

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
RUELLEN FORSYTH-NICHOLSON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

LAW SOCIETY FILE HE20120035

Hearing Committee:

Fred R. Fenwick, Q.C., Chairperson
James Eamon, Q.C.
Cal Johnson, Q.C.

Heard: November 15, 2013
Decision: November 15, 2013
Report: January 24, 2014

Appearances

M. Naber-Sykes, for the Law Society of Alberta
D. Castle, for Ruellen Forsyth-Nicholson

REPORT OF THE HEARING COMMITTEE

INTRODUCTION AND SUMMARY

1. Ruellen Forsyth-Nicholson, a member of the Law Society of Alberta, is subject to conduct proceedings under the Legal Profession Act alleging discourteous behaviour in letters and e-mails on various dates between 2009 and 2011 with a client, an unrepresented party, and an opposite party's solicitor.
2. At the opening of the Hearing, the member and counsel for the Law Society presented an Agreed Statement of Facts and Admission of Guilt together with a joint submission on sanction including a reprimand (no suspension or fine), payment of costs (with time to pay), and detailed conditions, including Ms. Forsyth-Nicholson's continued practice to be supervised by the Law Society and other individuals over the next three years.
3. The member had a record of being sanctioned by the Law Society for similar conduct in 1997, 1999, and 2010 including a suspension and substantial fine in 2010. The issue therefore for the Hearing Committee was whether to adopt the joint submission on sanction in whole or in part or to reject the submission and impose other sanctions,

including a possible lengthier suspension and increased fines from those last levied against Ms. Forsyth-Nicholson in 2010.

4. After deliberation, the Hearing Committee found the member guilty of conduct deserving of sanction, accepted the joint submission on sanction and imposed conditions on the members practice, costs of the Hearing, with time to pay, and administered a reprimand.

CITATIONS

5. On May 9, 2012, a Conduct Committee Panel referred the following conduct hearing to a hearing:
 1. IT IS ALLEGED THAT you treated the Complainant, a client, with discourtesy in the letters responding to the complaint dated August 9, 2011 and September 29, 2011, and that such conduct is deserving of sanction.
 2. IT IS ALLEGED THAT you treated the Complainant, an unrepresented party, with discourtesy in the e-mails to the Complainant dated December 17 and 18, 2009, and that such conduct is conduct deserving of sanction.
 3. IT IS ALLEGED THAT you treated the Complainant, an opposite party's counsel, with discourtesy in the letters to the Complainant's lawyer dated December 2, 2009, May 5, 2010 and June 14, 2010, and that such conduct is conduct deserving of sanction.

JURISDICTION

6. The jurisdiction of the Hearing Committee was consented to by both counsel for the Law Society and for Ms. Forsyth-Nicholson. A binder of Agreed Exhibits (tabbed with exhibit numbers) was put before the Committee including the usual jurisdictional exhibits 1 to 4: (the appointment of this Hearing Committee by the Chair of the Conduct Committee, the Notice to Solicitor containing particulars of the hearing date and the citations, the Notice to Attend to the member, and the Certificate of the Director of the Law Society certifying membership of Ms. Forsyth-Nicholson).
7. Counsel for the Law Society and counsel for Ms. Forsyth-Nicholson confirmed after hearing disclosure from a Hearing Committee member concerning past Law Society involvement with Ms. Forsyth-Nicholson, that they had no objections to the Hearing Committee members on the grounds bias or reasonable apprehension of bias. Both sides agreed that the Hearing Committee had jurisdiction and the Hearing Committee found that it did have jurisdiction.

PRIVATE HEARING MATTERS

8. When a hearing commences, the Hearing Committee must invite applications concerning having the whole or part of the hearing held in private. As well, pursuant to Rule 96(2)(a) of the Rules of the Law Society a private hearing notice was given to the members of the public and the one member of the Law Society involved in the citations.

9. Counsel for the Law Society of Alberta advised the Hearing Committee that one of the complainants could not be served but that none of the other Notice recipients had asked that the matter be heard in private. The Hearing Committee was satisfied that the lack of service of a private hearing notice on an individual did not deprive it of jurisdiction and the Committee was mindful to ensure that confidential information concerning this individual would be duly protected through the use of acronyms in submissions and a proper redaction order concerning the Record. Counsel for both sides agreed that the hearing should be held in public.
10. The hearing proceeded in public, and members of the public were present.
11. The Hearing Committee directed in closing matters at the end of the hearing that any third party names and client names be redacted from the hearing report, the transcripts of proceedings and the exhibits filed in the proceedings prior to any publication or public access.

EXHIBITS

12. The Hearing Committee received and with the consent of both counsel entered into the record Exhibits 1 through 15 including the jurisdictional Exhibits referred to previously. Other Exhibits were entered by consent during the hearing.

