

**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 TYLER SHANDRO, KC  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Bud Melnyk, KC – Chair and Bencher  
Edith Kloberdanz – Public Adjudicator  
Grant Vogeli, KC – Bencher

**Appearances**

Ken McEwan, KC, Kyle Thompson and Evan Cribb – Counsel for the Law Society of Alberta (LSA)  
Grant Stapon, KC – Counsel for Tyler Shandro, KC

**Hearing Dates**

January 24, 25, 26, June 12, 13 14 and September 5, 2023

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Overview**

1. The following citations were directed to hearing by the Conduct Committee Panel on January 28, 2022:
  - 1) It is alleged that Tyler Shandro, KC, attended the private residence of a member of the public, behaved inappropriately by engaging in conduct that brings the reputation of the profession into disrepute, and that such conduct is deserving of sanction.
  - 2) It is alleged that Tyler Shandro, KC, used his position as Minister of Health to obtain personal cell phone numbers, contacted one or more members of the public outside of regular working hours using that information, and that such conduct is deserving of sanction.
  - 3) It is alleged that Tyler Shandro, KC, responded to an email from a member of the public addressed to his wife by threatening to refer that individual to the authorities if they did not address future correspondence to his office as Minister of Health, and that such conduct is deserving of sanction.  
(collectively, Citations)

2. On January 24, 2023, the Hearing Committee (Committee) convened a hearing into the conduct of Tyler Shandro, KC, based on these three Citations.
3. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Shandro, for the reasons set out below, the Committee finds Tyler Shandro, KC, not guilty of conduct deserving sanction on Citations 1, 2 and 3 pursuant to section 71 of the *Legal Profession Act*<sup>1</sup> (Act).
4. A member of the Committee, while agreeing with most of the Committee's decision, provides a partial dissent below.

### **Preliminary Matters**

5. There were no objections to the constitution of the Committee and a private hearing was not requested so a public hearing into Mr. Shandro's conduct proceeded.

### **Tyler Shandro Background**

6. Tyler Shandro was called and admitted as a member of the LSA on June 30, 2005. During his legal career, Mr. Shandro served as a member of a number of boards including the Criminal Injuries Review Board, the Municipal Government Board and the National Parole Board.
7. Mr. Shandro has been a member of the United Conservative Party of Alberta (UCP) since May 18, 2018 and assisted in its formation. Mr. Shandro had been a member of the prior Progressive Conservative party since 1992 until its merger with the UCP.
8. On April 16, 2019 Mr. Shandro was elected as a member of the Legislative Assembly of Alberta. Following his election as an MLA, he was sworn in as the Minister of Health on April 30, 2019, which ministerial post he held until September 21, 2021 when he was appointed Minister of Labour and Immigration. On February 22, 2022 Mr. Shandro became the Minister of Justice.
9. Mr. Shandro ceased practicing law upon his election as an MLA. However, Mr. Shandro maintained his active status with the LSA so that he might continue to practice law at the end of his political career.

### **Jurisdiction**

10. Mr. Shandro during the course of the hearing raised an argument that the LSA lacks jurisdiction to govern the private conduct of Mr. Shandro as a politician. This Committee declined to hear this argument during the course of the proceedings but did provide that it was an issue that could be addressed in final argument.

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<sup>1</sup> *Legal Profession Act*, RSA 2000, c. L-8.

11. The arguments by Mr. Shandro on this issue consist of the following:
  - (a) That this Committee has the authority to summarily dismiss the Citations.
  - (b) That the Citations have been brought for an improper or collateral purpose.
  - (c) That the *Act* does not give the LSA authority to deal with conduct that is purely private or extra-professional activity.

#### *Summary Dismissal*

12. Mr. Shandro argues that this is a matter since the onset of the investigation which should not have been undertaken by the LSA. Mr. Shandro cites in his argument Rule 85(6) of the Rules of the LSA (Rules), which provides that following a review under section 53 of the *Act*, the Executive Director “may direct the Summary Dismissal of a matter when one or more” criteria are established. Furthermore, Mr. Shandro argues that this Committee should have the ability to summarily dismiss for want of jurisdiction just as the Executive Director does.

#### *Improper Purpose or Collateral Purpose*

13. Mr. Shandro further argues that the complaints are an attempt to curtail political action and that the complaints should be dismissed on that basis and his arguments are as follows:
  - (a) All of the Citations arose as a result of parties being unhappy with the Government of Alberta (Government) and Mr. Shandro as the Minister of Health.
  - (b) None of the parties who had direct dealings with Mr. Shandro were authors of the complaints to the LSA.
  - (c) The complaints were all politically motivated and arose directly as a result of Mr. Shandro’s actions as an elected MLA.
  - (d) The complaints only arose after the fee agreement with the Alberta Medical Association (AMA) was cancelled.
  - (e) The complaints by members of the medical profession were being made not because Mr. Shandro was a lawyer, but rather because of his political actions.
  - (f) These were weaponized complaints about Mr. Shandro’s political policy or actions brought by persons who had nothing to do with Mr. Shandro in the practice of law.

(g) Mr. Shandro referenced a news report from April 4, 2020 where one of the doctors who testified is quoted as saying he would “withdraw the complaint if he could speak with Shandro and if the Ministry would rebuild the relationship between the government and the doctors in the province.”

(h) Reference is made to a number of other parties who had made complaints against Mr. Shandro, but which complaints were dismissed by the Executive Director. These individuals had no personal dealings with Mr. Shandro and these unmerited complaints were directed against Mr. Shandro in a clear effort to challenge or complain about his political actions.

14. Mr. Shandro points out that Rule 85(6) of the Rules specifically requires a determination of whether a complaint is made for a collateral or improper purpose.

*Private and Extra-Professional Activity*

15. Mr. Shandro cites part of the commentary under section 2.2-1 of the Code of Conduct (Code) (which deals with “integrity”) as follows:

[4] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer’s professional integrity.

16. Mr. Shandro asserts that nothing in his conduct raises any issues about his integrity or trustworthiness or the reputation of the profession and that these proceedings should have been dismissed at the investigative stage.

17. Mr. Shandro argues that lawyers in public office are only subject to review where integrity issues are raised. Mr. Shandro makes reference in his arguments to section 7.4 of the Code and the related commentary:

The Lawyer in Public Office

Standard of Conduct

7.4-1 A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

Commentary

[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is

in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe ethical standards.

[2] Generally, the Society is not concerned with the way in which a lawyer holding public office carries out official responsibilities but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

[3] Lawyers holding public office are also subject to the provisions of Rule 3.4 (Conflicts) when they apply.

18. Mr. Shandro maintains that his only political conduct which involved "official duties" were his telephone calls with the two doctors under Citation 2. As such there is nothing in Mr. Shandro's conduct in office which reflects on his integrity or professional competence. Furthermore, nothing amounted to a failure to observe the LSA's ethical standards.
19. Mr. Shandro also refers to the LSA Pre-Hearing and Hearing Guideline (Guideline) regarding the "types of conduct" which may be fairly considered by a hearing committee. The argument put forth is that in order for Mr. Shandro to be sanctionable his conduct must be "dishonourable".

#### *Analysis and Findings on Jurisdiction and Summary Dismissal*

20. The jurisdiction of the LSA is determined by section 49 of the *Act*, which states:

49(1) For the purposes of this Act any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or the members of the Society, or

(b) tends to harm the standing of the legal profession generally, is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

21. Mr. Shandro was a member of the LSA during the time when the Citations arose. The jurisdictional documents were admitted and on the basis of section 49 of the *Act*, this Committee has proper jurisdiction to deal with the Citations.
22. With respect to the summary dismissal argument, this Committee is a creature of statute and in particular section 51(1)(a) of the *Act* creates a Conduct Committee and section 52 grants the Benchers the right to make rules. Part 3 of the Rules sets out Rules that govern the complaints process. Nowhere in those Rules is a hearing committee or Conduct Committee granted any authority to summarily dismiss a matter. That authority rests exclusively with the Executive Director.

23. This Committee does not have authority to question either the investigative process, or the authority granted to the Executive Director. Once a complaint has been reviewed by the Executive Director the matter is referred to a Conduct Committee, which then determines the appropriate citations. Section 53 of the *Act* vests power in the Executive Director to summarily dismiss a complaint. It does not give this Committee that authority.
24. As regards the claim of improper or collateral purpose, we certainly appreciate that the complaints arose in a heated political environment. However, even where a complainant has a political agenda, that does not by itself mean they do not have valid concerns about the conduct of Mr. Shandro. The complainants may have brought the complaints forward for a collateral purpose, namely political influence, but that does not by itself determine that the conduct did not amount to sanctionable misconduct.
25. The issue of off-duty conduct will be addressed further in this decision. Suffice it to say that the arguments around off-duty conduct are matters that are subject to consideration by a hearing committee, but only after all of the evidence has been considered. There is no basis for raising this as a preliminary application since that would effectively amount to allowing Mr. Shandro to have “two kicks at the cat”.
26. Integrity and trustworthiness are certainly important aspects of a lawyer’s character, but not all conduct matters involve or touch upon integrity. To confine the conduct of a politician to integrity matters is far too restrictive and completely inconsistent with the *Act* and the Code.
27. There is also no merit to the argument that the LSA should not be concerned with purely private or extra-professional activity. There is ample legal authority (which is addressed later in this Hearing Committee Report) that provides that off-duty conduct of a lawyer can amount to sanctionable conduct. Many of these cases deal with conduct arising in private situations or extra-professional activities.
28. A lawyer in public office may find his or her conduct being questioned by the manner in which they carry out their official duties, but also by virtue of their actions as a private citizen. Section 7.4-1 of the Code does not limit a politician’s conduct to only matters arising from official duties.
29. Mr. Shandro argues that paragraphs 198, 200, 201, 202 and 203 of the Guideline reference factors that a hearing committee considers in determining jurisdiction. This Committee does not find it appropriate to use sanctioning factors to determine jurisdiction.
30. While the conduct at issue arose while Mr. Shandro was the Minister of Health, that does not oust this Committee’s jurisdiction. Section 49 of the *Act* clearly states that conduct outside of a member’s practice as a lawyer is still subject to the purview of the LSA. The arguments raised by Mr. Shandro about the conduct arising from his political role are valid arguments to raise, but they do not go to the issue of jurisdiction. Rather, these

“nexus” issues are considerations that this Committee must consider in determining if the conduct was connected to Mr. Shandro’s role as a lawyer versus his political position. This is an argument that goes to the merits of the conduct and not to jurisdiction. For the reasons set out above, Mr. Shandro’s preliminary applications are dismissed. The Committee now turns to assess the Citations as addressed during the hearing.

## **Political World in 2020**

31. During the hearing, evidence was provided about the political environment during the early part of 2020. On March 7, 2020 the Government had declared a state of emergency due to the pandemic. It was in this environment that the Citations arose.

### *Alberta Medical Association*

32. In 2011-2012 the Government entered into an agreement with the AMA regarding how physicians are paid. Most physicians in Alberta are private, independent contractors and they are paid by the Government according to a specified rate schedule called a Schedule of Medical Benefits as prescribed under the *Alberta Health Care Insurance Act*.<sup>2</sup> This is a form of fee-for-service which contains thousands of billing codes and determines how physicians are paid.
33. The AMA is the representative for physicians, and they negotiate on behalf of doctors. One of the agreements between the AMA and the Government provided for a mechanism by which billing codes could be amended. On or about February 20, 2020, the Government, acting through cabinet, terminated this rate payment agreement pursuant to a termination clause.
34. In conjunction with this termination, the Government put forward proposals to modify the physician’s fee schedule. One of the more contentious issues was the fee code for complex modifiers, which allowed doctors to be compensated for lengthier visits with more multifaceted patients. Other issues included the cancellation of medicals for senior drivers and alterations to fees for in-hospital visits.
35. As a result of the contract termination, Mr. Shandro, as the then-Minister of Health, faced complaints and political pressure to reinstate that agreement. The response from the AMA, doctors, the media and the public, according to Mr. Shandro, was “extreme” since they viewed the delisting of codes as an access to health care issue.
36. As detailed below, both Mr. Shandro and his wife, A.S., had been receiving threats of physical violence which had arisen from “conspiracy” allegations concerning Vital Partners Inc. (Vital Partners), a company owned in part by A.S. Mr. Shandro brought this

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<sup>2</sup> *Alberta Health Insurance Care Insurance Act*, RSA 2000, c. A-20.

to the attention of the AMA. On March 20, 2020 the AMA issued a statement on their website that indicated that cyber-bullying and personal attacks on public officials is never acceptable.

*Vital Partners Inc.*

37. Mr. Shandro's spouse, A.S., along with her sister, started Vital Partners in 2014. A.S. was a director of Vital Partners the company is 50% owned by a company controlled by the sister of A.S., and the other 50% is owned by Shandro Holdings Inc. This latter company is owned 50% by A.S. and 50% by Mr. Shandro.
38. According to both A.S. and Mr. Shandro, he has never been a director of Vital Partners, and he has never been involved in the day-to-day operations of its business.
39. Vital Partners is a brokerage firm that assists small businesses in the development of benefit plans and programs for their employees, including private health insurance benefit plans. The company also provides services for clients to set up health spending accounts. Vital Partners is in the business of obtaining benefit packages for employers that would provide things like dental, prescription drug coverage, physiotherapy or massage. A.S. would consult with businesses to help them source insurance companies that could provide the appropriate benefits package. None of the benefits would in any manner be covered by the *Canada Health Act* since this legislation expressly provides that benefit programs cannot replace publicly funded healthcare.
40. Mr. Shandro stated that Vital Partners did not compete with any Government supplied services through Alberta Health Services (AHS). While this Committee was not tasked with determining if Vital Partners benefited in any manner from the cancellation of the agreement with the AMA, there was certainly no evidence before the Committee to suggest that any such benefit arose. We note this since it is germane to the conduct and actions of Mr. Shandro during the time when the Citations arose.

