

**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 KELECHI MADU, KC  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Tamela Coates, KC – Chair  
Michael Brodrick – Adjudicator  
Robert Philp, KC – Adjudicator

**Appearances**

Ken McEwan, KC and Emma Christian – Counsel for the Law Society of Alberta (LSA)  
Perry Mack, KC and Joyce Bolton – Counsel for Kelechi Madu, KC

**Hearing Dates**

June 17-19, 2024

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Overview**

1. The following citation was directed to hearing by the Conduct Committee Panel on July 5, 2023:
  - It is alleged that Kelechi Madu, KC engaged in conduct that undermined respect for the administration of justice when he contacted the Edmonton Police Services Chief of Police regarding a traffic ticket he received on March 10, 2021, and that such conduct is deserving of sanction.

(Citation)
2. Kelechi Madu, KC is a member of the LSA and at the time of the events in question, was also Alberta's Minister of Justice and Solicitor General – one of the highest profile and powerful positions associated with the administration of justice and law enforcement in Alberta. On March 10, 2021, Mr. Madu was pulled over for a cell phone violation while driving in Edmonton, Alberta (Traffic Stop). Mr. Madu denied that he had been using a

cell phone at the time. The attending Edmonton Police Service (EPS) constable disagreed and issued a violation ticket for distracted driving (Ticket). Rather than continuing to his office at the Legislature (as previously intended), Mr. Madu drove to the closest parking lot and called the Chief of the EPS (Call). It is undisputed that the Ticket was what prompted the Call. The purpose and import of the Call were the focus of this proceeding.

3. On June 17, 2024, the Hearing Committee (Committee) convened a merits hearing into the conduct of Mr. Madu, based on the Citation (Hearing). At its conclusion, the Committee adjourned and advised that it would issue its decision on the merits in writing.
4. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Madu with respect to the merits, for the reasons set out below the Committee finds Mr. Madu guilty of conduct deserving sanction on the Citation pursuant to section 71 of the *Legal Profession Act*, RSA 2000, c. L-8 (*Act*).

### **Preliminary Matters**

5. There were no objections to the constitution of the Committee or its jurisdiction.
6. A private hearing was not requested. The Hearing therefore proceeded as a public hearing, subject to the terms of a prior Consent Order issued on February 20, 2024 by L.G. Vogeli, KC (Bencher) directing redactions to certain Provincial Crown documents tendered as exhibits, the sealing of those documents and that any testimony referencing those documents be held *in camera* during the Hearing.

### **Evidence**

7. The LSA called as witnesses EPS Constable R.B., who issued the Ticket, and the Chief of the EPS, D.M.. Mr. Madu testified on his own behalf.
8. The parties also tendered a number of documents that were entered as exhibits by consent. Those included a Notice to Admit Facts (without Exhibits) and Response to Notice to Admit.
9. Five further exhibits were admitted during the course of the Hearing. One of them was the report of retired Justice Adele Kent of the Alberta Court of King's Bench dated February 15, 2022 (Kent Report). At the outset of the Hearing, counsel raised a preliminary evidential issue concerning the admissibility of the Kent Report. Counsel for the LSA sought to introduce the Kent Report as an exhibit. Counsel for Mr. Madu objected. Following submissions by both parties, the Committee held that the Kent Report would be admitted as some evidence in support of the Citation, with the weight, if any, to be determined by the Committee. The Committee advised that it would provide its reasons for its ruling in writing along with its decision in relation to the Citation.

10. While many of the facts were not in dispute, there were key points on which the evidence called by the parties differed. The Committee's findings of fact and the reasons it preferred the evidence of one witness over another where there were conflicts are detailed below. In short, the Committee finds that Mr. Madu's account of several points key to these proceedings, including the reason he made the Call, was simply not believable.

## **Background**

11. Mr. Madu was born in Nigeria, where he obtained his law degree and was first called to the bar in 2003. He practiced in Nigeria for approximately two years before relocating to Canada in mid 2005. In Canada, Mr. Madu worked in a variety of jobs until his call to the Alberta bar on September 15, 2014. Mr. Madu then set up his own legal practice in Alberta, practicing as a sole practitioner in corporate commercial, real estate, family, immigration and employment law.
12. In 2016, Mr. Madu became active in provincial politics. In the 2019 provincial election, Mr. Madu was elected as the member of the Legislative Assembly for Edmonton-South West (April 16, 2019). On April 30, 2019, he was appointed Minister of Municipal Affairs, in which role he served until August 25, 2020, when he was appointed Alberta's Minister of Justice and Solicitor General. With that appointment, he became the first Black Minister of Justice and Solicitor General in Alberta and Canada.
13. At the time of the events in question (March 10, 2021), Mr. Madu had been Minister of Justice and Solicitor General for approximately six and a half months. More will be said regarding his responsibilities in that role and the work in which he was engaged below.
14. In January 2022, the Call to Chief D.M. became public when it was, according to Mr. Madu, purportedly "leaked" to the media. Mr. Madu described what followed as a "media firestorm" and a "political issue."
15. After the Call became public, Premier Kenney asked Mr. Madu to "step back" and, on or about January 24, 2022, appointed retired Justice Kent to conduct an independent investigation with respect to the events of March 10, 2021.
16. Following her investigation, Justice Kent concluded that, even though Mr. Madu did not actually interfere with the administration of justice, he attempted to do so. She also concluded that there was a reasonable perception that he had so interfered. More will be said about Justice Kent's process and findings below.
17. Following release of the Kent Report, Mr. Madu was reassigned as the Minister of Labour and Immigration—something Mr. Madu described as a "minor cabinet shuffle." Mr. Madu remained in the latter role until October 2022. He then became the Minister of Skilled Trades and Professions and Deputy Premier, where he remained until the next provincial election in May 2023.

18. Mr. Madu was not re-elected. As of May 2023, he returned to private practice as a sole practitioner with a practice similar to that in which he had engaged previously.
19. On February 28, 2022, shortly following issuance of the Kent Report, the complaint which ultimately led to issuance of the Citation was submitted to the LSA (Complaint). The LSA appointed independent counsel to investigate. On July 5, 2023, following completion of that investigation, the Conduct Committee Panel of the LSA issued the Citation.

## **The Events of March 10, 2021**

### ***Overview***

20. Many of the facts surrounding the relevant events of March 10, 2021 have been agreed to through the Notice to Admit and Response thereto or are otherwise not in dispute.
21. On the morning of March 10, 2021, Mr. Madu was driving a Ford F150 truck on Windemere Road in Edmonton when he was stopped by Constable R.B. just before 9:30 am. Mr. Madu's vehicle was registered to the Government of Alberta and insured under its fleet policy.
22. At the time of the Traffic Stop, Mr. Madu was en route to his office at the Legislature to prepare for and hold a press conference about the story which had just become public regarding the illegal surveillance and other conduct of members of the Lethbridge Police Services (LPS) concerning an MLA. Mr. Madu was familiar with the area of the Traffic Stop as this was his usual route and his son's school was nearby.
23. That morning, Constable R.B. was conducting routine traffic stops along Windemere Road in the vicinity of two schools. He was in uniform and driving an unmarked Ford F150 truck. He observed Mr. Madu's vehicle approaching slowly from behind and, according to his testimony, pulled him over after observing Mr. Madu looking at his cell phone while his vehicle passed that of the Constable. He testified that Mr. Madu's left hand was at the 9 o'clock position on the steering wheel, his right hand was at 3 o'clock holding a cell phone, and he was looking down at the face of the phone while driving. This point will be reviewed in detail below as it is very much in dispute.
24. After Constable R.B. signalled for Mr. Madu to pull over, he got out of his vehicle, approached the driver's side of Mr. Madu's vehicle and informed Mr. Madu that he had been stopped for a cell phone violation. He asked for Mr. Madu's driver's license, vehicle registration and proof of insurance. Mr. Madu denied that he had been using a cell phone. The Constable responded that he had observed him using the phone. Other details of their exchange are in dispute.
25. Mr. Madu had three cell phones in his vehicle at the time: a phone for his work as a Cabinet Minister, a phone for his work as an MLA and his personal phone. He retrieved

his personal phone from the pocket of his jacket and offered it to the Constable for inspection, which the Constable declined.

26. After their initial exchange, Constable R.B. returned to his vehicle and wrote up the Ticket. Constable R.B. then returned to Mr. Madu's vehicle and provided him with his copy of the Ticket. The details of the second exchange between Mr. Madu and the Constable are also in dispute.
27. Mr. Madu drove from the Traffic Stop to a Superstore parking lot nearby and made the Call to Chief D.M. from his truck using his personal cell phone. According to Mr. Madu's phone record, he placed the Call at 9:45 am. The Call was to Chief D.M.'s private cell phone and, according to the Chief's phone records, was received at 9:46 am. The Call lasted approximately 8 minutes.
28. During the Call, Mr. Madu told Chief D.M. that he had been pulled over and accused of being on his phone when he had not been. He also told Chief D.M. that he had been on his way to the Legislature to speak to the media regarding the conduct of the members of the LPS and that he was concerned about the possibility that he was being subjected to illegal surveillance or that he was being racially profiled as a Black man. At some point during the Call, Mr. Madu also reminded Chief D.M. of prior discussions they had had regarding the experiences of racialized Albertans. Chief D.M. informed Mr. Madu that he doubted that he was being racially profiled.
29. Following the Call with Chief D.M., Mr. Madu drove to his office at the Legislature, where he informed his staff of what had just occurred.
30. On March 12, 2021, Mr. Madu paid the Ticket. The voluntary payment option was \$300.00.
31. The EPS has a public complaints body and formal process with which to raise concerns about police conduct. Mr. Madu was generally aware of the existence of a formal process. During the Traffic Stop, he did not raise any issue with Constable R.B. about whether he was being racially profiled or illegally surveilled. He also did not engage the formal complaint process. Indeed, Mr. Madu raised no issue with respect to the Traffic Stop or his concerns about whether he had been racially profiled or illegally surveilled until after the Call became public some 10 months later.
32. Given competing views as to relevant details, what follows is the Committee's review of the evidence regarding the relevant particulars of the foregoing events, notably those with respect to the Traffic Stop and the Call. As outlined further below, the Committee finds that Mr. Madu's evidence is not credible in several key regards.

## ***The Traffic Stop***

33. Both Mr. Madu and Constable R.B. testified with respect to what occurred during the Traffic Stop. Two sets of notes Constable R.B. made contemporaneously with or shortly after the event were also admitted into evidence and corroborate the Constable's testimony. Mr. Madu made no such notes, but the Committee does not fault him for that.