FINDINGS OF FACT – CONDUCT DESERVING OF SANCTION

13. At the opening of the hearing, after establishing the jurisdictional and other opening matters, counsel for Ms. Forsyth-Nicholson tendered an Agreed Statement of Facts and Admission of Guilt, signed by Ms. Forsyth-Nicholson, which was consented to by counsel for the Law Society and entered as Exhibit 16 at the hearing.
14. Section 60 of the *Legal Profession Act* requires that an Admission of Guilt be accepted in form by the Hearing Committee and with the consent of counsel for the Law Society and Ms. Forsyth-Nicholson, the Hearing Committee accepted the form of the Agreed Statement of Facts and Admission of Guilt.
15. The Agreed Statement of Facts and Admission of Guilt is attached as an Appendix to these reasons. In general, the particulars of the behaviour include the following.

Citation 1 (the Complainant E.D.)

16. Ms. Forsythe-Nicholson represented the husband in a high conflict family law matter. The complaint was made by the wife, E.D., who apparently at times was represented by other counsel.
17. In responding to E.D.'s complaint to the Law Society about Ms. Forsyth-Nicholson's conduct, Ms. Forsyth-Nicholson sent a letter to the Law Society dated August 9, 2011 (Exhibit 6) which contained at (pages 2 & 3) a factual explanation of the complaint. However those factual portions of the letter were preceded by two pages of highly subjective comments about the Complainant including:

- “...she [the Complainant] likes to specialize in misrepresentations and half-truths...”
- “...her lack of consistency and credibility...”
- “...she persists in ignoring the advice of her lawyer and the court...”
- “I am convinced...that she is doing and has done her utmost to triangulate and split the children...”

Citation 2 (the Complainant N.P.)

18. Ms. Forsyth-Nicholson represented the husband in an acrimonious matrimonial matter, the Complainant N.P. was the self-represented mother.
19. It is the practice in this jurisdiction that prior to attending in court to obtain a financial support matter in a family law application the parties must (with certain exceptions) attend in front of a court appointed Dispute Resolution Officer (DRO) for an attempted mediation of the financial issues.
20. Ms. Forsyth-Nicholson attended on the DRO with the Complainant and arrived at a complicated and (she considered) comprehensive resolution. However, after the attendance with the DRO, the unrepresented wife appeared to resile from the DRO arrangement, or at least particular details of it. In the e-mail exchange between Ms. Forsyth-Nicholson and the self-represented wife (the Complainant), she made the following comments about the Complainant:
 - “at least your body was there and you told the DRO you agreed to it. Now you want to change your mind?”
 - “We need a Justice to do the math and explain it to you because you forget such important things three days later”
 - “The DRO explained to you that it WAS childcare. Again your body was there and you supposedly agreed to it. So does that indicate you will be paying 100%? Not to anyone who speaks or read English, it doesn’t”
 - “Not only do I not TRUST you I cannot quite BELIEVE you.”
21. The e-mail above was sent by Ms. Forsyth-Nicholson December 18, 2009. On February 8, 2013, Ms. Forsyth-Nicholson caused a letter of apology to be sent to the Complainant. The letter of apology was included as Exhibit 9 and included statements:
 - “...offer you a heartfelt apology for the sarcasm and personal criticism...”
 - “I recognize that nothing in those emails was helpful in resolving the disagreements...”

- “I also recognize that I may have seriously damaged the image of my profession in your estimation by my words and attitude.”
 - “...I sincerely regret my actions and will attempt to significantly mend my communications in the future”.
22. The e-mail correspondence between Ms. Forsyth-Nicholson and the complainant was from Ms. Forsyth-Nicholson’s e-mail address “family-dragon@***.***” and the e-mail address on the letterhead of the 2013 apology letter is familydragon@***.*** (full e-mail redacted).

Citation 3 (Complaint of C.P.)

23. Ms. Forsyth-Nicholson acted for the wife in a high conflict divorce matter. The husband, the complainant C.P., was represented by counsel throughout and as well was a serving member of the Calgary Police Service.
24. The communications between Ms. Forsyth-Nicholson and C.P.’s counsel included allegations that C.P. had broken into his ex-wife’s house, stolen passports of the children and surreptitiously broke in at a later date to replace the passports. The written complaint of C.P. to the Law Society was not put before the Hearing Committee. However, correspondence between C.P. and his solicitor was entered as Exhibit 12 and it is clear that he took exception to the unsubstantiated allegations being made against him and the fact that such an allegation would have a negative effect on him as an allegation of a criminal offence against an active duty police officer.
25. C.P. complained to the Law Society, specifically about these “break and enter” allegations which were, as far as the Hearing Committee can establish, completely unsubstantiated and, at least in the opinion of C.P. (the Complainant), potentially extremely damaging to his position as a serving member of the police service.
26. On February 7, 2013, Ms. Forsyth-Nicholson sent a letter of apology to C.P. (Exhibit 15) including comments:
- “My conclusion respecting the form and content of those letters is that I owe you an apology”
 - “My verbal remonstrance’s were simply personal and mean...”
 - “I now feel extreme remorse for my lack of maturity and wisdom in making those comments”
 - “I do very sincerely regret my words and actions”
 - “I am genuinely sorry”
27. Throughout, the “dragon” email address continues.