*Ethics Commissioner*

41. The Committee heard from the Ethics Commissioner, M.T., who is an independent officer of the legislature. The role of the Ethics Commissioner is to administer the *Conflicts of Interest Act*<sup>3</sup>. This statute "tempers the behaviour and activities of MLAs." It was in this capacity that Mr. Shandro was obligated to disclose any business interests so that M.T. could determine if there is a conflict of interest.
42. M.T. gave evidence that Mr. Shandro approached her shortly after his election in 2019 about Vital Partners. As a result of the investigation by M.T. she learned that Vital Partners was a "company that provided group packages to businesses for things that

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<sup>3</sup> *Conflicts of Interest Act*, RSA 2000, c C-23.



weren't covered under the *Canada Health Act*." This was referred to by M.T. as a "benefits package" which companies will sometimes obtain and that it "would probably include things like massage therapy, physiotherapy, probably eyeglasses, sometimes dental." M.T. stated: "There are a number of things that it includes that are not covered by the provincial government."

43. In order to avoid any tax consequence from selling shares, Mr. Shandro was advised by the Ethics Commissioner to complete a blind trust agreement, which he did. The effect of this agreement was that the shares of Mr. Shandro in Shandro Holdings Inc. were held in trust by A.S. The trust agreement was approved by M.T.
44. In March 2020, M.T. started receiving third-party complaints about potential conflicts of interest regarding Mr. Shandro. These complaints arose from one of the changes made by the Government regarding coverage under Alberta Blue Cross for seniors. Under the policy at that time, a person attaining age 65 was entitled to coverage, and if their spouse was under age 65, that spouse could also receive coverage. The change meant that the under age 65 spouse would no longer be covered.
45. As a result of these complaints, M.T. again examined the website of Vital Partners to determine if any benefit could flow to Mr. Shandro. According to Mr. Shandro, the website had a button for "personal coverage" that directed you to a page that said you needed to contact Blue Cross for individual coverage.
46. As a result of M.T.'s investigation she concluded as follows:

That there was no conflict of interest because they didn't sell individual packages to people that would have been cut off Blue Cross. Those people would have had to, if they needed coverage, get it from Blue Cross and pay for it. There would have been a premium.
47. M.T. did not do a report since nothing raised any "red flags" and she was "satisfied that there was no conflict." M.T. did not do an investigation because there was nothing to investigate.

### *Security Concerns*

48. At the beginning of March 2020, there were increasing personal social media attacks against Mr. Shandro because of his role as the Minister of Health. Evidence was heard from the Sergeant-at-Arms, N.L., who is the head of the Legislative Assembly security services and provides security for visitors and legislative staff. The Sergeant-at-Arms stated that Mr. Shandro's file with Protective Services was between 900 and 1,000 pages. These threats included death threats, threats of physical violence and threats of sexual violence against Mr. Shandro's spouse.

49. Further evidence was given by N.L. as follows:
- (a) N.L. was the Superintendent of the Executive Protection Unit and Legislative and Government Centre security services. Protective Services is a division of the Sheriff's Office and which functions to assess threats against members of the Legislature. The Executive Protection Unit is responsible for protection of the Premier, Lieutenant Governor and senior Government officials.
  - (b) The Sergeant-at-Arms is responsible for the Legislative Assembly security services. The Sergeant-at-Arms is responsible for all members of the Legislative Assembly and all constituency offices.
  - (c) Each of these branches of Protective Services conduct their own evaluation on any inappropriate contacts or communications and where warranted to conduct a follow-up for a threat assessment.
  - (d) In March of 2020 there was an escalation of inappropriate contact and communications directed at Mr. Shandro. This was communicated to other agencies. In particular, N.L. notified the Calgary Police Service (CPS) about the concerns of A.S. In addition, A.S. was given a handbook that dealt with best practices regarding security issues.
  - (e) A large number of the communications directed to Mr. Shandro were not threats per se but rather requests that he resign as Minister of Health.
50. The Committee heard from Mr. Shandro about other examples of threats. About a dozen protestors showed at his Christmas constituency office social. These protestors were not only yelling at Mr. Shandro, but also at his wife and two young children saying that their father is a "scumbag". Someone attended at the offices of A.S. with the intent of physically attacking A.S. One physician claimed that Mr. Shandro had "killed another physician".
51. A.S. stated that in early March of 2020 she started receiving allegations that her company was going to benefit from the proposed delisting of certain publicly insured coverages. This was viewed by some as a privatizing of healthcare which would benefit Vital Partners since the business was seen by some as a private healthcare company. One of the issues arose regarding Telus Health, which is a secure technology platform that allows doctors to communicate using FaceTime with patients. This was a service offered in British Columbia and due to the pandemic, the Alberta Government was also implementing this platform. A.S. had posted on the company newsletter about virtual care, which is part of some insurance carrier platforms. For example, Sun Life uses a dialogue program called Lumino. This resulted in claims that Vital Partners owned Telus

Health. According to A.S. the purpose of the company newsletter was to advise clients that they should make employees aware that virtual healthcare is now available from the publicly funded system.

52. A.S. indicated that starting around March 10, 2020 she began receiving threatening emails and voicemails through the company website. These included the following:

(a) “die, die, die, you fucking bitch”

(b) “watch your back when you go to the office” and “she should watch her back”

(c) Another email sent March 19, 2020 stated:

You’re all sons of bitches. Your company is shit. I hope your company fails and you pass away alone. Pieces of shit you are. I hope your husband cheats on your on a much better-looking girl or even a guy.

(d) There were also threats of physical and sexual violence.

53. Of course, A.S. found this terrifying and she relayed her concerns to the Sergeant-at-Arms and to Mr. Shandro’s assistant, C.H. At one point on March 20, 2020, A.S. called her sister and told her to get out of the office due to some of the threats. On March 20, 2020, the police interviewed A.S. about a specific threat. Both A.S. and the children were upset and crying. At one point the car tires of A.S. had been punctured. Later that same day the CPS came to the Shandro home to discuss security measures and precautions. A.S. was advised that all of the threats up to March 27, 2020 were “threatening, but not threats”.

### **Evidence Related to the Citations**

54. Turning to the evidence related to the Citations, we will present same chronologically rather than by Citation number. For ease of reference, and without attaching any meaning, we will refer to Citation 1 as the “Sidewalk/Driveway Incident”, Citation 2 as the “Telephone Calls” and Citation 3 as the “Email Warning”.

### **Citation 2 Evidence: Telephone Calls**

55. Citation 2 arose from two separate telephone conversations that Mr. Shandro had with two doctors on February 26 and 27, 2020. The conduct in question is whether Mr. Shandro used his position as Minister of Health to obtain the cell numbers of the two doctors, and to then contact those doctors outside of regular working hours.

*Events of February 26, 2020*

56. On February 26, 2020, Mr. Shandro and the Premier were attending a media funding announcement. Since this announcement was to be held at a hospital, it was necessary for AHS to be involved in coordinating the event because AHS had control of hospitals. This media announcement was taking place six days after the termination of the AMA agreement.
57. Following the announcement, Mr. Shandro and the Premier were escorted through a hallway to a waiting freight elevator where Mr. Shandro encountered two individuals, who would later be identified as Dr. L. D. and Dr. J.J. Mr. Shandro stated that one “fellow was quite agitated” and he was holding a piece of paper from which he was “yelling” as he read. The other person was “chiding” Mr. Shandro for not stopping to speak with the physicians who were in attendance at the hospital and for being a “liar and a cheat”. Mr. Shandro stated that he did want to stop and speak with these persons, but the Premier’s security detail was ushering him into the open elevator. Dr. J.J. did enter the elevator, where he continued to read from his paper, but he was subsequently “shoved” out of the elevator by security.
58. Dr. L.D.’s evidence was that she had become aware that Mr. Shandro, who she had never met before, and the Premier would be making a funding announcement at a hospital on February 26, 2020. Dr. L.D. felt that this would be an opportunity to “try and express some of [her] concerns to Minister Shandro.” At the hospital the Premier and Mr. Shandro were escorted through a back hallway which would come back into the main hallway where Dr. L.D. and other doctors (including Dr. J.J.) had been waiting. Dr. L.D. and a couple of other doctors caught up to the Premier and Mr. Shandro and Dr. L.D. called out to Mr. Shandro something along the lines of, “why won’t you speak to doctors who work in this hospital”. Dr. L.D. also called Mr. Shandro a liar and a cheat.
59. Dr. J.J. testified that upon learning of the upcoming hospital appearance by Mr. Shandro and the Premier on February 26, 2020, Dr. J.J. constructed a statement with the intention of appearing at the hospital to deliver the statement to Mr. Shandro and the Premier, but also to make a public statement. Like Dr. L.D., Dr. J.J. waited outside the atrium where the public announcement was being made and he also moved to the elevator where Mr. Shandro was heading.
60. Dr. J.J. had prepared a list of concerns that he wanted to voice in the “theatre of the public audience.” Dr. J.J. was aware that Dr. L.D. was at the hospital on the day in question, but he did not coordinate in any way with Dr. L.D. The purpose of the doctor being at the hospital was to engage in a discussion with the involved politicians and to express his views with a public audience. Dr. J.J. indicated that in the heat of the moment he was focused on reading his statement and was not paying attention to what Dr. L.D. might be saying. He denies yelling, but admits he was speaking loudly.

### *Obtaining Telephone Numbers*

61. On the drive back to Edmonton on February 26, 2020, Mr. Shandro advised that he texted C.T., who was the Vice President of Community Engagement and Communications with AHS and had been responsible for handling the logistics at the hospital funding announcement. Mr. Shandro asked C.T. whether she knew the individuals that were at the elevator. Mr. Shandro felt that these two persons wanted very badly to engage with him, and he wanted to provide them with that opportunity. C.T. responded to Mr. Shandro by providing the names of Dr. L.D. and Dr. J.J., along with their phone numbers. Mr. Shandro and C.T. had no discussion about the phone numbers, whether they were cell numbers or business numbers, or if the physicians expressly indicated a desire to speak with Mr. Shandro.
62. The Committee also heard from C.T. who advised that AHS is a distinct entity from the Government (i.e., Alberta Health), though the two work closely together to deliver healthcare services. The media announcement about further hospital funding was being led by the Government, but since it was at a hospital, AHS handled logistics. C.T. stated that she was aware of persons outside of the atrium, where the media announcement was being made, who wished to speak with Mr. Shandro. Following the news conference, C.T. remained in the atrium and did not hear the interactions involving Dr. L.D and Dr. J.J.
63. Following the event, C.T. received a text from Mr. Shandro asking who the doctors were that had followed Mr. Shandro to “yell” at him. The text message from Mr. Shandro to C.T., as recited at the hearing by C.T., was as follows:
- Mr. Shandro: Who was the doc who followed me to yell at me?  
I am willing to talk to him? Can you find out?  
About our age, brown hair, a buttoned-down blue shirt with a pattern on it.
- C.T.: I will get his name and number. I do know who you mean.
- Mr. Shandro: And the woman with shorter brown hair, a stethoscope and no scrubs. Not sure if a doctor or nurse. She called me a liar and a cheat. If you know her, I’m happy to speak to her.
64. C.T. responded to the text with the names and telephone numbers of the two doctors, who were in fact Dr. L.D. and Dr. J.J. In the text messages Mr. Shandro did not expressly ask for telephone numbers, but rather C.T. volunteered to obtain the numbers. C.T. connected with another AHS staff member who retrieved the names and phone numbers, and passed that information along to C.T., which she then forwarded to Mr. Shandro. C.T. felt that consent to release the doctors’ numbers was implied from the

circumstances of the doctors wanting to speak with Mr. Shandro and she assumed that the parties wanted to connect.

65. Mr. Shandro's recollection was that he wanted to make himself available if either Dr. L.D. or Dr. J.J. wanted to speak with him. After receiving the phone numbers from C.T. Mr. Shandro assumed that both doctors wanted to speak with him, but at no time did Mr. Shandro confirm that with C.T. Also, Mr. Shandro did not ask C.T. where she obtained the phone numbers. Mr. Shandro did not know that AHS retained doctor telephone numbers for emergency and on-call purposes only.

*Dr. J.J. Telephone Call*

66. Mr. Shandro's evidence about his telephone contact with Dr. J.J. was as follows:
- (a) Sometime on February 27, 2020 between 4:30 p.m. and 7:30 p.m. (it was daylight) Mr. Shandro was driving back to Calgary from Edmonton. He called Dr. J.J. first, since this doctor appeared to be the most upset and appeared to have specific concerns about the AMA agreement termination.
  - (b) Mr. Shandro stated that it was his practice not to call anyone after 8:00 p.m.
  - (c) Mr. Shandro viewed the call, which was about half an hour in length, as a "positive conversation". Mr. Shandro said that he told Dr. J.J. that he felt bad that he was shoved off the elevator.
  - (d) At some point Dr. J.J. did ask how Mr. Shandro got his number, to which Mr. Shandro advised that he received it from AHS. Dr. J.J. did not express any concerns in this regard.
67. Dr. J.J. testified about the telephone call with Mr. Shandro as follows:
- (a) On February 27, 2020 Dr. J.J. received a telephone call on his personal cellphone around 9:00 p.m. from Mr. Shandro, though Dr. J.J. did indicate that the call could have been a little earlier than that hour. When asked if the call could have been around 7:00 p.m. Dr. J.J. testified that this was not very likely since he was already in bed reading a book, which would usually be late in the evening.
  - (b) Dr. J.J. answered the phone and asked who was calling. Mr. Shandro identified himself and asked Dr. J.J. if he had minute to talk. Thereafter the two had about a twenty-minute conversation about issues relating to the concerns revolving around the health care system. The tone of the conversation started as collaborative but as it progressed Dr. J.J. felt that Mr. Shandro was giving a

“canned response”. While Dr. J.J. and Mr. Shandro were expressing viewpoints and engaging in a positive conversation, Dr. J.J. felt that he was not actually being heard, but he did thank Mr. Shandro for the call.

