APRIL, 2019 INCIDENT") with 9 photos attached (Exhibit 6.9, 47-48). The text of her email included the following:

- a) "...I saw the lady police telling him [her husband] to accompany her to my house."
  - b) "My lawyer requested for it on the 18<sup>th</sup> November, 2019 when I was charged for Mischief as part of the document I submitted during our first meeting. I never knew photos was not taking by the police, when I told my son to retake for my record."
  - c) "I told my son to take photos of the incident with his phone, when I come he can transfer to my phone."
  - d) "I wish to request that my husband...come on the 26<sup>th</sup> March 2021 to testify to the fact that, he was the one that took the police into the scattered house...No photos of the incident was taken by the police, even when the sitting rooms were all in a mess."
109. During the March 26, 2021 interview with SB, Ms. Eraga repeatedly confirmed her belief that the police did not take photos of her house (Exhibit 6.12, page 287).
110. Ms. Eraga testified that her son took the photos in the afternoon of April 17, 2019, then cleaned the house and changed the carpet and that the house was clean when she returned home that evening (Exhibit 6.12, pages 287 – 289).
111. Ms. Eraga testified that she believed KK took the photos (of the orderly nature of the house) on April 18, 2021 while Ms. Eraga went upstairs to get the eyewitness statement.

### ***Arguments, Analysis and Decision***

112. LSA submitted the following:
- a) That there is compelling evidence that Ms.Eraga's photos did not represent the state of the home as of April 17, 2019, following the alleged assault, most notably, as per KK's evidence.
  - b) Notably, the metadata (Exhibit 9) was derived from the EPS Central Registry and is consistent with KK's evidence that KK's photos were taken on April 17, 2019.
  - c) There are glaring inconsistencies between KK's photos and those provided by Ms. Eraga.
  - d) There are also further inconsistencies in several of Ms. Eraga's photos.
113. The following summarizes Ms. Eraga's position regarding Citation 3:
- a) On April 17, 2019, her son took photos of the disarray in her house which resulted from the alleged assault.
  - b) She insists that the police did not take photos of her home on April 17, 2019, and that they must have taken pictures the next day by which time the carpet had been changed.
  - c) On March 7, 2021, she emailed the LSA Investigator SB and others to provide further details as to the alleged assault and attached to her email a number of

photographs purporting to show the disarray in her home on April 17, 2019, caused by the alleged assault.

114. Ms. Eraga's submission is that her son took photos of the disarray in the home on the day of the incident because she asked him to do so. Ms. Eraga was taken from her neighbour's home to the hospital soon after the incident, so was not present at the house for most of the day. There is no statement from her son. The photos were not sent from her son's phone and there is no evidence of when the photos were taken.
115. KK's testimony that she took photos on April 17, 2019 is supported by her notes, her written report and the availability of the original images displaying the date and time of capture. The content of KK's photos, specifically, the lack of disarray, is also consistent with her notes, her written report and other activities of her investigation.
116. There is no dispute that, on two occasions, Ms. Eraga sent photos that were taken by someone other than police to provide further details of the alleged assault that took place April 17, 2019. Specifically:
  - a) On November 19, 2019, seven months after the incident, Ms. Eraga sent photos to KO, counsel whom she had retained to represent her regarding her public mischief charge.
  - b) On March 7, 2021, two years after the incident, Ms. Eraga sent photos to LSA investigators and her new counsel, EM, along with a narrative including many details that she had not included in her Witness Statement Form.
117. In each case, Ms. Eraga affirmed her mistaken belief that the police had not taken pictures the day of the incident. Notwithstanding, the photos submitted to the LSA by Ms. Eraga were not mentioned nor provided to police on April 18, 2019, along with the eyewitness statement that was purportedly discovered on April 17, 2019.
118. The photos that Ms. Eraga submitted are different and inconsistent with the KK photos as they show:
  - a) A different carpet.
  - b) Disarray that was not evident in the KK photos.
119. The photos that Eraga submitted are inconsistent as they show different states of disarray in some photos as there were different items at different angles and in different locations.
120. Counsel for Ms. Eraga referred the Committee to the case of *Law Society of Alberta v. Watt* again in support of the proposition that Ms. Eraga was under the honest belief that the photos were accurate, and that Ms. Eraga was not wilfully blind. The Committee refers to the following passages from *Law Society of Alberta v. Watt*.

