

**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct of
BRIAN WARRINGTON, a Member of the Law Society of Alberta**

INTRODUCTION

1. On February 11, 2014, a Hearing Committee of the Benchers convened at the Law Society of Alberta office in Calgary for the purpose of a hearing into the conduct of Brian Warrington. The Panel comprised Nancy Dilts QC, Benchler (Chair), Rob Harvie QC, Benchler, and Derek Van Tassell QC, Benchler. The Law Society of Alberta (“LSA”) was represented by Timothy Meagher. Mr. Warrington was present at the hearing and was represented by Alexander Lytle.

SUMMARY OF PROCEEDINGS

2. Mr. Warrington faced proceedings on seven citations arising from three separate complaints brought by his clients SH, BP and M:

1. *It is alleged that you failed to respond to your client, S.H. in a timely manner and such conduct is conduct deserving of sanction;*
2. *It is alleged that you failed to provide competent services to your client, S.H. and such conduct is conduct deserving of sanction;*
3. *It is alleged that you failed to be candid in your letter to opposing counsel, and that such conduct is conduct deserving of sanction;*
4. *It is alleged that you failed to be accurate in your correspondence to the Law Society and that such conduct is conduct deserving of sanction;*
5. *It is alleged that you withdrew your representation without reasonable notice to B.P., and that such conduct is conduct deserving of sanction;*
6. *It is alleged that you failed to be candid in your communications and that you misled or attempted to mislead the Court, and/or B.P., in communicating your reasons for withdrawal, and that such conduct is conduct deserving of sanction;*
7. *It is alleged that you consented to the extension of an Emergency Protection Order without instructions from E.C.M., and that such conduct is conduct deserving of sanction.*

3. At the outset of the hearing, the Panel was presented a Statement of Admitted Facts and Admission of Guilt in which Mr. Warrington admitted guilt to citations 2, 4 and 5. With respect to citations 1 and 3, Law Society counsel advised that it would not proceed on those citations, with the view that the conduct complained of was encompassed in citation 2. Law Society counsel also advised that it would not proceed on citation 6.

4. As a result, the hearing proceeded on citation 2, 4 and 5 (upon which there was an admission of guilt), and citation 7 (upon which there was no admission of guilt).

5. The Statement of Admitted Facts and Admission of Guilt attached as Schedule "A" to this Hearing Report was entered as Exhibit 79 and was accepted by the Panel as an admission of guilt with respect to Citations 2, 4 and 5 such that the conduct complained of is conduct deserving of sanction in accordance with Section 60 of the *Legal Profession Act*.

6. In addition to the evidence contained in the Statement of Admitted Facts and Admission of Guilt, the following witnesses attended and gave oral evidence in the proceedings: S.H. respecting citations 2 and 4, and Michelle Pocock (formerly Papero), a non-practicing lawyer, respecting citation 7. Mr. Warrington also gave evidence and was cross-examined.

SUMMARY OF RESULT

7. At the conclusion of the hearing, the Panel found Mr. Warrington guilty of conduct deserving of sanction with respect to all of the citations advanced, being citations 2, 4, 5 and 7. The Panel was satisfied that the evidence demonstrated that Mr. Warrington failed to diligently serve his clients. Of concern to the panel was a pattern of conduct where Mr. Warrington placed his own interests before those of his clients and failed to demonstrate accountability for his actions.

8. Considering all factors relevant to sanctioning, Mr. Warrington was fined an aggregate amount of \$4,000, being \$1,000 per citation, and was issued a reprimand at the conclusion of the proceedings. In addition, Mr. Warrington was ordered to pay the actual costs of the hearing, with time to pay both the fine and the costs.

REVIEW OF THE EVIDENCE

9. Mr. Warrington was admitted to the Law Society of Alberta in 2002 and practiced as a sole practitioner from 2005 until late 2012, covering the period of time in which these complaints arose. He practices predominantly family law. At the time these complaints arose, Mr. Warrington's practice was approximately two thirds Legal Aid clients. He also acted as duty counsel for Emergency Protection Orders.

10. Since late 2012, Mr. Warrington has practised with a senior practitioner. That lawyer handles the business side of the practice, relieving Mr. Warrington of that responsibility. Mr. Warrington continues to act as duty counsel. Approximately 20% of his files are Legal Aid files.

11. Mr. Warrington is also an active member of the community, having a long history of volunteerism with the Cadet community in Alberta.

Complaint of S.H.

12. S.H. retained Mr. Warrington in August 2008 to assist her to obtain an order respecting the custody of her son following her separation from her husband. Mr. Warrington attended in court on S.H.'s behalf on September 4, 2008 out of which the Judge requested that Mr. Warrington prepare the order. S.H. informed Mr. Warrington that there was urgency to getting the order in place as she was concerned that her estranged husband intended to leave the country.

