

**REPORT ON THE INVESTIGATION OF A PHONE CALL, MARCH 10, 2021
FROM THE HONOURABLE KAYCEE MADU, Q.C. TO CHIEF DALE MCFEE,
CHIEF, EDMONTON POLICE SERVICE**

Terms of Reference:

In considering both the content and context of the Phone call, 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.

Investigation Process

1. My investigation consisted of meetings with Chief McFee, Minister Madu and Constable **Name**. I met with Chief McFee and Minister Madu on February 1, 2021 in person in Edmonton. I met with Chief McFee in his office in the morning. Chief McFee was accompanied by his Chief of Staff, Justin Krikler. I met with Minister Madu in a meeting room at the Federal Building in the afternoon. **Personal Information**
Name. I met virtually with Constable **Name** on February 5, 2022. **Personal Information**
Personal Information. I had a follow-up interview with both Chief McFee and Minister Madu on February 7, 2022. Because of the nature of the investigation, I did not have the ability to take evidence under oath. However, I advised all of them that I expected them to tell me the truth. They each acknowledged that they would.
2. In advance of the meetings, I requested any documents that might be relevant to the investigation. I received documents from all three. In this report, I have provided an exact transcription of one key document; a handwritten note made by the Chief. There are notes on the traffic ticket and an email written by Constable **Name** which I refer to but do not

reproduce exactly. I received phone logs from Chief McFee and Minister Madu. They are described in more detail below. In addition, the Chief referred me to the *Police Act*, and the Governance Procedure for the establishment of the Edmonton Police Commission and a link to its website. The Minister provided me with copies of news reports, briefing notes, calendar extracts and some training documents that he had received when he became an MLA and cabinet minister.

3. Minister Madu was the last person I interviewed on February 7. Personal Information

Personal Information

The Framework for Analysis

4. The two questions which I have been asked to address require different frameworks. The first question – did the Minister interfere or attempt to interfere with the administration of justice – requires me to make findings of fact and then apply those facts to the definition of interference with the administration of justice. The second question requires me to apply a standard of conduct against those facts to determine if there is a reasonable perception of interference, even if there was no actual interference or attempted interference.
5. The framework that I will use in answering the first question begins with the legal principles set out by Acting Ethics Commissioner Fraser in *Re-Investigation into Allegations Involving The Honourable Alison Redford, Q.C.*¹. The first two guiding principles set out by Commissioner Fraser, which I have adjusted slightly because my investigation is not pursuant to the *Conflict of Interest Act*, are relevant:
- a. A Minister who is the subject of an investigation is entitled to the presumption of innocence at the outset of the investigation,
 - b. An alleged breach by a Minister must be proven on a balance of probabilities.
- The balance of principles in that case are not relevant to this investigation. However, Commissioner Fraser does go on to emphasize that the process of fact-finding must be conducted carefully and based on evidence, not suspicions or guesses. I agree. Finally, the definition of interfere that is relevant here is ‘to hinder, prevent or obstruct’.
6. The framework that I will use in answering the second question is like the framework used to determine whether there is a perception that a decision-

¹ March 29, 2017

maker – usually a judge – is biased. The key word is ‘perception’. There are Supreme Court of Canada cases that have set out the appropriate test. *Canada (Minister of Citizenship and Immigration) v Tobiass*² was a case where the Assistant Deputy Attorney General met alone with the Chief Justice of the Federal Court to discuss some issues in a high-profile immigration case. The court found that this meeting without counsel for the other parties violated the rule that a judge should discuss a case only in the presence of all parties. The test applied by the court was whether a reasonable observer would perceive that the court was able to conduct its business free from the interference of the government and other judges.³ In *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*⁴ the issue was alleged bias or a perception of bias on the part of the judge hearing the case. The test set out in the case is a more refined version of the *Tobiass* test – “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude”.⁵