(c) Dr. J.J. asked Mr. Shandro if he could call him at another time, to which Mr. Shandro gave permission. Thereafter Dr. J.J. did text Mr. Shandro a number of times and Dr. J.J. did continue to engage with Mr. Shandro after the call of February 27, 2020.

68. Dr. J.J. stated that he felt surprised by the call and that he felt that the purpose of the call was “someone using their power to gain personal information” about Dr. J.J. and “letting you know that they can get it.” Dr. J.J. was aware that Mr. Shandro was a lawyer and that by virtue of his legal knowledge he would be able to gain access to confidential information regarding Dr. J.J.
69. At some point Dr. J.J. did file a complaint with the Privacy Commissioner, but Dr. J.J. advised Mr. Shandro that he would withdraw the complaint if Mr. Shandro would “collaborate with the stakeholders in the health care system instead of acting without collaboration”. Dr. J.J. withdrew the complaint. Dr. J.J. initiated contact with the press regarding his concerns. Dr. J.J. also stated that going public about the telephone call was a “mechanism” by which his concerns could be made public.

#### *Dr. L.D. Telephone Call*

70. After ending the call with Dr. J.J., Mr. Shandro proceeded to call Dr. L.D., and he left her a voice mail message including his phone number. This was corroborated by Dr. L.D., who stated that after returning home from attending the hospital rally, she had a voice mail message on her personal cell phone (unlisted) from Mr. Shandro. The message, which was left around 7:30 p.m., was that Mr. Shandro had obtained the cell number from AHS and that Dr. L.D. was welcome to call Mr. Shandro back to discuss Dr. L.D.’s concerns.
71. Dr. L.D. advised that the cell phone was used for personal communications, but also it was used by the hospital to contact Dr. L.D. for on call hospital maternity care.
72. Before deciding what to do, Dr. L.D. contacted the AMA for advice and they suggested it would be acceptable for Dr. L.D. to call Mr. Shandro back and that Mr. Shandro was known to try and engage doctors directly to discuss the issues. Dr. L.D. prepared notes about her concerns prior to calling Mr. Shandro.
73. Dr. L.D. stated that she called Mr. Shandro on February 28, 2020. It started out friendly and lasted some 15 to 20 minutes and primarily focused on a discussion of the concerns of the doctor. Dr. L.D. did not recall asking Mr. Shandro how he got her number.

74. According to Mr. Shandro, Dr. L.D. provided him with some feedback relating to the termination of the AMA agreement, but this was only about a five-minute conversation. The conversation with Dr. L.D. was brief and she asked Mr. Shandro a few questions.
75. On March 1, 2020 Dr. L.D. and Mr. Shandro exchanged text messages following their phone conversation. On June 3, 2020 Dr. L.D. advised Mr. Shandro by text message that she wanted the AMA to remain as her official representative in negotiations. Thereafter the two had no further contact.
76. Dr. L.D. testified that she was “afraid and intimidated” by Mr. Shandro but did not say anything about these fears during the conversation or the subsequent text messages. Dr. L.D. also testified that she was in disbelief and fearful that the Government had “tracked” her down only a short time after she had said “something insulting” to Mr. Shandro. Dr. L.D. said she was fearful of repercussions from the Government that could result in denials of payment claims. In the complaint to the LSA, which referenced a news article, Dr. L.D. was quoted as saying that she felt “intimidated” and that, “[t]he Health Minister tracked me down.” Dr. L.D. knew that Mr. Shandro was a lawyer and that as a result of her interactions with him said that she “wouldn’t trust him as a lawyer.” However, Dr. L.D. acknowledged that she was speaking with Mr. Shandro as the Minister of Health.
77. In correspondence to the LSA, Mr. Shandro, when addressing his communications with Dr. L.D., stated:
- The other physician did not object to my telephone call but indicated she could not take my call that day, and has not called me subsequently.
78. On cross-examination Mr. Shandro admitted that this statement was in error since he in fact had a subsequent telephone conversation with Dr. L.D. While the correspondence was not drafted by Mr. Shandro, he did review and approve it. Mr. Shandro understood his obligation to be honest and complete with the LSA, but he could not recall his mindset at the time of the writing of the statement.
79. When Mr. Shandro was asked about the perceived imbalance of power when someone is called by a Minister, he indicated that it was his experience that those persons were “always impressed” that a Minister would take the time to call them personally.

#### *Disclosure of Cell Numbers*

80. A fourth witness, V.L., was called. This witness was the Chief Privacy Officer and Legal Counsel for AHS. V.L. clarified that the Minister of Health sets policies and legislative matters while the role of AHS is to provide health services. They are separate entities



and AHS has no direct reporting obligation to the Minister of Health (except for reporting privacy breaches).

81. V.L. had prepared an internal report where she investigated concerns about privacy breaches relating to the disclosure of the personal cell phone numbers of the two doctors. In the report V.L. concluded: "I believe both [...] and [...] thought that they were being helpful in providing the telephone numbers to enable [Mr. Shandro] to contact the Physicians, in order to continue the conversations instigated by the Physicians at the Event."
82. V.L. stated that it was a "fact that we shared personal numbers without explicit consent of the doctors, that was our failing as an organization that I was pointing out in our investigation for the benefit of our Board and our leadership as lessons." The upshot of the evidence was that AHS should not have released the personal cell numbers of the two physicians. It is the practice of AHS to treat personal telephone numbers as private and not to disclose same without consent.
83. Mr. Shandro was never advised whether the disclosed numbers were in fact business or cell numbers, or that the physicians had or had not consented to the release of their numbers. V.L. stated in her evidence:

Q: So if there was any breach of confidentiality in connection with this, it occurred at the AHS level and not at Minister Shandro's level from the context of your investigation, correct?

A: That is correct. I was only investigating the conduct of AHS personnel.

### **Citation 3 Evidence: Email Warning**

84. Citation 3 alleges that Mr. Shandro responded to an email from a member of the public addressed to Mr. Shandro's wife by threatening to refer that individual to the authorities if they did not address future correspondence to his office as Minister of Health.
85. The principal witness was J.F., who had worked in the areas of domestic violence and with people with disabilities. J.F. also worked for a few years as the full-time constituency office manager for two different Calgary ridings. J.F. indicated that she first met Mr. Shandro at an appeal hearing before the Criminal Injuries Board, which appeal decision was done by Mr. Shandro. J.F. was greatly impressed by Mr. Shandro's handling of this matter. This was when Mr. Shandro was a practicing lawyer and not yet an elected MLA. J.F. then encountered Mr. Shandro when he was representing a group before the Alberta Environmental Appeal Board. J.F. stated that she was again very impressed by Mr. Shandro. After that encounter, Mr. Shandro reached out to J.F. to see if she would support him in his election bid.

86. On Friday, March 20, 2020, after seeing all of the media coverage regarding Mr. Shandro, J.F. sent an email at 10:55 a.m. to Mr. Shandro's wife, A.S., which stated:

Dear [A.] – you and your husband Tyler Shandro (who I used to have a tremendous amount of personal and professional respect for up until 2020) are considered to be in a conflict of interest by Albertans. We will not forget! Sincerely [J.F.]

87. J.F. sent this email because she felt that there was an obvious conflict of interest. J.F. felt that as the Minister of Health the "delisting" of public health care coverage would be a "blatant" conflict given that Mr. Shandro's spouse was in the "business of private health insurance." J.F. wrote directly to A.S. because A.S. and Mr. Shandro were a couple, and both were owners of Vital Partners. J.F. stated that the reference to "[w]e will not forget" was a reference to the election polls.
88. A.S. testified that she was "disgusted" by the J.F. email, which was addressed to her by first name, from a person she had never met before. A.S. took the email as a threat and because the J.F. email indicated that she knew Mr. Shandro, A.S. forwarded it to her husband.
89. This email from J.F. was forwarded by A.S. to Mr. Shandro shortly after A.S. received it and Mr. Shandro, at 11:17 a.m. on March 20, 2020, sent the following reply email to J.F.:

[J],

Sending threatening emails to my wife is completely inappropriate and must stop.

If you want to believe lies about her on social media, that's up to you. But you can send your threatening email to this office and this office only.

Email her again and it will be referred to Protective Services.

Tyler Shandro, Minister of Health

90. At 1:33 p.m. on March 20, 2020, J.F. sent the following reply email to Mr. Shandro, which email was also forwarded to the leader of the official opposition, the Mayor of Calgary, the CPS, the then Sergeant-at-Arms and a party staffer in Mr. Shandro's office, C.D. :

Dear Tyler Shandro and [C.H.], son of [A.H.] I suppose,

I reached out to a public contact address at [https...] to let [A.S.] and you, Tyler Shandro, know that I believe that a private health insurance company as co-owner and owner are for the Minister of Health a conflict of interest as seen by Albertans

and that it would be remembered. I also stated that I held you, the Minister, in personal and professional high regard until 2020. That is the full extent of my comment. It was not to agitate but to inform a public company for-profit that their choices are known to Albertans.

I have worked as full-time constituency manager in two constituency offices and for two different political parties from June 2015 to April 2019. I assure you I know what a threat is to an MLA. I absolutely with known and informed certainty did not threaten you or your wife in any way, nor was I inappropriate. What is inappropriate is that you, the Minister of Health, have time to respond to me during a global pandemic within the hour.

If I have been actually threatening, than [*sic*] protocol would determine that this should go to the Alberta Sergeant-at-Arms for review and they should be contacting me, neither of you should be!

However, your response to me is more than threatening and I will be providing this to the appropriate authorities as per this email.

I will be reaching out to Protective Services because as far as I am aware I live in a democracy and do not need to be threatened with protection services from my government for sending an informative email to a public address and company.

By this, I hope you and Vital Partners have been properly informed.

Those copied to this email – I expect a response as to how I will be protected from my government?

Most Sincerely,  
[J.F.]

91. Though J.F. referenced the Sergeant-at-Arms in her email to Mr. Shandro, she testified that she did not know that the Sergeant-at-Arms was part of Protective Services. Because of J.F.'s work experience in constituency offices she was aware of the Sergeant-at-Arms, but J.F. viewed "Protective Services" as meaning the police. J.F. testified that she found Mr. Shandro's email "extremely threatening" and it "petrified" her. This reaction by J.F. was because of her past experience with the criminal injuries system and that Mr. Shandro, being aware of this background, would have known that this would "have been quite triggering to a person" with J.F.'s background. According to J.F. the reference to "Protective Services" triggered a post-traumatic stress disorder response. J.F. testified that Mr. Shandro was trying to silence and scare her and that there was an imbalance of power between a layperson and a Minister.

92. Shortly after sending this email J.F. contacted the media. J.F. said she went public with the emails because she felt it was the only way to deal with the threat, the imbalance of power and as a means of protecting herself. When J.F. was asked why she did not go directly to Mr. Shandro, rather than to A.S., she replied that she “felt it important that Vital Partners Inc., of which she was running the day-to-day business of, knows that I felt they were in a conflict of interest.” J.F. was aware that the Ethics Commissioner had not found any conflicts, but J.F. did not agree with the Ethics Commissioner and J.F. felt that the Ethics Commissioner had come to a number of wrong conclusions. J.F. felt that there was a conflict because she believed that Vital Partners was providing private health care insurance.
93. J.F. stated that she would never hire Mr. Shandro as a lawyer “because he has displayed a complete incapacity to separate personal, legal professionalism, and politics.” J.F. knew Mr. Shandro firstly as a lawyer and she testified that she views him as a “lawyer first” and that she did not separate his role as the Minister and as a lawyer.
94. On March 20, 2020, A.S. sent a detailed reply email to J.F. explaining the role of Vital Partners. J.F. appreciated that A.S. reached out, but J.F. was more “psyched up” about Mr. Shandro, so the email made little impression on her. A.S. did not in that email indicate that the J.F. email was threatening, but A.S. stated that she did not feel that making such an allegation would be a “good way of starting out a discourse or a dialogue.”
95. Mr. Shandro’s evidence in this regard was as follows:
- (a) On March 20, 2020 Mr. Shandro was sitting in the Legislature when he received the email from his wife, who had forwarded to Mr. Shandro the website submission from J.F. Mr. Shandro initially believed it was an email from J.F.
  - (b) Mr. Shandro and J.F. knew each other and were on a first name basis.
  - (c) Mr. Shandro felt that because of his involvement in a “contentious political file” that “any third party going out who disagrees with what you’re doing, is going out and directly contacting your spouse, I think is inherently threatening.”
  - (d) Mr. Shandro stated: “I think [J.F.] knew that by not going to me and going directly to [A.S.] would be interpreted as being threatening to our family.”
  - (e) In respect of the conflict of interest and “[w]e will not forget” statements by J.F., Mr. Shandro felt that this meant that J.F. was “participating in the conspiracy theory about [A.S.] and her business, which has resulted in a ‘torrent of threats that were incredibly upsetting’ to [A.S.]”

- (f) The “[w]e will not forget” had an exclamation mark and that seemed threatening to Mr. Shandro.
- (g) Mr. Shandro sent his reply email to J.F. at 11:18 a.m. on March 20, 2020. That email identified J.F. by her first name.
- (h) Mr. Shandro believed that J.F. would understand what “Protective Services” meant because of her past involvement and work in constituency offices.
- (i) Mr. Shandro’s email to J.F. was also forwarded to C.H., who was the Ministerial Assistant, which was done so that J.F. had someone she could connect with about health and policy matters.
- (j) The response email from J.S., which had been copied to C.H., the Legislative Speaker, the Sergeant-at-Arms, the leader of the opposition, the Mayor of Calgary and the CPS, was viewed by Mr. Shandro as “continuing to be political in response”.
- (k) Mr. Shandro also understood that J.F. went to the CBC with the objective of assisting the opposition and to publicly criticize Mr. Shandro.
- (l) Mr. Shandro did not see an issue with the reference in his email to “Protective Services” because he had also stated that J.S. could email him directly about any concerns.
- (m) Mr. Shandro said that he responded to this specific email because he knew J.F.