13. S.H. made repeated and reasonable attempts to have Mr. Warrington complete the action he agreed to complete. She sent numerous emails and placed numerous calls over a

period of 6 weeks. Mr. Warrington did not take steps to complete the order, notwithstanding the urgency for him to do so. Moreover, he sent a strongly worded email to her indicating that she was not going to be able to reach him by phone but needed an appointment and requiring that an additional retainer be paid to him of \$1,000 before he would do any further work for her. In response, S.H. promptly paid the additional \$1,000 retainer for the sole purpose of completing the September 4, 2008 court order. That was October 15, 2008. By November 18, 2008, S.H. had to send Mr. Warrington a reminder of the terms of the order and he ordered transcripts of the proceedings. Finally, on December 4, 2008, Mr. Warrington sent S.H. a draft order. It contained fundamental errors, including misidentifying the child of the marriage and who the child's guardian was, and required correction by S.H. He made the same mistakes on a second draft and again they needed to be corrected by S.H.

14. On December 17, 2008, Mr. Warrington sent the draft order to counsel for S.H.'s estranged husband and said "Truth be told I have not yet received instructions from my client lately." S.H. took great exception to the characterization that she had not provided instructions.

15. In response, Mr. Warrington wrote a confrontational email to S.H. in which he took no responsibility for the delay in completing the order, no responsibility for the fundamental errors in the draft order, and no responsibility for his mischaracterization to opposing counsel of S.H.'s diligence. Mr. Warrington maintained much the same attitude in his response to S.H.'s complaint – he impugned S.H.'s level of comprehension and expectations and excused his own lack of diligence in completing the work he was hired to complete.

16. S.H. gave evidence in the hearing. She was a well-spoken, intelligent and sensible person. Her expectations of her lawyer were reasonable. She clearly understood what she needed to accomplish and what she needed a lawyer to assist her with.

17. At various times, Mr. Warrington hid behind a suggestion that the retainer paid by S.H. was exhausted, yet she paid a second amount promptly when requested. He hid behind a suggestion that there was confusion that the order had been prepared, when the transcript was clear that the court requested him to prepare it and he would know whether or not it was complete. Even in the face of obvious and fundamental errors that he committed, he did not acknowledge his mistake or offer an apology. His tendency in his communications with S.H. and in his responses to the Law Society was to blame S.H. or to point to some confusion that did not exist.

Complaint of B.P.

18. The complaint by B.P. underpins citation 5 that Mr. Warrington withdrew his representation without reasonable notice to her. Mr. Warrington admits guilt to citation 5.

19. Mr. Warrington was retained by B.P. through Legal Aid in December 2008 to oppose an application brought against her by her ex-husband and her ex-husband's wife in a high conflict family matter. The matter was to be heard on February 4, 2009 and Mr. Warrington was to represent B.P. in that hearing.

20. B.P.'s ex-husband is a lawyer and was known to Mr. Warrington in passing.

21. B.P. resided in Newfoundland. There were therefore logistics to get the affidavits sworn and returned. A storm event in Newfoundland prevented Purolator from delivering the

documents so that they arrived in Calgary before February 4, 2009. Upon learning that the affidavits had not arrived, B.P. faxed them to Mr. Warrington the morning of the hearing.

22. At the hearing, and without informing B.P., Mr. Warrington advised the court that he was withdrawing as B.P.'s counsel. He did not offer any explanation to the court as to why B.P.'s affidavits were late arriving and made no representations on her behalf. The matter was a serious one and B.P. had no idea that she would not be represented at the hearing. Instead, she learned of it after the fact.

23. In his responses to the Law Society, Mr. Warrington suggested his reasons for withdrawing as B.P.'s counsel were threefold: first, because the affidavits were not returned in time for the hearing; second, because of his familiarity with B.P.'s ex-husband; and third because he formed the view over time that B.P. was not being honest with him about whether she had violated the terms of an existing order. Ultimately, he questioned whether he was getting consistent instructions from his client.

Complaint of E.C.M.

24. The complaint of E.C.M. gives rise to the citation 7 that Mr. Warrington consented to the extension of an Emergency Protection Order without instructions to do so. Mr. Warrington disputes that his conduct in this matter amounts to conduct deserving of sanction. With respect to this citation, Law Society counsel called one witness, Michelle Pocock (formerly Papero) who, at the time represented Mr. E.C.M.'s estranged spouse and was in court on the return date for the Emergency Protection Order.