### *Constable R.B.*

34. At the time of the Traffic Stop, Constable R.B. had been with the EPS for over five years, starting in patrol and moving into traffic enforcement the year prior.
35. There is nothing from Constable R.B.'s evidence to suggest that he was doing anything other than conducting a routine traffic stop when he stopped Mr. Madu's vehicle. He testified that, as Mr. Madu's vehicle passed his, he saw Mr. Madu holding a cell phone in his right hand in a 3 o'clock position, with his face looking down, to the right toward the phone. He engaged his flashing lights and pulled over Mr. Madu's vehicle. Before leaving his vehicle and approaching Mr. Madu's, he believes he followed his standard practice of running an information check on the license.
36. As indicated above, there is no issue that, when he approached Mr. Madu's vehicle, Constable R.B. informed Mr. Madu that he was being stopped for a cell phone (i.e. distracted driving) violation. Constable R.B. testified that Mr. Madu's reaction to that was "immediately opposed" and that he was "definitely defensive." Constable R.B.'s impression was that Mr. Madu "adamantly believed" that he was not on his cell phone. He described him as "moderately argumentative" and that he "certainly was animated." Mr. Madu told the Constable that he was mistaken and both told him and, by way of gesture, showed him that he had been looking for something in the front console of his truck at the time. Given how adamant Mr. Madu was that he was not holding his phone, Constable R.B. asked him if his phone was an iPhone and where it was then located. The Constable testified that Mr. Madu pulled an iPhone out of the left breast pocket of his jacket and identified it as his phone.
37. Constable R.B. further testified that Mr. Madu said that he would never have been on the phone while driving because he was the Minister of Justice. On cross-examination, Constable R.B. confirmed that he understood that Mr. Madu was telling him his title as part of Mr. Madu's defence to the charge: namely, that he would not break the law because of who he was. The Constable did not believe that Mr. Madu was using his title as an intimidation tactic.
38. The Constable's evidence was that Mr. Madu told him that he was the Minister of Justice "at least 4 times" before the Constable returned to his vehicle and wrote up the Ticket. This is consistent with the notes the Constable made on the police copy of the Ticket before presenting Mr. Madu with his own copy. It is also consistent with an email the

Constable wrote for his superior at lunch that day, memorializing his recollection as to what had happened, at his superior officer's request.

39. Constable R.B. testified that after he presented Mr. Madu with the Ticket, he reviewed his options and asked whether he had any questions. The only question Mr. Madu had was to ask for Constable R.B.'s badge number, which he provided. The Constable also told Mr. Madu that his badge number was on the Ticket.

*Mr. Madu*

40. Mr. Madu's evidence was that he was not on or using his phone while driving prior to being stopped. The phone logs for each of the phones he had with him that morning confirm that he did not place or receive any call on those phones that morning prior to the Traffic Stop or receive any texts on his personal phone that morning prior to the Traffic Stop.
41. Mr. Madu testified that each of his three phones were stowed and stayed in their usual places in his vehicle prior to the Traffic Stop: his MLA and Ministerial phones were in his briefcase and his personal phone was in the left breast pocket of his suit, under a winter coat which he says he had zipped to the neck even inside his vehicle. He testified that Constable R.B. was mistaken as to what he had seen. During examination in chief, Mr. Madu said nothing about suggesting to Constable R.B. that he had been looking for something in his center console. Mr. Madu only acknowledged that it was possible that he may have said something to that effect during cross-examination as a guess as to what the Constable may have seen after being taken to Constable R.B.'s email clearly describing that communication.
42. Mr. Madu repeatedly denied identifying himself by title to Constable R.B. more than once. He also denied using the fact of his position as a defence with the Constable. He testified that Constable R.B.'s evidence in that regard was "not true". He testified that he told Constable R.B. who he was only *once*, and only *after*, Constable R.B. had returned with the Ticket, at the very end of their dialogue. Mr. Madu described it as a "by the way, I am the Minister of Justice" with the purported intent of clarifying why the proof of insurance he had provided for his vehicle was a fleet card (a point Mr. Madu said he thought the Constable was having difficulty understanding).
43. Mr. Madu also denied that Constable R.B. asked him to show him his phone and that he asked the Constable for his badge number.
44. Mr. Madu described Constable R.B. and his exchange with him as "cordial" and said that Constable R.B. was not abusive. He said he understood that Constable R.B. was only doing his job. Mr. Madu denied that he himself was "moderately argumentative" but acknowledged that it would not have been "outside of reality" for Constable R.B. to have thought that he was. Mr. Madu did, however, admit that he was "offended" because, in his view, Constable R.B. had "accused" him of being on his phone when he was not.

### ***The Call to Chief D.M.***

45. Chief D.M. and Mr. Madu both testified about the Call. Chief D.M. made notes during the call which were entered as an exhibit. Mr. Madu had no such notes.
46. To properly understand the conflict in the evidence about the Call, it is important to summarize, at a high level, the submissions made by counsel as to what happened and why. Those submissions will be addressed in further detail below.
47. In summary, Mr. Madu submits that he called Chief D.M. for assurance that he had not been racially profiled (also referred to as “carded”) or subjected to the same type of illegal surveillance in which members of the LPS had been engaged in relation to an MLA. While the Ticket was what prompted the call, Mr. Madu’s position is that his purpose in making it was to seek those assurances, entirely unconnected to the Ticket. He makes a distinction between the Ticket and the Traffic Stop and asserts that the assurances he sought were about the Traffic Stop—unrelated to the Ticket. He submits that he never asked or expected Chief D.M. to address the Ticket and that the Call with Chief D.M. was well within the permitted and normal scope of dialogue between a Minister of Justice and a Chief of Police, particularly given the issues Mr. Madu's office had been addressing in the months and days just before the Traffic Stop.
48. In summary, the LSA submits that the Ticket triggered the Call to Chief D.M. and that, during the Call, Mr. Madu raised both the fact of the Ticket and a concern that he had been racially profiled or illegally surveilled, even though there was no evidence that Constable R.B. acted with such motivation or that the issues surrounding the conduct of certain members of the LPS also existed in Edmonton. The LSA also seriously questions that Mr. Madu's purpose in making the Call was what he said it was. The LSA submits that, both during the Traffic Stop and the Call, Mr. Madu was using his position as Minister of Justice and Solicitor General to influence the outcome with respect to the Ticket and to circumvent the process available to ordinary citizens to address both it and any issue with the Constable's behaviour during the Traffic Stop.

### ***Chief D.M.***

49. Chief D.M. had been the Chief of Police in Edmonton for a little over two years at the time of the events in question and remained in that position at the time of the Hearing. Previously, he had been with the Prince Albert police force for over twenty-five years and had been the Deputy Minister of Corrections and Policing in Saskatchewan for six and a half years after that. He had also served in various roles with policing associations, such as president of the Canadian Association of Chiefs of Police and president of the Alberta Association of Chiefs of Police.
50. Chief D.M. testified that it was not uncommon for him to have communications with various government Ministers on serious policy and operational issues, including Mr. Madu.

51. On March 10, 2021, Chief D.M. was on holidays in Canmore. He testified that, at 9:42 am, he received a call from one of his civilian deputy chiefs to the effect that Minister Madu wanted to talk to him on a matter. During that call, he received a call on his cell phone directly from Mr. Madu. His phone records show that Mr. Madu's call was at 9:46 am.
52. Chief D.M. testified that, after some initial small talk, Mr. Madu voiced *two* issues: Mr. Madu was concerned that he had received a traffic ticket *and* about whether he had been racially profiled and targeted given what had been occurring in Lethbridge with an MLA. Chief D.M. said the conversation was cordial, but that Mr. Madu was clearly expressing his concerns.
53. Chief D.M. told Mr. Madu that he was not sure what he was talking about but that he highly doubted that this was profiling over a traffic ticket. He told Mr. Madu that he had two options: pay the ticket or go to court. Chief D.M. told the Committee he would have given anyone who called him about a traffic ticket this advice. He also testified that he had no power over traffic tickets and would not have wanted any.
54. On cross-examination, Chief D.M. was asked about whether Mr. Madu was asking for the alleged assurances:

Q: So with respect to the phone call, sir, on March the 10th, and I have listened to your testimony and I have read your note, would I be correct in understanding that Mr. Madu, after a traffic stop, wanted some assurance from you that he had just--not just experienced an example of profiling or carding: is that fair?

A: You know, as I said, the two things were mixed together, so I think you could easily make that assumption. I'm not exactly sure. I don't think we ever got to exactly that language. I think we had a pretty decent conversation and split the two things out. But yeah, I think we got to a good place through our discussion, if that makes sense. [Emphasis added]

55. Such is consistent with Chief D.M.'s evidence during examination in chief:

Q: And can you give your recollection of how that call initiated? What was initially discussed?

A: Well, I think at the start we just had some small talk, it was just a general conversation. And then it turned into a concern.

And it seemed like there were two issues. It seemed like there was a traffic ticket that he had received, as well as, you know, racial profiling, perhaps that he was targeted in relation to that, and some references to what was going on in

Lethbridge on that profiling and particular stuff that was happening that the minister was dealing with at that particular time.

Q: ... did Minister Madu make any specific complaint about the conduct of the officer?

A: No, it was more about is it profiling and concern that he got this ticket. There was really not a lot of discussion in relation to the officer. But it was kind of tied to two things, and thus my notes, that I'm assuming you probably have, were kind of almost two different--two different themes. [Emphasis added]

56. Chief D.M.'s notes from that conversation confirm the "two themes":

...[referring to his note] It says where I was, Canmore, on holidays, you know, expressed, as I mentioned, a couple of different themes. One was concerns of a distracted driving ticket around a school zone of the Daniel Woodall School. And then this tied into another concern that he had in relation to is this related to the concern about how Lethbridge--and was this targeted, was this racial, Black profiling. And those were the two themes. [Emphasis added]

57. While, at the beginning of the Call, during the small talk, Chief D.M. did not take notes, he thought it sufficiently important to take notes once Mr. Madu "got to the gist" of why he was calling. Those notes were on the back of an envelope from the hotel at which he was staying and were entered as an exhibit.

58. Chief D.M. clearly acknowledged that Mr. Madu never expressly asked him to have the ticket cancelled.

59. After the Call with Mr. Madu, Chief D.M. immediately made three further calls by way of a "heads up": one to his Chief of Staff, one to the civilian deputy who had initially alerted him to Mr. Madu's desire to speak with him and one to the Chair of the Edmonton Police Commission. He testified that he wanted them to be aware that a complaint about a racial profiling could be coming in and an issue in relation to the ticket Mr. Madu had received and how it had been handled. Because Mr. Madu had also referenced the situation in Lethbridge, which he was not aware of at the time, Chief D.M. also called the Executive Director of the Alberta Association of Chiefs of Police for the number for Lethbridge's Chief of Police and was filled in by the Executive Director about what was happening with respect to Lethbridge.

