LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT;*

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF CHRISTIAN OUELLETTE
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee:

Kent Teskey, Q.C., Chair

Douglas McGillivray Q.C., Committee Member

Glen Buick, Committee Member

Appearances:

Counsel for the Law Society – Karl Seidenz

Counsel for Christian Ouellette – Dennis McDermott, QC

Hearing Dates:

January 25, 26, 27; February 8, 12; April 4, 5, 6, 14, 20; May 2, 3, 4, 5, 19

July 25, 2016

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

A. Jurisdiction, Exhibits and Preliminary Matters

1. On January 25, 2016, a Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) in Calgary to conduct a hearing with respect to a number of citations against Christian Ouellette.

2. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

3. The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") pursuant to which the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application, was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public**.**

4. On the first day of the hearing, Mr Ouellette argued that Mr. McGillivary should recuse himself on the basis of a reasonable apprehension of bias, as he had sat on a hearing committee concerning Mr. Ouellette in 2004. Mr. Ouellette was self-represented and next applied for an adjournment of the proceedings on the basis that he did not have counsel and was not prepared to proceed. Both matters were considered by the Committee and both applications were denied.

5. On the question of bias, the Committee considered relevant case law provided by the parties and determined that there was no reasonable apprehension of bias. Oral reasons were given, as follows. The Committee confirmed the principle that adjudicators are presumed to be impartial. An apprehension of bias must be reasonable, and the grounds for an application for recusal must be serious and substantial, and not based on a mere suspicion. A reasonable apprehension of bias will only be found if a reasonable and properly informed person would have a reasonable apprehension that the decision maker will not act in an impartial manner.

6. In this case, Mr. McGillivray had been a member of a hearing committee on a previous hearing involving Mr. Ouellette, over a decade prior to this hearing. He also appeared to have been involved in some practice review matters concerning Mr. Ouellette in 2001. Mr. McGillivray could not recall his involvement in those matters and Mr. Ouellette did not bring forward any facts giving rise to any identified concern regarding Mr. McGillivray's impartial consideration of the issues in this hearing. Additionally, Mr. McGillivray was but one member of a three member Committee, and a majority is required to determine the outcome of the hearing.

7. As noted, Mr. Ouellette's adjournment application relied on the fact that he was self-represented and wished to retain counsel to assist him. He stated he had previously retained counsel but that the lawyer had resigned from the retainer approximately one month prior to the hearing. He also raised a number of personal matters, which he stated had affected his ability to prepare for the LSA hearing. Mr. Ouellette stated he had been unable to prepare or seek new counsel in the week leading up to the hearing as he had been unable to obtain an adjournment of a criminal matter in which he had appeared the previous week. He had only managed to make some preliminary phone calls to Mr. Dennis McDermott, Q.C., prior to the start of the hearing. He submitted that, in any event, efforts to retain counsel prior to the hearing would have been fruitless, as it would simply have been impossible for new counsel to prepare in the month prior to the hearing date.

Mr. Ouellette ultimately proposed a three-month adjournment to allow him to get his affairs in order and prepare for the hearing.

8. The application for an adjournment was denied. Mr. Ouellette had previously been given 5 adjournments of this matter by the pre-hearing conference chair for similar reasons, and it was concluded that he was guilty of laches. The last adjournment had been granted at a pre-hearing conference in the fall of 2015, and the hearing had been set on a peremptory basis, to commence the week of January 25, 2016, dates on which Mr. Ouellette had identified he was available.

9. The Committee considered the fairness of the hearing process, as well as the duty to the public interest and the need to hear discipline matters in a prompt and efficient fashion. Mr. Ouellette had failed to make diligent attempts to contact counsel. The matter had been scheduled on a peremptory basis, on dates to which Mr. Ouellette had agreed. The adjournment of a matter which has been scheduled on a peremptory basis requires significant evidence to justify further delays. Mr. Ouellette brought no medical evidence, nor any other compelling evidence which would justify another adjournment.

10. When the Committee reconvened on the second day, Mr. Ouellette was not present. The Committee was advised that he had checked himself into the hospital and remained there for three days of observation due to severe anxiety related to the stress of this hearing. This information was conveyed by Dennis McDermott, Q.C., who had been contacted by Mr. Ouellette after the adjournment had been denied.

11. The Committee reconvened on the third day, at which time Mr. McDermott appeared on Mr. Ouellette's behalf. An adjournment was granted, on the understanding Mr. McDermott would continue to represent Mr. Ouellette. Failing that, the Committee expressed its intention to proceed with the hearing on the new dates in April 2016, even in Mr. Ouellette's absence, pursuant to section 70(2) of the *Legal Profession Act*.

12. On the third day of the hearing, the Committee also heard an application by LSA counsel for an interim suspension. After hearing from both counsel, the interim suspension was granted based on evidence that Mr. Ouellette was unable to manage his practice due to his significant stress issues and there was a reasonable basis to believe that this created a risk to the public. For example, in the week just prior to the scheduled hearing, Mr. Ouellette had unsuccessfully applied to adjourn a criminal trial on the grounds of his mental stress and a resulting inability to focus. Mr. Ouellette had a history of requesting extensions for responding to the LSA and adjournments of his hearing on the basis that he was experiencing stress and anxiety. The citations which were the subject of the hearing related to long-standing failures to serve clients There was no evidence that Mr. Ouellette was effectively balancing the demands of his practice and the need to respond to his regulator, with his need for treatment. The interim suspension was effective on January 27, 2016. The Committee directed that any reinstatement application which might

be brought before it during the course of the proceedings would require evidence with respect to Mr. Ouellette's management of his health and his ability to practice responsibly.

13. The suspension was subject to the conditions that Mr. Ouellette would not:

(1) Conduct any of the work associated with any client files or accept any new lega work for existing clients;
(2) Make contact with clients;
(3) Create new lawyer-client relationships;
(4) Appear on behalf of clients before any court, tribunal, or administrative body performing any judicial or quasi judicial function;
(5) In any other manner whatsoever, render any legal services or take any action that assists or results in the continued operation and management of the legal business and Law Firm;
(6) During the term of suspension, receive from or on behalf of a group or person, any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons;
(7) Engage in or perform any service or activity of a paralegal nature, including any activity or service usually provided by an articling student, law clerk, legal assistant, research assistant or legal secretary;
(8) Be retained or employed in any capacity having to do with the practice of law or the provision of legal services;
(9) Occupy space or partner or associate with any other active member of the Law Society of Alberta.

14. The parties reconvened on February 8 and 12, 2016, to hear Mr. Ouellette's application for reinstatement. This application was denied as there was no change in the circumstances which had given rise to the original suspension order. There was no evidence of any new developments or treatment, and Mr. Ouellette failed to respond to the Committee's earlier direction to provide medical evidence to directly address his ability to practice. Evidence was heard from Dr. R.U. and Mr. Ouellette. Dr. R.U. testified that Mr. Ouellette's condition had largely resolved by the time the doctor met with him and prior to leaving the hospital. The doctor was not in a position to assess whether Mr. Ouellette might be fit to return to practice and testified that an independent medical examination might be required to provide a determinative answer. Mr. Ouellette failed to bring forward any evidence to satisfy the Committee that he could return to practice without creating a risk to the public. Mr. Ouellette did not demonstrate that he had taken any proactive steps to manage his stress in such a way that he could practice effectively. The Committee did not accept his assertions that he could return to practice and found insufficient evidence to displace the earlier finding that there were reasonable grounds to anticipate that allowing Mr. Ouellette to return to practice created a risk to the public.

15. The hearing resumed on dates in April, May and July of 2016. Mr. McDermott acted as counsel for Mr. Ouellette throughout the proceedings.

B. Citations and Findings

16. Christian Ouellette faced the following citations:

Complaints of the LSA - CO20121770:

1. It is alleged that you failed to cooperate with Practice Review, and that such conduct is conduct deserving of sanction;

2. It is alleged that you failed to reply promptly and completely to communications from the Law Society regarding your failure to cooperate with Practice Review, and that such conduct is conduct deserving of sanction;

3. It is alleged that you failed to comply with the accounting rules of the Law Society, and that such conduct is conduct deserving of sanction;

Complaint by J.O. - CO20120213:

4. It is alleged that you threatened the Complainant, J.O., with criminal proceedings, and with quasi-criminal proceedings, namely, child welfare proceedings, in order to gain a benefit for your client, and that such conduct is conduct deserving of sanction;

5. It is alleged that you failed to be courteous to J.O.'s counsel, and that such conduct is conduct deserving of sanction;

Complaint by M.M. - CO20132299:

6. It is alleged that you failed to serve your client, and that such conduct is conduct deserving of sanction;

7. It is alleged that you failed to respond to another lawyer on a timely basis, and that such conduct is conduct deserving of sanction; and

8. It is alleged that you failed to respond promptly or completely to the Law Society, and that such conduct is conduct deserving of sanction.

17. While there were numerous citations before the panel, the issues can be separated into three discrete areas of complaint: complaints by the LSA; complaints arising from Mr. Ouellette's handling of a file involving an opposite party, J.O.; and complaints arising from Mr. Ouellette's handling of a claim for M.M.

18. The Committee found Mr. Ouellette guilty of citations 1, 2, 3, 4, 6, 7 and 8. Citation 5 was dismissed. Mr. Ouellette was disbarred effective July 25, 2016.

19. For ease of reference, the Particularization of Citations filed by the LSA is attached as Appendix "A" to this Hearing Report.

20. At the commencement of the hearing, there was no agreement as to any facts underlying the citations. Ultimately, an agreed statement of facts was executed by the parties which is reproduced as Appendix "B" to this Hearing Report.

C. Complaints of the LSA

21. The complaints of the LSA may be summarized as follows:

1) Failing to cooperate with Practice Review between 2009 and 2012 with respect to examination of his practice and the provision of necessary accounting reports (Citation 1).

2) Failure to respond to communications with the LSA in relation to his failure to comply with Practice Review (Citation 2). Ultimately, no response was ever received.

3) Failing to comply with the accounting rules of the LSA (Citation 3). These breaches included the failure to address numerous audit issues and the failure to file accountant's reports in a timely fashion for 2008, 2009, 2010.

4) Failing to respond to the LSA in relation to the M.M. complaint (Citation 8).

Trust Accounting

22. Starting in 2009, the LSA became aware of deficiencies in Mr. Ouellette's trust accounting practices. Rather than simply citing Mr. Ouellette for these issues, he was referred into Practice Review to remediate them and to obtain assistance in organizing his practice. Mr. Ouellette's approach to Practice Review was alternately defiant and non-responsive. Despite numerous attempts at intervention, Mr. Ouellette did not address these issues in anything approaching a timely fashion.

23. Mr. Ouellette had failed to file accountant's reports to verify the security of the trust account and the trust accounting processes. Without these verifications, the LSA is incapable of determining whether trust monies are at risk. Without these reports, Mr. Ouellette had no way of knowing that his trust account was in order. These reports were unacceptably tardy. His 2008 report was filed 174 days late. His 2009 report was filed 702 days late and his 2010 report was filed 874 days late.

24. The citations arising from the complaints raised by the LSA were proven largely from the admissions in the Agreed Statement of Facts executed by Mr Ouellette. Notwithstanding that he admitted to the factual circumstances of the various breaches of his obligations to his regulator, he initially argued that they did not necessarily amount to conduct deserving of sanction. Near the conclusion of this sixteen day hearing, he conceded that his conduct was deserving of sanction, but argued that the evidence adduced should be considered in

mitigation.

25. Mr. Ouellette argued that, while he failed to comply with a variety of rules and obligations with respect to his accounting, no member of the public was ever actually at risk and the trust monies were substantially protected. We do not see this as mitigating. The effect of Mr. Ouellette's conduct was to put himself outside of the regulatory oversight of the LSA. The integrity of trust accounts cannot rest on a member's mere assertion that his clients' money is safe. The safety of trust money must be unassailable, transparent and absolute.

26. Mr. Ouellette's accounting was so delinquent that he could not be certain as to the safety of his trust account and this situation persisted for years. He deliberately, by both his action and his inaction, practiced without any effective regulation. The protection of the public demands substantially more.