25. Mr. Warrington was appointed as Mr. E.C.M.'s counsel through Legal Aid to respond to an Emergency Protection Order in June, 2010. Mr. E.C.M. had limited proficiency with the English language; Mr. Warrington interviewed Mr. E.C.M. through an interpreter via teleconference. In that conversation he learned that Mr. E.C.M. disputed the serious allegations against him and wanted to see his child. Coming out of that conversation, Mr. Warrington started to draft an Affidavit setting out Mr. E.C.M.'s position.

26. Mr. Warrington and Mr. E.C.M. did not meet in person or have further discussion prior to the date on which the Emergency Protection Order was brought forward. However, Mr. Warrington's office was able to reach Mr. E.C.M. to advise him of an adjournment and new return date for the Emergency Protection Order. From Mr. E.C.M.'s complaint, we know that Mr. E.C.M. was in the court room the morning the Emergency Protection Order was heard, but Mr. E.C.M. says Mr. Warrington did not appear.

27. From Mr. Warrington, we learned that he and Ms. Pocock reached an agreement outside the court room to continue the Emergency Protection Order by consent. The transcripts disclose that Mr. Warrington did not appear when the matter was called.

28. Mr. Warrington's evidence is that he felt he had implied instructions from his client to consent to the continuation of the Emergency Protection Order because he had required that the matter could be brought forward on two weeks' notice. He believed that there was no prejudice to Mr. E.C.M. by having consented to the continuation of the Order.

29. On cross examination and questioning from the Hearing Committee, Mr. Warrington acknowledged that he knew Mr. E.C.M. wanted to challenge the Emergency Protection Order; he also understood that it was very important to Mr. E.C.M. to see his daughter.

FINDINGS OF THE HEARING COMMITTEE

30. The *Legal Profession Act* (R.S.A. 2000, c. L-8) sets out the general definition of conduct deserving of sanction:

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.

31. In considering whether Mr. Warrington's conduct with respect to Mr. E.C.M. amounts to conduct deserving of sanction, Law Society counsel directed the Hearing Committee to the decision in *Law Society of Alberta v. Jan Ter Hart, June 21, 2004*, where the Hearing Committee set out 10 possible factors that could bear on a Hearing Committee's decision on whether conduct amounts to conduct deserving of sanction:

- (a) Was there a specific rule or duty which was breached?
- (b) What conflicting duties was the member under and how evenly were they balanced?
- (c) Was the member favouring his personal interests over his duties to his clients?
- (d) Were the circumstances and duties such that it is appropriate to conclude that the member must have known at the time, or be taken to have known, at the time that the course of action chosen was wrong?
- (e) Was it an isolated act?
- (f) Was it planned?
- (g) What opportunity did the member have to reflect on the act or the course of action?
- (h) What opportunity did the member have to consult with others?
- (i) What results flowed from the act or course of action taken?
- (j) What subsequent steps could have been taken to correct the error or its consequences and were such steps taken?

32. Law Society counsel urged that given the magnitude of the issues in the context of Mr. E.C.M.'s life, Mr. Warrington's conduct had to be found to be incompatible with the best interests of the public. Mr. Lytle, on Mr. Warrington's behalf, argued that Mr. Warrington's objective was to preserve his client's rights to argue the Emergency Protection Order on its merits and to ensure he was not prejudiced by what occurred in Chambers on the return date. He urged the Hearing Committee to take into consideration Mr. Warrington's intentions to preserve his client's rights. He argued that in the circumstances, the conduct did not rise to the level of deserving sanction.

33. The Hearing Committee concluded that there were other ways in which Mr. Warrington could handle his inability to confirm instructions with Mr. E.C.M., including declaring to the Court a lack of instructions, disclosing the client's intentions to oppose and seeking further adjournment to reach Mr. E.C.M. That course of conduct would have maintained the integrity of

the justice system and respect for his client's intentions. To do otherwise is to suggest authority when he did not have it.

34. Had the matter been called forward on the list in the normal course and had Mr. Warrington remained in the court room to address the matter, given that Mr. E.C.M. was present in the court room, Mr. Warrington could have confirmed his authority at that time. However, for personal expedience or otherwise, Mr. Warrington reached an agreement with counsel before the matter was called and left the court room.

35. This Hearing Committee accepts that Mr. Warrington had no authority to consent to an extension of the Emergency Protection Order. Mr. E.C.M. was then left with the burden of having to undo Mr. Warrington's actions. The Hearing Committee concludes that Mr. Warrington consented to the extension of an Emergency Protection Order without instructions to do so and that doing so amounted to conduct deserving of sanction.

36. Of particular concern to the Hearing Committee with respect to each of the three complainants was Mr. Warrington's complete failure to take accountability for his errors and an absence of remorse. Mr. Warrington is not aided in this regard by his responses to both his clients and the Law Society in which he endeavoured to excuse his shortcomings and blame his clients. It is this pattern of behaviour that causes the Hearing Committee its greatest concern.