7. While the facts in these cases are different, the process for arriving at a decision is the same. The issue is not simply factual. The test provides a measuring rod to determine if there is a reasonably-held belief in interference in the administration of justice.
8. There are a few other legal considerations that I have taken into account in this investigation. First, the position of Attorney General, which is the position held by the Minister of Justice is unique. Historically, and by confirmation in the *Government Organization Act*⁶, the Attorney General is the chief law officer of the province. The duties include superintending “all matters relating to the administration of justice in Alberta that are within the powers of jurisdiction of the Legislature or the Government”.⁷ He or she has an role independent from the rest of government because of the duty to enforce the laws.⁸ Accordingly the Attorney-General must be held to a higher standard when measuring their conduct. Second, the police are independent insofar as it concerns decisions about policing.⁹ There is a fine balance

² [1997] 3SCR 391

³ Para 72

⁴ 2015 SCC 25

⁵ Para 20

⁶ G-10, schedule 9

⁷ Schedule 9, 2(c)

⁸ See *Krieger v. Alberta Law Society*, 2002 SCC 65

⁹ Kent Roach, *The Overview: Four Models of Police-Government Relations in Police and Government Relations: Who’s Calling the Shots?* 2007, University of Toronto Press

between police and government that needs to be maintained to ensure that police decisions are made absent political considerations.

The Interviewees

9. **Chief Dale McFee** began his career as a police officer in Prince Albert, Saskatchewan. He was on the force for 26 years, the last 9 as Chief of Police. Chief McFee then took a position with the Saskatchewan government as Deputy Minister of Corrections and Policing. He was in that position for 6 ½ years. He then applied for the position of Chief of the Edmonton Police Service. He became Chief on February 1, 2019. The Chief of Police in Edmonton is hired by the Edmonton Police Commission, the Chief's contract is with the Commission and his performance reviews are done by the Commission.
10. **Minister Kaycee Madu** studied law in Nigeria graduating in 2001. He then trained as a barrister and solicitor and was admitted to the Bar in 2003. In 2005, he and his wife immigrated to Canada and settled in Edmonton. He worked in legally related jobs until he qualified for admission to the Alberta Bar. He was admitted to the Bar in Alberta in 2014. He had a practice in Edmonton, focusing on commercial and real estate matters and family law. He was elected as an MLA in 2019 and sworn in as a cabinet member in April, 2019. He was the Minister of Municipal Affairs until August, 2020 when he was appointed Minister of Justice and Solicitor General.
11. **Constable** Name, Age, Work History
Police Service Work History
[Redacted]
[Redacted]
[Redacted]

Contextual information

12. There is information which provides necessary background and context for the investigation. They are:
 - a. **Training** – I looked to determine whether either the Minister or the Chief were given training on the appropriate boundaries in their relationship with other public officials. The Chief told me that much of the training for his office is acquired through experience. The Chief has been the President of the Canadian Association of Chiefs of Police and the Alberta Association of Chiefs of Police. As a result of the years of service and his leadership positions, the Chief has learned where the lines are between police operations and government, and from there what is appropriate and inappropriate interaction by the police with

other public officials. Minister Madu told me that as a newly elected MLA and Minister, he attended orientation sessions for both roles. Minister Madu provided me with materials that he was given in those session. There is nothing specifically dealing with how to conduct relations with other public officials, generally, or specifically with members of the police forces. He was trained on the *Conflict of Interest Act*. Chief McFee and Constable **Name** confirmed that police officers receive training in unconscious bias, racism, and racial profiling. Chief McFee said that emphasis has been placed on these topics for training purposes and to ensure a diverse force.

- b. **The complaint process** - Chief McFee took me through the structure of policing in Alberta, an important foundation to understand the relationship between a chief of police and a minister. Responsibility for policing in Alberta lies with the Minister of Justice and Solicitor General. A municipality may choose to set up its own police force, which Edmonton has done. If it does so, it is also obliged to create a police commission. The commission then sets the goals and priorities for the police and the municipality sets the budget. The process to address complaints against police officers is set out in s. 45 of the *Police Act*. Very generally, the complaint is first assessed by the Professional Standards Branch which may attempt to mediate the complaint, and failing that, to investigate and report to the Chief. The Chief may take whatever action the Chief deems appropriate or may refer the complaint to the commission. The circumstances when a Chief may refer a complaint to the commission include a situation where the Chief deems it appropriate for another police force to investigate. Chief McFee said that in his opinion a complaint made by a public official like a minister would not necessarily trigger such a process. In his view, absent unusual circumstances, such a complaint would remain within his office.
- c. **Contact between the Minister of Justice and Chiefs of Police** - Both Minister Madu and Chief McFee indicated that there were frequent interactions that dealt with both policy and police operational matters. A typical policy matter would be a discussion to set up a project on a particular issue, such as setting up the Task Force on Mental Addiction. As well, there would be discussions about legislative changes. There were also discussions about operational issues. That would include matters that had been brought to the attention of the Minister by citizens which he would then raise with the Chief. Chief McFee gave