96. Mr. Shandro noted that March 20, 2020 was a “significant day” due to a larger volume of messages he received that day and in particular a message to the effect that someone attended at the office of Vital Partners in a threatening manner seemingly to cause A.S. physical harm. Upon reviewing a handful of other offensive and threatening emails that were sent to A.S., it appears that they were sent from disguised or false emails, while the one from J.F. was specifically from her correct email.

#### **Citation 1 Evidence: Sidewalk/Driveway Incident**

97. Citation 1 arose from Mr. Shandro attending at the home of Dr. M.Z. on March 21, 2020 (Saturday) where a discussion took place on the sidewalk/driveway between Dr. M.Z., Mr. Shandro and A.S.

#### *Background*

98. Mr. Shandro and Dr. M.Z. first met sometime in 2014-2015 when both served as board members for the UCP Calgary-West Constituency Association. During their shared

tenure they regularly dialoged on political issues and were on a first name basis. Mr. Shandro described Dr. M.Z. as being very vocal advocate on political matters and especially advocating on behalf of the Muslim community.

99. Mr. Shandro and Dr. M.Z. also resided in the same neighbourhood and their respective homes are located on the same block. The distance between their respective homes was about 50 yards and on occasion while walking, Mr. Shandro would pass the home of Dr. M.Z. and “wave and say hello”.
100. Dr. M.Z. testified that he is a family physician practicing in Calgary and considers himself to be a political activist. As an example, Dr. M.Z. had raised an issue in 2018 about an Iman, who was planning to come to Canada to speak, and Dr. M.Z. was opposed to this Iman speaking in Canada. Aside from being a member of the UCP, Dr. M.Z. was active on Facebook, Twitter, LinkedIn, WhatsApp, SnapChat, and Instagram and he has provided many television, radio and newspaper interviews. Dr. M.Z. was also part of a group of doctors whose mandate involved a number of roles, including advising the AMA on ways to advocate for physicians.

*Events of Saturday, March 21, 2020*

101. On March 20, 2020, Dr. M.Z. posted a tweet on Twitter which contained a photograph meme of Mr. Shandro and a speech bubble caption overhead which stated:

So every Albertan that I can kick off Health Care is another client we can sign up for Vital Partners! We're going to be RICH!

102. Dr. M.Z. gave evidence about the events of March 21, 2020 as follows:
  - (a) Dr. M.Z. was at home in the afternoon. His two boys were playing basketball outside on the driveway. Sometime in the afternoon or evening, but before sunset (it was still daylight and before 6:30 p.m.), the two children came inside the house and told Dr. M.Z. that there was somebody outside wanting to speak with him.
  - (b) Dr. M.Z. went outside and went about halfway down the driveway where he saw Mr. Shandro and his wife, A.S., standing on the sidewalk. According to Dr. M.Z. the distance apart was more than six feet.
  - (c) Dr. M.Z. described Mr. Shandro as being highly emotional with “red eyes” and yelling loudly. Dr. M.Z. stated that Mr. Shandro was “in high effects, he was crying, emotionally charged, his wife, A.S., was holding him.” According to Dr. M.Z. the following conversation of less than two minutes ensued:

- Mr. Shandro said, “You can’t do this to us. We’re getting death threats.”
- Dr. M.Z. asked, “What happened?”
- Mr. Shandro replied that the post needed to be deleted and said, “I will give you your codes on Monday, you’ll get your money.”
- A.S. said that Dr. M.Z. “doesn’t care about us, he just wants his money”.
- Dr. M.Z. asked Mr. Shandro what he wanted him to do, to which Mr. Shandro replied, “Delete your post.” Dr. M.Z. said “Okay”.

103. Following this conversation Dr. M.Z. testified that he turned around and went inside where he proceeded to delete the post from his Twitter account, and possibly also Facebook.

104. Dr. M.Z. posted a statement on Twitter at 6:34 p.m. on March 21, 2020 as follows:

We (physicians) have our disagreement with Honourable Minister Tyler Shandro and will advocate for our patients and primary care in Alberta. But, we do not support any threat against the Honourable Minister Tyler Shandro and his family. We support civilized discussion.

105. Dr. M.Z. stated that being yelled at was “infuriating and insulting” and intimidating since Mr. Shandro was his “direct boss” as the Minister of Health. Despite this Dr. M.Z. felt it was not appropriate in a civil society to harm anyone “whether they make the right or the wrong decisions.”

106. When addressing his family, Dr. M.Z. stated that they were upset, and the children asked why Mr. Shandro and his spouse were yelling at Dr. M.Z. and why Mr. Shandro was crying. From these questions Dr. M.Z. assumed that his children heard the conversation, though the children did remain in the house during the conversation. Dr. M.Z. could not say with certainty that his children, ages 16 and 14, heard the conversation with Mr. Shandro. In speaking with his children, they advised Dr. M.Z. that Mr. Shandro stated words to the following effect: “Please send your father out, I would like to speak to him, and stay inside the house because what I have to say would not be pleasant.”

107. Dr. M.Z. indicated that he felt that Mr. Shandro was acting in some partial capacity as a lawyer, but that the “immediate” capacity was as his “ultimate boss”, being the Minister of Health. Dr. M.Z. stated that, “I don’t really get intimidated”, but this “was a very

intimidating experience, seeing the Crown's representative and a lawyer attending at my house to tell me to delete a post". Dr. M.Z. testified that as a result of the incident with Mr. Shandro, Dr. M.Z. now questions the integrity of lawyers and about their being courteous and civil.

108. According to A.S. the following events took place on March 21, 2020:

- (a) While searching social media websites A.S. came across the meme on March 21, 2020 and she brought it to her husband's attention. A.S. was "disgusted" by the meme since it was "uninformed" and not based on the facts.
- (b) Mr. Shandro recognized this meme as being posted on the account of Dr. M.Z. and that he was a neighbour. At this point Mr. Shandro said to A.S. that he would be back in a minute, and he left their home to go and see Dr. M.Z.
- (c) After Mr. Shandro left the house, A.S. indicated that she sat for a minute "trying to contemplate" what she should do. At this point in time, and given the past few days and the threats, A.S. was very upset about the allegations about her company's involvement with her husband's political decisions. After about two minutes A.S. decided to follow her husband and bring him back home.
- (d) As A.S. came down the street she was about one minute away when she observed her husband and Dr. M.Z. standing at the end of Dr. M.Z.'s driveway about six feet apart. Both had their hands in their pockets, but at this point A.S. could not hear the conversation. As soon as she arrived A.S. went to her husband's far side and started pushing him back towards their home.
- (e) A.S. testified that she did not hear her husband yelling and that he was not crying, though A.S. started crying when she arrived. A.S. said she could hear her husband trying to explain to Dr. M.Z. the nature of her company and the fear that her husband had for the safety of his family. A.S. told her husband not to talk to Dr. M.Z. According to A.S. she heard Dr. M.Z. ask if he should take down the post to which Mr. Shandro replied that "you have to decide".
- (f) As A.S. was pushing" her husband away, she did say to her husband that " [Dr. M.Z.] does not care about the truth, he just cares about the money."

109. Mr. Shandro's version of events on March 21, 2020 was as follows:

- (a) A.S., who was upset, had shown the meme to her husband. Mr. Shandro was in disbelief that Dr. M.Z. would post the meme given that Dr. M.Z. was always very concerned about misleading actions or words.



- (b) It was still daylight and Mr. Shandro, without his wife, went to see Dr. M.Z. Mr. Shandro saw the children of Dr. M.Z. playing basketball on the driveway and asked them if their father was home and if they would “mind bringing him out” and that he “would like to speak to him”. Mr. Shandro wanted it to be a “private conversation” since Mr. Shandro thought that Dr. M.Z. would be embarrassed by the conversation and he “suggested” to the children that they should stay inside.
- (c) Mr. Shandro was standing on the sidewalk, where he stayed due to COVID-19 restrictions and Dr. M.Z. was on the driveway about two meters distance from Mr. Shandro. The conversation lasted a few minutes.
- (d) Mr. Shandro asked Dr. M.Z. why he did not ask Mr. Shandro personally if the doctor had any questions. To this question Dr. M.Z. was silent. Mr. Shandro went on to say that he understood that there was anxiety with family doctors about issues such as virtual codes.
- (e) Mr. Shandro denies crying or that his wife was holding him. Mr. Shandro was speaking loud enough to be heard, but he denies that he was yelling.
- (f) According to Mr. Shandro, Dr. M.Z. looked embarrassed, and while looking down, asked softly, “What do I do? Do I delete the post”. Mr. Shandro replied saying that “you have to decide that for yourself”.
- (g) At some point A.S. joined her husband and Dr. M.Z. She was upset and had red eyes from crying earlier. A.S. said, “Don’t talk to him. He’s not interested in us. He’s only interested in money.” This was said very loudly. At this point Mr. Shandro and his wife walked away.

*Postings March 22, 2020*

110. On March 22, 2020 (the day after the Sidewalk/Driveway Incident) Dr. M.Z. reposted the meme on social media, but added the following:

So – Tyler Shandro business Vital Partners (seems in conflict with your position in government). What do you say?

111. As noted earlier, on March 20, 2020, the AMA had issued a statement that cyber-bullying and personal attacks on public officials was not acceptable. Dr. M.Z. denies that he reposted the meme after seeing the AMA statement but reposted it because he felt that Mr. Shandro was in a conflict of interest because Vital Partners provided services as a “brokerage private health care”. Mr. Shandro stated that he did not see this repost until sometime later.

## *Media Involvement*

112. Dr. M.Z. stated that he was contacted by an investigative journalist and that he shared the details about what happened during his interaction on March 21, 2020 with Mr. Shandro. Dr. M.Z. testified that it was his intention to keep the episode private and that he had virtually forgotten the incident. Dr. M.Z. did advise the journalist about what transpired but asked that it be kept private. The journalist advised that the conversation was on the record, which Dr. M.Z. understood “would be that he investigated, and he wanted the facts to there.” When interviewed by an LSA investigator, Dr. M.Z., when told by the journalist that the report was being published, advised the LSA investigator that “I don’t want that to go on the record. I just want to keep it really simple, below the cables, it happened, it’s over, and it’s fine.”
113. Dr. M.Z. denies that he contacted the journalist, and he does not know how the journalist became aware of the Sidewalk/Driveway Incident. Dr. M.Z. did indicate that he told other doctors from the Patients for Doctor’s group about the incident.
114. On March 27, 2020 Dr. M.Z. gave at least nine further interviews with the media including with the CBC who published an article on March 27, 2020. That article stated that Dr. M.Z. asked Mr. Shandro what he should do to which Mr. Shandro had replied, “Delete your post”.
115. In response to the CBC article Mr. Shandro put out a media statement on March 27, 2020, which read in part:
- I have known [Dr. M.Z.] for many years, and have known him as a descent, honourable man. On Saturday, when I saw that a long-time political acquaintance and neighbour had posted something to social media that was contributing to attacks against my wife, I went to speak to him and implore him to cease propagating this false information.
116. In that same media statement Mr. Shandro stated that: “As any husband would do, I responded passionately to defend my wife.” Mr. Shandro advised that the use of the word “passionately” was not reflective of the conversation and that he did not draft this statement.
117. The March 27, 2020 media statement from Mr. Shandro’s press secretary also contained the following statement:
- Shandro asked [Dr. M.Z.] to remove the post and he did.
118. Mr. Shandro responded under cross-examination that this statement was not in quotes and was being made by the reporter. Mr. Shandro denies that this was the information

he provided to his press secretary. Mr. Shandro further denies asking Dr. M.Z. to remove the post. Mr. Shandro advised that the press secretary was also very busy and may not have gotten the information entirely correct.

119. Dr. M.Z.'s evidence was that this media statement was a "smear campaign" against him and that the media statement did not fairly represent what had happened. It was also the position of Dr. M.Z. that Mr. Shandro's statement "villainized" him as going after the family of Mr. Shandro. Dr. M.Z. felt that this was a personal attack against him and that it was being alleged that he attacked Mr. Shandro's spouse.
120. As a result of the public statements Dr. M.Z. says that he received death threats and threats of harm to his family. As a result of these threats, Dr M.Z. indicated he only left the house when needed, stopped walking the neighbourhood and asked his children not to play outside.

### **Legal Analysis and Tests**

121. Section 2.2.1 of the Code states:

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.

122. It is axiomatic that a lawyer's personal life outside his professional activities can be subject to the disciplinary process. It is fair to say that being part of the legal profession will necessarily mean that a lawyer will have a diminished expectation of privacy. Lawyers are ultimately required to account for their conduct to the public and as is stated in the Code, commentary 7.3-1(3): "...lawyers should aspire to the highest standards of behaviour at all times and not just when acting as lawyers."

123. These obligations also extend to those holding public office as set out in section 7.4-1 of the Code:

A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

124. A difficult issue is where to draw the draw line between the competing interests of a lawyer's private life and when inappropriate private behaviour becomes conduct deserving of sanction. Section 49 of the *Act* provides two broad factors that need to be considered:

1) Is the conduct incompatible with the best interests of the public?

2) Does the conduct tend to harm the standing of the legal profession?

*Case Law*

125. One of the earliest decisions dealing with off-duty conduct was by the British Columbia Supreme Court in *Ratsoy v Architectural Institute (British Columbia)*<sup>4</sup> (*Ratsoy*) where the Court established that off-duty conduct that is “disgraceful” in that “it tends to bring disgrace on the profession” can amount to misconduct.