37. Mr. Warrington is found guilty of conduct deserving of sanction with respect to citations 2, 4, 5 and 7.

SANCTION

38. Mr. Warrington's discipline record was entered as an Exhibit in the proceedings. In October, 2010, Mr. Warrington was found guilty of 6 counts of conduct deserving of sanction, the majority of which dealt with a lack of candor, courtesy and professionalism. Arising from those citations and the Hearing Committee findings, Mr. Warrington was referred to Practice Review. This Hearing Committee was provided with an April 2013 report of Practice Review noting that Mr. Warrington was required to work with a consultant to become more self-aware regarding his anger, to identify a mentor who is a senior family law practitioner and to include in his CPD plans courses relating to civility, collaboration, mediation and client management, among other things. The report provided a summary of the steps undertaken by Mr. Warrington and the feedback of his mentor.

39. The Practice Review Panel noted that while Mr. Warrington had not made a complete change of his methods of approaching and dealing with family law files, he had made significant changes, much of which were based on recommendations from his mentor. They further noted that Mr. Warrington had fulfilled and complied with all of the conditions imposed by the previous Hearing Committee.

40. In his submissions on behalf of Mr. Warrington, Mr. Lytle urged this Hearing Committee to not consider Mr. Warrington to be a repeat offender, noting that the citations before this Hearing Committee pre-dated his referral to Practice Review. His argument, in essence, was that the citations did not reflect how Mr. Warrington currently practices. The Hearing Committee was persuaded that Mr. Warrington should not be viewed as a 'repeat' offender. The complaints underpinning the citations before this Hearing Committee arose in the same time frame as the previous citations. Since that time, Mr. Warrington has had the benefit of Practice

Review and of the advice and counsel of a senior and respected member of the family bar in Calgary. He also has derived benefit from his own efforts to refine his skills.

41. In determining an appropriate sanction, the Hearing Committee is to take a purposeful approach to sanction. The overarching purpose of the sanction process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLs 10. The purpose of sanctioning is not to “punish offenders and exact retribution”: *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1).

42. The *Legal Profession Act*, Section 72(1) requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member. Unlike disbarment or suspension, a reprimand does not limit a member’s right to practice. It is, however, a public expression of the profession’s denunciation of the lawyer’s conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v. Westra*, 2011 CanLii 90716.

43. When deciding how the public interest should be protected through the sanction process, the Hearing Committee is invited to take into account various factors, including a) the nature and gravity of the misconduct, b) whether the misconduct was deliberate, c) whether the misconduct raises concerns about the lawyer’s honesty or integrity, d) the impact of the misconduct on the client or other affected person, e) general deterrence of other members of the profession, f) specific deterrence of the particular lawyer, g) whether the lawyer has incurred other serious penalties or other financial loss as a result of the circumstances, h) preserving the public’s confidence in the integrity of the profession’s ability to properly supervise the conduct of its members, i) the public’s denunciation of the misconduct, j) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct, and k) imposing a penalty that is consistent with the penalties imposed in similar cases. In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions that may be imposed including the lawyer’s conduct since the misconduct, the lawyer’s prior disciplinary record, the age and experience of the lawyer and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility: *Law Society of Alberta v. Elgert*, 2012 ABLs 9.

44. In balancing these factors, the Hearing Committee noted that each of Mr. Warrington’s clients were in vulnerable circumstances when they turned to him for counsel. S.H. was displaced from her home and in need of action regarding custody of her child before her estranged husband left the country. B.P. was far removed from Calgary and dependent upon Mr. Warrington to advocate her position before the court. Mr. E.C.M. was facing loss of access to his child and serious allegations against him. He too needed an advocate to represent his interests. In each instance, Mr. Warrington failed to provide conscientious service to his clients and, in the face of that failure, demonstrated a lack of accountability and a critical and unapologetic tone.

45. In addressing the various factors that will influence a Hearing Committee’s decision on sanction, Mr. Lytle reinforced that there was no deliberate effort on Mr. Warrington’s part to mislead his clients, opposing counsel, the court or the Law Society. Law Society counsel conceded this view and the Hearing Committee accepts that to be true.

46. He also encouraged the Hearing Committee to consider the change in practice environment for Mr. Warrington, now working with a senior member of the bar, and the efforts undertaken by Mr. Warrington to deal with issues of competence and concerns regarding interpersonal skills.

47. Both counsel for the Law Society and counsel for Mr. Warrington conceded that in this instance, a reprimand and a fine was the appropriate sanction. The debate was with respect to the magnitude of the fine.