Submissions on Behalf of the Member

28. The member's counsel made submissions on behalf of the member regarding the context of the member's practice generally and the complainant files more specifically. Ms. Forsyth-Nicholson as well answered questions from the panel and questions posed by counsel for the Law Society.
29. The Committee accepts the following facts concerning the member's practice:
 - (a) The member willingly accepts difficult cases including persons of limited means (including Legal Aid cases and persons for whom she "writes down" her time substantially), persons with limited experience with the judicial system (including immigrant persons), and high conflict cases.
 - (b) Ms. Forsyth-Nicholson produced eight letters of recommendation (Exhibit 19) from a Legal Aid worker, clients, a manager at the Calgary Immigrant Women's Association all speaking highly, for the most part, to Ms. Forsyth-Nicholson's dedication, hard work and long hours which she puts in on behalf of her clients, often clients of limited means and with difficult problems.
30. Ms. Forsyth-Nicholson as well testified (herself and through her counsel) of the steps taken to modify her practice including:
 - The letters of apology.
 - Dealing extensively and cooperatively with the Law Society Practice Review Committee (the Practice Review Report March 27, 2013 was entered as Exhibit 20).
 - The taking on of mentors in the profession including but not limited to Ms. Castle, the member's counsel at this hearing.
 - Actively seeking out and taking courses regarding the resolution of high conflict family and other matters.

Joint Submission on Sanction

31. Despite Ms. Forsyth-Nicholson's sanction record going back to 1997 and including a substantial fine and suspension in 2010 for similar behavior, counsel for the Law Society and Ms. Forsyth-Nicholson urged on the Hearing Committee a joint submission on sanction which included (details of which are set out more specifically subsequently in the section of this report on sanction):
 - No fine or suspension
 - Costs of the hearing to be paid modestly at \$200.00 per month until paid
 - Restrictions on the member's practice concerning unrepresented litigants

- The member voluntarily winding down her practice over three years (with the proviso that the member could apply to the Law Society to have her undertaking lifted)

Discussion

32. The key sanctioning section of the *Legal Profession Act* reads as follows:

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 or solicitor and whether or not that conduct occurs in Alberta.

33. As of November 1, 2011, the Law Society of Alberta adopted the Code of Conduct based on a national model promoted by the Federation of Law Societies of Canada. As at the time of these citations, the Alberta Code of Professional Conduct was in effect, which included the following provisions:

1.3 - a lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration

1.6 – a lawyer must be courteous and candid in dealing with others

3.1 – a lawyer must refrain from personal or professional conduct that brings discredit to the profession

3.2 – all correspondence and remarks by a lawyer addressed to or concerning another lawyer, the Law Society or any other professional organization or institution must be fair, accurate, and courteous

34. In the Statement of Agreed Facts and Admission of Guilt, Ms. Forsyth-Nicholson has admitted to discourteous conduct in dealing with the complaints, as set out in these citations.

35. Further, this sort of disrespectful conduct has occurred in Ms. Forsyth-Nicholson's practice for some period of time as is shown in the Record of Sanction:

September 5, 1997

Guilty, one count of conduct deserving of sanction – using the threat of criminal proceedings in an attempt to gain an advantage.

Guilty – one count of conduct deserving of sanction – failing to treat a fellow solicitor with courtesy and respect by making abusive and denigrating comments about the member both publicly and privately.

Reprimand and costs of \$3,000.00

July 27, 1999

Guilty – one count of conduct deserving of sanction – failing to treat a fellow solicitor with courtesy and respect.

Reprimand – costs of \$4,017.89 and fines of \$3,000.00

February 8, 2010

Guilty – one count of conduct deserving of sanction – lying to the complainant

Guilty – one count of conduct deserving of sanction – failing to keep the complainant informed as to the progress of the matter

Guilty – one count of conduct deserving of sanction – failing to provide competent services to the complainant

Guilty – one count of conduct deserving of sanction – failing to respond in a timely way to a client and to opposing counsel

Guilty – one count of conduct deserving of sanction – failing to treat a client with courtesy and respect