as an example the discussions that occurred to address physical attacks on immigrant women. Minister Madu said that his most frequent contact was with Chief McFee, the Chief of Police in Calgary and the head of the RCMP in Alberta. Generally, his office would arrange the meetings. They could be group meetings or one-on-one. Minister Madu had Chief McFee's phone number in his contacts list on his phone.

- d. **The Lethbridge Investigation** – In February, 2021, Minister Madu was addressing allegations that some Lethbridge police officers were illegally surveilling Ms. Shannon Phillips, the MLA for Lethbridge-West. The Minister provided me with a briefing note on the conduct of the officers and copies of CBC reports that show photographs of MLA Phillips and searches of her name in the police database. He met with MLA Phillips on March 8 to discuss the investigation and met with the Lethbridge Police Chief and Police Commission on March 9 . This was an active file in the days leading up to March 10 when he was stopped by Constable **Name** . That morning, he was on his way to his office to prepare for and hold a press conference about the Lethbridge investigation. I understand that these allegations continue to be under investigation. While the fact that these allegations were before the Minister in February and March, 2021 is relevant to this investigation, nothing I say here is intended to interfere with the investigation against the Lethbridge police officers.
- e. **Racial Profiling** – Another issue that is central to the call between Chief McFee and Minister Madu is whether the traffic stop could have been motivated by the fact that the Minister is Black. In this context, the Minister provided background on the work that he and his office had been doing on race in the months before the call, and most specifically in February, 2021. February is Black History month. During February, 2021, the Minister attended events not only to celebrate Black History month but also to address on-going issues concerning racial discrimination including in policing. The Minister provided me with a copy of a briefing memo prepared for him on an initiative to improve prevention and enforcement of hate or bias motivated crime, a memo on an initiative to amend regulations to prevent arbitrary and non-voluntary detention of individuals ('carding', which is the practice of arbitrarily stopping racialized citizens and demanding identification), and a briefing note in preparation for a Town Hall on Anti-Racism and Hate crimes scheduled for March 8, 2021. He told me that at the Town

Hall on March 8, he 'got an earful' from racialized communities about police profiling and the disturbing nature of interactions with the police. Finally, during February, he was dealing with attacks against Muslim women.

The Ticket

13. Constable **Name** explained that the traffic division is organized by squad or team. Each squad has 5 or 6 members. Sometimes the squad works in concert and sometimes each does their work alone. On March 10, 2021, Constable **Name** was working alone. He was in an unmarked **Vehicle** and was in uniform. He chose a spot near the Daniel Woodall/St. John school zone **Personal Information**. He arrived at this location at 8:45.
14. Constable **Name** was parked in the southbound parking lane on Windemere Road at a place where there are 2 driving lanes and the parking lane. His truck was facing south. In his rearview mirror he saw a blue F150 approaching. He activated his radar unit and noted that the truck was not speeding. He said that in accordance with his practice, as the vehicle approached, he looked into the vehicle to note any possible infractions involving things like seatbelts or cellphones. When the two vehicles were side by side as the truck was passing him, he noted that there was a dark-coloured cellphone in the driver's hand. The driver had his left hand at the 9 o'clock position on the steering wheel and he was holding the cellphone at approximately the 3 o'clock position. The screen was facing the driver and the driver's face was to the right and looking down. He was able to observe this for about 3 seconds. He decided to pull out and stop this vehicle. He attempted to move up beside the truck to get another look but could not. He slowed, moved in behind the truck and activated his lights and siren.
15. Constable **Name** ran the plate number through his computer and noted that it was registered to the government of Alberta.⁰ He got out of his truck and walked to the driver's side of the blue truck. He advised the driver that he had been stopped for a cellphone violation and asked for his driver's license and proof of insurance. The driver was not holding the cellphone and denied using it. He said that he was opening the console and that is what the