*Mr. Madu*

60. Mr. Madu testified at length about certain issues he and his staff were addressing and the detailed work he was doing in that regard during the months and days leading to the Traffic Stop and Call to Chief D.M.:

- banning unauthorized stopping of individuals by police because of the color of their skin or what they looked like (i.e. racial profiling or carding). Mr. Madu said that was the number one complaint he received from members of the community across the province after becoming Minister of Justice and was a major issue for him in that role. It was, however, not a new issue, having been a topic of concern for the Legislature for many years prior to him assuming that role;
- a comprehensive review of the *Police Act*;
- First Nation and Indigenous police services;
- hate crime; and
- the transition of certain responsibilities from the RCMP to provincial police.

(Collectively, the Issues)

61. While Mr. Madu chose to highlight the foregoing, particularly carding and hate crime, he admitted during cross-examination that he also had other duties and responsibilities.
62. Mr. Madu testified that, after he became Minister of Justice, he and his department had regular communications with the Chiefs of Police on the carding issue, most frequently with Chief D.M. and Calgary's Chief of Police. The policy work with respect to the carding issue was sufficiently done by November 2020 such that on November 19, 2020, an announcement was made that Mr. Madu had exercised his powers under the *Police Act* to prohibit law enforcement from carding, pending tabling of a bill in the spring 2021 sitting of the Legislature to prohibit it. He said Chief D.M. participated in that announcement, along with other Police Chiefs and community members.
63. [Redacted]
64. [Redacted]
65. [Redacted] [S]erious issues had also come to Mr. Madu's attention with respect to the LPS, including members of that force profiling, illegally surveilling and following the former Minister of Environment and Parks and the MLA for Lethbridge West, and a number of other serious issues with respect to the conduct of members of the LPS. Mr. Madu was "outraged" and took an authoritative stance, imposing a three-week deadline for the LPS Chief of Police to produce a plan to mitigate the issues or face the potential "nuclear option" of Mr. Madu taking the unprecedented and extraordinary step of unilaterally exercising his Ministerial power to disband the LPS entirely. The LPS issues became public on March 8, 2021 and set off a flurry of activity for Mr. Madu and his office [redacted]. A press conference on the issue had been planned for approximately midday on the day of the Traffic Stop.

66. One of the keys to Mr. Madu's response to the Complaint is in what he described his state of mind was as he drove off after receiving the Ticket and in the intervening time before he placed the call to Chief D.M.. During examination in chief, he testified as follows:

Q: So what was your state of mind when you drove off?

A: You know--so, as you see from my work diary and the various event and activities, the policy work and the issues I was dealing with at the time, I said to--in my mind, I was like, these are--this is the same concerns, the same complaint I have been hearing from folks from my community, from my constituency, town halls and e-mails to my office, and phone calls to my office. I'm talking about being stopped for no cause, without reasons. I was like, in my mind what had just happened to me is exactly what I have been dealing with, you know, in multiple conversations with stakeholders, including the chiefs of police, Chief [D.M.]. [Emphasis added]

67. During cross-examination, Mr. Madu testified that:

Q: And so, sir, between the time you concluded with Officer [R.B.], who you said you understood was just doing his job, and the time you started talking to Chief [D.M.], you came to a conclusion that was somewhat different [than events that are academic and may not happen in reality], that you were being carded and profiled; is that what you're now telling us?

A: Again, I was accused of being on my phone when I was not on my phone, and that was what that was all about.

Q: And, sir, there was nothing--I'm going to suggest to you and we'll take our time with this if we need to, there was nothing that Constable [R.B.] did: he wasn't abusive, he wasn't in any way objectively doing other than his job, was he?

A: I would agree with you. [Emphasis added]

68. After he left the Traffic Stop, Mr. Madu testified that he drove to the safest and nearest parking lot – the Superstore across the road – because:

I needed to sit back and just process what had just happened to me in light of all of the issues that I have been dealing with. So I parked there and gave myself a few--a few minutes. And in my mind, the one person that come to my mind right away was Chief [D.M.], because his is one--he is the one chief that I have had countless conversations with on carding.

69. Mr. Madu called Chief D.M. on the latter's cell phone while still in the Superstore parking lot. He used his personal phone – not either his Ministerial or MLA phones, although they were in the vehicle with him. The Call was placed at 9:45 am. Mr. Madu took issue with the suggestion that he had asked one of his staff to make Chief D.M. aware of any desire to speak with him (at all or in relation to the Traffic Stop or Ticket) before he made the Call. Indeed, there is no record on his cell phone logs (for any of his three phones) of any phone calls between the time of the Traffic Stop and the Call to Chief D.M..
70. Notwithstanding Mr. Madu's testimony throughout that there was no connection between the concerns he raised with Chief D.M. and the Ticket, during cross-examination, Mr. Madu testified that he agreed that Chief D.M.'s notes outlined the substance of their conversation and that he "raised concerns with having just received a distracted driving ticket" and gave Chief D.M. particulars with respect to where the Ticket was issued.
71. Mr. Madu disagreed with Chief D.M. that he had started the conversation with "small talk". He testified that he began by reminding Chief D.M. about their prior conversations and work in relation to carding and police profiling and then said:
- ...guess what, I have just experienced that. ...I have just been traffic stopped by one of your men and accused of being on my phone when I was not on my phone and I wanted to make sure of two things. Number one, I wanted to make sure that I have not been profiled as a Black person, because this is something, since I became Justice Minister, I have heard an ear full. I said number two, you know, that I am now in the midst of dealing with Lethbridge Police Service about-- with respect to illegal police surveillance of a sitting member of the Legislature. I wanted an assurance that I have not been dealt with the same faith [sic].
72. Mr. Madu emphasized that he asked for those assurances from Chief D.M. during the Call and that such was the reason for his call – not to deal with the Ticket. He also testified that he did not make any connection between the Ticket and the assurances he said he was calling for. He also clearly testified that he neither expected nor asked Chief D.M. to do anything about the Ticket.
73. In response to his request for the assurances, Mr. Madu testified that Chief D.M. told him that he did not think that he had been racially profiled or illegally surveilled and that that could not have been the case. In relation to the Ticket, he said that Chief D.M. told him he could either dispute it or pay it.
74. During cross-examination, Mr. Madu was challenged with respect to what he alleged as the purpose of the Call. He admitted that Chief D.M. was not in a position to give him assurance about what had happened: the Chief knew nothing about the Traffic Stop apart from what Mr. Madu told him, and Mr. Madu knew that Chief D.M. and the other Chiefs of Police were generally of the view that the concerns from the community about carding and profiling which Mr. Madu's office had been raising were more theoretical or

academic than what occurred in reality in their experience. Notably, Mr. Madu paused for some 10 seconds when asked during cross-examination why, faced with that logic, the sole purpose of the Call was to ask for the assurances. When he eventually answered, he skirted the question and did not give any meaningful explanation.

75. After his conversation with Chief D.M., Mr. Madu carried on to his office and told his staff what had happened. He told them that he was not paying the Ticket and planned on challenging it in court because:

...this is something that I am working on to end, this is something people of—mostly from the ethnocultural and Indigenous communities have been complaining about, and I need to bring an end to this. So I was not comfortable, you know, paying the ticket. My preference was to challenge it.

76. However, when cross-examined on this point, Mr. Madu clarified that he was not contemplating going to court because he thought he had been racially profiled, but because he thought he was wrongly accused of distracted driving. He was going to address racial profiling through the legislation his office was working on:

Q: So you weren't intending to convey that you felt righteously indignant about the ticket and that you were going to fight it on the basis that you had been profiled; that's not your meaning?

A: No, that was not my meaning. My meaning was to, if I'm going to—if I had exercised my right to go to court and challenge the ticket, it would be that I did not have my phone, and it would be—for example, the officer had said that my right hand was on 3 o'clock and I was looking down. In my car, in that truck, that is sideways, not looking--there's a lot of legal arguments to take before the Court to deal with that particular issue.

But the traffic ticket--the ticket is not what is before is not what I'm dealing with right now. I didn't take that opportunity because of—for political reasons, and because of my role as the AG. But if that was not to be the case, you bet, I would have gone to court to challenge the ticket on the basis of the false acquisition [sic] and inconsistencies with his testimony. [Emphasis added].

77. In any event, Mr. Madu's staff counseled against fighting the Ticket in court and told him to pay it. His testimony was that his staff thought he was "crazy" to even consider challenging it. He testified that he "wrestled" with what to do for a couple of days and then paid the Ticket.

## Decision Regarding the Kent Report

78. The Committee's reasons why it admitted the Kent Report as an exhibit at the outset of the Hearing and the weight to which it gave the Kent Report in reaching its decision on the merits are as follows.

### **Submissions of the LSA**

79. The LSA does not rely on the Kent Report as *prima facie* proof of the Citation or as proof of the truth of the facts summarized in the Kent Report. The LSA did, however, seek to rely upon the truth of Justice Kent's conclusions, based on the facts before her, as some evidence in support of the Citation.
80. Counsel for the LSA submits that the Kent Report's conclusions are relevant, probative and satisfy the criteria for admissibility in administrative proceedings. He submits that the only real question is the weight they should be given.
81. Counsel for the LSA argued that the Kent Report was clearly relevant as it was the genesis of the Complaint and underlies the LSA's investigation and issuance of the Citation. LSA counsel submitted that Justice Kent had substantially the same evidentiary record before her as would be before this Committee, from the same witnesses. Counsel for the LSA also argued that there is no prejudice to Mr. Madu in admitting it (on the basis tendered). LSA counsel submitted that Mr. Madu actively participated in the process before Justice Kent, the other two witnesses she interviewed were testifying at the Hearing, and, while there was no cross-examination, a representative for Mr. Madu was present during all the interviews. LSA counsel submitted that no fairness concerns arise, or have been raised (such as fraud, dishonesty, or new evidence), that the Kent Report's probative value outweighs any prejudicial effect, that Justice Kent applied the same civil standard of proof as is to be applied in the Hearing, and that she followed the principles of investigation prescribed by statute.
82. With respect to the issue of hearsay (given that Justice Kent was not being called as a witness), counsel for the LSA submitted that the Committee was not bound by the rules of evidence and that, in any event, reliance upon Justice Kent's conclusions fell within an exception to the hearsay rule. LSA counsel submitted that they were necessary, forming the foundation of the Complaint, reliable and trustworthy. Counsel for the LSA submitted that Justice Kent's conclusions fall within the public documents exception to the hearsay rule, having been issued by a public official in furtherance of her duties, with a view to its use as a public record, and having been made public and retained as such.
83. While counsel for the LSA submits that the Committee can give Justice Kent's conclusions weight, at the end of the day counsel for the LSA did not find it necessary to place much weight on them. LSA counsel treated them almost in passing in their closing submissions.