Reprimand – 7 day suspension, costs of \$4,798.50 and fines of \$10,000.00

36. Broadly speaking, the issue to be decided by the Hearing Committee, is whether to accept the joint submission on sanction (no suspension, no fine, conditions on practice) when the Record of Sanctions might tend to show that the previous short suspension and fine had not deterred the member.
37. In making its decision, the Hearing Committee is guided by:
- (a) The purpose of disciplinary proceedings is the protection of the best interests of the public and the standing of the legal profession generally. The fundamental purpose of the sanctioning process is not primarily to punish an offending member but rather to ensure that the public is protected and that a high degree of confidence in the legal profession is maintained.
 - (b) A joint submission on sanction ought to receive significant deference and should not be lightly disregarded unless demonstrably unreasonable.
 - (c) The sanction must denounce the conduct in question.
 - (d) The sanction must protect the public confidence in the profession.
38. The Hearing Committee received letters of reference with regards to Ms. Forsyth-Nicholson. The fact that Ms. Forsyth-Nicholson treated some of her clients with respect and care while being disrespectful to other participants in the litigation process is precisely the point of this hearing. The letters of reference, are therefore of limited relevance to the Hearing Committee's primary consideration of protecting the public and maintaining the standing of a legal profession.

Discourtesy generally

39. The Hearing Committee accepts that the member sometimes accepts unpopular and difficult cases often for litigants of limited means, that she participates actively and supports the Legal Aid Society of Alberta and thus is actively participating in the promotion of access to justice for persons who might not otherwise be able to afford counsel.
40. The Hearing Committee further accepts that the sorts of cases that Ms. Forsyth-Nicholson takes on are difficult legally, fraught with difficult and emotional clients and perhaps often (but not always) clients with limited experience in the judicial system.
41. The Hearing Committee understands that dealing with difficult and self-represented litigants can be troublesome:
 - in the case of E.D., Ms. Forsyth-Nicholson had a genuine belief that the complainant had credibility and misrepresentation issues throughout the process, and
 - in the complaint of the self-represented N.P., it appeared that N.P. was backing down from a mediated settlement.

However in each of these circumstances it remains the advocate's job to be calm and analytical rather than discourteous and accusatory.

42. Apparently Ms. Forsyth-Nicholson sees herself as her clients' "dragon slayer", indeed throughout, her email address describes herself as "dragon slayer". The Hearing Committee notes, with some dismay, that Ms. Forsyth-Nicholson hasn't realized after all of these years of practice that is not her job to slay all of her client's "dragons". It is an unfortunate reality that persons of limited means often come to family law courts (or for that matter any court) with a complicated constellation of legal, personal, financial, and other problems, not all of which their legal counsel can resolve. While remaining a forceful advocate for her client, it serves no legal or practical purpose to "throw gasoline" on an already difficult file through intemperate comments to counsel or litigants.
43. The Hearing Committee also acknowledges that from time to time the client may come to an advocate with a difficult to believe story. In the C.P. complaint, Ms. Forsyth-Nicholson evidently, not only believed her client's unsubstantiated allegations that the former husband had, unseen by anybody, snuck into a house to steal children's passports, and then, still unseen by anybody, snuck back in at a later date to replace them exactly where they had been previously, but passed them on, unfiltered in correspondence. Individual circumstances would vary from case to case but it is not always in the best interests of a case to forward such accusations as if they were truthful, proven, and ready to be acted upon. Even if one was tempted to believe the accusations, a more measured approach, or perhaps making the accusations subject of an affidavit which could be tested, which would be more appropriate.
44. The Hearing Committee considers that terms like, "courtesy" and "civility", within the context of a lawyer's professional obligations, reflects the lawyer's important role in

protecting and enhancing the administration of justice and goes beyond simply “good manners”. It is the lawyer’s professional obligation to recognize the distinction between being simply an advocate for the client’s cause and a professional obligation to remain technical and objective throughout.

45. Further, the Hearing Committee recognizes that useful short forms of description like, “civility” and “courtesy” ought not to detract from an analysis of the deeper ethical issues which may be engaged. For example, in these complaints:
- The Complainant E.D. engaged the Law Society’s regulatory function in making a complaint about Ms. Forsyth-Nicholson. E.D. had a statutory right to make the complaint and the Law Society a statutory duty to investigate it. Forsyth-Nicholson’s highly personal attacks against E.D. in her answer to the complaint could have inhibited E.D. (or any other complainant) from participating fully and openly in the regulatory process. Further, the personal attack on a complainant could only make it more difficult for the Law Society to engage its important self-regulatory function.
 - The Complainant N.P. was a self-represented litigant who was either confused by, or perhaps backing down, from a court mediated D.R.O. settlement. Similar to the previous matter, Ms. Forsyth-Nicholson’s rudeness directed at the opposing party can only have inhibited N.P.’s willingness to participate, as an untrained, unrepresented litigant in the already difficult process.
 - C.P. was an active duty police officer and Ms. Forsyth-Nicholson was apparently making unsubstantiated (and potentially defamatory) allegations of criminal behaviour against him.