48. The Hearing Committee concludes that the circumstances giving rise to the citations and Mr. Warrington's lack of accountability and remorse warrant that he receive a reprimand and be ordered to pay a fine for each of the four citations for which he has been found guilty of conduct deserving of sanction. The Hearing Committee concludes that the sanctioning principles of ensuring the protection of the public and maintaining the high standards of the profession can be maintained by delivering a reprimand and ordering Mr. Warrington to pay a fine.

49. Counsel for the LSA tendered an Estimated Statement of Costs. The Hearing Committee orders that Mr. Warrington pay the actual costs of the hearing.

50. As a result, having regard to all of the factors discussed above, the Hearing Committee makes the following order:

- a) Mr. Warrington shall receive a reprimand to be delivered by the Chair of the Hearing Committee;
- b) Mr. Warrington is ordered to pay a fine of \$1,000 per citation, totalling \$4,000;
- c) Mr. Warrington is ordered to pay actual costs of the proceedings; and
- d) Mr. Warrington is to pay one half of the fine and one half of the actual costs by on or before February 12, 2015 and the remainder by on or before February 12, 2016.

REPRIMAND

51. A reprimand was delivered by the Chair at the conclusion of the hearing. Mr. Warrington was reminded that as a member of the Law Society, his obligation is to discharge his professional duties with great diligence, recognizing that the public relies upon him and places their trust in him that he will act to protect and serve their interests. As a family law practitioner, Mr. Warrington has chosen to serve clients who, because of issues they face, are in a vulnerable position. By placing his name on a lawyer referral list and the Legal Aid roster, Mr. Warrington has invited people of limited means and with limited exposure to the Canadian legal system to rely on him to protect and serve their best interests. In each instance before this Hearing Committee, Mr. Warrington failed to discharge his responsibilities.

52. More so, Mr. Warrington demonstrated a lack of accountability to his clients and with respect to his mistakes. He blamed others for his failure to serve and contrived a series of explanations to cover his failure or to excuse his action or inaction. At no time did Mr. Warrington demonstrate remorse or apologize to his clients for his failures. The Hearing Committee sees a pattern of behaviour and is particularly concerned that Mr. Warrington does not see that pattern for himself.

53. The Hearing Committee hopes that Mr. Warrington puts into practice the advice he has received through Practice Review and through his mentor, and learns from the message from this Hearing Committee.

CONCLUDING MATTERS

54. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.

55. No referral to the Attorney General is directed.

56. There shall be no Notice to the Profession.

Dated at Calgary, Alberta this 12th day of May, 2014.

Nancy Dilts, QC - Chair

Robert Harvie, QC - Member

Derek Van Tassel, QC - Member

Schedule “A”

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

-and-

IN THE MATTER OF:

A HEARING INTO THE CONDUCT OF BRIAN WARRINGTON a member of THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

S.H. COMPLAINT

1. On December 19, 2008, S.H. lodged a written complaint (attached as **exhibit 6**) to the Law Society of Alberta (“LSA”) regarding Mr. Warrington’s conduct.
2. This complaint has given rise to the following citations against Mr. Warrington:
 - He failed to respond to the Complainant in a timely fashion;
 - He failed to provide competent services to the Complainant;
 - He failed to be candid in a letter to opposing counsel;
 - He failed to be accurate in correspondence to the Law Society.
3. At the material time S.H. was living separate and apart from her husband, in a women’s shelter.
4. S.H. retained Mr. Warrington on or about August 20, 2008 to make an application in Provincial Court regarding the parenting and guardianship of her child, scheduled for

September 4, 2008 (the “Application”). A copy of Mr. Warrington’s retainer agreement of August 20, 2008 is attached as **exhibit 7**.

5. Mr. Warrington and S.H, attended at the Application. A true copy of the transcript from the Application is at **exhibit 8**.
6. At the conclusion of the Application Mr. Warrington agreed to prepare the order granted, as requested by Judge O’Gorman.
7. Attached as **exhibit 10** is a copy of a letter dated September 8, 2008 from S.H. to Mr. Warrington.
8. On September 11, 2008 Mr. Warrington’s assistant prepared a memo to file, a copy of which is at **exhibit 11**, about a phone call between his assistant and S.H.
9. By way of email correspondence dated Friday, September 26, 2008, a copy of which is attached as **exhibit 12**. S.H. wrote to Mr. Warrington.
10. Mr. Warrington did not respond to the September 26, 2008 email message from S.H.
11. By email message dated Monday, October 6, 2008, a copy of which is attached as **exhibit 13**, S.H. wrote to Mr. Warrington.
12. By email message dated Wednesday, October 8, 2008, a copy of which is attached at **exhibit 14**, S.H. wrote to Mr. Warrington.
13. By email message dated October 9, 2008, a copy of which is attached as **exhibit 15**, Mr. Warrington wrote to S.H.
14. S.H. denies having received any account by this time from Mr. Warrington. There is an account on his file dated September 30, 2008, a copy of which is attached as **exhibit 16**, but there is no transmittal letter on Mr. Warrington’s file.
15. By letter dated October 15, 2008, S.H. provided a cheque for \$1,000.00 to be deposited into Mr. Warrington’s trust account for the sole purpose of obtaining the court order of September 4, 2008. Attached as **exhibit 17** is a copy of the October 15 letter.