The question became whether this wilful blindness amounted to cogent evidence which met the level of proof on a balance of probabilities.  
(paragraph 60)

...

... the Hearing Committee reviewed Mr. Watt's conduct with respect to Citation 1 to have been unequivocally made out and to have been carried out in a manner that was designed to be dishonest and deceitful at least with respect to the investigative authorities of the Law Society (paragraph 65).

121. The Committee finds, on a balance of probabilities, that the photos taken by KK on April 17, 2019 are a true record of the state of Ms. Eraga's home after the alleged assault and that Ms. Eraga's photos were staged and represent false evidence.

122. The Committee rejects the assertion of Ms. Eraga's wilful blindness. The Committee further finds that Ms. Eraga's conduct was carried out in a manner that was designed to be dishonest and deceitful, at least with respect to the investigative authorities of the LSA.

123. Section 2.1-1 of the Code reads:

A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

124. Section 7.1-1 of the Code reads:

A lawyer must reply promptly and completely to any communication from the Society.

125. A lack of candour cannot in any instance be compatible with the public interest or the interests of the LSA and its members and as such is deserving of sanction.

#### *Decision*

126. Based on the above, it is proven that Ms. Eraga provided false photos evidence in the course of an LSA investigation. Accordingly, the Committee finds Ms. Eraga guilty of citation 3 and that the conduct is deserving of sanction, given that it tends to harm the standing of the legal profession and is a breach of sections 2.1-1 and 7.1-1 of the Code.

#### **Citation 4: Failure to be Candid**

##### ***Particulars***

127. This citation alleges that Ms. Eraga failed to be candid with the LSA and that such conduct is deserving of sanction. The particulars in the Statement are as follows:



- a) Ms. Eraga denied that she was the author of the eyewitness statement during an interview with SB on October 30, 2020, in an email to SB and others dated October 31, 2020, and during an interview with SB on March 26, 2021.
- b) During an interview with SB on October 30, 2020, Ms. Eraga denied that she told KK that she had found the eyewitness statement inside her mailbox and also stated that the eyewitness statement was found by her husband on April 17, 2019 around 12 to 1 p.m. attached to the outside of the mailbox.
- c) Ms. Eraga represented that the photographs she forwarded to SB on March 7, 2021, were a true record of the disarray in her home caused by the alleged assault during an interview with SB on October 30, 2020, in an email addressed to SB and others on March 7, 2021, and during an interview with SB on March 26, 2021.
- d) Ms. Eraga denied that the EPS took photographs inside her home on April 17, 2019 during an interview with SB on October 30, 2020, in an email addressed to SB and others dated March 7, 2021, and during an interview with SB on March 26, 2021.
- e) Ms. Eraga denied that photographs purporting to represent the disarray in her home following the alleged assault were ever stored in the photo gallery of her cell phone during meetings with SB and IB on March 30, 2021, and April 6, 2021.

### ***Evidence***

128. The alleged actions specified in the particulars of Citation 4 have been proven, on a balance of probabilities, by the Committee's findings of guilt in Citations 2, 3, and 5.

### ***Arguments, Analysis and Decision***

129. LSA counsel submits that:

- a) If the Committee accepts Ms. Eraga wrote the eyewitness statement, the only available conclusion is that she was not forthright with the LSA when she made statements about the eyewitness statement.
- b) Ms. Eraga was not candid with the LSA when she maintained the photographs she submitted were a true and accurate record in her March 7, 2021 email and during her interview.
- c) Ms. Eraga was not candid with the LSA when she made additional denials related to photos.

