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 Evan Cribb– Counsel for the Law Society of Alberta (LSA)
Perry Mack, KC and Joyce Bolton – Counsel for Kelechi Madu, KC

Hearing Dates

February 3, 2025 (Sanction Hearing)

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION PHASE

Overview

1. 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. On March 10, 2021, Mr. Madu was pulled over for a cell phone violation while driving in Edmonton, Alberta. He denied that he had been using a cell phone at the time. The attending constable of the Edmonton Police Service disagreed and issued a violation ticket (Ticket) for distracted driving. Almost immediately thereafter, Mr. Madu called the Chief of the Edmonton Police Service about the Ticket.

2. On July 5, 2023, a panel of the LSA Conduct Committee directed the following citation to hearing:

> 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)

3. After the Merits Hearing convened on June 17, 2024, and for the reasons set out in its decision dated October 15, 2024 cited as *Law Society of Alberta v. Madu*, 2024 ABLS 20 (Merits Decision), the Hearing Committee (Committee) found Mr. Madu guilty of conduct deserving of sanction in relation to the Citation.

4. On January 27, 2025, counsel for the LSA and for Mr. Madu submitted a written Joint Submission on Sanction and Costs (Joint Submission). On January 31, 2025, they submitted a Joint Book of Authorities on Sanction and Costs. A few further authorities were provided just prior to the Sanction Hearing (collectively with those jointly filed, the Authorities).

5. In their Joint Submission, the parties submitted that:

    1) the appropriate sanction was a reprimand;

    2) Mr. Madu be directed to pay costs in favour of the LSA in the amount of $38,801.42; and

    3) payment of costs be stayed until conclusion of Mr. Madu's appeal of the Merits Decision to the Benchers.

6. Neither party called any evidence or tendered any exhibits at the Sanction Hearing. The Committee therefore proceeded on the basis of the Joint Submission and the Authorities.

7. After reviewing all of the material submitted and hearing further submissions made on behalf of the LSA and on behalf of Mr. Madu, the Committee advised at the conclusion of the Sanction Hearing that it accepted the Joint Submission on sanction and costs and granted the parties' joint request to stay payment of costs, on certain conditions. The Committee also issued a reprimand orally (the text of which is included, below). The Committee indicated that its reasons for so doing would follow in writing. These are those reasons.

Preliminary Matters

8. As noted in the Merits Decision, there were no objections to the constitution of the Committee or its jurisdiction and a public hearing proceeded. No objections or private hearing applications were made with respect to the Sanction Hearing. It therefore proceeded before the Committee in public.

Submissions on Sanction and Costs

9. The facts related to the sanctionable conduct are set out in the Merits Decision. This phase of the hearing is to consider the appropriate sanction for that conduct.

10. In the Joint Submission, the parties submitted that the appropriate sanction in this case is a reprimand and advised that they had agreed that an appropriate costs award was in favour of the LSA for the amount of $38,801.42, supported by an agreed to Statement of Costs. The only issue between them was the content of the reprimand, as discussed below.

The Test Where There is a Joint Submission on Sanction

11. The parties acknowledge that the Committee is not bound by their joint submission on sanction but submit that the Committee must give it significant deference[1] and must only depart from it if the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest, principally relying upon the leading case of *R* v *Anthony-Cook*, 2016 SCC 43.[2]

12. The parties submit that, applying *Anthony-Cook's* public interest test, the Committee must defer to the joint submission in support of a reprimand in the present case.

13. In this regard, the parties submit that the choice of a reprimand from the three available options prescribed by section 72(1) of the *Legal Profession Act* (*Act*) (disbarment, suspension or reprimand):

    a) best serves the purposes of sanctioning set out in the LSA's Pre-Hearing and Hearing Guideline dated June 3, 2022 (in particular, protection of the public from acts of professional misconduct and protection of public confidence in the integrity of the profession, general deterrence of lawyers, ensuring the LSA can effectively govern its members and denunciation of misconduct)[3]; and

    b) is appropriate and reasonable when consideration is given to the seriousness of the misconduct, additional factors that may aggravate or mitigate the severity of the appropriate sanction, the range of sanctions in other cases and Mr. Madu's lack of disciplinary history.