16. By way of email message dated October 20, 2008, a copy of which is attached as **exhibit 18**, S.H. asked Mr. Warrington to advise when the court order would be ready and that she needed it urgently.
17. By way of email message dated October 23, 2008, a copy of which is attached as **exhibit 19**, S.H. asked Mr. Warrington when the court order would be ready and reminded him that it had been 49 days since the court application.
18. By way of email message dated Tuesday, November 18, 2008 (a copy of which is attached as **exhibit 20**) S.H. told Mr. Warrington that she wanted the court order now and asked when it would be ready.
19. Mr. Warrington responded by email message dated Tuesday, November 18, 2008 (a copy of which is attached as **exhibit 21**) telling S.H. that he did not know what had happened with the order, that he was going to request a copy of the transcript, and then draft a copy to send to the judge.
20. S.H. responded by email message dated Tuesday, November 18, 2008, a copy of which is attached as **exhibit 22** in which she sets out her understanding of what the judge ordered at the Application.
21. By way of email message dated November 19, 2008, a copy of which is attached as **exhibit 23** S.H. wrote to Mr. Warrington.
22. By way of email message dated Thursday, December 4, 2008, Mr. Warrington provided a draft form of order to S.H. for her review and comment. A copy of this email is attached as **exhibit 24**.
23. By way of email dated Monday, December 8, 2008, a copy of which is attached as **exhibit 25**, S.H. sent a message to Mr. Warrington attaching the order with her suggested changes. This letter is not in Mr. Warrington's file.
24. Mr. Warrington obtained the transcripts of the Application on or after December 3, 2008. Attached as **exhibit 26** is the invoice.

25. By way of email message dated Monday, December 15, 2008, Mr. Warrington sent an email message to S.H., a copy of which is attached as **exhibit 27**.
26. By email message dated Monday, December 15, 2008, S.H. again suggested changes to Mr. Warrington's form of order, a copy of which is attached as **exhibit 28**.
27. By way of email message dated December 15, 2008, a copy of which is attached as **exhibit 29**, Mr. Warrington advised S.H. that he sent the updated order to "the other for his signature".
28. By way of letter dated December 17, 2008 from Mr. Warrington to Mr. Nguyen (counsel for S.H.'s husband), a copy of which is attached as **exhibit 30**, Mr. Warrington sent Mr. Nguyen a copy of the transcript and a draft consent order.
29. S.H. objected to Mr. Warrington's comment about not yet receiving instructions in an email message dated Friday, December 19, 2008 from S.H. to Mr. Warrington, a copy of which is attached as **exhibit 31**.
30. Mr. Warrington responded to S.H. on December 19, 2008 by email, a copy of which is attached as **exhibit 32**.
31. Mr. Warrington rendered an account to S.H. dated January 30, 2009, a copy of which is attached as **exhibit 33**.
32. A copy of Mr. Warrington's response to the LSA dated February 26, 2009 is attached as **exhibit 34**.
33. On March 4, 2009, S.H. sent an email to the LSA, a copy of which is at **exhibit 35**. This is her response to Mr. Warrington's letter of February 26, 2009.
34. On March 18, 2009, S.H. sent an email to the LSA, a copy of which is at **exhibit 36**.
35. On September 27, 2009, Mr. Warrington sent a letter to the LSA, a copy of which is at **exhibit 37**.

36. On February 23, 2010, the LSA sent a letter to Mr. Warrington, a copy of which is at **exhibit 38**. Ms. Whitburn asked Mr. Warrington to respond to S.H.'s allegation that he sent a letter to opposing counsel misrepresenting that he had not yet received instructions from his client lately. Ms. Whitburn also asked for a complete copy of Mr. Warrington's client file.
37. On March 16, 2010, Mr. Warrington sent a letter to the LSA, a copy of which is at **exhibit 39**.
38. On April 6, 2010, Mr. Warrington sent a letter to the LSA, a copy of which is attached as **exhibit 40**. Mr. Warrington provided the LSA with what he said were the entire contents of his file in this matter consisting of 97 pages inclusive of the transmittal letter.
39. On May 7, 2010, the LSA sent a letter to Mr. Warrington, a copy of which is attached as **exhibit 41**, asking Mr. Warrington to provide his accounting and timekeeping records. Mr. Warrington did not provide any additional records in response to this letter.
40. Mr. Warrington admits guilt to citation two and that his conduct in this matter amounts to conduct deserving of sanction. The particulars are that:
 - i. He failed to respond to S.H. in a timely fashion before and after the court application of September 4, 2008;
 - ii. He failed to prepare an order to be submitted to Provincial Court after the hearing of September 4, 2008;
 - iii. He blamed S.H. for the delay in starting to draft the order;
 - iv. He was rude to S.H. in his communications to her and to the Law Society;
 - v. He made mistakes in the draft of the order that he did prepare in December;
 - vi. He sent confusing communications to the opposing lawyer in which he said that he had not received instructions lately from his client when he sent a draft of the order to opposing counsel.