Failure to respond

27. Throughout the period between 2009 to 2013, Mr Ouellette was subject to numerous demands for responses on conduct and accounting matters. He admitted his failure to respond but submitted that these failures occurred during periods of high stress in his life and practice.

28. Like the accounting issues, Mr. Ouellette's deliberate inaction placed him outside of the regulation of the LSA. Mr. Ouellette asked us to consider the personal and professional stress he was under during these years. The difficulty with that position is that there is clear evidence of him consistently preferring other priorities over his regulator. The LSA established that, during the timeframes when he was relying on letters from doctors saying that he was under too much stress to deal with practice (and by extension, the LSA), he was engaged in a busy practice and trial schedule. Moreover, when Mr. Ouellette wished, he was prepared to respond quickly and completely. When confronted with the J.O. complaint, he responded appropriately and within a reasonable time.

29. When a lawyer ignores his regulator, he is placing himself outside of the regulatory regime. This has a clear impact on the protection of the public and the public's confidence in the regulator's ability to act in the public interest. By extension, it attracts a number of inferences about the governability of this member, which were considered during sanctioning.

30. Citations 1, 2, 3, and 8 were proven and the Committee found Mr. Ouellette's conduct deserving of sanction.

D. Complaint of M.M.

31. Citation 6 relates to the failure to serve Mr. Ouellette's clients, Mr. and Mrs. M. Mr. M. is also identified as M.M. in these reasons. Mr. and Mrs. M. purchased a home in Calgary in 2008. Shortly after moving in, they discovered evidence of a mouse infestation they

believed had been concealed by the seller. They consulted with Mr. Ouellette and ultimately retained him to advance a civil action in relation to this matter.

32. Rather than filing a Statement of Claim or approaching the sellers to discuss possible settlement, Mr. Ouellette advised the clients to seek an Attachment Order. The rationale for this decision was somewhat unclear, but essentially Mr. Ouellette felt that there was some risk that the opposing party might start liquidating assets.

33. The state of Mr. Ouellette's file on this matter can only be described as woeful. There were no file notes or memos to file. There were no records of client meetings. There was essentially no reporting to the client at all. There was no evidence that the client was advised about the implications of decisions being made on the file. Beyond sending bills, there was no meaningful correspondence. When Mr. Ouellette testified, he relied on his memory and vague billing records from his timekeeping system. Simply put, the state of this file did not assist Mr. Ouellette to any great degree in explaining the conduct of this matter nor the decisions he made.

34. After the opposing party was served, they retained their real estate lawyer, J.F., to conduct the defence of this matter. Unlike Mr. Ouellette, J.F. kept a detailed and organized file and most of the Committee's findings as to what occurred after his retainer were based on his file rather than any evidence provided by Mr. Ouellette.

35. After J.F. was retained, almost nothing occurred to advance the file. Mr. Ouellette failed to respond to letters regarding records and whether a home inspection had been done. He failed to explore any settlement of the matter at all. For all intents and purposes, the file languished. Having failed to receive any response from Mr. Ouellette, J.F. filed a Statement of Defence and Counterclaim, alleging defamation by Mr. M. These documents were served on Mr. Ouellette.

36. Mr. Ouellette never informed his client about the counterclaim, nor did he take any steps to respond. There can be no doubt that this failure created significant jeopardy for his client. In October 2009, M.M. and his wife, V.M., received another small bill from Mr. Ouellette, which did not provide any reporting information and did not mention the counterclaim. Frustrated by the lack of progress, the M's wrote Mr. Ouellette a letter, dismissing him as counsel. For all intents and purposes, they believed the matter was concluded.

37. Mr. Ouellette did not file a Notice of Ceasing to Act with the court, and over the next number of years, he was contacted by J.F. and his associates and represented to them that he still acted for the M. family. By this time, J.F. had reasonably concluded that Mr. Ouellette intended to take no action on the matter and he advised his client to wait for the five year drop-dead date to lapse and have the action struck.

38. In May of 2011, the defendants filed an application to strike the Statement of Claim for delay, but mistakenly filed the application roughly 2 months prematurely. Notwithstanding the fact that he had been dismissed by Mr. and Mrs. M. in 2009, Ouellette contacted counsel for the defendants seeking an adjournment of the application so he could canvass a discontinuance of the matter with his clients. He never contacted his clients and did not contact counsel for the defendants again.

39. On February 7, 2012, Mr. Ouellette filed a Notice of Withdrawal of Lawyer of Record and served it on the counsel for the defendants. He did not serve his clients. By 2012, his former clients were not aware of the counterclaim, the communications by counsel for the defendants, the application to strike, the Notice of Ceasing to Act, or the defendants' demand for costs. Moreover, Mr. Ouellette's communications with the defendants were explicit that he was still involved in the file. We find that there was substantial prejudice to M.M., both actual and potential.

40. After receiving the Notice of Withdrawal, the defendants refiled the application to strike and served it on the plaintiffs personally. M.M. was shocked that the matter had continued in the proceeding years and contacted Mr. Ouellette for assistance.

41. Notwithstanding that the existing problems were solely Ouellette's fault, he requested a retainer of $500 to "rehire" him and to receive his file. He described giving some notional advice to M.M. about how to address the court on the application. He did not attend before Justice Wilkins nor did he do anything to set the record straight about his complete lack of diligence on the file.

42. Due to the absence of fault by the M.'s and fairness of J.F., costs were limited to $426.30 in disbursements and the matter was dismissed.

Analysis

43. We found that the failure to serve M.M. was serious and protracted. After obtaining an attachment order and filing a statement of claim, Mr. Ouellette failed to explore obvious paths of settlement and simply allowed the file to languish.

44. Beyond that, Mr. Ouellette failed to show basic respect for his clients as a legal advisor. Most people thankfully do not have experience with civil litigation, but when they do have a problem, they come to lawyer in the hopes of obtaining a solution. There is little evidence that Mr. Ouellette ever explained the process to his clients, attempted to manage expectations or sought a solution. He failed to provide any reporting letters or follow-up and instead neglected their issue. His clients gave him a considerable amount of money for which they received no practical benefit. Beyond that, he left the file in such a perilous state that they were exposed to significant risk.

45. These clients came to Mr. Ouellette for assistance at a difficult time. They wanted help and in return they got delay and almost complete neglect.

46. While Mr. Ouellette admitted his responsibility for failing to serve his clients, we found his acceptance of responsibility was shallow and muted. To some extent, he expressed remorse for his failing on this matter, but at the same time spent a great deal of time defending his conduct and attempting to persuade the panel of his forensic and tactical skill.

47. Lastly, we found it serious that Mr. Ouellette never attempted to set the record straight by appearing before Justice Wilkins on the motion to strike. The failures of this file were his and he had an obligation to protect his clients. He put his self interest before his clients. His conduct was woeful and the protection of the public is clearly engaged by the facts of this matter.

48. Citation 6 regarding the failure to serve M.M. and V.M., and Citation 7, involving Mr. Ouellette's failure to respond to another lawyer, were proven and Mr. Ouellette's conduct is deserving of sanction.

E. Complaint of J.O.

Threat of Proceedings

49. The fourth citation against Mr. Ouellette, including particulars, is as follows:

> 4. It is alleged that you threatened the complainant, J.O. with criminal proceedings and with quasi-criminal proceedings, namely child welfare proceedings, in order to gain a benefit for your client, contrary to Rules 4(a) and 4(c) of Chapter 10 of the Code [the Code provisions referenced are those which were in effect until November 1, 2011].

50. The LSA particularized this complaint by reference to:

a. a letter of September 19, 2008, to J.O. directly;

b. a telephone conversation with J.O.'s counsel on September 23, 2008;

c. a letter of September 24, 2008, to J.O.'s counsel;

d. a letter of October 8, 2008, to J.O.'s counsel;

e. a letter of October 16, 2008, to J.O.'s counsel;

f. a letter of October 17, 2008, to J.O.'s counsel;

g. a letter of November 5, 2008, to J.O.'s counsel;

h. a letter of December 9, 2008, to J.O.'s counsel;

i. a letter of December 30, 2008, to J.O.'s counsel.

51. While each letter does not contain words making a threat of criminal or quasi-criminal proceedings, the letters as a whole provide a background and context to the allegations.

52. At the hearing, in addition to the letters in question which were made exhibits, the Committee heard evidence from J.O., J.O.'s counsel, and Mr. Ouellette.

Background

53. Mr. Ouellette acted for L.O., who at the time was separating from J.O. J.O. was a employed in law enforcement. Mr. Ouellette was aware of this.

54. Mrs. O. had alleged to Mr. Ouellette that J.O. had on occasion assaulted and sexually assaulted her. Mr. Ouellette accepted these assertions and it is the view of the Committee that, for the purposes of his hearing, Mr. Ouellette was entitled to do so.

55. Mr. Ouellette was aware that if the allegations against J.O. became public and were made known to his employer, it would cause him to be the subject of internal investigations by his employer. He could also face the possibility of criminal proceedings, in addition to any employment sanctions that might be imposed.

56. In addition, as there was an infant child of the marriage, Mr. Ouellette was aware that if the allegations against J.O. were made known to Child Welfare, the child might well be apprehended, giving rise to potential difficulties for J.O. with the Child Welfare Department. These factors became the leverage that governed Mr. Ouellette's dealing with J.O. and his counsel.

Evidence

57. J.O. testified that he received the initial letter of September 19, 2008, containing the Statement of Claim and an ex parte restraining order. J.O. viewed the letter as an overt threat that, if he did not comply with the wishes of his wife's counsel, the matters of their domestic difficulties would be reported to his employer, exposing him to discipline at his employment and potential criminal sanctions.

58. J.O. reviewed his wife's affidavit that was included with the correspondence and saw the allegations of physical assault and sexual assault. It was his intention to refute these allegations as untrue. Notwithstanding, he believed that if he did not comply with the wishes of his wife, communicated through Mr. Ouellette, he ran the risk that his wife or her lawyer would make the contents of the affidavit known to his employer and/or the Child Welfare department, which would cause collateral problems for him.

59. J.O.'s counsel received the September 19, 2008, correspondence and enclosures, and then was engaged in a series of communications with Mr. Ouellette by telephone and letter. The contents of the letters are set forth in Appendix "A". Through counsel, J.O. was aware of the contents of the communications.

60. Mr. Ouellette confirmed that he did indeed send the letters to J.O. and J.O.'s counsel, and expected they would come to the attention of J.O. Mr. Ouellette testified that he intended the content of the letters to control J.O.'s behaviour. In response to questions by the Committee, Mr. Ouellette acknowledged that it was his intention to cause J.O. to come into line with his way of thinking by asserting the consequences of what he was prepared to do, should J.O. not cooperate. Mr. Ouellette acknowledged that in each instance where the actions were threatened and the consequences set out, those actions and consequences were not relevant to the problems or issues in the matrimonial proceedings. Mr. Ouellette believed what his client had told him and was using these letters to J.O. and to J.O.'s lawyer to attempt to protect his client and to obtain what he perceived to be the best deal for her.

61. Mr. Ouellette testified that he consciously attempted not to specifically threaten criminal charges. He believed his letters did not contain a threat of criminal proceedings. Mr. Ouellette showed little contrition regarding the nature and the tone of the correspondence, particularly that which was found in his letter of December 30, 2008.

62. When Mr. Ouellette was dissatisfied with the progress of the file, J.O.'s spouse filed a complaint of sexual assault with his employer as well as other assault allegations. This gave rise to a criminal investigation which in turn saw J. O. charged with a sexual assault. This charge proceeded to trial and J.O. was acquitted.

63. Mr. Ouellette asserted that he had no involvement in his client's decision to proceed in that manner. We do not accept this assertion. The evidence from the police investigation notes show that the initial inquiries about the complaint process were made by Mr. Ouellette. It shows that prior to the police meeting with J.O.'s spouse, their communications were through Mr. Ouellette and that he was present during the complainant's interviews with the police. J.O. testified that, after his wife had engaged a new lawyer, she advised J.O. that it was Mr. Ouellette himself who had been pushing the criminal complaint.

64. Given Mr. Ouellette's involvement in the criminal complaint process, his assertion that he was not involved in encouraging J.O.'s wife to make a criminal complaint is not sustainable.