### ***Discussion Regarding Private Conduct***

130. Ms. Eraga and her counsel submitted that Citations 2 and 3 arose from circumstances in her private life and are therefore irrelevant. She also insisted that the public mischief charge was "...not a proper charge...". She stated that she did not want the matter to go to court or to be investigated; she just wanted to let it go.

131. The Committee refers to *Law Society of Alberta v. Juneja*, 2022 ABLS 11 to support its analysis, particularly the following passages wherein the hearing committee states (at paragraphs 165 & 171):

... lawyer's personal life outside their professional activities can be subject to the disciplinary process. ...as stated in the Code, commentary 7.3-1(3): "...lawyers should aspire to the highest standards of behavior at all times and not just when acting as lawyers."

...

The factors listed by the court in the *Strom*<sup>1</sup> case (which we do not take as being exhaustive) require that we engage in a contextual analysis to determine if private conduct constitutes conduct deserving of sanction. In the framework of section 49(1) of the *Act*, we would summarize the relevant circumstances and factors (recognizing that there is some overlap of factors) as follows:

- I Is the conduct incompatible with the best interests of the public?
  - (a) Does the misconduct impair the ability of the individual to perform as a member of the profession?
  - (b) How closely connected is the misconduct to the practice of the profession?
  
- II Does the misconduct engage the broader public interest?
  - (c) Does the conduct negatively reflect on the characteristics required to be a competent and ethical member of the profession?
  - (d) Does the conduct tend to harm the standing or reputation of the legal profession?
  - (e) What is the nature of the profession and what is the nature of the misconduct?
  - (f) Is the conduct more reprehensible by a member of the profession [than] in the case of others?
  - (g) Was the individual identified as a member of the profession? Did they purport to act as a member of the profession?
  - (h) Would the misconduct impair a client's trust in the profession?

132. The discussion on this topic must involve reference to sections 2.1 and 7.1 of the Code and section 49(1) of the *Act* which states:

...the conduct of a member ... is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor.

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<sup>1</sup> *Strom v Registered Nurses' Association*, 2020 SKCA 112.

133. The court in *Leontowicz v. College of Physicians and Surgeons of Saskatchewan*, 2022 SKQB 98 also summarizes Strom in its deliberations. In addition to discussing the factors outlined above (as in *Juneja*), at paragraph 178 the court states:

Strom identified at para. 112 three primary groups which have "an interest in fair and effective professional self-governance". These groups are: (1) the general public; (2) the profession at large, and (3) individual professionals who are subject to regulation and potential discipline. In relation to this third group, it is particularly important that a discipline committee give sufficient weight to a professional's freedom and autonomy in his or her personal life.

*Discussion Regarding Candour*

134. With reference to candour, the Committee again refers to sections 2.1 and 7.1 of the Code. The Committee also refers to the following passages in *Juneja* (at paragraphs 123-125):

Candour requires a reasonable person to disclose all salient and important information...

...

The Committee is satisfied that the untrue statements, ... to the investigator ... show a lack of candour. This failure to be candid amounts to a breach of section 7.1-1 of the Code...

...

A lack of candour cannot in any instance be compatible with the public interest or the interests of the LSA and its members and as such the conduct is deserving of sanction.

135. Ms. Eraga's counsel's closing argument included her summary of difficult personal circumstances that Ms. Eraga has faced over the past few years and how the investigation and the Hearing has impacted her and said that throughout the many challenges, Ms. Eraga has maintained a strong desire to become a lawyer and a commitment to doing whatever it takes to do so.
136. While the Committee is sympathetic to Ms. Eraga's personal challenges and circumstances, Ms. Eraga has a duty, as a student-at-law, to conduct herself ethically and not to harm the standing or reputation of the legal profession. The Committee finds that Ms. Eraga's conduct fell well short of that expected of a member of the LSA. Ms. Eraga has breached sections of the Code that exist, specifically, for the protection of the public. A lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect, and trust of clients and of the community, and avoid even the appearance of impropriety. Ms. Eraga's conduct interferes with the LSA's efforts to protect the public and her general lack of trustworthiness erodes the public's confidence in the administration of justice.