¹⁰ The constable at first thought that it was registered to an Alberta numbered company. Upon reviewing the email that documented his recollection of the call, he noted that it was registered to the government of Alberta. In answer to the constable's request for proof of insurance, Minister Madu said that he showed the documents that accompany a government vehicle. Because the constable was not shown anything that proved the vehicle was insured he gave a warning to Minister Madu. He now understands that government vehicle proof of insurance looks different.

constable may have seen. He was moderately argumentative. The driver then asked whether the constable knew who he was. The driver said that he was the Minister of Justice and that he would never do anything to break the law. He said he was the Minister of Justice 3 or 4 times during the discussion at the window. He gave the constable his driver's license but did not have his insurance documents.

16. The constable returned to his vehicle and wrote the ticket. That took 4 to 5 minutes. The constable returned to the truck, explained the options to respond to the ticket and asked the driver if he had any questions. The driver said that he had none but asked for the constable's badge number. The constable gave him the number and also told him that the number was on the ticket.
17. The constable also said that as they were talking at the window, the driver pulled the phone out of his left breast pocket to show him that it was in his pocket. He said that the driver had 45 seconds to a minute from the time that the lights and siren were activated until the constable got to the car window to put away the phone. The constable said that he only issues tickets when he is 100% sure that the driver is holding the cellphone. If he observes a driver who may be looking down at his lap or doing something else that indicates that he or she may be using a cellphone, he will not act unless he sees the phone.
18. After giving the driver the ticket, the driver drove away, and Constable **Name** went back to his truck. Because he does not pay a lot of attention to politics, he did not know who Minister Madu was. As a result, he radioed his squad members and a couple of them radioed back confirming that he was the Minister of Justice.
19. At noon that day, when the constable was eating lunch, his sergeant asked him to send him an email about what had happened with the stop. The constable sent the email at 13:04. The only difference between what he told me and what is in the email is about the ownership of the vehicle. There are also notes on the ticket which are in 'constable shorthand' but when translated by Constable **Name** are consistent with his recollection set out above.
20. I read my summary of how Minister Madu described the traffic stop to Constable **Name**. He took issue with one thing; that the driver only mentioned who he was at the end of the call. I asked the constable whether he concluded that the Minister was telling him who he was in hopes that the constable would not issue a ticket. The constable said no. He said that he

was ‘using it as a defence’, meaning that he was saying that he could not be guilty because he is the Minister of Justice and would not break the law.

21. Minister Madu said that on March 10, 2021, like every workday, he travelled to his office with three phones – a Minister’s phone, a Legislator’s phone and a personal phone. The first two are always stored in his briefcase and he carries his personal phone in the left breast pocket of his suit jacket. His personal phone is connected to Bluetooth in the truck. About 2 minutes after he left his home, he saw a police car flash its lights. As a result, the minister parked his car. The officer came to the driver’s side window. He said that he observed Minister Madu on his phone. Minister Madu denied that he was on his phone and that it was in his left-hand suit pocket. The officer said that he would go with his observations. Minister Madu replied that he should write the ticket. The officer returned to his car and shortly thereafter returned with the ticket. At that time, Minister Madu said that he identified himself as Kaycee Madu, the Minister of Justice and drove off.
22. I asked the Minister if he concluded that he had been racially profiled. He said that he could not speak to the officer’s demeanor. The minister paid the ticket two days later. I asked why he paid given that he said that he was not guilty. He said that because he was the Minister of Justice, it was better simply to pay the ticket and forget about it. I asked Minister Madu about the notation by Constable **Name** which states that the driver said that he was the Minister of Justice at least 4 times. Minister Madu said that he recalls that he said it once and then drove off.
23. In my first interview with Minister Madu, he went through call logs for all three of the phones that he carries. The Minister’s phone and the Legislator’s phone both show no calls on March 10. The Minister’s personal phone shows that the first identifiable call of the day was the call at 9:45 to Chief McFee. It was clear as Minister Madu was presenting the logs that he believed that the allegation against him was that he was talking on the phone. As is set out above, the allegations is that he was looking at his phone, not using it to make a call.