41. Mr. Warrington admits guilt to citation 4 and admits that his conduct is conduct deserving of sanction. He admits that his responses were not consistent and accurate especially with respect to his reliance on the October 6, 2008 email message from S.H. to him.

B.P. COMPLAINT

42. On October 11, 2009, B.P. complained about Mr. Warrington's conduct. A copy of her complaint is at **exhibit 42**.
43. This complaint has given rise to the following two citations:
- The Member withdrew his representation without reasonable notice to the complainant; and
 - The Member failed to be candid in his communications and misled or attempted to mislead the Court or the Complainant in communicating his reasons for withdrawal.
44. Mr. Warrington responded to B.P.'s complaint letter dated March 8, 2010, a copy of which is attached as **exhibit 43**.
45. Mr. Warrington provided a further response to the LSA by way of letter dated April 6, 2010 and various enclosures included with that letter, copies of which are attached as **exhibit 44**.
46. By way of letter dated June 1, 2010 (a copy of which is at **exhibit 45**), Mr. Warrington was asked by the LSA to provide further response.
47. Mr. Warrington's further response to exhibit 45 was made by way of letter dated June 29, 2010, a copy of which is attached as **exhibit 46**.
48. Mr. Warrington was retained by B.P. through Legal Aid to oppose an application by T.W. seeking to hold her in contempt of court and an application by T.W.'s wife seeking a restraining order against B.P. Mr. Warrington was retained on or about

December 15, 2008. Attached as **exhibit 47** is a copy of his letter dated December 15, 2008 to opposing counsel.

49. The application referred to in the December 15, 2008 letter was adjourned to January 20, 2009.
50. Mr. Warrington and B.P. made arrangements to have a telephone conference on Tuesday, December 30 at 9:00 a.m.
51. By way of email message dated Monday, December 29, 2008 (a copy of which is attached as **exhibit 48**) B.P. asked to reschedule the telephone meeting. She also provided a response to the applicants' material which is included at exhibit 47.
52. By way of an email string of messages dated December 29, 2008, January 14, 2009, January 15, 2009 and January 16, 2009, a copy of which is at **exhibit 49**, B.P. and Mr. Warrington made arrangements for a telephone conference for January 16, 2009.
53. By way of letter dated January 16, 2009, a copy of which is attached as **exhibit 50**, Mr. Warrington wrote to opposing counsel to ask for an adjournment of the January 20 applications.
54. On January 20, 2009, Mr. Warrington attended at court and obtained an adjournment of the application to February 4, 2009 with a deadline for filing B.P.'s affidavits by February 3, 2009.
55. By way of email message dated January 20, 2009, a copy of which is attached as **exhibit 51**, B.P. provided a response to B.W.'s affidavit in action number xxxx-xxxxx.
56. On January 21, 2009, by way of email message, a copy of which is attached as **exhibit 52**, B.P. provided Mr. Warrington with her response to B.W.'s affidavit in action number xxx-xxxxx.
57. By way of email message dated January 22, 2009, a copy of which is attached as **exhibit 53**, Mr. Warrington told B.P. what had happened in court on January 20, 2009.

58. By email message dated Saturday, January 24, 2009, a copy of which is attached as **exhibit 54**, B.P. told Mr. Warrington that she had anticipated prepared responses for her to have notarized.
59. By email message dated Monday, January 26, 2009, a copy of which is attached as **exhibit 55**, Mr. Warrington sent a copy of an affidavit to be sworn by B.P. in response to B.W.'s affidavit.
60. By way of a string of 4 email messages beginning on January 25, 2009 and concluding on January 27, 2009, a copy of which is attached as **exhibit 56**, Mr. Warrington provided a copy of an affidavit for B.P. to swear in response to T.W.'s affidavit.
61. By way of email message dated February 1, 2009, a copy of which is attached as **exhibit 57**, which is part of a string of 5 email messages, B.P. advised Mr. Warrington that there had been a major storm on Wednesday and Thursday but that Purolator had the documents and would be delivering them to his office.
62. By way of email message dated February 3, 2009, a copy of which is attached as **exhibit 58**, which forms part of a string of 3 email messages, Mr. Warrington asked B.P. to fax the affidavits to him that day.
63. B.P.'s affidavits arrived in Mr. Warrington's office on the morning of February 4, 2009. He provided them to opposing counsel and attended at the application as scheduled on the morning of February 4, 2009. Attached as **exhibit 59** is a copy of the transcripts from the proceedings in court on February 4, 2009.
64. After the court application, Mr. Warrington sent an email dated February 4, 2009 to B.P., which forms the first email in a string of 7 email messages between B.P. and Mr. Warrington, all on February 4, 2009, a copy of which is attached as **exhibit 60**.
65. By way of email message dated February 11, 2009, a copy of which is attached as **exhibit 61**, Mr. Warrington advised B.P. that he had obtained fiats on both affidavits. This email message is part of a string of 8 messages from February 4 through February 11, all of which are included in exhibit 60.