Arguments and Findings

65. The LSA's position was that the letters directed to J.O. and to his counsel were clearly intended to manipulate them by raising the specter of criminal and child welfare regulatory proceedings over J.O.'s head.

66. Mr. Ouellette's position was two-fold. Firstly, Mr. Ouellette's view was that he did not overtly threaten any criminal proceedings. He makes no reference to quasi-criminal proceedings, either through the regulatory processes of J.O.'s employer or child welfare. He stated he was merely trying to protect his client from what he perceived to be a bullying and dangerous estranged spouse. Secondly, Mr. Ouellette's position, as argued through counsel, was that the allegations did not meet the requirements of Rules 4(a) and 4(c) of Chapter 10 of the Code of Professional Conduct, in that whatever threats were made, they were not made in order to gain a benefit for Mr. Ouellette's client. In that context, Mr. Ouellette's counsel asserted that benefit meant monetary gain.

67. Mr. Ouellette's counsel provided copies of the definitions of the word "benefit" from various dictionaries in order to support the position that the evidence did not show a monetary benefit to J.O.'s spouse.

68. The materials and cases provided by the LSA's counsel and by Mr. Ouellette's counsel support a finding that the nature of the communications did amount to threats. They were made in order to gain a benefit for J.O.'s estranged spouse, in the course of the negotiations with respect to custody, parenting, child support and alimony, and with respect to the division of matrimonial property.

69. The assertions by Mr. Ouellette in his correspondence, that his statements should not be taken as threats, merely highlight for the recipient the very threats being made. The fact that the actions and consequences threatened were irrelevant to the domestic matters in dispute tended to exacerbate the situation.

70. In conclusion, the Committee was satisfied on a balance of probabilities that Citation 4 was proven and that the conduct is deserving of sanction.

Incivility to J.O.'s Lawyer

71. Citation 5 alleges Mr. Ouellette failed to be courteous in his handling of the J.O. matrimonial file. This citation is particularized in Appendix "A", which includes reference to and excerpts of the relevant correspondence.

72. The Committee heard evidence from J.O.'s lawyer and from Mr. Ouellette regarding this citation. J.O.'s lawyer was not particularly offended by Mr. Ouellette's communications with her, nor the statements made in the correspondence.

73. Mr. Ouellette testified that, as J.O.'s lawyer was from Saskatchewan, she might not be familiar with Alberta processes, as he described them. In addition, because of a dispute over whether J.O.'s lawyer's office had breached Mrs. O's restraining order, Mr. Ouellette did not want to extend to J.O.'s lawyer the courtesy of being able to attend on chambers applications by telephone from Saskatchewan. In addition, Mr. Ouellette expressed

concern that J.O.'s lawyer might give evidence over the phone.

74. While the Committee has some misgivings about Mr. Ouellette's rationale for not extending the usual courtesies, the Committee was not satisfied that these citations had been made out and dismissed them. Notwithstanding dismissal of Citation 5, the Committee did not find Mr. Ouellette's communications with J.O.'s lawyer to be examples of good practice.

F. Submissions on Sanction

75. In the course of the sanctioning phase of the hearing, the Committee heard submissions from the LSA, Mr. Ouellette's counsel and Mr. Ouellette himself.

76. The LSA urged on the Committee that Mr. Ouellette be disbarred, or at the very least, face a lengthy suspension.

77. The LSA suggested that Mr. Ouellette had shown a continuous disregard for his obligations to the LSA as the regulating authority and that he had shown no meaningful element of contrition, notwithstanding his ultimate admission of his delinquencies. The LSA asserted that Mr. Ouellette failed to serve his client well and that this was not the first time that this had occurred. Mr. Ouellette had been previously found guilty of similar conduct deserving of sanction and had been fined for similar conduct. Finally, Mr. Ouellette had shown callous disregard for the interests of an opposing party as a member of the public and again showed little contrition, justifying his acts on the grounds that he was acting in the best interests of his client.

78. The LSA asserted that Mr. Ouellette had been given many opportunities to participate with Practice Review to improve his approach to practice at all levels and, by his past conduct, had shown no real interest in taking the advice that was being given to him. Indeed, the LSA suggested that Mr. Ouellette disputed the advice being given, rather than putting it into an appropriate context to be utilized for his own benefit in the future.

79. Mr. Ouellette's counsel took the position that Mr. Ouellette had a minimal disciplinary record, that his accounting rule delinquencies did not result in any defalcations or loss of client funds, and that his failure to serve his client was really a technical aberration brought on by an oversight in failing to file a Notice of Withdrawal as counsel.

80. With respect to the complaints of the threats, it was asserted that this was not a serious matter, but merely an overzealous approach to protecting his client's interests, which is where his primary duty was owed.

81. Counsel for Mr. Ouellette suggested that a fine and reprimand might be appropriate. This was particularly so given that Mr. Ouellette had been suspended for the past number of

months, albeit for medical reasons.

82. Mr. Ouellette himself made submissions. From the Committee's perspective, those submissions did little to aid his cause. His submissions instead substantiated the Committee's concern that Mr. Ouellette simply did not understand the nature of his responsibilities to his profession, the risks to which he put his own clients, and the chaos and consternation that he unnecessarily created for an opposing party. His conduct in the J.O. matter provided no meaningful end to the resolution of the disputes that existed between J.O. and Mr. Ouellette's client at the time.

83. Mr. Ouellette only paid lip service to his past encounters with Practice Review. Without saying so, Mr. Ouellette would have had us believe that the practice reviewers did not know what they were talking about. Mr. Ouellette showed little ability to view problems or issues from any other viewpoint than that which he held. This conduct gave the Committee no comfort as to his governability going forward.

Decision

84. The Committee noted that Mr. Ouellette had been found guilty of citations that went to the core of his duties to the profession, his duties to his own client, and his duties to uphold the administration of justice. Mr. Ouellette breached every type of duty he could breach. His discreditable conduct covered the gamut. He had been warned in previous discipline proceedings about his behaviour and the consequences of repeating it.

85. Mr. Ouellette had been given a number of opportunities to demonstrate a willingness to change his behaviour through the practice review process. As well, in the course of dealing with the matters that give rise to these citations, and the hearing of them, Mr. Ouellette exhibited a lack of responsibility in meeting his obligations and meeting the commitments that he had given during the course of the process. He seemed to take every step to avoid this matter coming to a hearing.

86. The Committee found that Mr. Ouellette was not willing to change the manner in which he practices, and the manner in which he deals with his own clients. He failed to appreciate the importance of dealing appropriately with his regulating authority.

87. Discipline in law society proceedings requires a purposeful approach. The purpose is not to punish, but to "protect the public, maintain high professional standards, and preserve public confidence in the legal profession." (*Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin MacKenzie at pages 26-1).The purposes of professional discipline and sanctioning cannot be served by a mere fine or a reprimand of Mr. Ouellette. Mr. Ouellette's conduct demonstrated that he does not wish to be governed. He has placed the public at risk. He has placed the reputation of the profession at risk. As such, we viewed him as being ungovernable.

88. We were not comforted in any manner that Mr. Ouellette has learned anything from this process. As a consequence, if Mr. Ouellette were allowed to continue to practice, the LSA, clients, the courts, and other members of the profession and the public will continue to be put at risk. His approach to dealing with both clients and opposing parties can only leave a sour taste in the mouths of those members of the public. His conduct has not only harmed the reputation of Mr. Ouellette, but harms the reputation of the profession as a whole.

89. Bearing in mind these factors, our grave doubts that he can be rehabilitated, and being mindful that it is not the role of the LSA disciplinary process to punish the member, we determined that Mr. Ouellette be disbarred.

90. The behaviour giving rise to the citations before us was abhorrent, and such conduct must be denounced. In this case, the only meaningful method of denunciation is by way of disbarment. Similarly, the message must be sent to other members of the profession that lawyers who ignore their regulatory responsibilities, treat their clients with disdain, put clients at risk, and threaten and otherwise abuse opposing parties and members of the public in the litigation process may cause a member to lose the privilege of engaging in a legal practice. Other lawyers so inclined should be deterred from behaving in such a manner.

91. In coming to our conclusion that Mr. Ouellette should be disbarred, and although we do not list them item by item, the Committee has been guided by paragraphs 69 and 70 of the Hearing Guide and the considerations identified therein.

Concluding Matters

92. Costs in the amount of $100,818.97 were directed.

93. There shall be no referral to the Attorney General of Alberta.

94. A notice to the profession shall be issued by the Executive Director.

95. Exhibits shall be public, including the provision of copies of exhibits for a reasonable copy fee, except that personal identifying information will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at the City of Calgary in the Province of Alberta, this 20th day of March, 2017 by:

_____

Kent Teskey, QC

_____

Douglas McGillivray, QC

_____

Glen Buick

APPENDIX "A"

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

CHRISTIAN SYLVA OUELLETTE

HEARING FILE HE.2013.0044

PARTICULARIZATION OF CITATIONS

All references to the Code of Professional Conduct and to the Code of Conduct (collectively, the "**Code**"), to the Rules of the Law Society of Alberta (the "**Rules of the LSA**"), to the Rules of Court, and to the *Legal Profession Act* (the "***Act***") have been attached as schedules, as have the amendment histories of the Code[1] and Rules of the LSA.[2]

A. Complaint File CO.2012.1770 (Complainant: LSA)

1. **It is alleged that you failed to cooperate with Practice Review**, contrary to section 58(3) of the *Act*,[3] Rule 3 of Chapter 3 of the Code,[4] and Rule 6.01(1) of the Code,[5] particulars of which are:

    a. Failing to respond to the requests to produce Form T (5-2) for the years 2009 and 2010, made in the following correspondence to you:

        (1) In the letter dated October 13, 2011 from [H.K.];
        (2) In the letter dated December 15, 2011, from [B.C.];
        (3) In the letter dated January 20, 2012, from [M.R.];
        (4) In the letter dated January 31, 2012, from [G.A.], approving your application to operate a law firm;
        (5) In the letter dated February 13, 2012, from [M.R.];
        (6) In the letter dated July 24, 2012, from [M.R.] (for the year 2010 only); and
        (7) In the report dated July 24, 2012, from the Practice Review Committee to the Conduct Committee, provided to you as an attachment to the letter by

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1 Schedule "**A**" - Amendment History of the Code of Conduct.
2 Schedule "**B**" - Amendment History of the Rules of the Law Society of Alberta.
3 Schedule "**C**" - Section 58(3) of the *Act*.
4 Schedule "**D**" - Rule 3 of Chapter 3 of the Code of Professional Conduct, in effect between June 3, 2009 and November 1, 2011.
5 Schedule "**E**" - Rule 6.01 of the Code of Conduct, in effect since November 1, 2011, and not changed since then.

[M.R.] dated July 24, 2012 (for the year 2010 only).

b. Failing to respond to the requests for accounting records in item 1 of [B.C.]'s letter dated November 23, 2011, as described in Item 2 of her letter dated December 15, 2011;

c. Failing to comply with the requests made in [B.C.]'s letter of December 15, 2011, more particularly described in the following documents:

(1) The minutes of the Practice Review Committee meeting dated June 19, 2012; and
(2) The report dated July 24, 2012, from the Practice Review Committee to the Conduct Committee.

d. Failing to respond to the requests for accounting records as described in the following reports of examinations performed by trust safety staff at the request of the Practice Review Committee, which failures are also contrary to Rule 199.33(3)(a) of the Rules of the LSA:[6]

(1) The examination report dated April 12, 2012;
(2) The examination report dated May 11, 2012;
(3) The examination report dated July 8, 2012; and
(4) The examination report dated August 20, 2012.