## *Decision*

137. In considering the factors and authorities noted above in paragraphs 130 to 133, the Committee finds that, having found Ms. Eraga guilty of citations 2 and 3, while that conduct may have been in her private life, the Committee finds her, as a student-at-law, guilty of citation 4 and her conduct to be deserving of sanction for several reasons:
- a) She was not candid throughout the investigation.
  - b) The conduct would reasonably tend to harm the standing or reputation of the legal profession. A reasonable person, when viewing these circumstances objectively, would be left with an almost certain negative view of lawyers.
  - c) The behaviour does not reflect the characteristics required to be a competent and ethical member of the profession. Competent and ethical professionals do not and should not present false eyewitness statements and present staged and false photographs in any circumstances and, particularly, in the course of an LSA investigation.

### **Citation 5: Breach of an Undertaking**

#### ***Particulars***

138. This citation alleges that Ms. Eraga breached an undertaking to the LSA to preserve electronic data on her cellphone and that such conduct is deserving of sanction. The particulars in the Statement are as follows:
- a) On March 26, 2021, Ms. Eraga provided an undertaking to the LSA that she would refrain from deleting any emails, text messages, photographs, electronic documents, or any other material that is related in any way to the investigation.

### ***Evidence***

#### ***Evidence of SB***

139. During the March 26, 2021 interview Ms. Eraga confirmed that the photos depicting her house's disarray, copies of which she sent to SB, were still in her phone and she had that phone with her (Exhibit 6.12, page 277).
140. On March 26, 2021, SB told Ms. Eraga and her counsel, EM, that in accordance with Part 3 proceedings and pursuant to his investigation, the LSA would take control of her phone to copy it (Exhibit 6.12, pages 277-285).
141. In response to Ms. Eraga's hesitation to surrender her phone immediately due to concerns regarding the privacy of data on the phone that was unrelated to the investigation, SB agreed to accept Ms. Eraga's verbal undertaking that she would "...refrain from deleting any emails, text messages, photographs, electronic documents, or other material that is in any way related to this investigation (Exhibit 6.15, page 360)."

142. SB also requested that Ms. Eraga provide “electronic copies of text messages or emails transferring these documents from your son to you, from you to KO” (Exhibit 6.15, page 361). SB referred to an itemized list and EM agreed they could work on that basis toward satisfying Ms. Eraga’s undertaking (Exhibit 6.15, pages 361-364).
143. On March 29, 2021, Ms. Eraga provided responses to the undertaking including (Exhibit 13):
- a) “...how [my son] gave me the photographs on the 18<sup>th</sup> November 2021, my son reminded me he printed them off in two copies, and gave me and his father at the same time each copies. ... ”
  - b) “...the photographs attached to my email to SB dated March 7, 2021 were from printed pictures handed to me by my son, I scanned them to myself via email on November 18, 2021.”
  - c) “...no electronic photographs currently in the possession of my son...original electronic version of photographs...can not be provided because the phone used to take the photographs have been stolen.”
  - d) “...mode of transfer from my son to Me was via print out.”
  - e) “...original email of transfer of those photographs to KO was from my husband...It was not me that sent to KO...I gave my printed copies...physically to my lawyer KO in his office.”
  - f) “I only kept electronic copies of all the photographs on my email for my personal records, and this is what I forwarded to you on March 7, 2021.”
144. On March 30, 2021 SB sent a Part 3 letter to Ms. Eraga and her counsel, EM. The letter (Exhibit 14) directed Ms. Eraga, among other things to abide by her March 26, 2021 undertaking and produce the cellphone:
- ...that was in your possession and under your control during our meeting of March 26, 2021, in particular, to make further examination of the electronic photographs on the cellphone (as viewed on your cellphone’s photo gallery by IB on March 26, 2021), and purported to have been taken on April 17, 2019, which photographs were attached to your email to the LSA on March 7, 2021...
145. On March 30, 2021, SB and IB met with Ms. Eraga to take possession of the cellphone. The pictures viewed during the March 26, 2021 meeting no longer appeared on the phone. Ms. Eraga’s responses to related questioning confirmed the following (Exhibit 6.13):
- a) That the phone was the same phone viewed on March 26, 2021.
  - b) That she was the one who opened the pictures that were viewed.
  - c) That her cellphone had not been used to take the pictures.