### **Submissions of Mr. Madu**

84. Counsel for Mr. Madu objected to the admission of and, if admitted, any reliance upon or weight being given to the Kent Report. His position was that the Kent Report was irrelevant, hearsay, of no probative value and prejudicial.
85. Counsel for Mr. Madu took issue with several of the "factual" propositions referred to by counsel for the LSA in the course of his submissions regarding admissibility and use of the Kent Report. Unfortunately, there was no motion record before the Committee and neither the Kent Report nor what later became agreed exhibits were evidence at the time the issue was argued and, at counsel's joint request, decided. Over the course of the Hearing, however, the Committee did have the benefit of certain exhibits and testimony that assisted it in assessing the factual submissions made previously by counsel regarding the circumstances surrounding the Kent Report and deciding what weight to afford it, as referred to further below.
86. Counsel for Mr. Madu acknowledged that section 68 of the *Act* vests the Committee with broad discretion regarding evidential matters. However, he emphasized that our discretion is not limitless. In essence, he submitted that Justice Kent's process was seriously flawed and that led to flawed conclusions that were unreasonable if the *Vavilov* test were to be applied (which test he was arguing only by analogy). Contrary to the factual submissions of counsel for the LSA, counsel for Mr. Madu submitted that Justice Kent held no public office at the time she conducted her inquiry and issued the Kent Report. While he acknowledged, with the greatest of respect, her stellar reputation while on the bench, he pointed out that she was a retired justice when she took on and completed this assignment. Her appointment was at the pleasure of (then) Premier Kenny and was not pursuant to any statute. The process was not one that took place in court nor even public, although the ultimate report was made public, and remains public. Counsel for Mr. Madu also took issue with the LSA's description of Mr. Madu's participation in the process, submitting that neither Mr. Madu nor his counsel were present during Justice Kent's interviews of the other witnesses.
87. Counsel for Mr. Madu acknowledged that the same witnesses would testify before the Committee as had been interviewed by Justice Kent and that he therefore expected that there would be overlap in many of the facts. However, he anticipated that there would be differences.
88. In addition to what he submitted was the flawed process before Justice Kent, counsel for Mr. Madu submitted that there was no basis upon which to admit the Kent Report: it was not evidence of prior legal proceedings (because there were no such proceedings) and, at best, the Kent Report was simply Justice Kent's opinion, to be given no more weight than any other citizen in Alberta. Moreover, he submitted that, notwithstanding the purported basis upon which the LSA says it is tendering the Kent Report, her conclusions come perilously close to deciding the ultimate issue, all without following the

usual protections of producing an expert witness, duly qualified and subject to cross-examination.

### ***Decision Regarding Admissibility***

89. Having heard the submissions from the parties and having considered the law provided, including the additional authorities provided by counsel for the LSA the first morning of the Hearing, the Committee admitted the Kent Report as an exhibit as some evidence in support of the Citation, with the weight, if any, to be determined by the Committee.
90. Section 68(1) of the *Act* provides that this Committee:
  - (a) may hear, receive and examine evidence in any manner it considers proper, and
  - (b) is not bound by any rules of law concerning evidence in judicial proceedings.
91. In *Law Society of Alberta v. Zang*, 2023 ABLS 27, after reviewing many of the same authorities as those argued before us, the hearing committee there set out at paragraph 50 a number of principles. We relied upon those principles, and the authorities upon which they are based, in deciding to admit the Kent Report as some evidence in support of the Citation.
92. While broad, the Committee recognized that its discretion to receive and rely upon evidence must nonetheless be exercised by taking a principled and rational approach to both admitting and evaluating the evidence: see for example *Chartered Professional Accountants of Alberta v Mathison*, 2024 ABCA 33, at paragraphs 361-369 and the authorities cited at footnote 413. While not binding, we were also mindful of the rules of evidence and, even more importantly, the rationale that underlie them. The Committee also recognized that it is its obligation, not that of Justice Kent, to determine whether the conduct alleged in the Citation occurred and is deserving of sanction.
93. The Committee determined that Justice Kent's conclusions are clearly opinion and hearsay. We were also not satisfied that the public documents exception to hearsay squarely applied. However, there is no issue, nor was one truly raised by counsel for either of the parties, that her pedigree and experience would qualify her as an expert witness able to give opinion evidence had she been tendered as such.
94. However, we determined that the Kent Report, and its publication, provided context for both the Complaint and the Citation and there is a factual nexus between Justice Kent's investigation and conclusions and the issues before this Committee. We further determined that there is sufficient reliability and trustworthiness in her process to at least meet the hurdle of admitting the Kent Report given the basis upon which it was tendered.

### ***Decision Regarding Weight***

95. Having admitted the Kent Report into evidence, it is the role of this Committee to determine what, if any, weight her conclusions should be given in the circumstances, including such factors as:
- similarity of issues;
  - identity of the parties;
  - the applicable burden of proof and its purpose;
  - the nature of the earlier proceedings and the opportunity to participate therein; and
  - the varying circumstances of the cases involved: *Zang*, at paragraph 50; *The Law Society of Saskatchewan v. Phillips*, 2021 SKCA 16 at paragraph 80; *British Columbia (Attorney General) v. Malik*, 2011 SCC 18 at paragraphs 42 and 48.
96. Given that admissibility of the Kent Report was addressed at the outset of the Hearing, Mr. Madu was free to call evidence in relation to Justice Kent's investigation and any other matters that provided context for or challenged her factual findings and her conclusions.
97. Considering the foregoing factors, the Committee has noted the existence of the Kent Report as a matter of fact (essentially as context) but gives little weight to Justice Kent's conclusions in determining the issues before us. We were not asked to give weight to her findings of fact and do not do so.

### ***Similarity of Issues***

98. Justice Kent had two broad questions before her, which she summarized as follows:

In considering both the content and context of the Phone call [of March 10, 2021 by Mr. Madu to Chief D.M.], whether:

- a) In making the Phone Call, Minister Madu interfered or attempted to interfere with the administration of justice; or
- b) The Phone call created a reasonable perception of an interference with the administration of justice.

(Kent Report, preamble)

99. Justice Kent concluded that Mr. Madu did not interfere with the administration of justice but attempted to do so. She further concluded that there was a reasonable perception that he had interfered with the administration of justice.
100. The Committee agrees, in part, with the submissions of counsel for the LSA that there are similarities in the issues to be determined by Justice Kent and those to be determined by this Committee; unlike counsel for the LSA, however, we do not think that the issues are "substantially similar." The differences militate against placing any real weight on Justice Kent's conclusions.
101. The task before this Committee differs in two material ways.
102. First, we are to apply a different test. Justice Kent's focus was on "interference" with the administration of justice (Kent Report, paragraphs 4-7), which she defined as "to hinder, prevent or obstruct" (Kent Report, paragraph 5). The Citation is broader, referring to conduct that "undermines" the administration of justice. Moreover, section 49 of the *Act* requires this Committee to determine whether the conduct is deserving of sanction, necessitating a determination of whether the conduct is either incompatible with the best interests of the public or the members of the society or tends to harm the standing of the legal profession generally.
103. While there is little issue that interference, attempted interference or the perception of interference with the administration of justice (all matters within the scope of Justice Kent's mandate) will likely also "undermine" the administration of justice, this Committee must also consider whether conduct that falls short of interference, attempted interference or perceived interference may "undermine" or be perceived to "undermine" the administration of justice and, in any event, amounts to conduct deserving of sanction pursuant to section 49 of the *Act*.
104. Second, there is a difference in the capacity in which this Committee is to consider Mr. Madu's conduct. Justice Kent's mandate was focussed on Mr. Madu's conduct relative to his political role as Minister of Justice and Solicitor General (Kent Report, paragraphs 5 and 6). The focus of these Proceedings is on Mr. Madu's conduct as a member of the legal profession who was *also* the Minister of Justice and Solicitor General. This Committee must therefore assess Mr. Madu's conduct relative to the standard expected of lawyers, generally, and lawyer-politicians, specifically.

#### *Identity of Parties*

105. There is no issue that Mr. Madu was the subject of the proceedings before Justice Kent. The LSA was not. We do not find this difference particularly relevant to our analysis of weight.

#### *Standard and Burden of Proof*

106. The LSA must prove the alleged conduct on a balance of probabilities. Justice Kent applied the same standard of proof (Kent Report, paragraph 5(b)). While she did not expressly refer to who bore the burden of proof, it is clear from her report that she presumed Mr. Madu innocent and that he therefore did not carry the burden of proof (Kent Report, paragraph 5(a)).

#### *Nature of the Proceedings*

107. Counsel for Mr. Madu heavily relied upon differences between Justice Kent's process and that of this Committee in his submission that this Committee should give the Kent Report no weight. The Committee agrees that there are material differences between these Proceedings and the investigation Justice Kent was asked to, and did, undertake. While some of those differences become less significant given Mr. Madu's ability in these Proceedings to lead evidence or otherwise challenge both the factual record and conclusions in the Kent Report, overall, the differences militate against placing any appreciable weight on Justice Kent's conclusions.
108. These Proceedings are formal, subject to a process and accompanying substantive and procedural protections prescribed by statute, rules and common law. The decision of this Committee is also subject to further review and appeal, as also set out by statute and the Rules of the LSA (Rules).
109. There is no issue that Mr. Madu participated in the process before Justice Kent. While counsel for both parties, and Mr. Madu himself, informed the Committee that they held Justice Kent in high regard and respected her as a jurist, it appears from the Kent Report that she was appointed by the Premier and given a mandate to answer two questions, but otherwise left on her own to determine how to do so. She was not a trial judge, arbitrator or, from what this Committee can determine, appointed with the force (or benefit) of a statutory framework that prescribed her role or her process.
110. Justice Kent's process did not include cross-examination. This Committee has the benefit of cross-examination by learned counsel, versed in not only the issues but the available evidence and nuances of the case. Where, as here, there are conflicts in the evidence and where credibility has been put in issue, the availability of cross-examination is particularly important.
111. The submissions of counsel in the present Proceedings differed as to whether Mr. Madu had, or was even able to have, counsel present when Chief D.M. and Constable R.B. were interviewed. Mr. Madu testified before this Committee that his counsel was not present. The Kent Report does not list counsel as being in attendance during her interviews but does not expressly state that they were not (Kent Report, paragraph 1). Mr. Madu's evidence that his counsel was not present is thus the only clear evidence before us on the point. While Mr. Madu was himself a lawyer and this Committee notes that many parties choose to represent themselves in matters of all types and

significance, as is their right, there is no evidence that Mr. Madu had the benefit of the choice of being represented during Justice Kent's investigation. There is also no evidence that Justice Kent had the benefit of submissions from counsel, or even Mr. Madu, regarding the legal framework she chose or its application to the facts.