126. The next case of assistance, also from the British Columbia Supreme Court, was *Fountain v British Columbia College of Teachers*<sup>5</sup> (*Fountain 1*) where Justice Ross stated:

In summary, the framework for the analysis of off-duty conduct that arises from the case law is:

- (a) some, but not all, off-duty conduct can give rise to discipline for professional misconduct or conduct unbecoming;
- (b) in considering whether the particular conduct at issue is such as to give rise to discipline, the Panel should consider whether the conduct evidences direct impairment of the ability to function in the professional capacity or impairment in the wider sense as described in the case law; and
- (c) direct evidence of impairment is not always required. In an appropriate case, impairment can be inferred. In the absence of direct evidence of impairment, the Panel will need to consider whether it is appropriate to draw an inference of impairment in the circumstances.

127. The Court in the *Fountain 1*<sup>6</sup> case went on to discuss relevant factors when considering “impairment”:

In summary, the case law establishes that in appropriate circumstances it is permissible to draw an inference of direct impairment or of impairment in the wider sense in the absence of direct evidence. Relevant factors to be considered include:

- 1. the nature of the conduct at issue;
- 2. the nature of the position;

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<sup>4</sup> *Ratsoy v Architectural Institute of British Columbia*, 1980 CanLII 662 (BC SC), at paragraph 11.

<sup>5</sup> *Fountain v British Columbia College of Teachers*, 2007 BCSC 830, at paragraph 65.

<sup>6</sup> *Ibid.*, at paragraph 59.

3. whether there is evidence of a pattern of conduct;
4. evidence of controversy surrounding the conduct;
5. evidence that the private conduct has been made public; and
6. evidence that the private conduct has been linked by the member to the professional status of the member.

130. These criteria were also subsequently referenced and adopted by Justice Maisonville in *Fountain v British Columbia College of Teachers*<sup>7</sup> (*Fountain 2*).

131. The Alberta Court of Appeal addressed the off-duty conduct issue in the case of *Erdmann v Complaints Inquiry Committee*<sup>8</sup> (*Erdmann*). This was a case where an accountant made threats that she would make complaints to various agencies such as the Canada Revenue Agency in the context of the construction of her personal residence. In the *Erdmann* case the Court, referencing the *Ratsoy* decision, stated:

The test for professional misconduct is set out in *Ratsoy v. Architectural Institute (British Columbia)* at para 11, where Taylor J endorsed the following reasons of Lord Parker CJ, speaking for a Divisional Court of the Queen's Bench Division in *Marten v. Royal College of Veterinary Surgeons*, [1965] 1 All E.R. 949, at 953:

If the conduct, however, though reprehensible in anyone is in the case of the professional man so much more reprehensible as to be defined as disgraceful, it seems to me that it may, depending on the circumstances, amount to conduct disgraceful to him in a professional respect in the sense that it tends to bring disgrace on the profession which he practises.

Taylor J went on to say the following in para. 11:

I would paraphrase those words by saying that reprehensible conduct outside actual practice of the profession may render a professional person liable to disciplinary action if it can be said to be significantly more reprehensible in someone of his particular profession than in the case of others.

132. In the case of *Yee v Chartered Professional Accountants of Alberta*<sup>9</sup> (*Yee*) the Alberta Court of Appeal was addressing the issue of an apprehension of bias by a tribunal. In that decision Justice Slatter, in concurring reasons, addressed off-duty conduct where he held in *obiter* that: "In order to rise to the level of professional misconduct, the private

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<sup>7</sup> *Fountain v British Columbia College of Teachers*, 2013 BCSC 773, at paragraph 32.

<sup>8</sup> *Erdmann v Complaints Inquiry Committee*, 2013 ABCA 147, at paragraphs 28-29.

<sup>9</sup> *Yee v Chartered Professional Accountants of Alberta*, (2020) ABCA 98, at paragraph 45.

conduct in question must engage either the broader public interest, or the reputation of the profession.”<sup>10</sup> This we view as a restatement of section 49 of the *Act*.

133. Justice Slatter went onto to discuss where private conduct can amount to professional misconduct:

Many factors can be considered to determine if private conduct amounts to professional misconduct: *Fountain v British Columbia College of Teachers*, 2013 BCSC 773 at paras. 32-3. The closer the conduct comes to the activities of the profession, the more possible it is that personal misconduct will amount to professional misconduct. That is the lesson of *Marten* and *Ratsoy*. It is, however, an error for a discipline committee to assume that because certain “events happened” that are in some sense undesirable or improper, that automatically amounts to “professional misconduct”. An accountant may, as one member of the Discipline Tribunal put it, be an accountant “from the time you get up until you go to bed at night”, but that does not make everything an accountant does a matter of professional discipline. Section 1(t), and the cases just cited, recognize that private actions can amount to professional misconduct, but they are not intended to allow the Institute to regulate every aspect of its members’ private lives.<sup>11</sup>

134. The comments of Justice Slatter in the *Yee* case were cited with approval by the Saskatchewan Court of Appeal in *Strom v Saskatchewan Registered Nurses’ Association*<sup>12</sup> (*Strom*). The concept of “reprehensible” off-duty conduct, which had been spoken to in *Ratsoy* and *Erdman*, was addressed in *Strom*<sup>13</sup> where the court stated:

The phrase “reprehensible in anyone” – which I take to mean conduct that would be reprehensible regardless of whether the person charged was a professional – has occasionally been referred to in decisions relating to off-duty conduct. However, I do not agree the jurisprudence reflects a general principle that conduct can constitute professional misconduct only if it is found to be reprehensible in this sense. Rather, off-duty conduct may be found to be professional misconduct if there is a sufficient nexus or relationship of the appropriate kind between the personal conduct and the profession to engage the regulator’s obligation to promote and protect the public interest. More specifically, I would state the issue this way: was the impugned conduct such that it would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct? (See *The Regulation of Professions in Canada*, vol 2 at 13.4.)

Indeed, I read the passages in *Erdmann* and *Ratsoy* relied on by Ms. Strom as making this very point, rather than that proposed by Ms. Strom. Although they refer

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<sup>10</sup> *Ibid.*, at paragraph 43.

<sup>11</sup> *Ibid.*, at paragraph 45.

<sup>12</sup> *Strom v Saskatchewan Registered Nurses’ Association*, [2020] SKCA 112, at paragraph 93.

<sup>13</sup> *Ibid.*, at paragraphs 89-90.

to conduct being “reprehensible in anyone”, they do so to make the point that reprehensible conduct may bring disgrace to the profession due to the relationship between that conduct and the characteristics considered to be important for those in the profession. It is for that reason that factors such as the nature of the profession; the relationship of the misconduct to the work of the profession or the personal characteristics considered necessary to practice the profession; and whether the person charged is identified or purported to act as a member of that profession are relevant.

135. In the *Strom*<sup>14</sup> case, the Court articulated the central question as whether there is a nexus between the off-duty conduct and the profession that demonstrates a sufficiently negative impact on the profession or the public interest:

This statement reflects the central question in relation to the imposition of professional sanctions for off-duty conduct described above; that is, whether there is a nexus between the off-duty conduct and the profession that demonstrates a sufficiently negative impact on the profession or the public interest. This question calls for a contextual analysis. As Moldaver J. said in *Groia* at paragraph 83, “a law society disciplinary tribunal must always take into account the full panoply of contextual factors particular to an individual case” before making a finding of professional misconduct. The potential impact on personal autonomy - or as La Forest J. put the matter, on privacy and fundamental freedoms - is a key contextual factor when deciding whether *off-duty* conduct constitutes professional misconduct.

136. The Court in the *Strom* case outlined certain factors to consider when addressing the concept of a “nexus” between the conduct and the impact on the profession:
- i. The nature of the profession.
  - ii. The relationship of the misconduct to the work of the profession.
  - iii. The personal characteristics considered necessary to practice the profession.
  - iv. Whether the person is identified or purported to act as a member of that profession.

137. In the *Law Society of Alberta v. Juneja*<sup>15</sup> (*Juneja*), that hearing committee, after examining most of these cases, summarized the relevant nexus circumstances and 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?

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<sup>14</sup> *Ibid.*, at paragraph 113.

<sup>15</sup> *Law Society of Alberta v. Juneja*, 2022 ABLS 11, at paragraphs 169-171.

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?

138. The analysis is a contextual one where the central question is whether there is a nexus between the off-duty conduct and one's position as a lawyer that demonstrates a sufficiently negative impact on the public interest or the profession. Expressed another way, does the private conduct engage either the broader public interest, or the reputation of the profession.<sup>16</sup>

### **Arguments of the LSA**

139. As a general principal counsel for the LSA argues that Mr. Shandro's actions were an attempt to discourage public criticism.

#### *LSA Arguments on Credibility of Mr. Shandro*

140. Counsel for the LSA argues that Mr. Shandro's evidence was evasive and inconsistent for the following reasons:

(a) Mr. Shandro stated in a Twitter post on March 27, 2020 that his express purpose in confronting Dr. M.Z. was to "implore him to cease propagating false information". LSA argues that this is inconsistent with an emailed press statement from Mr. Shandro's press secretary, also on March 27, 2020, stating that Mr. Shandro asked Dr. M.Z. to take down the post.

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<sup>16</sup> *Yee*, supra note 9, at paragraph 43.



- (b) In the email press statement of March 27, 2020, Mr. Shandro stated that he “responded passionately to defend his wife”. Under cross examination Mr. Shandro said that it was not a “passionate conversation”, and that he did not draft the press statement.
  - (c) Mr. Shandro asserted that the meeting between him and Dr. M.Z. “only came to the attention of the media through the actions of the Alberta Medical Association.” However, under cross-examination Mr. Shandro acknowledged that the reporters who broke the story never indicated the names of their sources.
  - (d) Mr. Shandro’s evidence in respect of Dr. L.D. changed after he heard the evidence of Dr. L.D.
141. LSA argues that both Dr. J.J. and Dr. L.D. were credible witnesses. LSA argues that Mr. Shandro was less credible than either of the two doctors for the following reasons:
- (a) On November 23, 2020 Mr. Shandro’s then-lawyer provided a written response to counsel for the LSA where Mr. Shandro stated that the “other physician (referring to Dr. L.D.) did not object to my telephone call but indicated that she could not take my call that day, and has not called me subsequently”. Under cross examination Mr. Shandro acknowledged that this was not accurate in that Dr. L.D. did subsequently call him. Mr. Shandro acknowledged his mistake.
  - (b) Neither Dr. L.D. nor Dr. J.J explicitly asked to speak with Mr. Shandro. However, Mr. Shandro who felt it was “implicit that Dr. J.J. wanted to speak to me because he had prepared a statement and wanted it to be provided.” However, this evidence is contrary to the letter of November 23, 2020 where counsel for Mr. Shandro stated: “The two physicians I telephoned had expressed a clear and express intention to speak to me, as they attended at a hospital in Red Deer during my announcement and indicated verbally that they wished to speak with me.” (Our emphasis)
  - (c) Mr. Shandro’s characterization of events is self-serving in that the actions of the doctors at the hospital never amounted to a reasonable basis for determining that they both wanted to speak with Mr. Shandro.
  - (d) It was not reasonable for Mr. Shandro to “assume” that the receipt of the telephone numbers was an implicit consent of either doctor that they wanted their phone numbers to be shared.
  - (e) LSA counsel also brings into question the credibility of Mr. Shandro when he claims that the statement to “send your threatening emails to this office and this

office only” was an “invitation” for J.F. to continue corresponding with Mr. Shandro’s office. LSA further argues that Mr. Shandro is being inconsistent when he states that the statement by J.F. that “[w]e will not forget” is threatening, while in contrast the statement by Mr. Shandro that J.J. will be referred to “Protective Services” is not threatening.

*LSA Arguments on Political Motivations*

142. LSA argues that the political motivations, if any, of the witnesses in testifying should be rejected for the following reasons:

- (a) None of the witnesses were the actual complainants.
- (b) None of the complainants were called by Mr. Shandro and there is no evidence as to the motivation of these individuals.
- (c) Even if the motivation of a complainant is political or otherwise, that does not mean that the complaint itself does not have merit.

*LSA Arguments on Integrity and the Administration of Justice*

143. The LSA argues as follows:

- (a) That the actions of Mr. Shandro raise a question about his integrity.
- (b) The conduct by Mr. Shandro fails to encourage public respect for the administration of justice.

*LSA Arguments on Civility and Communication*

144. The LSA argues that Mr. Shandro’s conduct was discourteous and lacked civility as required by section 7.2-1 of the Code:

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

145. The LSA further argues that Mr. Shandro failed to communicate responsibly as required by section 7.2-6 of the Code:

7.2-6 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

146. The LSA relies firstly on the decision in *Doré v. Barreau du Québec*<sup>17</sup> (*Doré*) which was a case dealing with a lawyer who had faced disciplinary action for an insulting letter sent to the judge who had previously dismissed a stay application brought by the lawyer. The case stands for the proposition that lawyers, as legal professionals, when facing criticism or pressure, are expected to endure that criticism or pressure with civility and dignity. The Court in *Doré* does state that lawyers do have a right to speak their minds freely, but they must do so with dignified constraint.
147. The LSA goes on to argue that it does not matter if a lawyer has been provoked or reached a breaking point. LSA referred to the Law Society of British Columbia decision in *Johnson (Re)*<sup>18</sup> where a lawyer used profane language to a police officer in a corridor outside a courtroom. That decision concluded that excessively angry, insulting, hostile, or belligerent behaviour may erode public confidence in the administration of justice and in the legal profession.
148. The LSA cites a number of disciplinary cases dealing with lawyer-politicians, which can be summarized as follows:

*Office of Disciplinary Counsel v. Yoshimura*<sup>19</sup> (*Yoshimura*)

A lawyer, who was also a city councilor, was in a car accident while intoxicated. He admitted to the police that he had been drinking, but later denied that fact to the media. He also made misleading statements to disciplinary counsel. The Committee found these statements were misrepresentations and amounted to professional discipline violations. The matter was upheld by the Supreme Court of Hawaii.