Mr. Madu's Submissions

14. Counsel for Mr. Madu submits that the reprimand should essentially be limited to "You are hereby reprimanded" or "You are hereby reprimanded, for the reasons set out in the Merits Decision". In essence, his argument is that the Merits Decision should stand as the reprimand in lieu of any substantive, standalone reprimand.

[1] LSA's Pre-Hearing and Hearing Guideline dated June 3, 2022 [*Guideline*] at paragraphs 207-209 and *Law Society of Alberta* v *Farrell,* 2024 ABLS 11 [*Farrell*] at paragraph 16.
[2] As also recently applied in *Farrell* at paragraphs 16-17.
[3] *Guideline* at paragraphs 185-186.

15. Section 72(1) of the *Act* provides that, if a hearing committee finds that a member is guilty of conduct deserving of sanction, the committee shall order that the member either be disbarred, suspended or reprimanded. Counsel for Mr. Madu argues that if, as here, the sanction is to be a reprimand, the *Act* does not mandate the *form* of the reprimand or *how* it is to be delivered. There is no prohibition, he argues, on granting the form of sanction sought.

16. Counsel for Mr. Madu submits that a substantive, standalone reprimand would serve no useful purpose. He argues that the Merits Decision itself accomplishes what he submits are the two purposes of a reprimand:

    1) a means to express the LSA's disapproval of the sanctioned conduct while permitting the member to carry on his or her practice; and

    2) a means to provide some guidance for the member as to how to improve in practice so as to avoid the type of conduct at issue.

17. Counsel for Mr. Madu argues that the Merits Decision meets the first purpose as a reprimand is embedded therein. He further submits that there is no need for anything further to address the second purpose as Mr. Madu is no longer the Minister of Justice or Solicitor General. Accordingly, he argues that the circumstances at issue could not possibly arise again.

18. Counsel for Mr. Madu also underscores that the present case has unfolded in a very public process and that both the Merits Hearing and the Merits Decision have been widely commented upon in the media. He cautions about the potential detrimental effects of repeating the words contained in the Merits Decision (and, by implication, its message) in light of the publicity this case has garnered. He therefore urges the Committee to consider the far-reaching effect of publicization, particularly given the "perpetual punishment of the Internet", and to consider whether continually repeating the words in the Merits Decision becomes more than is required to meet the purpose of sanctioning.

19. Counsel for Mr. Madu candidly acknowledges that he could not point the Committee to any reported decisions from the LSA where the reprimand was essentially the underlying decision on the merits, nor did he cite any cases from other Canadian Law Societies in which a hearing panel had taken (or even considered) that approach. Counsel for Mr. Madu did, however, point the Committee to a number of cases from other professional bodies in which that approach was taken, primarily those under the *Health Professions Act (HPA)*.

20. Counsel for Mr. Madu submits that section 72 of the *Act* in question here was enacted a long time ago and could not have possibly contemplated the world in which disciplinary hearings now take place. He references the more modern trend regarding the

transparent and public nature of disciplinary proceedings and their outcomes, that hearings take place by video, where members of the public and the media may attend and report or comment on the evens in real time, and the advent of the Internet and ease by which decisions are widely circulated.

LSA's Submissions

21. Counsel for the LSA made no submissions with respect to the specific content of the reprimand. However, he submits that section 72(1) of the *Act* requires a choice of one of the three forms of sanction and that Mr. Madu is essentially asking this Committee to order a sanction that, while "notionally" a reprimand, is in fact something less than what the *Act* requires.