The Phone Call

24. The phone call between Chief McFee and Minister Madu occurred at 9:45 (when the call was placed by Minister Madu according to his phone logs) or 9:46 (when the call was received by Chief McFee according to his phone

¹¹ There are two calls from the same number with no time stamp that are listed at the top of the log for March 10th. Minister Madu does not know who they are from and from all the facts, I have concluded that they are not related to this investigation

logs). The call lasted 8 minutes. Before describing the information provided in the interviews, it is helpful to have the notes made by Chief McFee at the time of the call. These notes were made on the back of a brown envelope since the Chief was on holidays in **Location** at the time. It was the only paper available to him. The notes read:

Minister Madu Called March 10

Location (holidays)

- Concerns distracted driving ticket
- Around 2 schools, Donald Woodall School
- Mentioned/concerned about Lethbridge
- Targeted? Black profiling?
- Not sure what you are talking about Traffic ticket not the case
 - o Pay ticket/go to court?
- Called Chief of Staff heads up

25. Chief McFee said that he received a text from and then spoke with his Acting Chief Operating Officer, Enyinnah Okere, who advised him that the Minister wanted to talk to him. ² That call is shown on the Chief's call logs at 9:42. It was interrupted by Minister Madu's call. The Chief characterized the first couple of minutes as small talk. Then the Minister started to talk about having just received a ticket for distracted driving in a school area. He seemed 'concerned' and 'frustrated'. He raised the issue of the Lethbridge police force and the possibility that there was racial profiling in relation to the ticket. The Chief described the points that the Minister was making at this point as 'jumbled' and the Minister seemed worked up. The Chief responded by saying that he was not going to talk about the Minister's traffic ticket. He said that there were two choices – to pay it or go to court. He also said that no one was going to racially profile the Minister over a traffic ticket. Chief McFee said that by the time the call ended, the Minister had calmed down. He said there was a marked difference in the Minister's demeanour by the end of the call. The Chief interpreted the remarks made by the Minister about Lethbridge and racial profiling as relating to his receipt of a ticket. The Minister never asked him to do anything with the ticket.

¹² I had questions about whether a series of texts between Mr. Okere and Mr. Bohmer (the Minister's press secretary) before 9:42 was relevant to this matter. Apparently, Mr. Bohmer advised Mr. Okere that the Minister wanted to speak with the Chief and asked for the Chief's number. I asked the Minister whether he requested the Chief's number from Mr. Bohmer. He said he did not because he had the Chief's number in his contacts list.

26. After the call ended, Chief McFee made several calls. He first called his then Chief of Staff, Brian Sinclair to tell him what had happened so that Mr. Sinclair had some notice in case something further occurred. Chief McFee thought that the matter had ended with the call but was simply being careful that his Chief of Staff knew, particularly since Chief McFee was on vacation. He then called Mr. Okere to advise him of what had happened and to make sure that Mr. Okere let Constable Name supervisors know, again simply in case anything arose. Next, he called Ms. Micki Ruth, then Chair of the Police Commission, again to let her know what had happened. He told her that he did not know if anything would come of the call, but he thought that nothing would. At this point in the log there is a blocked call, which means the number cannot be identified. Since all police cell phone numbers show as blocked on a call log, the Chief believes that this was a call from someone on the police force. He cannot recall what it was about but does not think it was about this incident. He next called Letitia Aplin, Executive Director of the Alberta Association of Chiefs of Police to let her know about the call. He checked in with Mr. Okere later in the day. At 5:01 he called Lethbridge Chief of Police Mehdizadeh. Again, he wanted to let him know about the call, particularly since the Minister had referenced the Lethbridge investigation in the call. Finally, he checked in with his Chief of Staff. I asked the Chief if he would do anything different today. He answered that he would not.
27. Minister Madu said he called Chief McFee for two reasons. He wanted assurance from Chief McFee that he was not being illegally surveilled as had happened to MLA Phillips in Lethbridge and that he was not being racially profiled. Both of those issues were top of mind, he said, because of the work he had been doing on both. That day, he was on his way to a press conference about the Lethbridge investigation, and two evening before, he had had an earful from racialized Albertans about racial profiling. He said that the traffic ticket was not the point of the call. It was the trigger that caused him to be concerned about illegal surveillance and racial profiling. He repeated that the ticket was the trigger but it was never about the ticket. He admitted that he was angry.
28. He knew that the Chief had no ability to do anything about a ticket that had already been issued. He said that it would be unprecedented for the Minister of Justice to ask the Chief to do anything about a ticket and he would not do so. He said that he has received tickets in the past which he has quietly paid because that is the right thing to do.
29. The only person other than family members that Minister Madu told about the call was his press secretary, Blaise Bohmer. He told him he had been