112. While, based on the contents of the Kent Report, Justice Kent appears to have provided Mr. Madu with some documents and to have generally informed him of evidence to the contrary, there does not appear to have been any formal discovery process, nor can this Committee say that any discovery was as fulsome as in the present Proceedings.
113. We also note that Justice Kent's interviews were not conducted under oath (Kent Report, paragraph 1), as were these Proceedings. The Committee considers that difference largely irrelevant given: a) Justice Kent is a respected, experienced, former Justice of the Court of King's Bench (acknowledged as such by both parties); and b) Justice Kent told the interviewees that she expected them to tell the truth even though they were not, technically, under oath and they acknowledged that they would (Kent Report, paragraph 1).
114. Finally, the Committee notes that, while the Kent Report was made public (including the process she followed and her findings), the process in which she engaged was not. In comparison, the issues before this Committee were heard in public, subject only to a prior order regarding certain sensitive and confidential Governmental information.

#### *Varying Circumstances*

115. The same witnesses appeared before the Committee as were interviewed by Justice Kent: Mr. Madu, Chief D.M. and Constable R.B.. However, there appear to have been differences in the evidential record between the two proceedings.
116. The Committee had the benefit of hearing the testimony of these witnesses under oath, subject to cross-examination by learned counsel. The Committee also had the benefit of hearing Mr. Madu's testimony after he had been present for the testimony of Chief D.M. and Constable R.B. and had had full access to all the exhibits.
117. The transcripts of Justice Kent's interviews were not tendered as evidence in these Proceedings. Justice Kent's account in the Kent Report of the information she gained from her interviews is generally consistent with the testimony heard by this Committee. This Committee has noted the consistency but has instead relied upon its own account of the actual testimony it heard.
118. No evidence was led as to whether Justice Kent had exactly the same written material before her as forms part of the evidential record in these Proceedings. Clearly there was some overlap. For example, Mr. Madu testified as to certain documents that he had provided to Justice Kent and others which he was provided with during the course of

Justice Kent's investigation, all of which were also admitted as exhibits in these Proceedings (by consent).

119. However, Justice Kent also appears to have had additional written material before her (such as certain texts between Mr. Madu's Chief of Staff and Chief D.M.'s staff). While reference was made in cross-examination to those texts and to the transcript from Justice Kent's interview(s) with Mr. Madu, none of that information was tendered, or at least properly tendered, for consideration by the Committee. It has therefore not been considered.
120. Assessing all of the foregoing factors, the Committee has determined that the Kent Report, while relevant and admissible, was of little assistance to it. It essentially placed no weight on her conclusions, but to note them as part of the public record and as context for the Complaint and the Citation.

### **Decision Regarding the Citation**

121. The central question before this Committee is whether Mr. Madu engaged in conduct that undermined respect for the administration of justice when he contacted Chief D.M. on March 10, 2021 regarding the Ticket and whether such conduct is deserving of sanction.
122. The answer is "yes".

### **Governing Law**

123. There is no issue between the parties that the LSA bears the burden of proof on a balance of probabilities<sup>1</sup> and that section 49 of the *Act* sets out the governing test to be applied:

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 of 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.

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<sup>1</sup> *F.H. v McDougall*, [2008] 3 SCR 41

124. However, the parties differ as to, first, what factors ought to be considered in applying that test and, second, whether they result in conduct deserving of sanction pursuant to the Citation.

## **Submissions of the Parties**

### ***Submissions of the LSA***

125. Counsel for the LSA looks to the duties of a lawyer-politician prescribed by the LSA Code of Conduct (Code) and case law and assesses those duties objectively in light of the facts of the case. He submits that Mr. Madu's motivation for the Call is not essential and that, in any event, his evidence as to what his motivation was is, in its best light, "problematic."
126. Counsel for the LSA submits that, by making the Call to Chief D.M., Mr. Madu failed to adhere to the high standard of conduct imposed upon lawyers by virtue of their special status in the community. He emphasizes a lawyer's obligation to encourage public respect for the administration of justice and its accompanying commitment "to the concept of equal justice for all within an open, ordered and impartial system" (section 5.6-1 of the Code, and associated Commentary). He further submits that that duty requires a lawyer to consider the optics of his or her conduct.
127. Counsel for the LSA also relies upon a lawyer's duty of integrity, which is a foundation of the Code, and the duty to avoid even the appearance of impropriety (section 2.1-1 of the Code, and associated Commentary).
128. Counsel for the LSA submits that a lawyer must meet the high standard of conduct expected when carrying out both his or her professional activities and in his or her personal life. As is the case here, he also submits that a lawyer who holds public office is bound by the same standard of professional conduct required of a practicing lawyer and refers to the rationale that, because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by failure to observe its ethical standards (section 7.4-1 of the Code and associated Commentary). Counsel for the LSA further submits that, in some instances, the duty upon a lawyer-politician may be even higher than that of a lawyer alone, relying on *Law Society of Yukon v Kimmerly*, [1988] LSDD No. 1 at 5.
129. In applying those standards, counsel for the LSA submits that, as Minister of Justice and Solicitor General, Mr. Madu knew or ought to have known of the correct procedures for both disputing a traffic ticket and complaining about an officer. By virtue of his office, he had direct access to Chief D.M. and, regardless of his motivation for making the Call, complained about the Ticket, questioned Constable R.B.'s motivation for issuing it and sought assurances that he was not being treated unfairly. Counsel for the LSA submits that Mr. Madu "sidestepped" the ordinary process from a position of power and authority and that such interferes with the administration of justice.

130. Counsel for the LSA also submits that Mr. Madu's conduct signals to the public that the Minister of Justice and Solicitor General may be privileged to have special procedures in relation to a ticket that has been issued to him and such undermines the public's respect for the administration of justice.
131. Counsel for the LSA therefore submits that Mr. Madu's conduct is deserving of sanction in accordance with the principles set out in *Law Society of Alberta v Juneja*, 2022 ABLS 11:
- his qualifications as a lawyer are central to performance of his duties. By appearing to circumvent the very justice system he was appointed to superintend, his conduct undermined respect for the administration of justice and tends to harm the reputation of the legal profession;
  - his conduct also calls in to question his professional judgment. He knew the avenues available, but chose to air his grievance privately; and
  - as a lawyer-politician, he was obliged to adhere to standards of conduct as high, or higher, than those of a lawyer engaged in the practice of law as public figures can more readily bring the profession into disrepute by a failure to observe its ethical standards, a concern that counsel for the LSA submits was not hypothetical in this case given the significant media attention garnered and real harm it demonstrated to the public respect for the administration of justice and the standing of the profession because of Mr. Madu's conduct.
132. Counsel for the LSA submits that Mr. Madu's evidence is "problematic" with respect to particular aspects of the facts. He questions Mr. Madu's insistence that the Call was to seek the assurances (let alone only the assurances, unconnected to the Ticket). He submits that Mr. Madu knew that the Chief could not give the assurances allegedly sought and emphasizes the fact that Mr. Madu paused for some 10 seconds without explanation when questioned about the logic of why he was then seeking them. Along this line, counsel for the LSA also queries the plausibility of Mr. Madu's supposed jump from the Traffic Stop which Mr. Madu said was cordial and just part of the Constable's job, without raising any issue about racial profiling or illegal surveillance with the Constable, to allegedly being so concerned about having been racially profiled or illegally surveilled that within minutes he called the Chief of Police from the Superstore parking lot. Moreover, counsel for the LSA questions why concerns of such purported importance to Mr. Madu went no further.
133. While submitting that the purpose of the Call was not essential, counsel for the LSA also submits that an inference could be made that Mr. Madu's purpose was not to seek the assurances but to attempt to influence what happened with the Ticket. LSA counsel argues that Mr. Madu decided to connect the Ticket to other matters of serious public concern when he had no basis to do so and then raised all that with Chief D.M..

134. Counsel for the LSA further submits that Constable R.B.'s evidence as to how many times Mr. Madu referred to his title should be believed over that of Mr. Madu given, in particular, the Constable's two sets of notes and the inconsistency of Mr. Madu's version of the events with the notes.

### ***Submissions of Mr. Madu***

135. Counsel for Mr. Madu's primary argument implicitly encourages the Committee to take a more subjective than objective approach. He submits that the reason Mr. Madu made the Call and the fact that Mr. Madu did not ask for, expect or receive any benefit should end the matter (thus implicitly making consideration of perception irrelevant).
136. Counsel for Mr. Madu submits that Mr. Madu did not call seeking dispensation concerning the Ticket but to seek assurance that the Traffic Stop was not the result of racial profiling or illegal surveillance. He submits that a Minister of Justice and Solicitor General can always discuss racial profiling and police conduct with a Chief of Police, regardless of the trigger, and that there is nothing inappropriate about Mr. Madu doing so on this occasion. Indeed, counsel for Mr. Madu submits that Mr. Madu was obliged by the Code to raise his concerns about the Traffic Stop with Chief D.M. given his obligation to encourage public respect for and try to improve the administration of justice (in essence, the other side of the coin from the LSA's reliance on that obligation as prescribing what not to do in these circumstances).
137. Counsel for Mr. Madu acknowledges that the Ticket prompted the call to Chief D.M. but submits that it is the purpose and content of Mr. Madu's Call that governs. He submits that Mr. Madu had devoted his ministry to eliminating discrimination and had a traffic stop experience that brought it to top of mind. Mr. Madu was thus not calling about the *Ticket*: he was calling about the *problems*.
138. Mr. Madu's counsel submits that there is no credibility issue concerning Mr. Madu's testimony. He submits that there is nothing to infer regarding Mr. Madu's motivation because Mr. Madu's evidence is uncontroverted. During closing argument, counsel for Mr. Madu acknowledged that Mr. Madu was probably upset when he made the Call and that the Committee could reasonably infer that Mr. Madu was probably objectively wrong about being profiled at the Traffic Stop. However, he submits that none of that matters because "that's what he was thinking, that's what he believed." Counsel for Mr. Madu also suggests that it was unfair to infer the purpose of Mr. Madu's Call without expressly putting such to him during cross-examination (implicitly relying upon the rule in *Browne v Dunn*).
139. Secondly, counsel for Mr. Madu submits that there is no conduct deserving of sanction. In this regard, counsel for Mr. Madu takes an objective approach but urges the Committee to consider arguably "expanded" factors. Counsel for Mr. Madu submits that the lens through which Mr. Madu's conduct must be considered is that of a member of

the public who has, in essence, been in Mr. Madu's shoes: a Black Minister of Justice who "spent six months getting an ear full from the Black and ethnic communities about policing, who then is confronted with the Lethbridge situation."

140. In this regard, counsel for Mr. Madu submits that this Committee should "look at this through the lens of a reasonable member of the public, who is fully apprised of all of the facts and circumstances, and the lens of the public attuned to the issues and importance of the policy concerns of this particular minister." He relies upon *R. v S*, 1997 Carswell NS 301 (SCC) (*R. v S.*) and the LSA's Acknowledgement of Systemic Discrimination in support of these factors. He submits that Mr. Madu's personal circumstances and responsibilities as a minister are an important part of the lens through which this Committee must view the events.