(See Professor Alice Woolley’s articles on this issue: “Does Civility Matter?” (2008) 46 Osgoode Hall LJ 175, “Uncivil by too Much Civility” Critiquing Five More Years of Civility Regulation in Canada, 36 Dalhousie LJ 239 2013)

46. Access to justice is a systemic issue. In addition to the availability of actual courtrooms and judges, litigants engaging their rights to have their disputes resolved need to know that their issues will be dealt with in an orderly and civilized fashion (even when wrong) and not subject to inflammatory and personal attacks. Trained counsel have to be willing to participate in a specialty of law to provide advice to litigants. It can only have a chilling effect on the availability of counsel to know that in this already potentially emotionally difficult area of law (family law) that there are senior counsel willing to “wind up” a case with personal attacks.

Similar Record of Discourtesy

47. As indicated previously, it is notable that the member, at least on the record, has not learned from previous sanctions imposed.
48. In mitigation of this, the Hearing Committee does accept that the member had sent early and sincere apology letters to the complainants, has taken steps to engage the Law

Society's professional advisors (Practice Review), peer professional advisors, including her counsel at this hearing who has agreed to continue assistance with the member, and sought outside, academic education in the area of high conflict matters. The Committee accepts that now (at last) the member seems to be taking positive steps.

49. In that regard the Hearing Committee particularly noted that, in February, 2013 and even after completing various educational courses and an informal mentorship arranged by the Law Society to provide further guidance on dealing with situations in a manner and method that is more professional, courteous and civil, Ms. Forsyth- Nicholson inadvertently sent an email intended for her own client to the opposing lawyer and wherein she continued to use intemperate language disparaging opposing parties. This raised some serious concerns for the Hearing Committee

Reasonable Range of Sanctions

50. As referred to above, the Hearing Committee does regard joint submissions with a high degree of deference. An early dialogue about joint submissions promotes the parties to come forward and accept responsibility and work within the system to mitigate their behavior. Joint submissions also promote certainty for both sides and efficiency in the use of the Law Society's scarce regulatory resources. A joint submission ought to be disregarded only when it is unreasonable or another very relevant reason.
51. Therefore regarding the reasonability of the joint sanction proposed, the Hearing Committee accepts that within the range of possible sanctions would be a more substantial suspension (2-4 weeks) and a higher fine. The member would then be put to the task to attending at a Reinstatement Panel perhaps to contemplate the exact same mitigating conditions that are now before this Hearing Committee. There seems no logical reason to delay the mitigating efforts if they seem reasonable and thereby put all parties to the time and expense of redoing what could be done now. Further, taking mitigating steps, to the extent that they are rational, now rather than later, promotes the public interest. Finally, the fact that the submissions are "joint" and in this case backed up by demonstrative pre-hearing mitigating steps, means that Ms. Forsyth-Nicholson has been engaged in remedial steps in accepting the governance of her regulator, the Law Society, prior to the hearing.
52. The Hearing Committee is mindful that Ms. Forsyth-Nicholson may need to continue efforts to remediate the way she communicates in her practice. The continuing use of the "dragon slayer" email address is a prime example. The practice conditions sought by joint submission will provide for continuing interim monitoring and require that Ms. Forsyth-Nicholson exit from the practice of law by fixed date unless she can prove to the satisfaction of the Benchers that the underlying problems are remediated. The Hearing Committee considers this a reasonable solution that protects the public and avoids unnecessary harm to those clients currently served by Ms. Forsyth-Nicholson who may be put in difficult circumstances in obtaining substitute counsel if she were immediately suspended.

Sanction

53. The Hearing Committee therefore, accepts the joint submission on sanction with some modifications which were agreed to by both sides:
- (a) Ms. Forsyth-Nicholson's admission of guilt on the three citations is accepted and she is found guilty of conduct deserving of sanction.
 - (b) Ms. Forsyth-Nicholson will receive a reprimand but no fine.
 - (c) Ms. Forsyth-Nicholson will pay the actual costs of this hearing, estimated (Exhibit 18) at this hearing at \$3,008.25 but actual costs to be produced by the Law Society to Ms. Forsyth-Nicholson. Costs are payable in the amount of \$200.00 per month until completely paid, first payment to begin January 15, 2014.
 - (d) Ms. Forsyth-Nicholson agrees to and the Hearing Committee imposes conditions on her practice as follows:
 - (i) Ms. Forsyth-Nicholson undertakes to wind up her practice and resign from the Law Society of Alberta coinciding with the end of her premises lease, approximately October 16, 2016 but in any event no later than December 31, 2016;
 - (ii) Ms. Forsyth-Nicholson will seek the assistance of the Practice Review Committee of the Law Society of Alberta considering the orderly wind up of her practice as referred to above including the sale of her practice or a sublease of the premises in advance of a termination of the lease.
 - (iii) Ms. Forsyth-Nicholson agrees to access the services of ASSIST of the Law Society of Alberta for psychological counselling.
 - (iv) Ms. Forsyth-Nicholson will attend workshops and other academic seminars with regard to dealing with difficult clients, litigants, and high conflict situations. Ms. Forsyth-Nicholson will provide the Practice Review Committee with a list of courses taken and completed.
 - (v) Ms. Forsyth-Nicholson undertakes not to take any new files where there are self-represented litigants. If Ms. Forsyth-Nicholson feels bound by the rules of the Legal Aid Society to take or continue with a Legal Aid case with an self-represented litigant on the other side, she will bring the matter to the Practice Review Committee for advice and direction.
 - (vi) To the extent that Ms. Forsyth-Nicholson is dealing with self-represented litigants, she will have her counsel, Ms. Diann Castle, review e-mail and letter correspondence to the self-represented party.