*Bayly (Re)*<sup>20</sup> (*Bayly*)

In this case the lawyer was the Principal Secretary of the Northwest Territories, an unelected position. During a telephone conversation with the Conflict of Interest Commissioner the lawyer failed to mention that the conversation was on speaker phone with other persons present, including the Deputy Premier. In addition, the Deputy Premier had been recording the conversation, which the lawyer failed to inform the Commissioner. The tribunal found that the lawyer's conduct was unbecoming and undermined the respect that the public have for lawyers.

*Law Society of Yukon v. Kimmerly*<sup>21</sup>

This disciplinary hearing involved a lawyer who was the Minister of Justice and who had criticized the court's disagreement with his decision to place the Yukon coat of arms on the wall behind the judicial bench. The member stated that "Yukoners have

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<sup>17</sup> *Doré v. Barreau du Québec*, 2012 SCC 12.

<sup>18</sup> *Johnson (Re)*, 2014 LSBC 8, at paragraphs 13-14.

<sup>19</sup> *Office of Disciplinary Counsel v. Yoshimura*, 2002 WL 32864713.

<sup>20</sup> *Bayly (Re)*, 2002 CanLII 53208 (NWT LS).

<sup>21</sup> *Law Society of Yukon v. Kimmerly*, [1988] LSDD No. 1.

been insulted, “It is silly”, and “It brings the repute of the Courts and the judiciary into disrespect in the Yukon, and I’m extremely saddened by the whole thing”. The Committee in this case dismissed the complaint stating that the comments do not amount to professional misconduct unless they clearly amount to expressions that bring the administration of justice into disrepute.

*Rowe (Re)*<sup>22</sup> (*Rowe*)

The lawyer was the Leader of the Opposition, and she encouraged a police officer to provide and share confidential police reports with the media. The member suspected that there had been an attempt to cover up an apartment fire. The Committee in this matter was split with two members finding that the conduct did not constitute a clear violation of the lawyer’s obligations because a lawyer in public office must serve that office with some degree of integrity. The Benchers of the Law Society of Newfoundland reviewed the Discipline Committee report and concluded that the member’s conduct interfered with the course of justice. The Benchers found the member guilty of conduct unbecoming.

*Law Society of Alberta v Rau*<sup>23</sup>

The lawyer in this case attended at a correctional center where he acted uncivilly by repeatedly swearing at staff. The Hearing Committee found the member was aggressive and abusive using profane language. The member was found guilty of unprofessional conduct.

*Juneja*<sup>24</sup>

The lawyer was found guilty of misleading another lawyer, breaching an undertaking regarding practice restrictions, breach of an abstinence undertaking, failure to be candid with the LSA, engaging in discreditable conduct arising from a physical altercation with afterhours club staff and the police.

*Law Society of Alberta v. Garth Dymond*<sup>25</sup>

The member obtained mortgage payout information in an effort to determine if his son was in financial difficulties. However, the lawyer did not have authority to obtain that information since he was not acting in any capacity for the son or daughter-in-law. The Committee dismissed the citation finding that the member’s conduct was a “single incidence of neglect” and an “isolated mistake”. Accordingly, the inadvertence and neglect did not rise to the level of conduct deserving of sanction.

*LSA Arguments on Citation 1: Sidewalk/Driveway Incident*

149. The LSA raises the following arguments regarding the meeting with Dr. M.Z.:

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<sup>22</sup> *Rowe (Re)*, 1980 CanLI 28 (NL LS).

<sup>23</sup> *Law Society of Alberta v Rau*, 2021 ALBS 24.

<sup>24</sup> *Juneja*, supra note 15.

<sup>25</sup> *Law Society of Alberta v. Garth Dymond*, 2009 LSA 7 (CanLII).

- (a) LSA characterizes Mr. Shandro as being belligerent and confrontational and that Mr. Shandro was “berating” Dr. M.Z by demanding that he remove the post.
  - (b) Mr. Shandro had no countervailing obligation as the Minister of Health which required him to attend at the home of Dr. M.Z.
  - (c) Dr. M.Z.’s political expression lies at the core of the protection granted by section 2(b) of the *Charter of Rights and Freedoms*<sup>26</sup> (*Charter*).
  - (d) The attendance at the home of Dr. M.Z. violates Mr. Shandro’s obligation to conduct himself with civility and courtesy pursuant to sections 7.2-1 and 7.2-6 of the Code and in particular because Mr. Shandro raised his voice in a public confrontation.
  - (e) Provocation, of which there was none, does not excuse Mr. Shandro’s behaviour.
  - (f) LSA counsel, in response to Mr. Shandro’s argument that his statements were *Charter* protected, stated that the conduct of Mr. Shandro is not protected by the *Charter* since the communications were not designed to achieve personal ends. Furthermore, LSA argues it was not simply, or primarily the message being conveyed, but rather the manner in which it was communicated.
150. The LSA further argues that Mr. Shandro’s denials of acting uncivilly and discourteously to Dr. M.Z. is neither reliable or credible and LSA points to the following:
- (a) Mr. Shandro’s denials are inconsistent with his public statements regarding the events and Mr. Shandro’s explanation to the representative of the LSA’s Executive Director.
  - (b) Mr. Shandro’s denials are inconsistent with his evidence about asking the children of Dr. M.Z. to remain in the house because they would be “embarrassed” by the conversation. If this was to be a civil conversation, then there would be no reason for the children not to hear the conversation. The more plausible explanation is that Mr. Shandro was in a highly emotionally charged state and was seeking to implore Dr. M.Z. to remove the post.
  - (c) Mr. Shandro should have understood that the meme was a wholly acceptable political comment.

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<sup>26</sup> *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*; being Schedule B to the *Canada Act 1982* (UK), 1982 c. 11.

*LSA Arguments on Citation 2: Telephone Calls*

151. The LSA argues, based on the *Juneja*<sup>27</sup> framework, as follows:

- (a) Mr. Shandro failed to inquire or consider whether the contact information he obtained and used was private demonstrates a failure to consider or respect the rights of Dr. J.J. and Dr. L.D.
- (b) Mr. Shandro, as a lawyer, should have been more aware of individual rights such as privacy.
- (c) Mr. Shandro should have addressed whether there were any privacy concerns associated with his obtaining of the telephone numbers.
- (d) There is no merit to the argument that Mr. Shandro was trying to fulfill his political obligations by contacting concerned doctors. Mr. Shandro's political obligations cannot outweigh his legal and ethical obligations as a lawyer.
- (e) Mr. Shandro was attempting to quell public criticism by taking advantage of an unequal power dynamic. Both doctors testified that they felt that they were being signaled that they could be found.
- (f) This incident is part of a pattern of inappropriate behaviour by Mr. Shandro in engaging in inappropriate contacts with members of the public in response to political criticism.

*LSA Arguments on Citation 3: Email Warning*

152. The LSA argues that Mr. Shandro's conduct is deserving of sanction for the following reasons:

- (a) Mr. Shandro threatened J.F. by stating that he would refer her to "Protective Services".
- (b) Following the response email from J.F., Mr. Shandro in fact referred J.F. to Protective Services.
- (c) Following the *Doré*<sup>28</sup> decision, the use of a formal email is sufficient to establish that Mr. Shandro was acting in his professional capacity as a public official. Even if the email was intended as being a private communication, Mr. Shandro as a lawyer should have displayed moderation and dignity.

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<sup>27</sup> *Juneja*, supra note 15.

<sup>28</sup> *Doré*, supra note 17.

153. Again, using the framework set out in *Juneja*<sup>29</sup>, the LSA argues:
- (a) The email from J.F., made on a public website inviting comments, made no threats of violence and the threat by Mr. Shandro to refer the matter to “Protective Services” was an abuse of power.
  - (b) Mr. Shandro abused his political office and powers to stifle political expression, a *Charter* protection right owed to J.F.
  - (c) The email from Mr. Shandro breached his obligations under section 7.2-6 of the Code to not send correspondence that is inconsistent with the proper tone of professional communications.
  - (d) Mr. Shandro allowed his outside interests, specifically protecting his wife’s business from criticism, to jeopardize his professional judgment, which is in contravention of section 7.3-1 of the Code.
  - (e) That the facts in this citation are akin to those in the *Erdmann*<sup>30</sup> decision. This case involved an accountant who was found guilty of unprofessional conduct based on two threatening or intimidating emails. The power imbalance in this case exacerbates the circumstances in *Erdmann*.

#### **Arguments of Mr. Shandro**

154. Mr. Shandro argues firstly that none of the conduct involved or touched upon Mr. Shandro’s work or practice as a lawyer since he was not in active practice.
155. At no time in any of the three matters did Mr. Shandro hold himself out as being a lawyer or undertake any conduct in his capacity as a lawyer.
156. Though Mr. Shandro knew Dr. M.Z. and J.F. personally prior to the respective issues, there is no evidence that Mr. Shandro had any prior involvement with either of these persons concerning political matters related to the meme or the email from J.F.
157. The telephone calls between the two physicians and Mr. Shandro were done entirely in his capacity as the Minister of Health. The email to J.F. was done from Mr. Shandro’s political email, but that was because he was in Edmonton and did not have access to his personal email account. This is therefore properly characterized as personal since Mr. Shandro had considered J.F. a friend. The email referred to J.F. by her first name and the referral to Protective Services was only if J.F. failed to deal with Mr. Shandro directly.

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<sup>29</sup> *Juneja*, supra note 15.

<sup>30</sup> *Erdmann*, supra note 8.

158. As regards Dr. M.Z., Mr. Shandro approached the doctor in a personal capacity. Although the meme was political commentary, the meme made reference to the business interests of Mr. Shandro's spouse, making it personal.
159. Mr. Shandro further argues that the interaction with Dr. M.Z. was done in relative privacy and not witnessed by anyone. Furthermore, the conversation with Dr. M.Z. was not undertaken by Mr. Shandro in the context of either his political office or legal practice, but rather it was in respect of a concern for the safety of his wife.
160. Mr. Shandro also argues that Dr. M.Z. did not have an issue with the conversation. Dr. M.Z. stated in his May 20, 2021 report to the LSA: "You know what? He was emotional. He's a nice person. And I forgave him." Dr. M.Z. also told the press that: "I've known him for quite some time. I have forgiven him and his wife. I think these are difficult times. They acted out of character...I don't want to pursue this matter any further."
161. In referring to the case of *Yee*<sup>31</sup>, Mr. Shandro argues that this decision stands for the proposition that there must be a definite link between the conduct and the profession itself. He argues that *Yee* confirms that private misconduct alone does not in and of itself amount to professional misconduct merely because the conduct is improper or undesirable. Mere reprehensibility alone does not in itself engage the "broader public interest" unless the conduct has a direct and sufficient nexus to the reputation of the profession.
162. Mr. Shandro particularly gives import to the following comments by Justice Barrington-Foote's in the *Strom*<sup>32</sup> case:
- Similarly, a single emotional outburst by a registered nurse at the deathbed of a child or spouse criticizing the treatment provided by medical staff would generally lack a sufficient nexus to justify a professional sanction. Such an outburst would be profoundly personal. Grief can bring people low or cause them to rage. Those hearing of such comments would understand that context, reducing their potential impact on other nurses or the profession. While those unfairly criticized in such a circumstance may suffer hurt feelings and deserve sympathy, a negative impact on the public interest, nurses or the profession is a horse of a different colour.
163. Mr. Shandro also references the recent decision in *Leontowicz v. College of Physicians and Surgeons of Saskatchewan*<sup>33</sup> (*Leontowicz*). In this case a fourth-year medical student and his date went back to his apartment where they engaged in consensual sex during which time the medical student initiated consensual rough sex. The "hits" however exceeded what she considered appropriate for rough sex. At some point the

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<sup>31</sup> *Yee*, supra note 8.

<sup>32</sup> *Strom*, supra note 12 at paragraph 116.

<sup>33</sup> *Leontowicz v. College of Physicians and Surgeons of Saskatchewan*, 2022 SKQB 98.



medical student removed his condom against the wishes of the other party. The woman was not a patient, and the assault did not occur in the context of the doctor's medical practice. The Court, after taking into account all of the contextual factors peculiar to this case, found that the discipline Committee erred in finding him guilty of professional misconduct. The Court in *Leontowicz*<sup>34</sup> observed as follows:

Taking account of the "full panoply of contextual factors" peculiar to Dr. Leontowicz's case, I am persuaded the Committee erred in principle when finding him guilty of professional misconduct as set out in s. 46(o) of the *MPA, 1981*. Respectfully, the Committee's analysis was "one dimensional", to quote *Strom* at para 128. To be sure, Dr. Leontowicz's conduct that night exhibited a grievous error in judgment and lapse of personal responsibility. Yet, no true nexus, let alone a significant one, had been established between his sexual encounter with the complainant on January 22, 2018, and the Committee's finding that because of it, he could not be trusted to practice medicine safely, a career for which he has trained for many years, and has the educational credentials to pursue.