2. **It is alleged that you failed to reply promptly and completely to communications from the Law Society regarding your failure to cooperate with Practice Review**, particulars of which are failing to provide any substantive response to the complaint pursuant to the request by [K.W.], Manager-Conduct, on July 25, 2012, contrary to section 53(3)(a) of the *Act*,[7] and Rule 6.01(1) of the Code,[8] despite:

a. An extension from August 8, 2012, to September 22, 2012;[9]
b. Your self-imposed deadline of October 1, 2012;[10] and
c. Two additional extensions:
(1) From October 1, 2012, to November 9, 2012;[11] and
(2) From November 9, 2012, to the final deadline of December 30, 2012.[12]

3. **It is alleged that you failed to comply with the accounting rules of the Law Society**, particulars of which include:

a. The exceptions to the accounting Rules noted in the following documents:

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6 Schedule "**F**" - Rule 119.33(3)(a) of the Rules, which wording was as in effect at all times during the examinations.
7 Schedule "**G**" - Section 53(3)(a) of the *Act*.
8 Schedule "**E**" - Rule 6.01 of the Code of Conduct.
9 As per [K.W.]'s letter of August 29, 2012.
10 As per your letter of September 27, 2012.
11 As per [K.W.]'s letter dated October 12, 2012.
12 As per [K.W.]'s letter dated November 14, 2012.

(1) The Rule 130 Follow-Up Audit Report dated July 31, 2009;[13]
(2) The memo dated September 3, 2010, by [G.A.] to [K.W.];[14]
(3) The audit report dated January 6, 2011;[15]
(4) The examination report dated April 12, 2012;[16]
(5) The examination report dated May 11, 2012;[17]
(6) The examination report dated July 8, 2012;[18] and
(7) The examination report dated August 20, 2012.[19]

b. The late filing of Form T (5-2), contrary Rule 126(2) of the Rules of the LSA,[20]

(1) On September 21, 2009, which is 174 days after the deadline of March 31, 2009, for the year 2008;
(2) On March 2, 2012, which is 702 days after the deadline of March 31, 2010, for the year 2009; and
(3) On August 20, 2013, which is 873 days after the deadline of March 31, 2011, for the year 2010.

and described in the following documents:

(1) In the letter dated October 13, 2011 by [H.K.];
(2) In your Practice Snapshot dated November 30, 2011;
(3) In the letter dated December 15, 2011, by [B.C.];
(4) In the letter dated January 20, 2012, by [M.R.];
(5) In the letter dated January 31, 2012, by [G.A.], approving your application to operate a law firm;
(6) In the letter dated February 13, 2012, by [M.R.];
(7) In the letter dated July 24, 2012, by [M.R.]; and
(8) In the report dated July 24, 2012, from the Practice Review Committee to the Conduct Committee dated July 24, 2012.

13 Schedule "**H**" - Rules version 2009_v.3, in effect at the time of the Rule 130 Follow Up Audit Report.
14 Schedule "**H**" - Same wording as in Schedule "H" as this memo refers to the Rule 130 Follow Up.
15 Schedule "**I**" - Rules version 2010_v.4, in effect at the time of the audit report.
16 Schedule "**J**" - Rules version 2012_v.2, in effect at the time of the examination report.
17 Schedule "**J**" - Same wording.
18 Schedule "**J**" - Same wording.
19 Schedule "**J**" - Same wording.
20 Schedule "**K**" - Rule 126(2) of the Rules, same wording in effect in 2008, 2009, and 2010.

B. Complaint CO2012.0213 (Complainant: J.O.)

4. **It is alleged that you threatened the Complainant, J.O., with criminal proceedings** and with quasi-criminal proceedings, namely, child welfare proceedings **in order to gain a benefit for your client,** contrary to Rules 4(a) and 4(c) of Chapter 10 of the Code,[21] particulars of which include the statements made in the following communications:

   a. The following paragraphs in your letter of September 19, 2008 to J.O.:

      > I am informing you by virtue of this letter that my client has stopped short of seeking an Order restraining you from carrying a weapon, including your [●] handgun. Had she instructed me to seek an Order preventing you from carrying a gun that Order would, in all probability, have had to have been served upon your [●]. That step would then probably have resulted in an internal investigation into your conduct, including a review of the affidavit in support of the Restraining Order. Please read that affidavit carefully and ask yourself if that is a step you wish to risk having taken. My client did not wish to contribute to your professional demise and a possible termination from your employment.
>
> Accordingly, I would caution you to abide strictly by the terms of the Restraining Order. If you do not, then I will act on instructions already provided to seek an Order preventing you from carrying a weapon, and seek to have that Order served upon [your employer]. As well, we will seek to have you Incarcerated for both contempt of Court and as a serious threat to my client's safety. You may wish to seek advice as to the possible ramifications of such a step, which, optimistically, will be unnecessary, as you will see the wisdom of leaving my client strictly alone, both directly and indirectly, which includes no communication with my client or her family by either you or your family. That includes emails.
>
> Please have your counsel contact me at my office so this matter might be able to be resolved without unnecessary litigation.

   b. The following comments made during your telephone conversation with opposing counsel on September 23, 2008:

      > You advised that the content of your client's affidavit was not intended to harm my client, but was merely to ensure she felt safe, and further that you had argued against the court's suggestion that these issues ought to be raised with Social Services so as to "save my client's career".

   c. The following paragraph in your letter of September 24, 2008, to opposing counsel:

[21] Schedule "**L**" - Rule 4 of Chapter 10 of the Code, in effect until November 1, 2011.

If your client reduces his position to sworn testimony, it may reduce the inclination of the Court to expunge the two affidavits in question. That increases the risk for your client. …

d. The following paragraph in your letter of October 8, 2008, to opposing counsel:

Further to the above, I suggest that you do not have your client swear an affidavit until you discuss this matter with me.

e. The following paragraphs in your letter of October 16, 2008, to opposing counsel:

I advise that at the time of the *ex parte* Order, that the presiding Queen's Bench Justice was inclined to order this matter reported to Child Welfare (Social Services). I was able to fend off that directive on the part of the Court at that time and I did so because I oppose Child Welfare on many files, predominantly successfully, in the process of attempting to keep children with their parents as opposed to having them become wards of the director. Once Child Welfare gets involved, that involvement precludes any directive or Order from the Court of Queen's Bench (other than on appeal) as any Order in favor of the director takes precedence over any Order made pursuant to the *Divorce Act*, and their involvement can be, and often is, traumatic to the emotional well being of the child, particularly upon apprehension, which is typically ex-parte and beyond my clients control.

If this matter develops into a full-blown contest, in which direction it appears to be headed, my client would then file an affidavit in response, and I expect that this would include a copy of the recording which was sent to you by e-mail. Notwithstanding your observations that it may be that the content of the recording might not be admissible in a Criminal Court, on which opinion I presently take no position as I have not researched the point. I can advise that there is strong authority from our Court of Appeal that the usual restrictions on evidence in criminal and civil matters do not apply in family matters. …

In such event, I would expect my instructions will be to not resist any further the Court's referral of this matter to the Child Welfare director. Child Welfare would undoubtedly review my client's original affidavit as well as her reply, including her references to your client's threat with the gun, etc., and in the course of their investigation, the individuals who would become privy to that information would be totally out of my client's control.

Please understand that the above is not any form of threat, but simply an indication of a series of events some of which will occur, and some of which may occur, flowing from your Client's alleged conduct and the denial of same under oath. It is simply a preview of a possible cause and effect series of events, which we would

suggest your client consider seriously before reducing his materials to a sworn document.

I will consult further with my client on the issue of supervised access in the short-term. However, it seems to me that your client has more far-reaching issues to consider as this matter unfolds then [sic] immediate access to his child. Notwithstanding his stated view and his professed acceptability of his (substandard) approach to child treatment, I would expect that the Court will be reluctant to provide anything more than supervised access until he goes through a risk assessment as a parent. I can almost guarantee, given my extensive experience in these matters, that, if child welfare becomes involved in this matter, that he will have to undergo significant psychological testing and a detailed risk assessment before being allowed anything more than supervised access.

…

In closing, please note that the enclosed is on a "'without prejudice" basis, as I take the position we are negotiating whether or not your client swears an affidavit in the form of the materials earlier provided to me, or whether he intends to negotiate a solution to this matter without forcing these issue to full-blown litigation. In short, we are negotiating the issue of forbearance. Accordingly, these materials are privileged and cannot be disclosed unless privilege is waived by both parties.

f. The following paragraphs in your letter of October 17, 2008, to opposing counsel:

Please find enclosed herein my client's version of events regarding Paragraph 19 of your client's draft materials. If what my client says is true, and is accepted by the Court as being fundamentally what occurred on March 15, 2008, your client's life will be changed dramatically. As I understand it, in speaking with former counsel for [J.O.'s employer], his employment will come to an end. It might well be that his [supervisor] will have an affirmative duty to have criminal charges laid, which is my understanding of the protocol. Further, I am informed that there will be an internal investigation by [J.O.'s employer], which will be suspended pending the outcome of the criminal charges. You and your client can take it from there.

Clearly, my outlining of the above is not a threat, as there is no mention of my client laying an information. In the event that you might infer that from our correspondence to date, my client has given no indication whatsoever of bringing criminal charges, nor do I have any intention whatsoever of advising her to do so. What I have done, is simply, once again, pointed, pointed out the possible domino effect of contested litigation on the points raised.

Further, my client advises that she will have the balance of the substance of any necessary affidavit in reply (should the need

arise from your client's filing an affidavit along the lines of the materials provided by your office) by Monday, October 20. These materials will include, among other things, a description of what would appear to have been an assault on December 15. 2007, where your client threatened to "drill her head". Upon the preliminary investigation of that matter, which had been reported to 911, my client, in order to minimize the damage to yours, downplayed to the investigating officers her fears flowing from that threat, upon being advised that a further investigation would ensue. If necessary, this reported assault will once again become a live issue.

…

I look forward to your advice as to your client's position on the points raised, and we look forward to an orderly and non-litigious, as amicable is probably not available, resolution to this matter.

g. The following paragraphs in your letter of November 5, 2008, to opposing counsel:

My client's present inclination is to allow your client to file his affidavit subject always to his paying for her legal costs in the cross-examination thereof, including preparations for cross-examination. The process to date, in light of the allegations of your client's assaults on my client, including the sexual assault, and my client's wishing to protect herself but not necessarily injure your client personally or financially, has been exceedingly expensive for my client. My client's version of events is, I strongly suggest, supported in large part by the recordings of the oral admissions of alleged sexual assault in the voice of your client, together with his admission that he called his son, 1½-year-old boy, a "prick". Your client, to put it mildly, does not appear to be a nice man.

…

I can advise that, as things now stand, my client will be bringing an additional motion returnable November 13, including an application for interim child support in the amount of $646 per month (based on income of $78,000 per year) interim spousal support in the amount of $2,000 per month, and an Order that your client continue to pay the mortgage on the matrimonial home in the amount of $1,500 per month, together with the costs of the Restraining Order and subsequent dealings associated therewith on a solicitor client basis (approximately $9,000).

As to the proposed supervised access of the infant boy to your client, my client will consider that (as earlier indicated) when she has reviewed the contents of your client's affidavit, as the content thereof will provide her with a basis for what she considers to be the risk management of allowing contact between the child and your client.

h. The following paragraph in your letter of December 9, 2008, to opposing counsel:

As by now you are well aware, your client is under investigation by the Calgary City Police Service in regards to four allegations of assault, two of which were alleged to be sexual assaults. These, together with two threats with a weapon, one being a knife, and one being a gun, cause my client to be very careful about any issue having to do with safety where your client is involved. He appears to be a dangerous man, and my client does not want to subject her child to any unnecessary risk.

i. The following paragraphs in your letter of December 30, 2008, to opposing counsel:

I have your three pieces of correspondence dated December 10, 2008. I now also have your elements of comparison dated December 15, 22, 28, 28 and 29, 2008. My instructions are to conserve funds, and not to debate with you further by letter. My client attempted to resolve these matters in the most amicable fashion, at considerable expense to herself, and attempted to refrain from disrupting your client any more than necessary other than for self protection, and yet your client, presumably with the benefit of your advice, chose to continue to be arrogantly aggressive in the process of divorce, just as he had been during the process of marriage. It is now possible that your client will have a few years "vacation" to contemplate what might have been the benefit of a resolution founded on an appropriate contrition and humility. His imprudent approach to these matters may now well attract an "arrogance tax" far exceeding his contemplation. Once the "allegations" of my client are adjudicated by the criminal justice system, it could very well be that Court ordered "supervision" of your client will continue, but involving no further access to [the child] for the "vacation" period aforesaid. There would be no point in having the little fellow witness his father in striped pajamas.