- (vii) Ms. Forsyth-Nicholson may apply to a three member panel of benchers to be appointed by the Chair of Conduct to be relieved of her undertaking to wind up her practice and withdraw from the Law Society. Upon such application, she will allow her files and correspondences to be reviewed prior to the consideration of such application, if requested, by the Practice Review Committee of the Law Society of Alberta.

Closing Matters

54. The Hearing Committee Report, the evidence and the exhibits in this hearing are to be made available to the public subject to redaction to protect privileged communications, the names of any of Ms. Forsyth-Nicholson's clients and such other confidential personal information as thought necessary by the Law Society of Alberta.
55. No referral to the Attorney General is directed.
56. There shall be no Notice to the Profession issued.

Reprimand

57. Ms. Forsyth-Nicholson was reprimanded by the Chair of the Committee at the conclusion of the hearing and the sanctioning as set out below.
58. Ms. Forsyth-Nicholson, as seen by the discussion above and the discussion during the verbal decision at the hearing, you must recognize that the acceptance of the joint submission and the Law Society of Alberta thus allowing you to continue in practice without a substantial fine or suspension was a very near thing.
59. To your credit, you sought advice from Ms. Castle, an experienced family law practitioner (present with you at the hearing), apparently followed her advice, and have taken significant mediating steps in advance of the hearing including the admission of your responsibility, engagement of practice review, engagement of significant outside academic study, and the letters of apology.
60. Further, to your credit, the Hearing Committee acknowledges that you practice in an extremely difficult area of law and have been a significant asset to citizens of Alberta of limited means. Access to justice is a systemic issue with many factors involved. The chilling effect of discourteous behavior and personal attacks on the other participants in this already difficult area cannot be overlooked. Perhaps (only perhaps) there would be more people practicing in these difficult areas and access to justice improved if the files weren't subject to hurtful and inflammatory comments by other counsel.
61. Similarly, people must willingly submit their disputes to the Courts in the knowledge that their highly personal, important and emotionally difficult matters will be treated with respect and objectivity by those involved, even when the facts, law or interests of an opposing party require you to disagree.

62. Against that background, the members of this Hearing Committee are quite frankly appalled that you haven't learned that your duty of zealous advocacy of your client's position does not necessarily obligate you to believe every fantastic story they tell you, make accusations based on those stories, or say hurtful and intemperate things to opposing parties even when potentially justified by legal or factual differences of opinion.
63. You are entitled to your "trademark" but the Hearing Committee wonders what image you are attempting to promote to the public with your "dragon slayer" e-mail and other promotional paraphernalia. You have reached a point of seniority and experience in your career where a more calm, professional, and analytical approach and public persona would be more in keeping with your experience and professional obligations. The Hearing Committee highly recommends a change.
64. The Hearing Committee has read with interest the letters of reference but notes they were all from clients and advocacy organizations who the Hearing Committee suspects must know, as we do, that you were willing to put in vast amounts of time, believe anything the client says and sometimes, say intemperate things on behalf of clients. Of course the clients appreciate this.
65. More appropriate to this situation, would be letters of reference from co-counsel and judicial officers who would testify to your calm "under fire" and your ability to remain analytical and professional in the face of difficult situations. Indeed we hope, that if you do get around to making the application to be relieved of your undertaking referred to in the sanction, that there will be such letters within your application.
66. We find the joint submission put forward by your counsel and counsel for the Law Society to be reasonable, albeit not necessarily what a Hearing Committee may have done without your own substantial remedial efforts, the support of your counsel, Law Society counsel, and the Law Society Practice Review Committee.
67. We acknowledge your undertaking to withdraw from practice and withdraw from acting in matters involving self-represented litigants but note that it is not necessarily in the public interest that competent counsel withdraw from or limit their practice. We would much rather you learn the full scope of your professional obligations and continue in your support for access to justice if that is where you wish your practice to develop.
68. We appreciate your comments concerning your growing knowledge of your own responsibility, your seeking of outside academic information and courses concerning high conflict matters and your self-described journey of self-discovery. However for the purpose of the Law Society, we would just as soon that you read the Code of Conduct and follow it. The Code contains a distillation of centuries of practical experience of members of the bar with respect to advocating within high conflict situations and it has always required you to remain professional in the face of difficult situations.
69. No doubt from time to time, a learned academic will come forward with worthwhile material and courses concerning advocating in high conflict areas and we do not seek to