traffic-stopped. Because he was concerned about being illegally surveilled or racially profiled, he told Mr. Bohmer that he called the police chief to discuss these issues. Mr. Bohner showed concern but that was all. In hindsight, Minister Madu said that he should have paid the ticket and then wait for an appropriate opportunity to discuss the ticket with the Chief.

Analysis

30. I begin with what this investigation is not about. My mandate does not include deciding whether or not Minister Madu is guilty of distracted driving. In Canada, we have a centuries-old, well-developed criminal trial process. That process presumes an accused person is innocent until proven guilty, sets a high burden of proof of guilt beyond a reasonable doubt, takes place in a public setting and gives both the Crown Attorney and defence counsel the right to vigorously cross-examine witnesses. The information that I acquired through the interview process set out above has none of these features. Even in a case like this where the information from Constable **Name** and Minister Madu differs, the only place that that can be assessed is in a criminal trial.
31. With that said, there are two important conclusions that I draw from the information that I did obtain about the ticket stop. First, there is nothing about the stop that could lead a reasonable person to conclude that Minister Madu was racially profiled. It was an ordinary day of a police officer doing his work in a school zone. He made observations which led him to conclude that an offence has occurred. He issued a ticket to the driver.
32. Second, when I obtained the notes on the back of the ticket, the notation that the driver had identified himself as the Minister of Justice raised the question of whether the Minister identified himself to attempt to intimidate Constable **Name**. That would be relevant to the questions I must answer. Based on the information from Constable **Name**, I conclude that Minister Madu was not attempting to interfere with the issuance of the ticket. Constable **Name** said that the driver was using it as ‘a defence’ to the ticket – “I would not break the law because I am the Minister of Justice”. There is nothing in that exchange which requires further consideration.
33. Moving to answer the two questions, let me first address the two reasons that Minister Madu said were the reasons for his call. The first was the Lethbridge investigation. He says he was concerned that he was being surveilled like MLA Phillips was being surveilled in Lethbridge. The allegations of what went on in Lethbridge are disturbing. However, to take from those facts the possibility that police in other police forces in Alberta

are doing the same kind of thing is highly speculative. There is nothing that I have been shown to suggest that whatever may have happened in Lethbridge has infected other police forces. As a result, taken by itself, I would not accept it as a reason or explanation for the call.

34. That takes me to a more complicated issue, the concern by the Minister that he was being racially profiled. I am not an expert in systemic racism, racism, and racial profiling but I have had some training through the National Judicial Institute. There have been studies that document racism in relation to policing.³ There are scholars like Professor David Tanovich and Professor Joshua Sealy-Harrington who have written and spoken extensively on these matters.⁴ It is a fact that racism and systemic racism that lead to conduct such as carding and profiling exist in law enforcement.⁵ The hard part is finding a solution. Some of the initiatives identified by Chief McFee and Minister Madu are important steps.
35. I accept that Minister Madu was deeply involved in issues relating to racism. He was working on amendments to legislation to address carding. Two days before the traffic stop, he had had ‘an earful’ from representatives of diverse communities around Alberta about issues or racism and the police. When he was given the ticket, by his own admission, he was angry. At the time, he thought he was accused of talking on the phone which we now know not to be the case. Both he and Chief McFee said that during the call, the Minister was frustrated and concerned (according to the Chief) or angry (according to the Minister). I accept that as a Black man who was addressing relations between racialized people and the police, he could have questioned whether the traffic stop was motivated by race. The fact that it was not motivated by race is different than his belief that it could have been.
36. With that context, I turn to the specific questions I have been asked. As I said above, to answer the first question, I need to find some facts and then determine where they lead. Many of the facts about this case are not in dispute. No facts about the phone call are in dispute. I have accepted that the Minister’s motivation for the phone call was in part because of the issues of racism he was dealing with combined with the fact that he is Black. Having