Further yet, if your client is convicted of the criminal allegations to which my client has deposed in her affidavit, he may then very well have to face the seriousness of his having sworn under oath in an affidavit that he had not performed the conduct of which he is accused.

You now advise that your client is no longer employed in his original capacity. That may mean that he is suspended with pay, that may mean that he is suspended at lesser pay, we do not know. What we do know is that if your client is convicted of the offenses with which we anticipate he is being charged, he will no longer be working for [his employer]. He will then be in a position, as he so unkindly admonished my client, to (in his own words) "get a job". You seemed earlier to be enamored of the term "a blue-collar approach" to child rearing; the "blue-collar" response to parallel your client's approach would be "what goes around comes around".

I trust my client has made her point. She will continue to do so.

I strongly suggest that your client return to the bargaining table with a view to resolving the outstanding issues in a cost-effective fashion. If he does not, you can be sure that my client will be seeking considerable Court costs against your client, including solicitor client costs on certain issues, as this matter regresses. As you contemplate how you might wish to advise your client, you may wish to exercise the utmost in prudence, and to factor into the equation that your client would have been far better positioned today had he taken the benefit of the suggestions which I offered to you some months ago. Had he done so, this matter would probably already have been resolved. Instead, we continue, at great expense to both parties. I suggest that you and your client "live and learn", and settle this matter without further needless expense.

Your client continues to breach the Restraining Order of Justice Kent. These breeches are now being reported to the Calgary City Police Service.

5. **It is alleged that you failed to be courteous to J.O.'s counsel**, particulars of which include:

a. The discourteous statements made in the following communications, which is contrary to Rule 6 of Chapter 1 of the Code:[22]

(1) The following paragraphs in your letter of November 21, 2008, to opposing counsel:

Prior to receiving your recent correspondence, I was advised by my client that your office had been in contact with my client's father. A number of issues arises [sic] from that contact:

…

4. Regrettably, your assistant appears to have acted in breach of the Order. Parliamentary sovereignty may, however, excuse her from a contempt motion. I will leave to your own assessment how your governing body might respond to your having instructed your staff to act in breach of an Order of the Court. I would think that, at the very least, you would be precluded from acting for the Respondent in such a motion.

(2) The voice message left with opposing counsel's office, as described in the following paragraphs of a letter to you by opposing counsel on

[22] Schedule "**M**" - Rule 6 of Chapter 1 of the Code, in effect until November 1, 2011.

December 23, 2008:

> I have reviewed your correspondence received in my office during my absence on Friday, December 19th 2008 and have discussed the content of your correspondence with my client. My staff, as they have been instructed to do, provided your office with immediate notice that I was not in the office to respond to the demand/time line in your fax. My staff also advise that you left an abrupt voice message on the office answering machine, suggesting that my absence from the office and failure to immediately respond to your fax - was somehow 'game playing'.
>
> Please be advised that I have never been accused of acting in any manner that might be construed or interpreted as less than ethical, professional, and forthright and I take some exception to your unfounded verbal assertions received by my staff.

(3) The following paragraphs in your letter of January 5, 2009, to opposing counsel:

> You speak of ethical issues in the same series of correspondence as you inform that you have appeared to have advised your client to breach the Restraining Order yet again, by attending at the matrimonial home on January 8, 2009, with two of his [●] buddies in tow. Somehow, it would appear, the logic behind this anticipated breach, or lack of logic, more to the point, is that if he brings enough of his buddies who are also members of the [employer], that he Is magically granted a window of immunity from the Order of Justice Kent. I suggest that you may be counseling an offense, and I strongly suggest you get some legal advice of your own.
>
> To place this in perspective, it is important that one realizes that in the first instance, your office was the agent or the breach of the Restraining Order. When we brought this to your attention, you were silent in response. Now you are advising your client to breach the Order yet once again, which anticipated breach will be, to the best or our knowledge, your client's seventh.
>
> As they say on the golf channel, where decorum and delicateness of tone are of the utmost importance, and understatement becomes "de rigueur":
>
> Oh my! Oh my!
>
> Please be advised that your letters regarding the anticipated January 8 breach are being sent to the Calgary City Police. Moreover, they are being sent to the

> [supervisor] overlooking a number of matters involving your client. I strongly suggest your client **not** attend at the matrimonial home, of which my client has exclusive possession. …
>
> I am advised by the practice adviser in Calgary, that when you appear on a file in this province, that your conduct is governed by the code of professional conduct of the Law Society of Alberta. I would refer you to the practice adviser in Calgary for what would appear to be some much-needed advice. Her name is [N.C.], and her telephone number is (403) [●●●-●●●●]. She is a very nice lady, and will assist you in understanding in greater detail your anticipated course of action. [emphasis in original]

b. Your failure to respond within a reasonable time to the following correspondence from opposing counsel, which is inconsistent with the duty to be courteous described in the Commentary to Rule 6 of Chapter 1 of the Code:[23]

(1) The letter dated December 10, 2008, from opposing counsel to you:

> I would appreciate a response to:
>
> a) my requests of November 14 for your client's personal bank accounts, RRSP savings, credit card debt as at time of marriage and date of separation/statement of claim;
> b) my numerous inquiries, most recently as at Dec 3rd, with respect to [L.O.]'s attendance at the mandatory Parenting after Separation program; and
> c) my inquiries with respect to the preparation, assessment and listing of the family home in my December 4th correspondence.

(2) The letter dated December 15, 2008, from opposing counsel to you:

> I have not received responses to my correspondence dated November 14, December 3, December 4, and December 10th, 2009 [sic].
>
> Further, I await confirmation that you agree with the format and content of the Order we provided last week, so that it may be issued by the Court.

[23] Schedule "**M**" - Commentary to Rule 6 of Chapter 1 of the Code in effect until November 1, 2011.

Please advise when I may anticipate some written response

(3) The letter dated December 23, 2008, from opposing counsel to you:

Thank you for providing [L.O]'s Certificate of Completion of the Parenting After Separation today. I continue to await a response to the balance of my inquiries contained in my correspondence of November 14, December 3, December 4, December 10th, and December 15th 2009 [sic].

(4) The letter dated December 29, 2008, from opposing counsel to you:

I continue to await a response to my various previous correspondence. I suggest that your continued failure to respond is verging on unethical and I ask that you respond soon to those and this correspondence.

(5) The letter dated December 30, 2008, from opposing counsel to you:

I have not had a response to my inquiries in my letter of December 23, 2008.

…

Neither of our clients can afford to divide their property 'one piece at a time'. The issue of who retains the car at the end of the day may be moot – [J.O.] is prepared to be very generous as outlined in our previous correspondence. We have asked you to outline what it is that your client wants in a property settlement. You have failed to do so. A negotiated settlement is not possible where only one party participates in the negotiation.

(6) The letter dated January 3, 2009, from opposing counsel to you:

As a result of our obvious inability to agree with what transpires orally between our offices, in November I asked that all communication be in writing. When you advise that your "instructions me to conserve funds, and not to debate with me further by letter" are you advising that:

a) I will not receive responses to my previous inquiries in my previous inquiries in my previous correspondence that you are now suggesting are "elements of comparison" …
b) I will not receive the documentation you advised was to be served in the near future? …
c) I will not receive responses to this or any future inquires related to this matter and the outstanding issues between our clients?
d) All further decisions with respect to our client's and their issues are to be made by the courts?

> This will be significantly more costly to both our client's [sic] than merely responding to written inquiries.
>
> …
>
> With respect to your 'invitation to treat', [J.O.] did provide a very generous offer to settle all outstanding issues in November. He advises he is prepared to consider [L.O.]'s request for interim spousal support above that which he offered in November if both the need and means for doing so can be demonstrated. You have not provided any materials from which you draw your proposed figures for support.

(7) The letter dated January 15, 2009, from opposing counsel to you:

> We continue to await your client's position with respect to a property settlement and her budget of expenses, amongst other items previously requested. We look forward to receiving these materials

c. Your refusal to consent to opposing counsel appearing in Court by telephone conference, which conduct is contrary to the duty to be courteous as described in Commentary to Rule 6 of Chapter 1 of the Code,[24] as described in the following documents:

(1) The letter dated January 3, 2009, from opposing counsel to you:

> Please advise, both my office and the court, that you continue to consent to my appearance before the court by telephone conference.

(2) The following paragraph in your letter of January 5, 2009, to opposing counsel:

> Whereas I had initially been inclined to consent to your appearance in Court by telephone, as a result of what appears to be serious breaches of the code of conduct by you, my instructions are to **no longer consent to your appearance by telephone**. I do not want you giving evidence over the phone, or complicating this matter further by any other ethical breaches for which it would be too expensive to make you accountable. Please get an agent, who presumably, regularly practices law in the province of Alberta.

(3) The letter dated January 6, 2009, from opposing counsel to you:

> Please also advise whether [L.O.] has reconsidered the needless expense [J.O.] will incur if she is not prepared to consent to my attendance by telephone.

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[24] Schedule "**M**" - Commentary to Rule 6 of Chapter 1 of the Code in effect until November 1, 2011.

(4) The letter dated January 15, 2009, from opposing counsel to you:

> Alternatively, if you do not wish to leave the matters to the Special Hearing date, I do ask that you provide your written consent to allow my appearance by telephone on which ever regular chambers date you may advise works for you and your client. Neither of our clients can afford the expense of having me appear in person if it is not necessary. I do affirm that I have made arrangements to travel to Calgary for the Special Chamber's Hearing scheduled for March 16th, 2009 @ 1:00 pm.

C. Complaint CO.2013.2299 (Complainant: [M.M.])

6. **It is alleged that you failed to serve your client**, particulars of which include:

a. Failing to prosecute your clients' action promptly, contrary to Commentary G1(a) to Chapter 2 of the Code,[25] by incurring a delay of six months between the initial meeting with your clients on January 20, 2004, and the filing of the Statement of Claim, Attachment Order, and supporting documents on July 19, 2004 (the "**Pleadings**"), when you knew, or ought to have known, that there were reasonable grounds for believing that the Defendants were dealing with, or likely to deal with, their exigible property in a manner that would be likely to seriously hinder your clients in the enforcement of a judgment,[26] including:

(1) Failing to take substantive steps to prepare the Pleadings between January 20, 2004, and April 12, 2004;
(2) Failing to take any steps in the preparation of the Pleadings between May 19, 2004, and June 14, 2004; and
(3) Failing to file the Pleadings between the signing of your client's Affidavits on June 15 and 18, 2004, and the filing of the Pleadings on July 19, 2004.

b. Failing to adequately explain the following legal issues to your clients, contrary to Rule 12 of Chapter 9 of the Code[27] and to Commentary G.1(c)(iv) of Chapter 2 of the Code;[28]:

(1) The anticipated additional costs associated with obtaining an Attachment Order; and
(2) The nature of an Attachment Order, leaving them with the impression that it would expire within one year of having been issued.

c. Failing to keep your clients informed of developments in the litigation, contrary to Rule 14 of Chapter 9 of the Code,[29] including:

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25 Schedule "**N**" - Commentary G.1(a) to Chapter 2 of the Code, in effect at that time.
26 Schedule "**O**" - Section 17(2) of the *Civil Enforcement Act* in effect at the time of the litigation.
27 Schedule "**P**" - Rule 12 of Chapter 9 of the Code, in effect at that time.
28 Schedule "**N**" - Commentary G.1(c)(iv) of the Code, in effect at that time.
29 Schedule "**P**" - Rule 14 of Chapter 9 of the Code, in effect at that time.

(1) Between September 24, 2004, and October 11, 2006, failing to keep your clients informed about:

a) The numerous requests in writing and by telephone by opposing counsel seeking the Home Inspection Report;
b) The existence of Affidavits filed by the Defendants on February 3, 2005, and served on your office shortly thereafter; and
c) The existence of a Statement of Defence and Counterclaim filed by the Defendants on July 12, 2006, and served on your office shortly thereafter.