- d) That she had scanned photos to her email.
  - e) That she did not have another cellphone.
146. On April 6, 2021, SB and IB met with Ms. Eraga to return her cellphone. Ms. Eraga was asked to show SB and IB where the photos she showed them during the March 26, 2021 meeting were located. Ms. Eraga stated: “So the email I sent to you, that is what I opened. And I had about nine to ten pictures.” They were unable to locate the photos or any of the emails related to transfers of the photos in question on the cellphone (Exhibit 6.14, page 338).

*Evidence of IB*

147. Investigations assistant, IB was in attendance at each of the referenced meetings with Ms. Eraga (October 30, 2020, March 26, 2021, March 29, 2021, and April 6, 2021). IB observed that at the end of the March 26, 2021 meeting (Exhibit 6.15, page 366) “[w]hen she was scrolling and she stops in November 2019 and all the photos are there...”
148. IB testified that during the March 26, 2021 meeting, she observed thumbnails of the photos of the disarray in Ms. Eraga’s home, on Ms. Eraga’s cellphone, under the heading, November 2019 and that she opened the details of one of the photos. Following the meeting, IB prepared written notes of her actions and observations, including the photos she had taken of what she observed on Ms. Eraga’s cellphone.
149. IB testified that at the March 29, 2021 meeting, prior to taking possession of Ms. Eraga’s phone, the photos she had observed at the March 26, 2021 meeting could not be found on Ms. Eraga’s phone.
150. IB testified that after returning Ms. Eraga’s cellphone on April 6, 2021, Ms. Eraga was unable to confirm where the photos had been located on the phone when they viewed them on March 26, 2021.

*Evidence of KR*

151. KR was qualified at the Hearing as an expert in Digital Forensic Investigations. On March 31, 2021, KR was retained by the LSA Investigations Department to conduct a forensic investigation on Ms. Eraga’s cellphone to answer questions regarding activity on the device related to the photos, emails, and the like that might have been deleted. KR completed a preliminary report on April 3, 2021. On March 1, 2022 the LSA posed a number of questions for clarification, to which KR responded in his Supplemental Report dated March 31, 2022(Exhibit 30, page 654).
152. Specific conclusions in KR’s Supplemental Report include (Exhibit 30, pages 657-658):

- a) The photos that had been attached to Ms. Eraga's March 7, 2021 email to SB "... could not be found in the photo gallery in their original form as when they had been taken."
- b) "I found depictions of the original photos individually stored in the Sent Items folder of the "WhatsApp" application...I have concluded that the original photos, or a version of the photos used by WhatsApp...had existed on the device as of at least March 26, 2021, at 15:30 hrs local Edmonton time. I can further conclude that the photos were then deleted from the device, as no other depictions were found on the device."
- c) "Because of the limited device access, I was unable to recover them. I also cannot know if there were more photos deleted from the device than the ones we noted."

#### *Evidence of Ms. Eraga*

153. On March 7, 2021 Ms. Eraga sent an email to SB (Subject: RE: EXHIBITS PICTURES NOT INCLUDED IN THE POLICE DISCLOSURE ABOUT 17 APRIL, 2019 INCIDENT) with 9 photos attached. The text of her email included the following (Exhibit 6.9):
- a) "I told my son to take photos of the incident with his phone, when I come he can transfer to my phone."
  - b) "My phone was taken from me the next day at about 9am on the 18<sup>th</sup> April for about 48 hours, the TEXT messages and the photos were in the phone they [the police] took from me. They NEVER looked at it or did not print all of the photos out."
154. During the March 26, 2021 interview Ms. Eraga confirmed that her son had sent her the photos after taking them. When Ms. Eraga required photos for KO, in November 2019, she asked that her son resend the photos to her, as she had a new phone. She added (Exhibit 6.12, page 259), "...but since that 2019, I've not change it. So the details is there...so I now send it to KO."