## Analysis and Decision

### Overview

141. Given the importance of public perception and perceived impropriety to the substance of this case, the Committee thinks it important to address at the outset the central theme presented on behalf of Mr. Madu: that this is an "unusual or remarkable prosecution" that should have never gone this far. With respect, it is far from that. The process that led to the Citation was initiated by a public complaint, not one initiated by the LSA. Even though Mr. Madu challenges the *bona fides* of the complainant, there is no issue between the parties that the ensuing Complaint was investigated and assessed in accord with the LSA's formal process, applicable to all complaints, of whatever nature. It was only following that investigation, by independent counsel, that the Citation was issued. Moreover, Mr. Madu has had a fulsome opportunity, with learned counsel, to present his case in its best light at this Hearing, with the strongest advocacy. Whether or not Mr. Madu agrees with its result, there was nothing unusual or remarkable about the process.
142. In short, this case is about a call that never should have happened. Almost immediately after failing to convince an EPS traffic constable that he was not using his cell phone while driving, the Chief Law Enforcement Officer of Alberta used his position, and information he had by virtue of that position, to call the private cell phone of the Chief of the EPS. He told him that he had just been issued a ticket for distracted driving and also raised concerns about whether he had been racially profiled or illegally surveilled. While much time was spent in this Hearing about the reason for the Call, the *fact* of the Call, in the circumstances of this case, undermines the administration of justice. Mr. Madu's conduct falls short of the standard he is required to uphold, particularly given his unique status at the time of the call: Minister of Justice and Solicitor General. In making the call to Chief D.M., Mr. Madu acted in a manner that is incompatible with the best interests of the public and the members of the LSA and also engaged in conduct that tends to harm

the standing of the legal profession generally. It is therefore conduct deserving of sanction.

143. The Committee has carefully considered Mr. Madu's arguments to the contrary. They are not established by the applicable law or the facts of this case. Moreover, Mr. Madu's attempt to distinguish what "prompted" the Call from its "purpose"—and to thus entirely disconnect the Ticket from why he called Chief D.M.—is not credible.
144. In rendering its decision, the Committee wishes to make clear that this case is not about whether Mr. Madu was, in fact, using his cell phone at the time of the Traffic Stop, and thus not about whether the Ticket was supportable on that basis. There is also no suggestion that the Traffic Stop was actually the result of racial profiling or illegal surveillance. Constable R.B. is not being accused of any such conduct, nor has any formal complaint been made about his conduct.

### ***The Test***

145. As indicated above, there is no issue that section 49 of the Act sets out the mandate, and thus framework, for this Committee's analysis. In applying that framework, the Committee is to determine what occurred, compare that conduct to the standard to which lawyers are held and ultimately determine whether the conduct is incompatible with the best interests of the public or of the members of the LSA, or tends to harm the standing of the legal profession, generally. The analysis is necessarily objective. Public perception, objectively determined, and what is in the best interests of the public and members of the LSA are the governing principles: not the intent or motivation of the lawyer in question.
146. As to what factors ought to be considered in objectively determining public perception in the present case, the Committee agrees, in part, with counsel for Mr. Madu: the Committee must consider all of the relevant facts and circumstances and the existence and impact of systemic racism and discrimination in applying the lens of an appropriately (i.e. reasonably) informed member of the public. The Committee also agrees that it should also not be influenced by the political and media storm that emerged after the Call became public in 2022.
147. The LSA and this Committee take issues of racism and discrimination seriously.<sup>2</sup> As stated above, the Committee has taken such issues into account in considering public perception. It is important to understand, however, that no allegations of racism or discrimination are made in this case. Rather, Mr. Madu points to the existence of such issues in our society, generally and as connected to his work, to attempt to explain his response to the Traffic Stop and support what he submits was the sole purpose of the Call.

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<sup>2</sup> See, as but one example, the LSA's public Acknowledgement of Systemic Discrimination

148. While the Committee has, as indicated above, agreed with counsel for Mr. Madu with respect to some of the factors to consider in assessing public perception, it disagrees with his submission that a reasonably informed member of the public should, in effect, fully step into Mr. Madu's shoes and have knowledge of Mr. Madu's personal and life experience and details of his work, priorities and initiatives as Minister of Justice and Solicitor General. We are of the view that a reasonably informed member of the public would not have insight, and certainly not detailed insight, into the work being done by Mr. Madu's ministry to the extent that it was not already in the public domain. Mr. Madu's work may be relevant, but only to the extent that it was made public at the time of the events in question (i.e. on March 10, 2021), such as the public announcement that Mr. Madu had banned carding and that his office was working on legislation to that effect and the publicity concerning the surveillance situation in Lethbridge with the MLA. That level of knowledge is much different from a reasonably informed member of the public having detailed knowledge of the type of work, priorities, initiatives and activities or the inner workings and information of Government of which, for example, Mr. Madu testified about *in camera*. That was the very point of holding that part of the Proceeding *in camera*.
149. Counsel for Mr. Madu relied upon certain passages from the Reasons of Madam Justices L'Heureux-Dube and McLachlin (who spoke for the Majority with respect to the passages Mr. Madu's counsel relied upon) in *R. v S.*, 1997 Carswell NS 301 (SCC), paragraphs 46-48. We do not read that case as supporting the proposition that a reasonably informed member of the public in the present case would have any further level of detailed information than that which we have prescribed.
150. *R. v S.* dealt with whether there was a reasonable apprehension of bias as a result of comments a Black trial judge made in oral reasons regarding police conduct. In addressing the two-fold test for apprehension of bias, the SCC had to consider what factors were to be considered by the reasonable person and whether the apprehension of bias itself was reasonable in the circumstances of the case.
151. *R. v S.* centered on the impartiality of the judiciary and the extent to which social context (in that case, anti-Black racism and high-profile clashes between the police and the visible minority population over policing issues in Halifax, Nova Scotia) could be taken into account by a trial judge in making her decision. L'Heureux-Dube and McLachlin JJ. held that contextual understanding could be gained from expert testimony, academic studies properly put before the court and from the judge's personal understanding and experience of society – all of which were held to be an essential pre-condition of impartiality. A trial judge was also to be aware of the social reality that forms the background of the case, such as societal awareness and acknowledgement of the prevalence of racism or gender bias in a particular community.
152. By necessity, both aspects of the apprehension of bias test focus on the circumstances of the particular case and what factors are consistent with *judicial impartiality*. That is a

different lens than that before this Committee, concerned as we are with what is incompatible with the best interests of the public or of the members of the LSA, or tends to harm the standing of the legal profession generally.

### ***Application of the Test***

153. In applying the applicable test, as determined by the Committee, above, to Mr. Madu's conduct in making the Call, the Committee has particularly taken into account the following principles that emerge from the Code, its Commentary and the case law:
- lawyers are held to the highest standards of conduct, on both a personal and professional level and their responsibilities are greater than those of a private citizen: Rule 2.1-1, Commentary [2] and Rule 5.6-1, Commentary [1]. This point is also well established in the common law: see, for example, *Erdmann v Complaints Inquiry Committee*, 2013 ABCA 147 at paragraphs 20-21 and *Law Society of Alberta v Juneja*, 2022 ABL 11 at paragraph 165;
  - a lawyer's integrity is fundamental and of overarching importance to his or her obligations and the standard to which his or her conduct is to be measured: Rule 2.1-1 and the Preamble to the Code;
  - a lawyer must encourage public respect for and try to improve the administration of justice: Rule 5.6-1;
  - admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system: Rule 5.6-1, Commentary [2];
  - a lawyer's conduct should avoid even the appearance of impropriety: Rule 2.1-1, Commentary [2];
  - irresponsible conduct may erode confidence in the administration of justice and in the legal profession: Rule 2.1-1, Commentary [2]; and
  - the foregoing are applicable to the discharge of official duties by those lawyers who hold public office: Rule 7.4.
154. In passing, counsel for Mr. Madu referred to the difficult question of where to draw the line between the competing interests of a lawyer's private life and when inappropriate private behavior becomes conduct deserving of sanction. He pointed out that that issue was being, and has now been, decided by a different panel in a different case in relation to another former Minister of Justice and Solicitor General (*Law Society of Alberta v Shandro*, 2024 ABL 14). We do not understand that issue to have been raised as being applicable here, nor does it arise on the facts of this case. Neither party directed

their submissions to it nor cited any law that would depart from the general principles referred to in paragraph 153, above.

155. The facts necessary for this Committee to find Mr. Madu guilty in relation to the Citation are essentially not in dispute:

- On March 10, 2021, Mr. Madu received the Ticket for distracted driving;
- Mr. Madu thought that he had been wrongfully accused and disputed the Ticket;
- With the Ticket in hand, Mr. Madu used his position as Minister of Justice and Solicitor General, and information he had because of that position, to call Chief D.M. on the Chief's private cell phone;
- the Call took place almost immediately after the Ticket had been issued;
- During the Call, Mr. Madu (by his own admission during cross-examination) told Chief D.M. that he had just been issued a ticket for distracted driving when he was not using his cell phone and raised concerns about whether he had been racially profiled and illegally surveilled (along the lines of what had been occurring in Lethbridge); and
- At the time of the Call, the processes available to the public to address a traffic ticket were to pay it or dispute it in court. There was also a formal complaints process within the EPS for members of the public to raise an issue with police conduct.

156. The Committee is cognizant of the fact (which is also undisputed) that Mr. Madu never *expressly* asked Chief D.M. to do anything with respect to the Ticket. The evidence is also uncontroverted that Chief D.M. *did nothing* about the Ticket. He instead handled the situation by telling Mr. Madu that Mr. Madu could either pay the Ticket or fight it in court and told him that he doubted that the Traffic Stop was the result of racial profiling. At the time of the Call, Chief D.M. did not know what Mr. Madu meant about the Lethbridge situation and thus gave no assurance one way or the other about that.

157. As noted by Andrew Flavelle Martin in his article "The Lawyer's Professional Duty to Encourage Respect for – and to Improve – the Administration of Justice: Lessons from Failures by Attorneys General," 2023 CanLIIDocs 3142: "Not only are Attorneys General some of the highest-profile lawyers in the country, but they also face unique tensions and pressures that bring their duties as lawyers into stark relief." (at page 251 of the article). While that article addressed different circumstances than those relevant to the present case, the Committee agrees with Professor Martin's observation and its applicability here.