denigrate from the growth of such knowledge. It is true that correspondence in high conflict matters ought to be brief, informative, factual, and friendly, but as noted above, these were already your professional obligations and have been a barrister's obligation for centuries. A lawyer's professional obligations remain centered around the Code of Conduct, the hard won distillation of practical knowledge of a learned and still self-governing profession.

70. The comments in this reprimand have been necessarily harsh but the Hearing Committee commends your remedial work in advance of the hearing and reiterates its comments that it is not necessarily in the best interests of the Society or the public that an experienced member withdraw or limit their practice. You obviously have gifts of intellectual ability and work ethic and we sincerely hope that you find the missing piece of the puzzle (courtesy and objectivity) and are able to use it to continue serving the public.

Dated this 15th day of November, 2013,

Written Reasons delivered this ____ day of January, 2014.

Fred R. Fenwick, Q.C., Chair

James Eamon, Q.C.

Cal Johnson, Q.C.

**Appendix to
Hearing Committee Report dated January 24, 2014**

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF RUELLEN FORSYTH-NICHOLSON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

AGREED STATEMENT OF FACTS

AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted to the Law Society of Alberta on September 15, 1992.
2. My status with the Law Society of Alberta is Active/Practising.
3. I have practiced as a sole practitioner since September 15, 1992.
4. My practice comprises primarily matrimonial files.

CITATIONS

5. On May 9, 2012, the Conduct Committee Panel referred the following conduct to hearing:
 1. IT IS ALLEGED THAT you treated the Complainant, E.D., with discourtesy in the letters responding to the complaint dated August 9, 2011 and September 29, 2011, and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED THAT you treated the Complainant, N.P., with discourtesy in the e-mails to the Complainant dated December 17 and 18, 2009, and that such conduct is conduct deserving of sanction.
 3. IT IS ALLEGED THAT you treated the Complainant, C.P., with discourtesy in the letters to the Complainant's lawyer dated December 2, 2009, May 5, 2010 and June 14, 2010, and that such conduct is conduct deserving of sanction.

FACTS

E.D. Complaint

6. This complaint involves a custody and access matter. I acted for the father. E.D., the mother, at times had counsel and at times represented herself.
7. E.D. complained to the Law Society about my conduct by December 21, 2011 letter, by March 4, 2011 complaint form, and by July 20, 2011 e-mail.
8. I responded to E.D.'s complaint by August 9, 2011 letter. My letter contained the following statements about E.D.:
 - (a) "Ms. D's complaints that I am pushy and disrespectful are, in my opinion, a classic case of transference...Ms. D...likes to specialize in misrepresentations and half-truths herself and has been able to demonstrate her lack of consistency and credibility to the Court without any assistance whatsoever from me."
 - (b) "I am quite sure that K. and M. are stressed....I am convinced from my observations of Ms. D that she is doing and has done her utmost to triangulate and split the children and it is from her actions and representations that the children are deriving most of their anxieties".

(Exhibit 6)

9. My September 29, 2011 letter to the Law Society contains further comments about E.D.:
 - (a) "Based on Ms. D's claims about her scholastic ability and credentials I am willing to concede that it may not be Ms. D's lack of facility with the English language that resulted in her failures to comply with the Court's direction and written orders, but some other deficiency in her abilities. It has been rather obvious, that whatever the reason, Ms. D presents as entirely uncomprehending when an order is granted or a direction is given. This demeanor has been challenging... the best I can do it make every legal and ethical effort to protect him (Mr. D) and the children from the more negative effects of Ms. D's misstatements, misunderstandings and misleading representations".

(Exhibit 7)

Treated E.D. with Discourtesy

10. I treated E.D. with discourtesy in my letters dated August 9, 2011 and September 29, 2011 to the Law Society of Alberta.