¹³ Ontario Human Rights Commission, Framework for change to address systemic racism in policing, <https://www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing>

¹⁴ David Tanovich, *Applying the Racial Profiling Correspondence Test* (2017) 64 Crim.L.Q. 359; Joshua Sealy-Harrington, *Working Paper: Critical Racial Profiling*, <https://www.courthouselibrary.ca/sites/default/files/inline-files/Sealy-Harrington%2C%20Joshua%20-%20Critical%20Racial%20Profiling%20%28Working%20Paper%20-%20Crim.%20L.%20Assoc.%20Conf.%202020%29.pdf>

¹⁵ The most recent decision I know of is R. v. Sitladeen, 2021 ONCA 303

taken into consideration those facts, I divide the first question into two parts. First, did Minister Madu interfere with the administration of justice? He did not. As set out above, the word 'interfere' in this context means to hinder, prevent or obstruct. The conversation did not reach the point where the Minister asked that the Chief do something about the ticket. The Chief told the Minister about his options to deal with a traffic ticket and that essentially ended the call.

37. Did Minister Madu attempt to interfere with the administration of justice? He did. The Minister said that the call was not about the ticket but the ticket was the trigger. He said that he was looking for assurance from the Chief that the traffic stop was not motivated by illegal surveillance or racial profiling. The logical next step would mean that he expected the Chief to respond to his concerns about his ticket. There is a process that the Minister knows well to address questions of police conduct. It does not start with a phone call to the Chief of Police. The very fact that the purpose of the call was to obtain assurance that the police were acting properly rather than going through appropriate channels is an attempt to interfere with the administration of justice.
38. Having arrived at this conclusion, I must tie it back to the issues surrounding racism that I have raised above. Being angry, wanting assurances that he was not racially profiled are all understandable reactions, given the context of the phone call. It does not absolve the Minister from responsibility, but it is an explanation that deserves recognition. My mandate is not to determine what flows from the conclusions I have drawn, but it is important to say that the context of my conclusions cannot be ignored as we collectively search for a path to ensure equality and fairness for everyone, regardless of skin colour.
39. Did the phone call create a reasonable perception of an interference with the administration of justice? It did. This is a different kind of question than the first one. I have said above that 'perception' is the key word. It means 'a way of regarding, understanding, or interpreting something'. In Canada, the rule of law is the foundation for how society operates. Canadians understand that principle to mean that everyone is treated the same. The laws govern the boundaries of appropriate behaviour. Those boundaries cannot be breached simply because of who someone is. People in positions of influence or power like politicians, ministers of the Crown, judges and so on cannot use their position to obtain a personal benefit. In the case of a traffic stop, there is a process to deal with traffic tickets and with any concerns about police behaviour. Phoning the Chief of Police directly is not an option nor is it appropriate. In answering the first question, I said it was important to

understand the circumstances and context of Minister Madu. For this question, the answer is much simpler. A reasonable person informed of all the facts and having had time to think about can only come to one conclusion. The Minister of Justice cannot phone the Chief of Police to discuss his traffic ticket. In *A Book for Judges*, a 1980 publication of the Canadian Judicial Council, one of the topics addressed is attempts to influence judges by third parties. “Regardless of the source, ministerial, journalistic or other, all such efforts must, of course, be firmly rejected. This rule is so elementary that it requires no further exposition.”⁶ And, it is elementary here.

Conclusions

40. Did Minister Madu interfere with the administration of justice? He did not.
41. Did Minister Madu attempt to interfere with the administration of justice? He did.
42. Is there a reasonable perception that Minister Madu interfered with the administration of justice? Yes.

Dated at Calgary, Alberta, February 15, 2022

A handwritten signature in black ink, appearing to read 'C. Adèle Kent', written over a horizontal line.

C. Adèle Kent

¹⁶ The Hon. J.O Wilson, *A Book for Judges*, Minister of Supply and services Canada 1980, p.55