158. At the time of the events in question, Mr. Madu was one of the highest profile lawyers in Alberta, if not also Canada. As Alberta's Minister of Justice and Solicitor General, he was required to ensure that public affairs are administered according to law and to superintend all matters relating to the administration of justice in Alberta that are within the powers or jurisdiction of the Legislature or the Government: *Government Organization Act*, RSA 2000, c G-10, s. 2.
159. Mr. Madu acknowledged that, as Minister of Justice and Solicitor General, he was the Chief Law Enforcement Officer of the province, with responsibility for the Department of Justice, the justice system, and all law enforcement (including provincial police, correctional facilities, and the courts). He admitted on cross-examination that "a great deal of power came with that office...that is to be exercised appropriately and cautiously." For example, his powers over policing extended so far as to disband a police force, based *solely* on his own opinion and authority.
160. As Minister of Justice and Solicitor General, Mr. Madu also had direct access to, and regular contact with, Chief D.M., and all of the Chiefs of Police in the province. By virtue of that position, he had Chief D.M.'s direct cell phone contact information and Chief D.M. had his.
161. At all material times, Mr. Madu was therefore in a unique position of power and authority—relative to Chief D.M., other lawyers and to members of the public, generally. If anything, his conduct should have set an example.
162. Applying the principles outlined above at paragraph 153, Mr. Madu's conduct failed to meet the high standard required of all lawyers. He used his position as the Chief Law Enforcement Officer of the province to privately call Edmonton's Chief of Police to raise an issue concerning a personal matter: he had, according to him, wrongfully been issued a traffic ticket and wanted assurance that he had not been racially profiled or subjected to similar treatment as had the MLA by the LPS.
163. What would a reasonable member of the public, informed of the relevant facts, think of the fact that such a call was made by the Minister of Justice and Solicitor General, when the Ticket was not only still outstanding but still so fresh? When that was the first step taken after Mr. Madu was unsuccessful in convincing Constable R.B. that the Constable was mistaken? When Mr. Madu did not raise any issue with Constable R.B. about having been racially profiled or illegally surveilled and where there is no evidence that the Traffic Stop was anything other than routine and based on the Constable's unshakable belief that he had seen Mr. Madu using a cell phone? The Committee finds that those factors would weigh more heavily in a reasonably informed member of the public's mind in these circumstances than any public knowledge of what Mr. Madu and his staff were working on, be it the carding issue (which, as of November the year before seemed well in hand) or the LPS situation (and the absence of any evidence or public information to the effect that there was any similar issue within the EPS). The key factors are Mr. Madu's position

as Minister of Justice and Solicitor General, the existence of the Ticket, Mr. Madu's position that he had been wrongfully accused and disputed the Ticket, and the timing of the Call.

164. Accordingly, the answer to the question of what a reasonable member of the public, informed of the relevant facts, would think of the Call is that the Minister of Justice and Solicitor General was trying to use his position to, at a minimum, bring forward a personal issue to the Chief of Police to have it addressed. That is the perception that is created. It is undisputed that there were processes that Mr. Madu ought to have followed: a) dispute the ticket in court if he was not prepared to pay it; and b) make a formal complaint through the EPS complaint process regarding Constable R.B. conduct. Regardless of his actual purpose, Mr. Madu used his position to raise a personal matter (whether the Ticket, the reason for the Traffic Stop, or both). His conduct is inconsistent with his commitment as a lawyer as it imports special access and the perception of special treatment. That remains whether or not Mr. Madu expressly asked Chief D.M. to do anything about the Ticket.
165. In short, Mr. Madu's conduct, regardless of his intent, created the appearance of impropriety: that the Minister of Justice and Solicitor General could sidestep the processes available to members of the public faced with the same situation and potentially avail himself of a result through that process. It is inconsistent with Mr. Madu's commitment to equal justice for all within an open, ordered and impartial system. A hallmark of that system is transparency – not private dealing. Far from encouraging public respect for the administration of justice, Mr. Madu's conduct is reasonably perceived as sidestepping the process entirely and thus eroding public confidence in the administration of justice and in the legal profession. It was irresponsible and failed to meet the high standard required to retain the trust, respect and confidence of other members of the profession and members of the public.
166. To be clear, the Committee is not holding Mr. Madu to a standard that differs from that required of a lawyer engaged in the practice of law: section 7.4-1 of the Code. Counsel for the LSA, relying upon *Kimmerly*, suggests that the duties on a lawyer-politician can, in some instances, be even higher. The Committee does not need to address whether the proposition counsel for the LSA cites *Kimmerly* for is consistent with the legal framework against which Mr. Madu's conduct is to be assessed. Mr. Madu was in a unique position given that his political position was so closely entwined with his duties as a lawyer. As Minister of Justice and Solicitor General, he was one of the most senior-ranking, prominent lawyers in the province and the Chief Law Enforcement Officer. The public expects the conduct of someone in that role to set an example for the profession.
167. The present case is thus a prime example of the heightened risk contemplated in the Commentary to Rule 7.4-1: that the legal profession may more readily brought into disrepute where the lawyer in issue is also a high-profile politician. That risk is

particularly germane here, where the lawyer is the Chief Law Enforcement Officer of the province.

168. This is not to say that a lawyer, or even the Minister of Justice and Solicitor General, cannot defend themselves or express a contrary view with the police, whether during a traffic stop or otherwise. Mr. Madu's conduct at the Traffic Stop is not the subject of the Citation: it is the fact that his first step thereafter was to gain access to the Chief of Police by virtue of his position as Minister of Justice and Solicitor General and to raise an issue with the Ticket and Constable R.B.'s motivation in making the Traffic Stop.
169. The Committee is aware that a lawyer's obligations, including the obligation to encourage public respect for and to try to improve the administration of justice (Rule 5.6-1), may, in appropriate circumstances, require the lawyer to speak out. Indeed, counsel for Mr. Madu argued that was what Mr. Madu was doing. In our view, that is not what occurred here. Mr. Madu had other avenues open to him to advance any such obligation, including making a formal complaint through the EPS complaint process or raising an issue through his ministerial office (such as an investigation about conduct within the EPS). From the totality of his evidence, it is clear that Mr. Madu raised the issue of whether he was racially profiled or illegally surveilled in the context of seeking his own private remedy—not advocating to encourage public respect for or to try to improve the administration of justice. While testifying, Mr. Madu repeatedly emphasized that he asked for assurance from Chief D.M. about his own situation. Even though Chief D.M. could only give a general assurance to the effect that he thought it unlikely that Mr. Madu would have been racially profiled in a traffic stop for distracted driving, Mr. Madu took the issue no further.

### ***The Purpose of the Call***

170. In light of the Committee's determination of the appropriate test and its finding that the *fact* of the Call, in the circumstances of this case, warrant a finding of guilt on the Citation, it is, strictly speaking, unnecessary for the Committee to address Mr. Madu's submission that the reason he made the Call should end the matter. Given the emphasis that Mr. Madu placed on that point, however, and the findings of fact that accompany its disposition, the Committee thinks that it is important that it address that submission here.
171. Mr. Madu submits that, even though the Call was *prompted* by the Ticket, the *purpose* of the Call was not about the Ticket or to seek dispensation in relation to the Ticket but to seek Chief D.M.'s assurance that the Traffic Stop was not the result of racial profiling or illegal surveillance. Mr. Madu agreed that he raised "concerns" with Chief D.M.. However, he strenuously asserted that it was not the Ticket that he connected with his concerns, but the Traffic Stop. Mr. Madu's position is that his evidence as to why he made the Call is uncontroverted and, even if his belief about having potentially been racially profiled or illegally surveilled is not reasonable, it was his belief and is a full answer to the Citation.

172. The Committee disagrees, for three principal reasons:

- Such a position makes the test subjective and one of intent, rather than objective, and is therefore neither supported in the law nor by the mandate imposed upon this Committee by section 49 of the *Act*.<sup>3</sup> Moreover, it would be non-sensical if a lawyer's intent or belief could so easily provide a full defence to conduct that, objectively determined, was not in the public interest or disparaged the reputation of the legal profession; and
- Even if the test is subjective, Mr. Madu's position:
  - i. does not account for the fact that he was nonetheless seeking assurance about his personal circumstances through a process not available to the public; and
  - ii. is not supported by the evidence with respect to his alleged disconnect between the Ticket and the reason for his Call.

*Mr. Madu Availed Himself of a Private Process*

173. Mr. Madu's response to the Citation focusses on the lack of any request to "fix" the Ticket and the assertion that the Call was not about the Ticket, but to seek assurance. Counsel for Mr. Madu submits that there is nothing at all inappropriate with a Minister of Justice having a conversation with a Chief of Police about whether he was racially profiled, particularly given what Mr. Madu was working on and the fact that he had previously engaged with the Chiefs, notably Chief D.M., on racial profiling. We do not agree.

174. In seeking the purported assurance, Mr. Madu still sought to avail himself of a private process by virtue of his position as Minister of Justice and Solicitor General. That is, even if we were to fully accept Mr. Madu's evidence that he was only calling to seek assurance, it remains that he nonetheless used his position as Minister of Justice and Solicitor General to privately address a personal issue. The situation is exacerbated in that the private process he sought also involved the conduct of a constable of the EPS. Mr. Madu's argument fails to account for the important role that perception plays in the administration of justice and, generally, in the reputation of the legal profession. Mr. Madu's duties required him to avoid even the perception of impropriety.

*Mr. Madu's "Disconnection" with respect to the Ticket is not Credible*

175. In any event, Mr. Madu's attempt to distinguish between what "prompted" the Call and what its "purpose" was, is implausible. Mr. Madu does not simply *downplay* the fact that

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<sup>3</sup> The Committee's assessment of the test has been addressed above at paragraphs 145-152.

he called Chief D.M. because he was concerned about the Ticket: the *very core* of his testimony was that "it was not about the ticket, never was about the ticket."

176. While Mr. Madu may very well have been concerned about racial profiling and the Lethbridge situation, we cannot accept that such was the sole reason, or in our view even the primary reason, that he made the Call. We have arrived at this conclusion for a number of reasons.
177. First, Mr. Madu knew that Chief D.M. was in no position to give him the assurances he sought. Mr. Madu admitted such during cross-examination. Chief D.M. was not at the Traffic Stop, the Call was immediately thereafter, and the Chief had no information about what had happened other than that which Mr. Madu was telling him. Faced with that logic, even after a long pause he could give no real explanation as to why the sole purpose of the Call was then to ask for the assurances. While only one of the reasons for our findings regarding the alleged purpose of the Call, the Committee found this exchange to be particularly telling.
178. Second, there was no objective basis for Mr. Madu's connection between the Traffic Stop, racial profiling and illegal surveillance. The uncontroverted evidence is that there was nothing unusual about the Traffic Stop. When he approached Mr. Madu's vehicle, Constable R.B. told Mr. Madu that he was being stopped for using a cell phone while driving. Mr. Madu described the Constable as "cordial" throughout. He acknowledged that the Constable was only doing his job and that he told him that during the Traffic Stop. There was absolutely no evidence that Mr. Madu had been illegally surveilled nor any evidence that there had been problems with that within the EPS, unlike Lethbridge.
179. Accordingly, there was nothing that, objectively, ought to have raised any concerns about racial profiling or illegal surveillance, let alone to have warranted any connection between the Traffic Stop and either of those two issues or the extraordinary step of the Minister of Justice communicating with the Edmonton's Chief of Police about what had occurred.
180. Third, Mr. Madu essentially called Chief D.M. immediately after he received the Ticket: he admitted that during cross-examination. He had been on his way to his office at the Legislature prior to the Traffic Stop. Instead of continuing on, he pulled into the closest parking lot, sat for a few minutes, and then made the Call.
181. Mr. Madu did not collect himself and then carry on to his office, set up a meeting or discussion with Chief D.M. through his staff or take any other number of steps available to him in the ordinary course of his work to discuss whether there were problems within Chief D.M.'s force regarding racial profiling or illegal surveillance. Instead, he kept this in the personal realm and privately called Chief D.M. on the Chief's private cell phone from the parking lot. Moreover, he chose not to use his MLA phone or his Ministerial phone (which were in his briefcase with him in his truck), but his own *personal* phone.