(2) Between October 11, 2006, and February 7, 2012, in your capacity as the solicitor of record [which you still were given your failure to serve on opposing counsel a written notice of your intention to withdraw pursuant to Rule 555 (under the old *Rules of Court*)[30] and Rule 2.29 (under the new *Rules of Court*)[31]], failing to keep the Martenses informed about the following:

a) Service on your office of an Application to Strike for want of prosecution, filed on behalf of the Defendants on April 29, 2011;
b) Adjournments that you requested from opposing counsel following service of the Defendants' Application to Strike; and
c) Discussions that you had with opposing counsel about seeking to discontinue the action, contrary to Rule 15(b) of Chapter 9 the Code.[32]

(3) Between February 7, 2012, and April 27, 2012, in your capacity as the solicitor of record [which you still were because, although you filed a Notice of Withdrawal of Lawyer of Record and served it on opposing counsel, you did not serve a copy of the Notice on the [M's], as per Rule 2.29(1)(a) of the Rules of Court, nor did you file an Affidavit of Service of the Notice, as per Rule 2.29(1)(b) of the Rules of Court[33]], failing to keep the [M's] informed about the telephone messages received from opposing counsel about the Defendants' Application to Strike, contrary to Rule 2.01(2), 2.01(1)(d) and 2.02(1) of the Code.[34]

d. On April 27, 2012, you were paid an additional retainer of $500.00 by the [M's], and thereafter failed to provide conscientious service to the [M's] contrary to Rule 2.02(1) of the Code,[35] by:

(1) Failing to provide the [M's] with a copy of their file materials in advance of

30 Schedule "**Q**" - Rule 555 of the "old" Rules of Court in effect at that time.
31 Schedule "**R**" - Rule 2.29 of the "new" Rules of Court in effect at that time.
32 Schedule "**P**" - Rule 15 of Chapter 9 of the Code of Professional Conduct in effect at the time.
33 Schedule "**R**" - Rule 2.29 of the "new" Rules of Court in effect at that time.
34 Schedule "**S**" - Rule 2.01(1) and 2.01(2) of the Code of Conduct, in effect at that time.
35 Schedule "**T**" - Rule 2.02 of the Code of Conduct, in effect at that time.

the Defendants' Application to Strike their claim on May 1, 2012;

(2) Failing to appear in Court on May 1, 2012, during the Application to Strike, to assist the [M's];

(3) Advising the [M's] before their appearance that they should be sure to advise the Court that you had been in touch with opposing counsel a few years earlier to let him know that you no longer represented the [M's], even though you knew, or ought to have known, that you were still their solicitor of record because of your failure to comply with the Rules of Court that governed your withdrawal of a solicitor of record; and

(4) Failing properly account for your services to the [M's] by:

a) Failing to credit them $164.72 that should have been in their trust account; and

b) Failing provide legal services in the amount charged in your account for services dated May 16, 2012.

7. **It is alleged that you failed to respond to another lawyer on a timely basis**, particulars of which include failing to respond to the following letters and telephone messages, each of which contemplated a reply from you, contrary to Rule 5 of Chapter 4 of the Code[36] (in effect from 2004 to 2011) and Rule 6.02(7) of the Code (in effect thereafter):[37]

(1) The letter dated February 3, 2005;
(2) The voice message left on April 15, 2005;
(3) The voice message left on April 19, 2005;
(4) The letter dated April 28, 2005;
(5) The letter dated July 20, 2005;
(6) The letter dated August 30, 2005;
(7) The letter dated May 31, 2006;
(8) The telephone call dated July 19, 2006;
(9) The letter dated January 23, 2008;
(10) The telephone message left on February 4, 2008;
(11) The telephone conversation and letter dated November 9, 2011;
(12) The letter dated January 4, 2012;
(13) The letter dated February 1, 2012; and
(14) The voice message left on April 12, 2012.

8. **It is alleged that you failed to respond promptly or completely to the LSA**, particulars of which are described below and which are contrary to section 53(3)(a) of the *Act*,[38] and Rule 6.01(1) of the Code:[39]

a. Pursuant to the written request dated December 11, 2013, of the Complaints Resolution Officer, failing to provide a written response by the agreed-upon

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36 Schedule "**U**" - Rule 5 of Chapter 4 of the Code of Professional Conduct.
37 Schedule "**V**" - Rule 6.02(7) of the Code of Conduct.
38 Schedule "**G**" - Section 53(3)(a) of the *Act*.
39 Schedule "**E**" - Rule 6.01 of the Code of Conduct.

deadline of February 3, 2014, despite two extensions being granted:

(1) From January 10, 2014, to January 30, 2014; and
(2) From January 30, 2014, to February 3, 2014.

b. Pursuant to the written request dated February 10, 2014, by the Manager-Conduct, made under section 53 of the *Act*, failing to provide a written response, or to seek an extension, by the deadline of February 25, 2014;

c. Failing to provide a written response, or to seek an extension, by your self-imposed deadline of April 14, 2014;

d. Failing to provide a written response by the agreed-upon deadline of September 3, 2014, despite consideration having been made over the previous six months of the circumstances,

(1) Described in your letter of April 23, 2014;
(2) Described in your letter of May 9, 2014;
(3) Described in your letter of June 5, 2014;
(4) Described in your letter of June 27, 2014;

and additional extensions having been granted:

(1) From July 21, 2014, to July 31, 2014; and
(2) From August 18, 2014, to September 3, 2014.

e. Failing to provide a written response after being informed by letter dated September 5, 2014, that the Manager-Conduct was ready to start her final review of the complaint;

f. Failing to provide a written response pursuant to your letter of October 30, 2014, in which you stated that the distracting matter has come to an end and you would provide a response by October 31, 2014; and

g. Failing to provide a written response despite being advised on November 19, 2014, that the Manager-Conduct had completed her review and intended to refer the complaint to a Panel of the Conduct Committee.

APPENDIX "B"

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

CHRISTIAN SYLVA OUELLETTE

HEARING FILE HE.2013.0044

AGREED STATEMENT OF FACTS

1. All references to Tab numbers in this Agreed Statement of Facts are to the corresponding exhibits in the Book of Exhibits.

A. INTRODUCTION

2. Christian Sylva Ouellette was admitted as a member of the Law Society of Alberta (the "**LSA**") on September 14, 1992.

3. At all material times, Mr. Ouellette practiced law as a sole practitioner in Calgary, Alberta.

B. CITATIONS

4. The citations that form the basis of this hearing arise out three complaints against Mr. Ouellette.

5. On March 12, 2015, the Twice-Amended Notice to Solicitor was served on Mr. Ouellette.

6. On July 6, 2015, Citation #4 was amended by direction of the Chair of Conduct to read as follows (changes in bold):

> 4. It is alleged that Mr. Ouellette threatened the Complainant, J.O., with criminal proceedings, **and with quasi-criminal proceedings, namely, child welfare proceedings,** in order to gain a benefit for his client, and that such conduct is conduct deserving of sanction; and
>
> **Exhibit A1 (Tab 23) - Pre-Hearing Conference Report dated July 6, 2015**

7. For ease of reference, the citations are repeated here and grouped by complainant:

> **Complaint File CO[•](Complainant: LSA)**
>
> 1. It is alleged that Mr. Ouellette failed to cooperate with Practice Review, and that such conduct is conduct deserving of sanction;

2. It is alleged that Mr. Ouellette failed to reply promptly and completely to communications from the Law Society regarding his failure to cooperate with Practice Review, and that such conduct is conduct deserving of sanction; and

3. It is alleged that Mr. Ouellette failed to comply with the accounting rules of the Law Society, and that such conduct is conduct deserving of sanction.

Complaint CO[•] (Complainant: J.O.)

4. It is alleged that Mr. Ouellette threatened the Complainant, J.O., with criminal proceedings, and with quasi-criminal proceedings, namely, child welfare proceedings, in order to gain a benefit for his client, and that such conduct is conduct deserving of sanction; and

5. It is alleged that Mr. Ouellette failed to be courteous to J.O.'s counsel, and that such conduct is conduct deserving of sanction.

Complaint CO[•] (Complainant: M.M.)

6. It is alleged that Mr. Ouellette failed to serve his client, and that such conduct is conduct deserving of sanction;

7. It is alleged that Mr. Ouellette failed to respond to another lawyer on a timely basis, and that such conduct is conduct deserving of sanction; and

8. It is alleged that Mr. Ouellette failed to respond promptly or completely to the LSA, and that such conduct is conduct deserving of sanction.

8. On June 3, 2015, a particularization of citations, including the anticipated amendment to Citation 4, was served on Mr. Ouellette.

Exhibit A1 (Tab 20) – Service Letter dated June 3, 2015
Binder - Particularization of Citations with Schedules

C. STATEMENT OF FACTS

1. Complaint CO2012.1770 (Complainant: LSA)

a. Introduction

9. On July 25, 2012, [K.W.], Manager-Conduct, opened a formal complaint (the "**LSA Complaint**") regarding Mr. Ouellette's conduct following receipt of a report from the Practice Review Committee sent pursuant to section 58(5) of the *Legal Profession Act* (the "***Act***").

Tab 1 - Letter dated July 25, 2012

10. For ease of reference, the overall factual context regarding the LSA Complaint has been represented visually in a chronology provided under **Tab 2** (the "**Chronology**").

Tab 2 – Chronology

b. Facts

i. Rule 130 Follow Up Audit

11. The LSA Complaint arises out of a follow-up audit of Mr. Ouellette's practice that was conducted in 2008 pursuant to Rule 130 of the Rules of the LSA (the "**Follow-Up Audit**") (in red on the Chronology). The term "Follow-Up Audit" was coined because it followed up on a previous audit that had occurred in 2006 (in blue on the Chronology).

Tab 2 – Chronology
Tab 3 - Letter dated July 31, 2009

12. On July 31, 2009, [G.A.], Manager of Audit and Investigations for the LSA, wrote to Mr. Ouellette outlining sixteen categories of exceptions to the accounting Rules revealed during the Follow-Up Audit, one of which was the failure to have filed a Form T (5-2) for the year 2008.

Tab 3 - Letter dated July 31, 2009

13. On September 21, 2009, Mr. Ouellette filed his Form T (5-2) for the year 2008, which had been due on March 31, 2009.

Tab 4 -LSA DBA Summary

14. On September 3, 2010, [G.A.] provided an internal memo to [K.W.] regarding the Follow-Up Audit, outlining four exceptions to the accounting Rules. He also recommended that Mr. Ouellette be cited for failing to follow the accounting Rules and that he be required to pay for the costs of the Follow-Up Audit

Tab 5 - Memo dated September 3, 2010 with attachments

ii. Rule 130 Follow Up Audit Complaint

15. On September 14, 2010, [B.H.], a Formal Complaints Reviewer with the LSA, wrote to Mr. Ouellette to advise him that a formal complaint had been opened based on the materials received from [G.A.]. [B.H.] requested that Mr. Ouellette provide a written response to the allegations contained in the internal memo.

Tab 6 - Letter dated September 14, 2010

16. Mr. Ouellette provided a written response on October 6, 2010, which included a cheque in payment of his portion of the costs of the audit. On December 17, 2010, [B.H.] wrote back, requesting that Mr. Ouellette provide any comment that he wanted to be considered as part of [B.H.]'s consideration of the complaint, no later than January 7, 2011.

Tab 7 - Letter dated October 6, 2010
Tab 8 - Letter dated December 17, 2010

17. On January 6, 2011, [G.A.] wrote to Mr. Ouellette outlining the results of an audit that had been completed in late 2010. The fieldwork conducted on November 23, 2010, had resulted in a checklist of eight outstanding action items being provided to Mr. Ouellette. The audit itself

revealed 11 exceptions to the accounting Rules. [G.A.] requested that three documents be provided to him within 30 days.

Tab 9 - Letter dated January 6, 2011

18. On January 18, 2011, and January 21, 2011, Mr. Ouellette provided responses to some of the outstanding action items and to some of the exceptions outlined in [G.A.]'s letter.

Tab 10 - Letter dated January 18, 2011
Tab 11 - Letter dated January 21, 2011

19. On September 15, 2011, a Conduct Committee Panel considered whether Mr. Ouellette had failed to comply with the accounting rules of the LSA. The Conduct Committee Panel directed that he be referred to the Practice Review Committee pursuant to section 58 of the *Act* to carry out a general review and assessment of Mr. Ouellette's conduct and practice.