22. Counsel for the LSA argues that, from both a legal and a factual perspective, it is incorrect to say that the Merits Decision contains a reprimand: it does not. He submits that the *Act* is structured such that the Committee was required to first determine whether the requirements were met under the *Act* to find that Mr. Madu was guilty of conduct deserving of sanction. What that sanction should be and what form it should take were not the issues before the Committee at the Merits Hearing. Moreover, counsel for the LSA submits that there is nothing in the Merits Decision to suggest that the Committee "jumped ahead" to the next step and addressed sanction. He drew a distinction between what he called the Committee's criticism of Mr. Madu's conduct in the Merits Decision and going further to actually reprimand Mr. Madu as a consequence.

23. Counsel for the LSA distinguishes the cases referred to by counsel for Mr. Madu on the basis of the language of the *HPA*. Pursuant to section 82 of the *HPA* (that statute's version of ss 72 and 73 of the *Act*), if a hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the tribunal "may make any one or more orders", including a reprimand (section 82(1)(a)) *and* "any order that the hearing tribunal considers appropriate for the protection of the public" (section 82(1)(l)). Counsel for the LSA therefore argues that the *HPA* provides a wider scope for hearing committees to determine the appropriate sanction than does section 72(1) of the *Act* this Committee must apply. He submits that it is within the unique umbrella of the *HPA* that a practice appears to have developed in professional disciplinary hearings under the *HPA* of directing that the reprimand takes the form of the decision on the merits of the case. He argues that section 72(1) of the *Act* at issue here is not so broad and that simply referring to the Merits Decision would be an unprecedented request, amounting to something less than what is required under the *Act*.

Costs Submissions

24. In the Joint Submission, the parties agree that, in addition to a reprimand, Mr. Madu should be ordered to pay costs of $38,810.42, as set out in the Schedule of Costs attached to their submission.

25. The parties submit that such a costs award is reasonable and reflects that the misconduct is, in their view, at the lower end of the scale, that Mr. Madu has provided some assistance in facilitating the efficiency of the proceedings, and that the total costs incurred were themselves reasonable.

Analysis and Decision on Sanction and Costs

The Appropriate Sanction

26. While not bound by the Joint Submission, the Committee must give it significant deference. In considering the Joint Submission, the Committee must apply the public interest test established by the Supreme Court of Canada in *Anthony-Cook* and should therefore not depart from the Joint Submission unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The threshold is "undeniably high".[4]

27. In applying the public interest test in the present case, the Committee has considered the three questions posed by the Court in *Anthony-Cook*, as slightly modified for disciplinary proceedings, to determine whether the proposed sanction is within the range of possible sanctions that would satisfy that test:

    a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the misconduct and the member that the joint submission would be viewed as a break down in the proper functioning of the system?

    b) Would the joint submission cause an informed and reasonable public to lose confidence in the legal profession?

    c) Is the joint submission so unhinged from the circumstances of the misconduct and the member that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the system had broken down?[5]

28. The answer to all of those questions is "No". While this Committee may not have limited the sanction to a reprimand (and instead considered the addition of a monetary penalty), the "undeniably high" threshold is not met in this case and the Committee therefore defers to the request for a reprimand. Presented with a joint submission on sanction,

[4] *Anthony-Cook* at paragraphs 33-34; *Farrell* at paragraphs 16-17; and, generally, see the *Guideline* at paragraphs 207-212.
[5] *Anthony-Cook* at paragraphs 33-34; *Farrell* at paragraphs 16-17.

this Committee should take it on an "as-is" basis.[6] Our role is not to determine what sanction we would have imposed at first instance, but whether the proposed sanction meets the public interest test.[7]

29. The Committee largely agrees with the parties' analysis in the Joint Submission of the relevant factors to consider with respect to the principles of sanctioning in the present case and the relative weight and balancing of those factors. While the Committee did not find the cases cited by counsel regarding sanctions in other cases to be overly helpful in light of the unique nature of the present case, we note that the sanction jointly proposed in this case falls well within the range of sanctions in the cases counsel were able to provide.