N.P. Complaint

11. N.P. was an unrepresented mother in a very acrimonious matrimonial matter in which I acted for the father.

12. The parties attended a Dispute Resolution meeting on December 15, 2009. Later that day, I e-mailed a draft of the Consent Variation Order to N.P. for her review, endorsement and return. N.P. did not sign the proposed Consent Order.
13. On December 17 and 18, 2009, N.P. and I corresponded by e-mail. N.P. alleged I was attempting to trick her and was inserting false information in the draft Order. Included in my responses to N.P. were the following comments:
- (a) N.P. had “changed her story AGAIN”;
 - (b) “At least your body was there and you told the DRO you agreed to it. Now you want to change your mind?”
 - (c) “we need a Justice to do the math and explain it to you because you forget such important things 3 days later.”
 - (d) “the DRO explained to you WAS Child Care. Again, your body was there and you supposedly agreed to it.”
 - (e) “If you read paragraph 1 carefully, or even not so carefully, if you just READ paragraph 1, it states that section 7 expenses listed will be shared equally, on a 50/50 basis. So, does that indicate you will be paying 100%? Not to anyone who speaks or reads English, it doesn’t.”
 - (f) “All we varied is the deal regarding the section 7 expense of Child Care that you (or someone who looked and sounds just like you) agreed to.”
 - (g) “I don’t WANT your tax summary. That is not what was ordered. I am entitled to your Income Tax RETURN and NOTICE OF ASSESSMENT. And, no, I did NOT get your 2008 Tax Summary yet.”
 - (h) “Not only do I not TRUST you, I cannot quite BELIEVE you. This is a clause meant to ASSIST you so you don’t have to come all the way down here, but, hey, if you want to trek to Midnapore, even though you don’t have gas to exercise access to T., who am I to try to help. And it had to be before this afternoon at 4, so I guess you won’t be trekking down here anyway, you will be trekking to Court. Your choice, not mine. I incurred my client’s expense by going to the DRO and listening to you rant and fabricate and complain, and again by drafting the Order that you supposedly agreed to. Now, I guess I will just have to explain to the Court that you are impossible to believe, communicate with, or even make sense of, and we are going to need their help. At your cost, even given your
“limited” income.”

(Exhibit 8)

Treated N.P. with Discourtesy

14. I treated N.P. with discourtesy in the e-mails which I sent to her on December 17 and 18, 2009.

15. I apologized to N.P. by February 8, 2013 letter. **(Exhibit 9)**

C.P. Complaint

16. I acted for the wife in very acrimonious divorce proceedings. The Complainant, C.P., was represented by Penny Pritchett.
17. I wrote a letter to Ms. Pritchett on December 2, 2009, which contained the following comments about C.P.:
- (a) C.P. having “now-invisible or dissipated investment funds”;
 - (b) C.P.’s affidavits were not worth the paper on which they were printed;
 - (c) Ms. Pritchett should “cease killing trees for the purpose of continuing to excuse her client’s lack of responsibility for the support of his family”;
 - (d) “...how he can possibly justify letting the children starve for 24 days of the month just so he can plan to feed and entertain them on Christmas Day. It seems the height of hypocrisy and irresponsibility to any thinking individual. ... he may wish to consider taking some Christmas work, perhaps as a Department Store Santa, so he can scrape together at least the Costs he was ordered to pay, so that the children will still be conscious, fed, clothed and healthy at the time of his proposed visit.” **(Exhibit 10)**
18. By May 5, 2010 letter, I informed Ms. Pritchett that my client advised me C.P. had entered my client’s home without authorization and taken the children’s passports and birth certificates. I advised that my client would not be allowing unsupervised access or negotiating settlement until the documents were returned. I advised my client to change the locks and report any further unauthorized removal of property as being a break-and-enter with theft to the police. **(Exhibit 11)**
19. By May 10, 2010 letter, C.P. denied committing a break and enter or taking any documents from his ex-wife’s home. C.P. is a police officer with the Calgary Police Service and was unaware of any thefts or break and enters being reported to the police. **(Exhibit 12)**
20. By May 13, 2010 letter, I again addressed the “break and enter” **(Exhibit 13)**.
21. By letter of June 14, 2010, I informed Ms. Pritchett that my client advised “Amazingly, the passports WERE returned, and apparently to the same file from which they were removed and for which my client has a 3rd party witness to their absence. So, there were obviously at least TWO ‘break-ins’ by the same party, who knew his way around the house, and who shall remain nameless, but whose initials are C.M.P.P.” **(Exhibit 14)**

Treated C.P. with Discourtesy

22. I treated C.P. with discourtesy in my letters to C.P.'s lawyer dated December 2, 2009, May 5, 2010 and June 14, 2010.
23. I apologized to C.P. by February 7, 2013 letter. **(Exhibit 15)**

ADMISSION OF FACTS AND GUILT

24. I admit as fact the statements in this Agreed Statement of Facts for the purposes of these proceedings.
25. I admit my guilt to citations 1, 2 and 3 directed May 9, 2012 for the purposes of section 60 of the Legal Profession Act.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 15th DAY OF NOVEMBER, 2013.

RUELLEN FORSYTH-NICHOLSON