Tab 12 – Conduct Panel Minutes dated September 15, 2011

iii. *Rule 130 Follow Up Audit Referral to Practice Review*

20. On September 19, 2011, [K.W.] wrote to Mr. Ouellette to advise him of the direction of the Conduct Committee Panel.

Tab 13 – Letter dated September 19, 2011

21. On October 13, 2011, [H.K.], Deputy Executive Director of the LSA, wrote to Mr. Ouellette confirming that the referral to Practice Review on September 15, 2011, would be incorporated into a pre-existing referral that had been made in 2009 (in orange on the Chronology). [H.K.] noted that, "This latest referral arises from, but will not be limited to, your failure to comply with the accounting rules of the Law Society as set out in the Audit Report dated July 31, 2009."

Tab 14 – Letter dated October 13, 2011

22. The pre-existing practice review referral discussed by [H.K.] had come into existence out of two earlier complaint files, namely:

    a. A complaint arising out of the original Rule 130 Audit in 2006, which, on May 12, 2009, had been referred to Practice Review (in blue on the Chronology); and

    b. A complaint filed by a person named [E.M.], which, on May 12, 2009, had also been referred to Practice Review (in green on the Chronology). The [E.M.] Complaint had simultaneously been referred to a hearing, which eventually resulted (1) in a nullity and (2) in a "not guilty" decision on May 7, 2012.

Tab 2 - Chronology

23. In his letter of October 13, 2011, [H.K.] also requested that Mr. Ouellette provide the following documents by October 28, 2011, to [B.C.], Manager of Practice Review at the LSA:

    a. A letter dated March 18, 2011, which requested responses to four questions by October 1, 2011;

    b. The Forms T for 2009 and 2010, which were overdue, along with an explanation for the delay; and

c. An updated description of his practice.

Tab 14 – Letter dated October 13, 2011

24. On November 10, 2011, [B.C.] wrote to Mr. Ouellette stating that she had not received a response to [H.K.]'s letter of October 13, 2011, and requested that one be provided before the next meeting of the Practice Review Panel on November 23, 2011.

Tab 15 – Letter dated November 10, 2011

25. On November 14, 2011, [D.C.], a Staff Lawyer in the Practice Review department of the LSA, submitted a report pursuant to section 58 of the *Act* regarding Mr. Ouellette.

Tab 16 – Section 58 Report dated November 14, 2011

26. On November 22, 2011, Mr. Ouellette provided responses to [F.L.], a staff member in the trust safety department of the LSA, with respect to an email that she had sent to him on August 23, 2011, regarding outstanding items that had been identified in the audit report dated January 6, 2011.

Tab 17 – Letter dated November 22, 2011

27. On November 22, 2011, Mr. Ouellette telephoned [B.C.] and requested his matter not be considered by the Practice Review Panel on November 23, 2011, for the reasons summarized in an email by [B.C.] to the members of the Practice Review Panel.

Tab 18 – Email dated November 22, 2011

28. On November 23, 2011, a Practice Review Panel met by telephone conference and extended the deadline for submissions to November 30, 2011, so that Mr. Ouellette could provide further information to it. The panel also directed that Mr. Ouellette submit the following documents by the following deadlines:

a. Monthly trust and general reconciliations for January to September of 2011, with all required supporting documentation, no later than November 30, 2011. He was also directed to submit all future monthly reconciliations no later than 7 days after the 30-day period of completion of the reconciliation allowed under the Rules;

b. All accounting data defined as "Prescribed financial records" under the accounting Rules on a monthly basis, starting on December 1, 2011; and

c. By January 31, 2012, successfully complete the LESA education modules relating to the Trust Safety program and provide [B.C.] with copies of the certificates of completion for each module; and

d. A written acceptance of the above-noted undertakings by November 30, 2011.

Tab 19 – Minutes dated November 23, 2011
Tab 20 –Letter dated November 23, 2011

29. On December 1, 2011, Mr. Ouellette provided his Practice Snapshot to [B.C.], in response to [H.K.]'s letter of October 13, 2011, which had set a deadline of October 28, 2011.

Tab 21 – Fax dated December 1, 2011

30. On December 7, 2011, the Practice Review Panel met by telephone conference to discuss Mr. Ouellette's practice review file. By then,

a. The monthly trust reconciliations requested on November 23, 2011, had been provided to [B.C.] and forwarded to the Trust Safety department for review;

b. The CPD Plan for 2010 had been provided. The CPD Plan for 2011 had not yet been provided;

c. The report on the CPD Plan for 2010 and 2011, as requested in the letter of March 18, 2011, had not yet been provided;

d. Forms T for 2010 (due on March 30, 2010) and 2011 (due on March 30, 2011) had not yet been provided; and

e. The undertakings requested in the November 23, 2011, letter had not yet been provided.

Tab 22 - Minutes dated December 7, 2011

31. The Practice Review Panel made the following directions, which were communicated to Mr. Ouellette by letter dated December 15, 2011:

a. That the Practice Review file relating to the 2009 referral be closed because Mr. Ouellette had been provided the opportunity to engage in the Practice Review process and did not do so to the satisfaction of the Practice Review Committee. Given the ongoing failure to satisfactorily engage in this process, there was nothing more that Practice Review could offer;

b. That a report be returned to the Conduct Committee which would identify a number of concerns arising out of the 2009 and 2011 referrals, including:

i. Exhibiting an overall lack of understanding and appreciation for the Practice Review process and the underlying reasons for his referral thereto;

ii. Exhibiting an overall lack of understanding and appreciation of the seriousness and gravity of his failure to genuinely embrace and implement the recommendations of the Practice Assessors imposed as directions of the Practice Review Panel by letter dated March 18, 2011;

iii. Failing to provide the 6-month status report as requested, or to explain why it could not be provided;

iv. Failing to submit the CPD Plan for 2011;

v. Failing to submit the Forms T that were due on March 30, 2010 and March 30, 2011, despite repeated requests; and

vi. Overall, generally failing to cooperate with Practice Review.

c. That if Mr. Ouellette was found guilty in the [E.M.] Complaint, that a meaningful sanction be imposed (as noted, Mr. Ouellette was eventually found not guilty in the [E.M.] Complaint);

d. That Mr. Ouellette be required to provide a number of undertakings, including:

i. Submitting monthly general reconciliations from January to October 2011, no later than January 30, 2012;

ii. Submitting monthly trust and general reconciliations on a monthly basis (starting with November 2011) with all required supporting documentation, with future submissions to be made within 37 days of the month-end of the month being reconciled;

iii. Submitting monthly all accounting Data defined as "Prescribed financial records" of the Rules;

iv. Attending LESA education modules regarding the Trust Safety program, and providing certificates of completion by January 31, 2012;

v. Providing, by January 15, 2012,

1. The CPD Plan for 2011;

2. The report on steps taken in response to CPD Plan for 2010 and 2011, by January 15, 2011; and

3. The Forms T that were due on March 30, 2010 and March 30, 2011.

vi. Submit an application to register a law firm and to become a responsible lawyer by a deadline provided by the LSA.

Tab 23 – Letter dated December 15, 2011

32. As a result of this decision,

a. The Practice Review file arising out of the [E.M.] Complaint was closed;

Tab 24 - Conduct Committee Panel Minutes dated February 28, 2012

b. The Practice Review file arising out of the original Rule 130 Audit was also closed, although there is no explicit evidence of this having been done; and

c. The Practice Review file arising out of the Rule 130 Follow-Up Audit was kept open.

33. On December 15, 2011, pursuant to section 58(5) of the *Act*, the Practice Review Panel sent its report to the Conduct Committee.

Tab 25 – Report dated December 15, 2011

iv. Rule 130 Follow Up Audit Continues in Practice Review

34. On January 3, 2012, [M.R.], a staff member in the Practice Review department of the LSA, spoke to Mr. Ouellette to arrange for a visit by [C.E.], a staff accountant in the trust safety department of the LSA.

Tab 26 – Telephone Notes

35. On January 4, 2012, Mr. Ouellette wrote to confirm the substance of their conversation in writing and noted that he would respond to the November and December letters at his earliest convenience, after dealing with a time-sensitive Court of Appeal stay application.

Tab 27 – Letter dated January 4, 2012

36. On January 20, 2012, [M.R.] wrote to Mr. Ouellette as a follow up to [B.C.]'s letter of December 15, 2012, noting that Mr. Ouellette had started submitting the monthly trust reconciliations, but had not responded to the balance of the requests. She set a new deadline of January 27, 2012, to provide the materials.

Tab 28 – Letter dated January 20, 2012

37. On January 27, 2012, Mr. Ouellette responded to [M.R.], confirming that he would respond to her previous letter at his earliest availability, but that there were two Law Society related items and three urgent litigation matters that needed to be addressed first. He expected to be able to respond shortly after February 4, 2012.

Tab 29 – Letter dated January 27, 2012

38. On January 31, 2012, Mr. Ouellette was approved to operate a law firm and his application to be a responsible lawyer was approved with conditions, one of which was to complete the LESA education modules by February 13, 2012.

Tab 30 – Letter dated January 31, 2012

39. On January 31, 2012, Mr. Ouellette was approved to maintain a trust account, under the conditions that he submit the following documents:

    a. The Forms T for 2009 and 2010, no later than February 15, 2012;

    b. The monthly trust reconciliations for a six month period starting with the January 31, 2012 trust reconciliation, due on February 29, 2012;

    c. The trust journal for a six month period starting with the January 31, 2012 trust journal, due on February 28, 2012;

    d. The monthly general bank reconciliations for a six month period starting with the January 31, 2012 general reconciliation, due on February 28, 2012;

    e. The general journal for a six month period starting with the January 31, 2012, due on February 28, 2012; and

    f. The automated data in lieu of the Accountants Report starting with the year ended December 31, 2012, due on January 31, 2013.

Tab 31 – Letter dated January 31, 2012

40. On February 13, 2012, [M.R.] followed up in writing and requested that he provide her with the outstanding requests, noting that:

    a. His application to register a law firm and to become a responsible lawyer had been received and approved;

b. She had not yet received the trust reconciliations for November 2011 (due on January 6, 2012) and December 2011 (due on February 3, 2012); and

c. She requested that all missing material be provided to her by February 24, 2012.

Tab 32 – Letter dated February 13, 2012

41. On February 27, 2012, Mr. Ouellette wrote back, stating that he was working on a response, but had been delayed by three other time sensitive LSA matters to address.

Tab 33 – Letter dated February 27, 2012

42. On February 28, 2012, Mr. Ouellette provided the trust and general reconciliations since January 2011 to [B.C.]. He also provided an updated about:

a. The certificate of completion, which he was unable to locate;

b. The status of the Forms T, which he stated would be ready by the next day; and

c. An update about the CPD plan for 2012, which he said had already been sent by his assistant.

Tab 34 – Letter dated February 28, 2012

43. On February 28, 2012, Mr. Ouellette provided the trust and general reconciliations for January 2012.

Tab 35 – Letter dated February 28, 2012

44. On February 29, 2012, Mr. Ouellette wrote to [B.C.] and advised her that had been trying to get in contact with the accountant for the completion of the Form T, which he would forward to her upon receipt.

Tab 36 – Letter dated February 29, 2012

45. On March 2, 2012, Mr. Ouellette provided his Form T for 2009, which had been due on March 31, 2010, advising that his Form T for 2010 was being completed.

Tab 37 – Letter dated March 2, 2012
Tab 4 – LSA DBA Summary

46. On March 30, 2012, Mr. Ouellette provided his trust and general reconciliations for February 2012.

Tab 38 – Letter dated March 30, 2012

47. On April 3, 2012, [B.C.] wrote to Mr. Ouellette and set out which requests from the December 15, 2011 letter had been complied with, and which ones hadn't. By then, the following ones remained outstanding:

a. He had not returned the signed copy of the letter acknowledging the undertakings;

b. Although he could not find the trust safety certificates of completion, he had not yet identified the dates on which he had attended the course;

c. The CPD for 2011 had not yet been provided;

d. The report regarding his CPD plans had not been received; and

e. The Form T for 2010 had not been received.