164. Mr. Shandro further argues that any public or private statements made in good faith with a reasonable basis are protected by the *Charter*.<sup>35</sup> In support of this argument Mr. Shandro references the Newfoundland and Labrador Court of Appeal decision in the *Law Society of Newfoundland and Labrador v Buckingham*<sup>36</sup> (*Buckingham*). In this case the lawyer had a client die while in custody. The lawyer gave a media interview where the lawyer stated that his client's death "appear[ed] to be at the ... hands of ... the correctional officers" and that he knew "more than what [he could] say". Eight health-related, self-governing, statutory bodies were granted leave to intervene.
165. The *Buckingham*<sup>37</sup> Court cited the *Groia v. Law Society of Upper Canada*<sup>38</sup> decision on the issue of the importance of balancing a lawyer's right to free expression as protected by the *Charter* with the Law Society's statutory mandate:

Justice Moldaver also noted the importance of proportionately balancing a lawyer's right to free expression protected by the *Canadian Charter of Rights and Freedoms* with the Law Society's statutory mandate (para. 119). He continued:

[120] ...sanctioning a lawyer for good faith, reasonably based allegations that are grounded in legal error does not reflect a proportionate balancing. Advancing good faith, reasonable allegations — even those based on legal error — helps maintain the integrity of the justice system by holding other participants

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<sup>34</sup> *Ibid.*, at paragraph 201.

<sup>35</sup> *Charter*, supra note 26.

<sup>36</sup> *Law Society of Newfoundland and Labrador v Buckingham*, 2023 NLCA (*Buckingham*).

<sup>37</sup> *Ibid.*, at paragraph 65.

<sup>38</sup> *Groia v. Law Society of Upper Canada*, 2018 SCC 27.

accountable. Well-founded arguments exposing misconduct on the part of opposing counsel thus lie close to the core of the s. 2(b) values underpinning a lawyer's expressive freedom. Discouraging lawyers from bringing forward such allegations does nothing to further the Law Society's statutory mandate of advancing the cause of justice and the rule of law. If anything, silencing lawyers in this manner undercuts the rule of law and the cause of justice by making it more likely that misconduct will go unchecked.

166. Mr. Shandro further references the Alberta Court of Appeal case of *Pridgen v. University of Calgary*<sup>39</sup> (*Pridgen*). This case involved university students that had posted social network comments that were critical of the instruction provided by a professor. The university disciplined the students and the issue before the Court was whether the university had acted unreasonably and infringed the students' right to freedom of expression. The Court confirmed that the *Charter* can apply to "limits placed on regulated individual's freedoms freedom of expression and association"<sup>40</sup> by disciplinary proceedings.

#### *Shandro Arguments on Citation 1: Sidewalk/Driveway Incident*

167. Citation 1 states that Mr. Shandro "attended the private residence of a member of the public, behaved inappropriately by engaging in conduct that brings the reputation of the profession into disrepute". Mr. Shandro argues that Citation 1 would permit the LSA to penalize as deserving sanction any heated discussion undertaken by a lawyer having nothing to do with the practice of law. Furthermore, he argues that the LSA has not alleged that the conversation between him and Dr. M.Z. raises any integrity issues. Mr. Shandro also argues that even if Dr. M.Z.'s version of events is accepted, it has nothing to do with the reputation of the legal profession or with the administration of justice. He argues that the conversation was in no manner "dishonourable".
168. Mr. Shandro argues that the fact that the matter received media attention does not satisfy to the nexus test since the conduct in question does not relate to the practice of law. In none of the media coverage is Mr. Shandro referenced as a "lawyer", but rather the media coverage was entirely political.
169. To summarize, Mr. Shandro argues that the issue with Dr. M.Z. does not impair his ability to perform as a member of the profession, it was not connected to the practice of law, it did not reflect negatively on the competence or ethics of Mr. Shandro and it did nothing to harm the standing or the reputation of the profession.

#### *Shandro's Arguments on Citation 2: Telephone Calls*

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<sup>39</sup> *Pridgen v. University of Calgary*, 2012 ABCA 130.

<sup>40</sup> *Ibid.*, at paragraph 92.

170. Mr. Shandro argues that the conduct related to Citation 2 has none of the indicia of professional or political misconduct. There was nothing in connection with Mr. Shandro's request for the telephone numbers that was dishonourable or that brought the reputation of the profession into disrepute.
171. Mr. Shandro points out that Dr. J.J. did not initially, and not until the Hearing, complain about the fact or the time that Mr. Shandro was calling or that Mr. Shandro had obtained his telephone number. Rather, Dr. J.J. viewed the conversation as "falling into his lap" and being an "opportunity" to engage with Mr. Shandro. At the conclusion of the call Dr. J.J. thanked Mr. Shandro and thereafter the two of them engaged in consensual written communications. The initial communications were collaborative and on a first name basis.
172. Mr. Shandro also notes that neither doctor raised any concerns about how Mr. Shandro obtained their numbers or why he was calling them. Mr. Shandro argues that Dr. J.J. did not have to answer the call and there is nothing improper or unethical about the time of the call. It was the position of Mr. Shandro that telephone calls can be made at any time and that Dr. L.D. prepared herself for the call after speaking with the AMA.
173. Mr. Shandro further argues that he was performing his political duties by engaging with persons who wanted to speak with him, and he should be congratulated for doing his duty as Minister. Mr. Shandro asserts that there is nothing in his conduct that is either "dishonourable or questionable". Mr. Shandro argues that he was fully entitled to request contact information to determine if the physicians who were trying to speak with him would like the opportunity to do so.

*Mr. Shandro's Arguments on Citation 3: Email Warning*

174. On Citation 3 Mr. Shandro argues that the email from him to J.F., though sent from his work email, was clearly personal in nature as it related to Mr. Shandro's wife. Mr. Shandro perceived the email from J.F. to his wife as threatening in the context of everything else that was occurring on the day in question and the days before.
175. Also argued by Mr. Shandro is that his email was not threatening. He characterized it as a personal email and pointed out that he referenced J.F. by her first name. He suggests that the email did not threaten to report J.F. to Protective Services because he said he would only report to Protective Services for assessment if J.F. sent another threatening email to his wife – something which J.F. herself suggested would have been an appropriate action given J.F.'s knowledge of the political landscape.
176. Mr. Shandro argues that the response email by J.F., where she stated that she did not intend a threat but rather was referring to politics, was sophisticated in that the email was also sent to the Sergeant-at-Arms. Mr. Shandro in his arguments references the following statement made by J.F. at the hearing:

“because I knew the proper – I knew the proper route for him, if he felt threatened by me, in any way, him and [C.H.] should have brought it to the Sergeant-at-Arms’ attention.”

### **Analysis: Citation 1**

177. The specific Citation alleges that Mr. Shandro “behaved inappropriately by engaging in conduct that brings the reputation of the profession into disrepute”. The central theme is that the “conduct”, being the conversation between Mr. Shandro and Dr. M.Z., was of such a nature as to bring the reputation of the profession into disrepute.

### *Credibility*

178. Both the LSA and Mr. Shandro have called into question the credibility of the other party and their respective witnesses as to what transpired during the Sidewalk/Driveway Incident. There are three principal differences between the version of events put forward by Dr. M.Z., Mr. Shandro and A.S.:

- (a) Dr. M.Z. says Mr. Shandro and his wife were both waiting outside when he came out of the house. Mr. Shandro says it was just him and that his wife joined a few minutes later. A.S. concurs in her evidence with Mr. Shandro on this point.
- (b) Dr. M.Z. says that Mr. Shandro was in “high emotions”, yelling, crying and red-eyed. Mr. Shandro denies these allegations and says that although voices were raised, he was neither yelling nor crying.
- (c) Dr. M.Z. says he asked Mr. Shandro how he could resolve the situation and was told by Mr. Shandro to take down the social media post. Mr. Shandro says that he told Dr. M.Z. that it was up to Dr. M.Z. to decide what to do.

179. The Committee does not find it necessary to determine credibility in this case since we find that nothing turns in our conclusions regarding guilt related to the differences in the evidence. Whether Mr. Shandro was crying, yelling loudly or emotional does not change our view of the matter. Given the events of the preceding days it is reasonable to conclude that Mr. Shandro was highly sensitive to the ongoing threats against his family and that he reacted emotionally in responding to the meme. As such we accept that Mr. Shandro was very likely in an emotional state.

180. The LSA argues that Mr. Shandro was “uncivil” and “discourteous” during this conversation, but we do not view the conversation and the words spoken, regardless of whose version one might accept, as being uncivil or discourteous. Even if Mr. Shandro did ask that the post be taken down, there was nothing to suggest that this was done in a threatening manner. Dr. M.Z. stated in his interview with the LSA:

“So I’m like, “okay, you know what?” And I don’t think as he was in any frame or mind to have a proper discussion or negotiation, so I’m like – and it’s out in front of my house, so I say, “You know what? What do you want me to do?” He’s like, “Delete the post.” Like, “You know what? I’m gonna delete the post. You go home.”

181. While accepting that Mr. Shandro likely responded in an emotional state, we do not find that this was inappropriate under the circumstances. Even if Mr. Shandro was loud and emotional, that behaviour does not rise to a level of being improper in the context. There is nothing inherently wrong about a lawyer approaching a neighbour about issues or concerns, even where there is an emotional content to the conversation. If this were the case then no lawyer could contact a neighbour, or arguably any third person, with personal issues. To find Mr. Shandro guilty would mean that no lawyer could engage in an argumentative or emotionally heated private conversation with another person. It is not the emotional nature of the conversation which is of concern, but rather the tone and actual statements that determine misconduct. In this case Mr. Shandro did not threaten or swear and he was not condescending.
182. When considering the nexus factors, we take note of the following:
- (a) There is nothing in the conduct of Mr. Shandro which impairs his ability to perform as a lawyer nor does the incident reflect negatively on the competence or ethics of Mr. Shandro.
  - (b) It is clear that Mr. Shandro attended at the home of Dr. M.Z. as a father and husband, and not principally as the Minister of Health. Furthermore, the attendance was not in any manner connected to the practice of law.
  - (c) There is nothing in Mr. Shandro’s actions which would negatively reflect on the characteristics of a competent and ethical member of the legal profession. Given the circumstances of what was transpiring on social media, it is understandable why Mr. Shandro would have been emotional and upset. This had nothing to do with lawyer characteristics.
  - (d) Mr. Shandro was not in any capacity acting as a lawyer and at no time did Mr. Shandro identify himself as a lawyer. Dr. M.Z. was certainly aware that Mr. Shandro was a lawyer, but objectively speaking, it was clear that the issues around the meme arose from Mr. Shandro’s concern for the safety of his family and tangentially from his position as Minister of Health. Dr. M.Z. did testify that he now thought less of lawyers, but we note that this comment was not made to the LSA or anyone else prior to the Hearing.
  - (e) This incident does not harm the standing or the reputation of the profession.
  - (f) There is nothing in the conduct of Mr. Shandro which relates in any reasonable connection to the activities of the profession.
186. Accordingly, we find Mr. Shandro not guilty on Citation 1.

## Analysis: Citation 2

187. Citation 2 states that Mr. Shandro “used his position as the Minister of Health to obtain personal cell phone numbers, contacted one or more members of the public outside of regular working hours using that information”. There is no doubt that all of these facts are established. Mr. Shandro as the Minister of Health did obtain personal cell numbers and he used those numbers to call members of the public outside regular working hours.
188. The evidence is that Mr. Shandro contacted someone from AHS and that individual provided Mr. Shandro with private cell numbers for Dr. L.D. and Dr. J.J. However, Mr. Shandro was not aware that these were private cell numbers and he was not aware that the doctors had not consented to the release of those numbers. While it was not necessarily reasonable for Mr. Shandro to assume that he had such consent, we do not see this as rising to a competency or integrity issue.
189. We do note that the time of the telephone call with Dr. J.J. is somewhat in dispute, but we do not see this as material. It is true that the calls were made after regular working hours, but this fact by itself cannot be considered inappropriate conduct. A lawyer may call another person at a late hour and that person does not have to answer if the call is made at an unreasonable hour.
190. As regards the telephone conversations, the evidence from the two doctors was that there was nothing in those discussions that was unprofessional. Dr. J.J. continued to converse with Mr. Shandro after the telephone call and Dr. L.D. had consulted with the AMA before calling Mr. Shandro.
191. It is however of concern to this Committee that Mr. Shandro’s reporting letter of November 24, 2020 claimed that the “two physicians in attendance were quite vocal and expressed an interest in speaking with me.” This is not completely accurate, and while Mr. Shandro admits his inaccuracy, we do not take lightly the misleading nature of this statement. We do note that Dr. L.D. called out to Mr. Shandro something along the lines of, “Why won’t you speak to doctors who work in this hospital”, which could be interpreted in favour of Mr. Shandro. However, Dr. J.J. made no such comment or any similar remark to suggest that he expressed an interest in speaking with Mr. Shandro.
192. Examining the nexus criteria, we find as follows:
- (a) Mr. Shandro’s contacting of the two physicians was done as the Minister of Health and there was no connection to the practice of law.
  - (b) Mr. Shandro was calling as the Minister of Health and at no time did he identify himself as being a lawyer, nor did Mr. Shandro purport to be acting as a lawyer. There is no connection in the calls to the practice of law.

- (c) There is nothing in the conduct which negatively reflects on the characteristics required to be a competent and ethical member of the legal profession. In hindsight Mr. Shandro should have been more diligent in confirming the consent of the doctors prior to obtaining their numbers or calling them. While this may be careless on the part of Mr. Shandro, mere carelessness cannot warrant a finding that raises the conduct to be sanctionable.
  - (d) There is nothing in the conduct which negatively reflects on the characteristics required to be a competent and ethical member of the legal profession.
  - (e) We see nothing in the conduct which to any objectively reasonable standard would harm the standing of the profession. We appreciate that both doctors gave evidence that the experience impaired their trust in the professions as a whole, but we note that both doctors consented to the conversations which were not in any manner threatening or unprofessional.
  - (f) We see nothing that is reprehensible in the actions of Mr. Shandro.
193. Additionally, we do not see the events as a violation of the physician's privacy rights, which would assume that Mr. Shandro intentionally acted knowing that the doctors did not want to be contacted or to have their numbers disclosed. This is not supported by the evidence.
194. The central issue is whether the actions of Mr. Shandro are of sufficient degree as to be conduct that is incompatible with the best interests of the public or conduct that tends to harm the standing of the legal profession. To both of these questions we conclude that the conduct does not.
195. Accordingly, the Committee finds Mr. Shandro not guilty on Citation 2.