30. We depart, however, from counsel's general characterization of Mr. Madu's conduct as being at the "lower end" of the scale of sanctionable conduct and would give more weight than that characterization imports to the factors the parties identified as militating in favour of a more severe sanction:

1) the significant risk to the reputation of the legal profession;

2) the lessening of respect for and interference in the administration of justice;

3) the failure to self-report, admit guilt, or express any remorse for the conduct found to be deserving of sanction; and

4) the public nature of Mr. Madu's role and the requisite need for sanction to maintain the public's confidence in the integrity of the profession.

31. In the Merits Decision, the Committee reviewed the high standard that a lawyer is held to, the fundamental and overarching importance of integrity, and the fact that a lawyer's conduct should avoid even the appearance of impropriety. It summarized its finding as to why Mr. Madu's conduct is deserving of sanction as follows, at paragraphs 165 and 166:

> 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

[6] *Anthony-Cook* at paragraph 51.
[7] *Farrell* at paragraph 16.

> 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.
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> ….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.

32. At the Merits Hearing, Mr. Madu attempted to distinguish between what had prompted the call and what its purpose was. His position was not accepted, for reasons that included a finding by the Committee that Mr. Madu's evidence of a purported "disconnection" between the ticket and the purpose of the call was not credible.

33. One of the fundamental purposes of sanctioning is to protect the public's confidence in the integrity of the profession. This principle is underscored in this case given Mr. Madu's unique position of power and authority at the time of the events in question.

34. The foregoing factors support a finding that Mr. Madu's misconduct was a matter of utmost seriousness and neither inconsequential nor a mere "technicality". The Committee does not consider it to be at the lower end of the spectrum of misconduct.

35. Nonetheless, there are a variety of factors that support the parties' joint submission that the appropriate sanction should be a reprimand. In this regard, the Committee weighs heavily the fact that there was no harm, or potential harm, to a client and that the conduct did not arise from Mr. Madu's practice as a lawyer. As indicated above, the Committee does not find that the joint submission on sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest and must therefore defer to the parties' agreement in that regard.

The Form of the Reprimand

36. The Committee agrees with the submissions of counsel for the LSA that it is both legally and factually incorrect that the Committee either decided upon a reprimand as the appropriate sanction or delivered one through the Merits Decision. That was not the issue before us at that time.

37. The Committee is of the view that the form of reprimand suggested by counsel for Mr. Madu is not appropriate in this case. Accordingly, it need not decide whether, in other circumstances, it would be appropriate to use words to the effect of "You are hereby reprimanded", with or without reference to a more robust explanation as to "why" by referencing another decision.

38. The Committee is of the view that the form of reprimand suggested by counsel for Mr. Madu, even with reference to the Merits Decision, does not adequately serve the fundamental purpose of sanctioning: protecting the public from acts of professional misconduct and protecting public confidence in the integrity of the profession.

39. As indicated above, the Committee does not view Mr. Madu's misconduct as being at the lower end of the spectrum. The Committee acknowledges that Mr. Madu's misconduct is a far cry from some types of misconduct at the most serious end of the spectrum. It also acknowledges that neither of the more serious sanctions of disbarment or suspension are appropriate here.

40. However, the "bare" reprimand we were urged to adopt would not address one of the fundamental aspects of the misconduct in question here: Mr. Madu's failure to appreciate the consequences of his actions and the integral principle of the need to avoid even the *perception* of impropriety, all of which was highlighted by the prominent position he occupied at the time.

41. Mr. Madu did not testify at the Sanction Hearing or lead any evidence to the effect that he takes responsibility for his behavior, acknowledges even the potential for a mistake, or in any way appreciates the consequences of his actions—particularly the perception that they created. He has tendered no evidence to show the Committee any insight into a problem he continues to deny or humility, notwithstanding an adverse credibility finding.