182. Fourth, based on what Mr. Madu said and how he said it, Chief D.M. understood the Ticket to have been a reason for the Call. Chief D.M.'s notes and evidence were that the Call and the Ticket were connected. The Committee has reviewed and excerpted his evidence in detail on that point, above.<sup>4</sup> In short, Chief D.M.'s evidence was that there were two issues or themes to the Call: Mr. Madu was concerned that he had received a traffic ticket *and* about whether he had been racially profiled or targeted. When specifically asked about Mr. Madu seeking assurance, Chief D.M. testified that he could see how one could "easily make that assumption" but that they never got to that language and instead "split the two things out." Chief D.M.'s notes from that conversation confirm the "two themes".
183. Chief D.M. clearly understood that Mr. Madu was raising a concern about having received the Ticket, so much so that Chief D.M. felt it necessary to tell him what his options were. As he candidly testified, "I didn't find a lot of difficulty in getting this conversation to where it needed to be"—concluded. Indeed, Chief D.M.'s advice to pay the Ticket or dispute it in court ended the conversation.
184. Where it conflicts with that of Mr. Madu's, we prefer the evidence of Chief D.M.. Chief D.M. is an experienced police officer and Chief of Police, with his own political experience. None of the parties challenged his credibility as a witness and there is no reason to do so. His testimony was also consistent with his notes, made contemporaneously.
185. Fifth, Mr. Madu's alleged disconnect between the Ticket and the purpose of the Call is also difficult to believe when considered in the context of the tenor of his exchange with Constable R.B. and the fact that he was evidently still worked up when he arrived at his office later that morning. It is clear from the totality of Mr. Madu's evidence that the root of the problem was that he was "accused" (his word) of being on his phone when he says he was not.
186. We find that Mr. Madu strongly disagreed with Constable R.B. about there being any basis for the Ticket. Constable R.B. testified that Mr. Madu "certainly was animated", that he was "immediately opposed", "definitely defensive," "adamant" and "moderately argumentative." During cross-examination, Mr. Madu acknowledged that he understood how Constable R.B. could describe him as "moderately argumentative."
187. Mr. Madu repeatedly attempted to convince Constable R.B. that he was wrong, telling him multiple times (likely as many as four or more) that he was the Minister of Justice, arguing that he would not be using his phone while driving given who he was. The evidence of Constable R.B. and Mr. Madu differed on this point, and we accept that of the Constable. The Constable's account is consistent with both the notes he made on his own copy of the Ticket before it was issued and an email he wrote later that morning at

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<sup>4</sup> See paragraphs 52-57.

the request of his superior to memorialize what had happened. While we do not fault Mr. Madu for having no notes himself, his account of when and why he told Constable R.B. that he was the Minister of Justice strains credulity and is contrary to the notes Constable R.B. made *before* issuing the Ticket about Mr. Madu having used his title "at least 4 times" before he went back to the vehicle to give him the Ticket.

188. Constable R.B.'s description of Mr. Madu during the Traffic Stop when faced with a proposition with which he disagreed is also consistent with aspects of Mr. Madu's demeanor and testimony before the Committee. For example, where it conflicted with his own, Mr. Madu insisted at times that Constable R.B.'s testimony was simply "not true". Mr. Madu was adamant that he told Constable R.B. who he was only *once*, and only *after*, Constable R.B. had returned with the issued ticket (not before). He testified that he told Constable R.B. who he was at the very end of their dialogue. Mr. Madu went so far as to describe it as a "by the way, I am the Minister of Justice" with the purported intent of simply clarifying why the proof of insurance he had provided for his vehicle was a fleet card. Mr. Madu also strongly denied using the fact of his position as a defence with the Constable, attempting to downplay any suggestion that he was seeking to influence the Constable in any way—even in defence.
189. Clearly, Mr. Madu tried to convince Constable R.B. that he should not receive a ticket. While the Constable said that he did not take Mr. Madu's repeated reference to his title as being intimidating, but instead a defence, we find as a fact that Mr. Madu tried several times to convince Constable R.B. that he was not on his cell phone. We also accept Constable R.B.'s evidence that Mr. Madu told him that he had been accessing his center console, that that was what the Constable may have seen, and then did a demonstration of what he had been doing. At first, Mr. Madu denied that he had said or done that, but begrudgingly acknowledged that he may have said and done so – but only as a guess as to what the Constable had seen. Once again, the Committee accepts the evidence of Constable R.B. on this point rather than that of Mr. Madu as there is no other reason for it to be in his email memorializing the exchange other than because it happened.
190. When Mr. Madu was unsuccessful in convincing Constable R.B. that he did not see what the Constable insisted he had, and Constable R.B. issued the Ticket, it is telling that Mr. Madu asked the Constable for his badge number. While Mr. Madu denied doing so, we again prefer the evidence of Constable R.B.. There is no other reason for him to have put that detail in his email.
191. Mr. Madu was still sufficiently worked up about the Ticket later that morning that, in his first communications upon arriving at his office, he told his staff he was going to fight it. His impression was that they thought he was "crazy" to think that and counselled him to just pay it. Even that did not end the issue as, in his own words, Mr. Madu "wrestled" with whether to do so *for a couple of days*, until eventually paying the Ticket.

192. Sixth, the Call essentially ended the issue for Mr. Madu. It is simply not believable that Mr. Madu took no further steps to address issues which were allegedly so important to him that they were the sole reason for the Call—not the Ticket. Chief D.M. could give no meaningful assurances, yet Mr. Madu did not pursue the matter further.
193. Mr. Madu essentially asks this Committee to believe that, notwithstanding all of the above, the Ticket had taken such a back seat in his mind by the time he placed the Call to Chief D.M. that it was no longer the purpose of the Call – just the prompt – and was entirely unconnected to his concerns. Such a proposition is difficult for us to accept, and we cannot do so.
194. Mr. Madu's evidence that, in his mind, he was "stopped for no cause, without reasons" is telling, particularly when considered in the context of: a) the manner with which he dealt with Constable R.B.; b) the fact that he asked for the Constable's badge number when he was not successful in persuading him to accept his version of what had happened; and that c) even after the Call with Chief D.M., Mr. Madu was still so worked up about the Ticket that he told his staff he was going to fight it and then "wrestled" with whether to take their advice not to for a couple of days. As Mr. Madu testified during the Hearing, he thought he had been wrongly "accused" by the Constable and that he was "offended" because of that. Whether the Constable's observations were right or wrong, Mr. Madu was so offended that he had been "accused" that he jumped to the explanation that it could only have been because he was racially profiled or even illegally surveilled and that the EPS too may have been engaging in the same type of conduct as members of the LPS.
195. The fact that there was no objective basis to trigger any concern about racial profiling, let alone illegal surveillance, and that the Constable was "very cordial" and acknowledged to be "just doing his job," demonstrates to us just how worked up Mr. Madu was.
196. In assessing the credibility of Mr. Madu's insistence that the Call was unconnected with the Ticket, we have taken into account all the evidence, including the details of Mr. Madu's background, his position, details of what he was doing and all the *in camera* and redacted evidence. The Committee's assessment of Mr. Madu's credibility with respect to the purpose of the Call and its purported disconnect with the Ticket has therefore included consideration of evidence that we have found does not inform public perception in this case. Weighing everything, the evidence simply does not support Mr. Madu's assertion that, in the space of only a few minutes between the Traffic Stop and the Call, on an issue he was so worked up about—and continued to be worked up about—that he had managed to completely put the Ticket on the back burner. For all of the reasons above, we therefore find that the Ticket was, at a minimum, a reason for the Call and one of the subjects of the Call.
197. During closing argument, counsel for Mr. Madu took issue with the LSA's challenge to Mr. Madu's motivation for the Call on the basis of the rule in *Browne v Dunn*. Counsel for

Mr. Madu submitted that counsel for the LSA did not expressly put to Mr. Madu that the reason for the Call was to have the Ticket taken care of and yet submits that such was the case. He submits that, if the LSA was arguing that Mr. Madu had unprofessional motives in making the Call, fairness dictated that such be put to Mr. Madu directly so he could challenge it. In essence, counsel for the LSA denied that the rule was applicable given Mr. Madu's evidence that he denied calling Chief D.M. for that purpose and that, instead, the Call was only to seek the assurances.

198. The rule in *Browne v Dunn* (1894), 6 R. 67 (H.L.) is a rule of evidence to which this Committee is not bound: section 68(1)(b) *Act*. Rooted as it is in fairness, the Committee has nonetheless considered this rule in the context of whether Mr. Madu was treated fairly with respect to the impugned line of questioning and the ultimate submissions the LSA relies upon. We find that he was.
199. A helpful definition of the rule is found in Sopinka, *Law of Evidence in Canada*, 4<sup>th</sup> edition (Toronto: LexisNexis, 2014): “[Paragraph] 16.197...if the cross-examiner intends to impeach the credibility of a witness by means of extrinsic evidence, he or she must give that witness notice of his intention.” Sopinka goes on to quote the following passage from Lord Herschell's explanation of the rule in the case itself: “My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him.”
200. Reviewed in its totality, it is clear that counsel for the LSA cross-examined Mr. Madu with respect to the purpose of the Call and specifically challenged his assertion that it was only to seek assurances about racial profiling and illegal surveillance. Furthermore, Mr. Madu's evidence was clear, when specifically questioned by his own counsel, that he denied seeking dispensation for the Ticket. There was never any secret regarding the LSA's position with respect to the purpose of the Call—whether as to what was expressly said or what could be inferred. Mr. Madu had, in Lord Herschell's words, “an opportunity of making any explanation which is open to him.” That was what he did, during both examination in chief and during cross-examination on this very point. No unfairness arises.

### **Concluding Matters**

201. The Committee has found that the Citation has been proven on a balance of probabilities based on clear, cogent and convincing evidence and that Mr. Madu's conduct is deserving of sanction. Accordingly, the Committee will reconvene for the sanction phase in this matter.
202. 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. Madu will be redacted

and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)) and to comply with the Order of February 20, 2024.

Dated October 15, 2024.

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Tamela Coates, KC

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Michael Brodrick

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Robert Philp, KC