#### ***Arguments, Analysis and Decision***

155. Section 7.2.14 of the Code states:

A lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honour every trust condition once accepted.

156. LSA counsel's position is that:

- a) Ms. Eraga admits that on March 26, 2021 she gave an undertaking to the LSA that she would refrain from deleting any emails, text messages, photographs,

electronic documents or any other materials that was related to the investigation (Exhibit 6.15).

- b) When all of the evidence is taken together – what IB says she saw, what KR found in his analysis and the limitations on Ms. Eraga’s ability to explain what happened on her cellphone, it is more likely than not that there were photos showing disarray in her home in her photo gallery on March 26, 2021 which were deleted before the phone was turned in on March 30, 2021 to the LSA.

157. Ms. Eraga’s counsel:

- a) Submits that the Committee should be cautious about relying on IB’s account about the photos seen in the gallery on the cellphone on March 26, 2021 as what IB claims to have seen cannot be verified by an expert and because IB admitted she made a mistake in her testimony about whether she had only looked at Ms. Eraga’s phone when SB’s recorder was on at the time.
- b) Is critical of KR’s expertise for a number of reasons, including his lack of knowledge of how WhatsApp works.
- c) Submits that the only evidence of the relevant photos being deleted is that of KR and IB.

158. The Committee finds that, on a balance of probabilities, at the time of giving the undertaking on March 26, 2021, photos of the disarray in Ms. Eraga’s home were on her cellphone based on the following:

- a) They were the subject of conversation during the March 26, 2021 interview.
- b) Ms. Eraga’s verbal confirmation that the photos were on the particular cellphone she had in her possession.
- c) IB observed the photos on March 26, 2021 as Ms. Eraga scrolled through them.
- d) The expert, KR, concluded “...that the original photos, or a version of the photos used by WhatsApp...had existed on the device as of at least March 26, 2021.”

159. There is no dispute that the photos were not on the cellphone on March 30, 2021 when Ms. Eraga gave her phone to the investigators, pursuant to the directions of the investigation order. The Committee finds that it is more likely than not that the photos that were on the phone on March 26, 2021 were deleted.

160. The Committee finds KR to be a candid, credible witness and relies on his expert opinion. While the expert evidence could not confirm the specific properties of the photos (date and time taken) or the camera on which they had been taken, the evidence did conclude that the photos were then deleted from the device, as no other depictions were found on the device and concluded the photos had existed on Ms. Eraga’s cellphone and that they could have been sent from another device.



161. The Committee finds IB to be a candid, credible and reliable witness who provided clear and consistent testimony, supported by contemporaneous notes and the transcripts of interviews with Ms. Eraga.
162. In light of the totality of the evidence, the Committee cannot rely on Ms. Eraga's explanations as her explanations were evasive, inconsistent from one conversation to the next, are contradictory to each other, and often, implausible (as per *F.H. v. McDougall*).

#### *Decision*

163. The Committee finds that it is proven that Ms. Eraga failed to fulfil an undertaking to the LSA to preserve electronic data on her cellphone, in breach of Section 7.2-14 of the Code. Given the significance of undertakings for the legal profession, her actions cause the standing of the profession harm and are incompatible with the best interests of the public. The Committee finds the conduct to be deserving of sanction.

#### **Concluding Matters**

164. In conclusion, the Committee finds citations 1, 2, 3, 4, and 5 are proven on a balance of probabilities and finds in relation to each citation the conduct to be deserving of sanction.
165. Accordingly, a sanction hearing will be set to deal with remaining matters, including sanction, costs, notices, and any other outstanding issues.
166. The exhibits and other hearing materials, transcripts and this Hearing Report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee. However, redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated December 23, 2022.

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Louise Wasylenko, Chair

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Ronald Sorokin

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Edith Kloberdanz