42. This is not a case in which the proverbial "slap on the wrist", as a bare reprimand could be characterized, is sufficient. It does not align with the fact that the public was entitled to look to Mr. Madu as someone who should set an example: not a legal leader who undermined respect for the administration of justice. It also does not align with Mr. Madu's demonstrated lack of insight into the consequences of his actions and the fact that, even though no longer the Minister of Justice and Solicitor General, he continues to bear responsibilities and duties, in both his personal and professional life that must be consistent with and enable the public to have confidence in the integrity of the profession and respect for the administration of justice.

43. The Committee is sympathetic to those who find themselves subject to what counsel for Mr. Madu termed the "perpetual punishment of the Internet" and wide-spread media commentary. However, transparency is a hallmark of both the Canadian judicial system and self-regulation for professions such as ours.

44. In light of all of the foregoing, the Committee is of the view that a reprimand that best serves the purpose of sanctioning in this case is the following, which was delivered orally at the end of the Sanction Hearing:

Mr. Madu, the right to practice law in the Province of Alberta is a privilege that has been bestowed upon you by the Law Society of Alberta in exercise of its authority under the *Legal Professions Act*.

When you accepted that privilege, you also accepted certain responsibilities that are greater than those of a private citizen. On both a personal and professional level, you are to be held to the highest standard of conduct. Integrity is fundamental and of overarching importance to your obligations and the standard to which your conduct is to be measured.

Also of importance to this case are your obligations as a lawyer to avoid even the appearance of impropriety. Your conduct is also to evidence a commitment with respect to equal justice for all within an open, ordered and impartial legal system.

At the time of the events in question, you held the position of Minister of Justice and Solicitor General. You were one of the highest profile lawyers in Alberta, if not also Canada. All of the foregoing duties and responsibilities equally applied to discharge of your duties in that role, which you yourself have acknowledged was one which garnered a great deal of authority to be exercised appropriately and cautiously.

You have breached the duties and the obligations that accompany the privilege of practicing law in this province.

As reviewed in detail in this Committee's decision of October 15, 2024 on the merits of the case, your conduct in calling the Chief of Police of the Edmonton Police Services on March 10, 2021 regarding a traffic ticket you had received that day undermined respect for the administration of justice and is conduct deserving of sanction.

You have failed in your commitment and obligations as a lawyer. That failure is even more egregious given the unique role you were vested with at the time of the events—one in which the public was entitled to regard your conduct as that which ought to have set an example.

The Committee considers your failure to discharge your duties and responsibilities as a lawyer to be of utmost seriousness. This is not an inconsequential matter, nor a technicality. We do not consider it to be at the lower end of the spectrum of misconduct.

A formal reprimand such as this is not taken lightly by members of the legal profession, nor should it be by members of the public at large. A reprimed forms part of the permanent and public record of a lawyer.

In rendering this reprimand, the Committee urges you to reflect on your conduct, the obligations and duties that accompany the privilege of being a barrister and solicitor in this province, and to understand how and why your conduct has been found to be deserving of sanction.

While you are no longer Minister of Justice and Solicitor General, you are still a member of the legal community and community at large. You continue to bear responsibilities and duties, in both your personal and professional life that must be consistent with and enable the public to have confidence in the integrity of the profession and respect for the administration of justice.

You should not take this reprimand lightly. These are not simply words. Your conduct has been found markedly wanting and this reprimand is intended to convey the strongest possible message to you.

Costs Decision

45. The Committee accepts the parties' agreement as to costs.

46. The Committee also grants the parties' request to stay payment of costs until conclusion of Mr. Madu's extant appeal of the Merits Decision to the Benchers. So that there is certainty as to when payment is to be made, the Committee additionally directs that, subject to the outcome of that appeal, payment must be made within one year of the conclusion of that appeal.

Concluding Matters

47. There will be no Notice to the Attorney General and no Notice to the Profession in this case.

48. The hearing materials and this report will be available for public inspection, including the provision of copies of the exhibits for a reasonable copy fee, except that identifying information in related 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)).

Dated April 14, 2025.

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Tamela Coates, KC

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Michael Brodrick

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Robert Philp, KC