**Analysis: Citation 3**

196. Citation 3 alleges that Mr. Shandro responded to an email sent to his wife by a member of the public by threatening to refer that individual to the authorities if they did not address future correspondence to his office as Minister of Health. There are two factual elements to this Citation:
- (a) Was the initial email from J.F. to Vital Partners threatening?
  - (b) Was the email from Mr. Shandro to J.F. threatening and if so, was it of a sufficient nature as to amount to conduct unbecoming?

197. The initial email from J.F. to Vital Partners was as follows:

Dear [A] – you and your husband Tyler Shandro (who I used to have a tremendous amount of personal and professional respect for up until 2020) are considered to be in a conflict of interest by Albertans. We will not forget! Sincerely [J.F.]

198. Mr. Shandro argued that the email from J.F. was threatening. The Committee finds nothing objectively threatening about this email. It addressed Mr. Shandro's wife by her first name and J.F. identifies herself. The email also had a contact phone number and an email address. It is our view that the words "[w]e will not forget" in this context reasonably refer to future elections and that the express words have no import of any threat.

199. We also note that the email from J.F. to A.S. was forwarded by Mr. Shandro to the Sergeant-at-Arms and/or Protective Services and they advised: "The emails, enclosed for your review, utilize threatening language; however, upon review are not deemed to be threatening and fit into our area as inappropriate communication and contact or ICC."

200. While we objectively see nothing threatening in the email from J.F., we do find the email from Mr. Shandro to J.F. somewhat concerning as regards this statement by Mr. Shandro:

Email her again and it will be referred to Protective Services.

201. From an objective viewpoint, the response email of Mr. Shandro was an over reaction on his part and failed to address the actual concerns raised by J.F. regarding a conflict of interest. We certainly recognize that Mr. Shandro was under a great deal of stress at this moment in time, but we would note the comments of the *Doré*<sup>41</sup> Court:

Lawyers potentially face criticisms and pressures on a daily basis. They are expected by the public, on whose behalf they serve, to endure them with civility and dignity. This is not always easy where the lawyer feels he or she has been unfairly provoked, as in this case. But it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility. On the other hand, lawyers should not be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint.

202. While the Committee finds Mr. Shandro overacted, we do not find that his response email rose to the level of being an outright threat. The reply email of Mr. Shandro, while improper, does not rise to the level of being sanctionable conduct. We note the following:

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<sup>41</sup> *Doré*, supra note 17 at paragraph 68.



- (a) The email begins by qualifying the referral to Protective Services as only arising if J.F. were to again email A.S.
- (b) The reference to “Protective Services” appears to be reasonably referencing those services being provided to Ministers and it did not expressly state the “police”.
- (c) The email from Mr. Shandro was sent to J.F. using her first name.
- (d) Mr. Shandro did not say that J.F. could not send threatening emails, but only that those types of emails must be only sent to Mr. Shandro.

203. Examining the nexus factors, we conclude as follows:

- (a) The email from Mr. Shandro was sent from his office and in no way did Mr. Shandro identify himself as a lawyer, nor did he purport to be acting as a lawyer.
- (b) Whether this is characterized as a personal email or one sent as the Minister of Health, there is no connection to the practice of law.
- (c) The conduct in question does not impair the ability of Mr. Shandro to perform as a member of the legal profession.
- (d) There is no reasonable connection between the conduct and the practice of being a lawyer.
- (e) We do however find that the conduct does negatively reflect on the characteristics required to be a competent and ethical member of the profession. The reply email of Mr. Shandro borders on lacking civility and professionalism and as such it will tend to harm the standing of the legal profession. The tone of the email is not done in a professional manner. However, in the context of events at this time, this lone concern does not raise the matter to being sanctionable.
- (f) We do not find the conduct to be reprehensible, especially in light of the personal circumstances at the time.
- (g) We acknowledge that J.F.’s personal trust in lawyers may have been impaired, but we conclude that the email would not generally impair client trust in the profession.

204. Addressing the cases, we find that the *Yoshimura* and *Bayly* cases cited by the LSA involved integrity matters and to that extent we do not find them applicable. The LSA also referred to the *Rowe* case where a member had interfered with a trial and the administration of justice. That is not the case with respect to Mr. Shandro’s conduct under Citation 3.

205. We have also given consideration to the case of *Erdmann*<sup>42</sup>. In that case a chartered accountant was involved in disputes with the builder of her residential condominium and the condominium board's property management company. During those disputes the accountant sent two threatening or intimidating emails. One was sent to the salesperson for the builder and one to a representative of the property management company. The specific details of the emails were as follows:
- (a) With respect to the salesperson, the email stated that "I will also file a complaint with the City of Edmonton who issues business licenses and may file complaints with other agencies (ie WCB for unsafe worksite, the utilities commission for having utility boxes exposed and unlocked ... and maybe Canada Revenue Agency ... for failure to submit subcontractor information slips and possible tax evasion with family members)".
  - (b) A further email was sent to the property management representative which stated, "I will be forwarding your letter to Canada Revenue Agency special investigations and other agencies ... as they are quite interested in your property management company and the condo board. Enjoy!".
206. In the *Erdmann* case the dispute arose over a City of Edmonton inspection that found cement cracking (which created a fire hazard) and posts that formed part of the foundation of the accountant's residence. In respect of the email to the property management representative, the Court of Appeal concluded that there was "no nexus whatsoever between her insistence that the repairs to her condo be completed and her threat to file these last complaints."<sup>43</sup> The Court further concluded:
- There is nothing in that letter that would warrant the intervention of "Canada Revenue Agency special investigations". The suggestion that the CRA and others "are quite interested in your property management company and the condo board" is wholly unjustified and in our opinion, constitutes a not so veiled threat to engage the CRA special investigations unit. That constitutes unprofessional conduct for the reasons set out above.<sup>44</sup>
207. In our view the *Erdmann* case differs significantly from this case for the following reasons:
- (a) In this case the accountant identified herself as such, while it is not the case that Mr. Shandro identified himself as a lawyer.
  - (b) The threats made by the accountant had absolutely no connection to the issues at hand and were clearly done to intimidate. This was not the case with the email from Mr. Shandro. The stated intention of Mr. Shandro in sending his email to J.F. was over a concern for his wife. While that concern may not have been justified, his email was sent in a heated moment and not as a result of some planned and deliberate attempt to prevent J.F. was voicing her opinions.

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<sup>42</sup> *Erdmann*, supra note 8.

<sup>43</sup> *Erdmann*, supra note 8 at paragraph 27.

<sup>44</sup> *Ibid.*, at paragraph 31.

(c) The reply email from Mr. Shandro was directly related to the initial email by J.F. and to that extent there is a connection.

208. Accordingly, we find Mr. Shandro not guilty of Citation 3.

### **Concluding Matters**

209. While we conclude that the Citations were not made out, the Committee thought that Mr. Shandro's conduct at the time of the events that give rise to the Citations was at times inappropriate. However, we find that the conduct did not rise to the level of conduct deserving of sanction. Mr. Shandro is not guilty on all three Citations.

210. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Shandro will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (rule 98(3)).

Dated July 18, 2024.

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Bud Melnyk, KC

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Grant Vogeli, KC

### **Reasons for Partial Dissent**

*(Reasons for the partial dissent by Edith Kloberdanz)*

#### **Overview of Dissent**

211. I have read the decision of the majority of the Committee (Majority). I concur with the Majority on the presentation of facts, reasons and disposition on Citations 2 and 3. I also take no issue with how the facts are presented by the Majority on Citation 1. However, I diverge from the Majority on the analysis, reasons and decision on Citation 1, the citation that alleges that Mr. Shandro attended the private residence of a member of the public, behaved inappropriately by engaging in conduct that brings the reputation of the profession into disrepute and that such conduct is deserving of sanction.

212. Instead, I would find Mr. Shandro guilty of conduct deserving of sanction on Citation 1, for the reasons set out below.

213. In writing the Dissent, I am guided by the principle that “the purpose of disciplining lawyers is to protect the public interest and maintain public confidence in the legal profession” (Guideline, paragraph 100).

### **Analysis and Conclusion**

214. As stated above, I do not take issue with the Majority’s characterization of the evidence presented at the Hearing. I also agree with the Majority that the Committee does not need to make a determination on the credibility of the parties as to what transpired during the Sidewalk/Driveway Incident. I further agree with the Majority on accepting “that Mr. Shandro was very likely in an emotional state” at the time of the events relating to Citation 1.
215. The Majority finds Mr. Shandro not guilty on Citation 1, outlining a number of factors in coming to this conclusion, including that it found the incident did not harm the standing of the profession. With all due respect, I disagree with the Majority’s analysis and conclusions on Citation 1.
216. Firstly, the Majority has described the central theme of Citation 1 to be a “conversation” or “discussion” between Mr. Shandro and Dr. M.Z. Instead, I believe the central theme to be Mr. Shandro’s overall behaviour during the events related to Citation 1. As set out in the above quoted *Leontowicz*<sup>45</sup> decision, the “full panoply of contextual factors” need to be considered in coming to a decision.
217. While I agree with the Majority that there is nothing inherently wrong with a lawyer approaching a neighbor (or anyone) to have a conversation, “even if it is emotional”, I do not consider Mr. Shandro’s conduct that day to be just a “conversation” with his neighbor as the Majority finds. I consider Mr. Shandro to have attended uninvited and unannounced at Dr. M.Z.’s residence, in an emotional state. There was a plethora of options available to Mr. Shandro to resolve his concerns with Dr. M.Z. without attending at his house. Failure to appropriately consider those other options was unreasonable and inappropriate and is incompatible with the best interest of the public and negatively affects the public perception.
218. I am also particularly troubled by the fact that Dr. M.Z.’s children were present for at least some of Mr. Shandro’s attendance at Dr. M.Z.’s residence. Upon arrival at Dr. M.Z.’s residence and finding the children playing out front, Mr. Shandro still persisted upon continuing with his plan to confront Dr. M.Z. I am even more troubled by the undisputed fact of Mr. Shandro telling the children to stay inside while the conversation took place. This shows not only poor judgment, but in my opinion, crossed the line into inappropriate conduct on Mr. Shandro’s part.

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*Leontowicz*, supra note 33.

219. I disagree with the Majority as to how the Sidewalk/Driveway Incident impacted Dr. M.Z. and his family. This aspect was not given sufficient weight or taken into great consideration by the Majority when assigning weight to what constitutes reasonable and appropriate conduct. The Majority does not find Mr. Shandro's conduct to be "uncivil or discourteous" and the Majority goes so far as to conclude that there was nothing to suggest that conduct was threatening in any manner. The Majority fails to give sufficient weight to Dr. M.Z.'s testimony that he felt threatened and that his family was very upset after the Sidewalk/Driveway Incident. Dr. M.Z. testified he felt threatened and embarrassed because Mr. Shandro was his "ultimate boss" and felt that Mr. Shandro was acting in "some partial capacity as a lawyer." To ignore such testimony would be dismissive of the impact Dr. M.Z. described.
220. I further part from the Majority in its finding that Mr. Shandro's behaviour is somewhat justified because of the circumstances at the time for Mr. Shandro. The Majority states it was reasonable for Mr. Shandro to be "highly sensitive" especially given the ongoing situation involving threats against him and his family. I agree and acknowledge that Mr. Shandro at the time was facing safety concerns impacting him and his family. Even so, there was no justification or emergency for Mr. Shandro to engage Dr. M.Z. at his residence. The public's trust and confidence in lawyers is based on the ability of lawyers to manage their behavior in highly stressful situations and circumstances. However, Mr. Shandro's conduct during the Sidewalk/Driveway Incident, erodes public confidence in the legal profession and as such puts the legal profession into disrepute. In this case, even in the context of the ongoing events, Mr. Shandro's behavior was improper.
221. The Majority's discussion included "off-duty conduct" and reference is given to section 49 of the *Act* which states that conduct can be deserving of sanction "whether or not that conduct relates to the member's practice as a barrister and solicitor" and further, the case law in this area, summarized by the Majority above, is particularly informative. There is agreement between the Majority and Dissent that a lawyer can be found guilty for inappropriate off-duty conduct, but, as the Majority points out above, "the central question is whether there is a nexus between the off-duty conduct and one's position as a lawyer that demonstrates as sufficiently negative impact on the public interest or the profession." The Majority found there was no nexus. Respectfully, I disagree.
222. At the time, Mr. Shandro was a very public member of Government, known publicly to be a lawyer with cabinet positions and at the time of the Sidewalk/Driveway Incident, in the position of Minister of Health. Public perception is fundamental here. As a known lawyer, the Minister of Health, attended at the home of a member of the public, Dr. M.Z., which is witnessed in part by Dr. M.Z.'s children, in order to have a "conversation" about a meme on a social media post. The conduct is damaging to the reputation of lawyers and negatively affects the public perception of lawyers.

223. I acknowledge that Mr. Shandro's integrity is not at question with this Citation, however the Code (Rule 2.1-1), requires a lawyer to retain the trust, respect and confidence of members of the public and I find in this case that has not occurred.
224. For the reasons stated above and in line with the criteria set out in section 49 of the *Act*, Mr. Shandro's conduct is incompatible with the best interests of the public or of the members of the Society and tends to harm the standing of the legal profession generally.
225. Accordingly, I do not concur with the Majority's decision on Citation 1. I would find Mr. Shandro guilty of conduct deserving of sanction on Citation 1.

Dated July 18, 2024.

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Edith Kloberdanz