66. Attached as **exhibit 62** is a copy of the order arising from Mr. Warrington's attendance at court on February 4, 2009.
67. By way of fax correspondence from Mr. Warrington to Legal Aid, a copy of which is attached as **exhibit 63**, Mr. Warrington advised Legal Aid that he thought he was in a conflict of interest on the file and that he had informed B.P. that she needed to retain alternate counsel.
68. A copy of Mr. Warrington's one and only account to Legal Aid for the work he did for B.P. is dated February 11, 2009 and is attached as **exhibit 64**.
69. By letter dated February 13, 2009 faxed to opposing counsel, a copy of which is attached as **exhibit 65**, Mr. Warrington served opposing counsel with the two affidavits in question.
70. By way of email message dated February 17, 2009 from Mr. Warrington to B.P., a copy of which is attached as **exhibit 66**, Mr. Warrington advised that he made an application to obtain the fiats and he enclosed a copy of the order from Justice LoVecchio.
71. By way of email message dated April 28, 2010, a copy of which is attached as **exhibit 67**, B.P. advised that she was going to report Mr. Warrington to the Law Society.
72. Mr. Warrington responded on April 28, 2010 by email message, a copy of which is attached as **exhibit 68**.
73. Mr. Warrington admits guilt to citation number 5 and that his conduct is deserving of sanction.

E.C.M. COMPLAINT

74. By way of written complaint dated July 5, 2010, a copy of which is attached as **exhibit 69**, Mr. E.C.M. notified the LSA about his complaint regarding Mr. Warrington's conduct.
75. This complaint has given rise to the following citation:
 - Mr. Warrington consented to the extension of the Emergency Protection Order without instructions.
76. Mr. Warrington responded to the complaint by way of undated letter which was received by the LSA on September 14, 2010, a copy of which is attached as **exhibit 70**.
77. Mr. Warrington's notes to file arising from his phone call with Mr. E.C.M. on June 2, 2010 are attached as **exhibit 71**.
78. Mr. E.C.M.'s wife made an application to the Provincial Court of Alberta for an Emergency Protection Order. A copy of the application is attached as **exhibit 72**.
79. The application was granted by Judge Larochelle on May 25, 2010. Attached as **exhibit 73** is a copy of the Emergency Protection Order. Attached as **exhibit 74** is a copy of the transcripts from the court hearing.
80. Attached as **exhibit 75** is a copy of a letter from Mr. Warrington to Ms. Papero of Calgary Legal Guidance regarding the review of the EPO that was scheduled for June 8, 2010.
81. Attached as **exhibit 76** is a copy of the order arising from the review of the Emergency Protection Order.
82. Attached as **exhibit 77** is a copy of the transcripts from the Court of Queen's Bench review.
83. Attached as **exhibit 78** is a copy of a letter from Mr. Warrington received by the LSA on January 26, 2011.

84. Attached as **exhibit 78 (Tab 1)** is a copy of the affidavit from N.D. sworn January 14, 2011 that was included with Mr. Warrington's letter.

ADMISSION

85. The Law Society of Alberta and Brian Warrington agree to and admit to all of the facts stated herein, provided that:

- a) Except as explicitly indicated otherwise:
 - i) where any document is marked as an exhibit hereto, this Statement of Admitted Facts constitutes an agreement that such document is authentic within the meaning of the *Alberta Rules of Court* and that, where such document appears or purports to have been sent, it was sent by the sender and received by the addressee; and
 - ii) this Statement of Admitted Facts does not constitute an agreement or admission as to the truth of the contents of any documents; and
- b) Both parties retain the right to adduce additional evidence and to make submissions as to the effect of and weight to be given to these agreed facts in the context of all of the evidence.

DATED this 11th day of February, 2014.

Brian Warrington

Witness

Timothy Meagher, Counsel for the Law
Society of Alberta