Tab 39 – Letter dated April 3, 2012
Tab 40 – File Review dated April 3, 2012

48. On April 12, 2012, [G.A.] wrote to Mr. Ouellette outlining the findings of an examination that had been conducted of the monthly trust reconciliations for the year 2011 and for the month of January 2012 by [C.E.]. Eight categories of exceptions to the accounting Rules were highlighted and three requests for additional documents were made. The report also noted that during her office visit on January 4, 2012, [C.E.] had explained to Mr. Ouellette the theory behind trust reconciliation and recommended trust reconciliation procedures.

Tab 41 – Letter dated April 12, 2012

49. On April 30, 2012, Mr. Ouellette provided his trust and general reconciliations for March 2012, to [M.R.].

Tab 42 – Letter dated April 30, 2012

50. On May 11, 2012, [G.A.] wrote to Mr. Ouellette as a follow up to the examination report of April 12, 2012, after having received additional information on March 1, 2012. Three categories of exceptions to the accounting Rules were highlighted and five requests for additional documents were made, three of which had been made previously in the report of April 12, 2012.

Tab 43 – Letter dated May 11, 2012

51. On May 31, 2012, Mr. Ouellette provided his trust and general reconciliations for April 2012.

Tab 44 – Letter dated May 31, 2012

52. On June 19, 2012, a Practice Review Committee met to review the status of Mr. Ouellette's practice review file. A summary of the previous requests made to Mr. Ouellette and the responses provided by him are listed in the minutes of the meeting. After reviewing the file, the Practice Review Panel directed the following:

a. That the Practice Review file be closed;

b. That a formal complaint be filed against Mr. Ouellette noting:

i. His failure to respond to the letter of December 15, 2011, despite numerous extensions;

ii. His failure to provide his requested Form T and other relevant financial documents; and

iii. His lack of timely and fulsome responses.

c. That a report be prepared advising that Mr. Ouellette was not a suitable candidate for involvement with the Practice Review Committee.

Tab 45 – Minutes dated June 19, 2012

53. On July 8, 2012, [G.A.] wrote to Mr. Ouellette outlining the findings of an examination that had been conducted of the monthly trust reconciliations for January to April 2012. [G.A.] noted that he was still missing records from January and March, which were still outstanding at the time of the report. Four categories of exceptions to the accounting Rules were highlighted and a list of missing documents were requested.

Tab 46 – Letter dated July 8, 2012

54. On July 24, 2012, a report was sent to the Conduct Committee from the Practice Review Committee pursuant to section 58(5) of the *Act*, recommending that a complaint be made against Mr. Ouellette, noting that:

a. The Practice Review Panel directed that the Practice Review file be closed on the basis that Mr. Ouellette had failed to cooperate with Practice Review, had failed to respond in a complete and appropriate manner to Practice Review, and had failed to exhibit an understanding and appreciation of the process;

b. The concerns of the Practice Review Panel were that:

i. Mr. Ouellette continued to exhibit an overall lack of understanding and appreciation for the Practice Review process and the underlying reasons for his referral thereto;

ii. Mr. Ouellette exhibited an overall lack of understanding and appreciation of the seriousness and gravity of his failure to genuinely embrace and implement the recommendations of the Practice Review Panel imposed on him pursuant to the of December 15, 2011;

iii. At the time of his referral, Mr. Ouellette had not filed his 2009 Form T (due on March 31, 2010), which was subsequently filed on March 2, 2012;

iv. At the time of his referral, Mr. Ouellette had not filed his 2010 Form T (due March 31, 2011), which still remained outstanding;

v. Mr. Ouellette was required to submit his monthly trust and general reconciliations to Practice Review, but failed to submit complete reconciliations and failed to respond to requests for missing documentation.

c. Overall, Mr. Ouellette had generally failed to cooperate with Practice Review as evidenced by this lack of understanding, lack of appreciation, and failures to provide requested responses or documents; and

d. In the opinion of the Practice Review Panel, Mr. Ouellette had not complied with the spirit of the referral and was not a suitable candidate for referral to Practice Review.

Tab 47 – Report dated July 24, 2012

55. On July 24, 2012, [M.R.] sent a letter to Mr. Ouellette to which was attached the report dated July 24, 2012, and informed him of the Practice Review Committee's decision to close its file. She also asked him to respond to the requests of the Trust Safety Department.

Tab 48 – Letter dated July 24, 2012

56. On August 20, 2012, [G.A.] wrote to Mr. Ouellette outlining the findings of an examination that had been conducted of the monthly trust reconciliations for May 2012. Five categories of exceptions to the accounting Rules were highlighted and a list of missing documents were requested, including all of the documents that had been requested on July 8, 2012.

Tab 49 – Letter dated August 20, 2012

c. Involvement of LSA Conduct Department

57. On July 25, 2012, upon receipt of the report from the Practice Review Committee, [K.W.] opened a formal complaint against Mr. Ouellette. She requested that he provide her with a written response to the report by August 8, 2012.

Tab 50 – Letter dated July 25, 2012

58. On August 29, 2012, Mr. Ouellette responded to [K.W.]'s letter of July 25, 2012, , explaining why he would not be able to respond before September 20, 2012, which reasons included family and work commitments.

Tab 51 – Letter dated August 29, 2012

59. On August 29, 2012, [K.W.] extended the deadline for a response to September 22, 2012. She also asked him to respond to [G.A.]'s letter of August 20, 2012.

Tab 52 – Letter dated August 29, 2012

60. On September 24, 2012, Mr. Ouellette's office wrote to [K.W.] advising that Mr. Ouellette was out of the office that day because of illness, but that he would be able to provide his response upon his return to the office the next day.

Tab 53 – Letter dated September 24, 2012

61. On September 27, 2012, Mr. Ouellette's office wrote to [K.W.] advising that Mr. Ouellette was still out of the office because of illness, but that he would be able to provide his response upon his return late that day.

Tab 54 – Letter dated September 27, 2012

62. On September 27, 2012, Mr. Ouellette provided a response to [G.A]'s letter of July 8, 2012.

Tab 55 – Letter dated September 27, 2012

63. On September 27, 2012, Mr. Ouellette forwarded to [K.W.] a copy of his letter to [G.A.], along with a photograph of the documents that he was sending to [G.A.]. He stated that he would provide a further response by October 1, 2012

Tab 56 – Letter dated September 27, 2012

64. On October 3, 2012, Mr. Ouellette wrote to [K.W.] citing a number of reasons for the delay in providing a response. He stated that he was in the process of ordering the Form T for 2010 from his accountant.

Tab 57 – Letter dated October 3, 2012

65. On October 12, 2012, [K.W.] responded, clarified the nature of the complaint, and extended the deadline for a response to November 9, 2012.

Tab 58 – Letter dated October 12, 2012

66. On November 12, 2012, Mr. Ouellette wrote to [K.W.] and advised her that he had retained counsel to assist him with his response, but that the earliest he would be able to meet with him was on December 12, 2012. He also explained why he was delayed in responding to her and noted that he expected to provide the Form T from 2010 as soon as possible.

Tab 59 – Letter dated November 12, 2012

67. On November 14, 2012, [K.W.] extended the deadline to December 30, 2012, based on fact that Mr. Ouellette stated that he was going to meet with counsel.

Tab 60 – Letter dated November 14, 2012

68. No further response was received from Mr. Ouellette, nor from the counsel with whom he was going to meet on December 12, 2012.

69. On June 28, 2013, a panel of the Conduct Committee considered Mr. Ouellette's conduct and directed that it be dealt with by a Hearing Committee.

70. On August 20, 2013, Mr. Ouellette filed his Form T for 2010, which had been due on March 31, 2011.

Tab 4 – LSA DBA Summary

2. Complaint CO2012.0213 (Complainant: J.O.)

a. Introduction

71. On January 30, 2012, the LSA received a Lawyer Complaint Form from J.O., a Defendant in an action in which Mr. Ouellette was acting for the Plaintiff.

Tab 61 – Lawyer Complaint Form

b. Facts

72. On September 19, 2008, Mr. Ouellette filed a Statement of Claim for Divorce and Division of Matrimonial Property, in which his client, L.O., was named as Plaintiff, and her then spouse, J.O., was named as Defendant. Mr. Ouellette also filed an *ex parte* Restraining Order and a supporting Affidavit on behalf of his client.

Tab 62 – Statement of Claim, Ex Parte Order, Affidavit
Tab 63 – Procedure Card in Action No. 4801-137733

73. That morning, Mr. Ouellette appeared in Court before Madam Justice Kent to request that the *ex parte* Restraining Order be granted.

Tab 64 - Transcript of Proceedings dated September 19, 2008

74. Later that day, Mr. Ouellette drafted a cover letter to accompany the materials that were going to be served on J.O. In his letter, Mr. Ouellette stated the following:

…
I am informing you by virtue of this letter that my client has stopped short of seeking an Order restraining you from carrying a weapon, including your [●] handgun. Had she instructed me to seek an Order preventing you from carrying a gun that Order would, in all probability, have had to have been served upon your [supervisor]. That step would then probably have resulted in an internal investigation into your conduct, including a review of the affidavit in support of the Restraining Order. Please read that affidavit carefully and ask yourself if that is a step you wish to risk having taken. My client did not wish to contribute to your professional demise and a possible termination from your employment.

Accordingly, I would caution you to abide strictly by the terms of the Restraining Order. If you do not, then I will act on instructions already provided to seek an Order preventing you from carrying a weapon, and seek to have that Order served upon [J.O.'s employer]. As well, we will seek to have you Incarcerated for both contempt of Court and as a serious threat to my client's safety. You may wish to seek advice as to the possible ramifications of such a step, which, optimistically, will be unnecessary, as you will see the wisdom of leaving my client strictly alone, both directly and indirectly, which includes no communication with my client or her family by either you or your family. That includes emails.

Please have your counsel contact me at my office so this matter might be able to be resolved without unnecessary litigation.

Tab 65 – Letter dated September 19, 2008

75. On September 24, 2008, a series of letters were exchanged between Mr. Ouellette and [L.G.] of the [G] Law Office Prof. Corp., who had been retained to represent J.O. In particular,

a. [L.G.] wrote to confirm that she had been retained. She also summarized the content of a conversation that she had had with Mr. Ouellette the previous day, during which he stated:

> You advised that the content of your client's affidavit was not intended to harm my client, but was merely to ensure she felt safe, and further that you had argued against the court's suggestion that these issues ought to be raised with Social Services so as to "save my client's career".

Tab 66 – Letter dated September 24, 2008

b. Mr. Ouellette responded, stating in part,

> If your client reduces his position to sworn testimony, it may reduce the inclination of the Court to expunge the two affidavits in question. That increases the risk for your client. …

Tab 67 – Letter dated September 24, 2008

c. [L.G.] responded with a draft consent order setting out deadlines for the exchange of affidavits in advance of a review of the ex parte Restraining Order.

Tab 68 – Letter dated September 24, 2008

76. On October 8, 2008, Mr. Ouellette wrote to [L.G.], stating in part,

> … I suggest that you do not have your client swear an affidavit until you discuss this matter with me.

Tab 69 – Letter dated October 8, 2008

77. On October 9, 2008, Mr. Ouellette served a copy of a Consent Order on [L.G.] in which the deadlines were set for the review of the ex parte Restraining Order.

Tab 70 – Letter dated October 9, 2008

78. On October 16, 2008, Mr. Ouellette wrote to [L.G.], stating in part:

> …
> I advise that at the time of the *ex parte* Order, that the presiding Queen's Bench Justice was inclined to order this matter reported to Child Welfare (Social Services). I was able to fend off that directive on the part of the Court at that time and I did so because I oppose Child Welfare on many files, predominantly successfully, in the process of attempting to keep children with their parents as opposed to having them become wards of the director. Once Child Welfare gets involved, that involvement precludes any directive or Order from the Court of Queen's Bench (other than on appeal) as any Order in favor of the director takes precedence over any Order made pursuant to the *Divorce Act*, and their involvement can be, and often is, traumatic to the emotional well being of the child, particularly upon apprehension, which is typically ex-parte and beyond my clients control.
>
> If this matter develops into a full-blown contest, in which direction it appears to be headed, my client would then file an affidavit in response, and I expect that this would include a copy of the recording which was sent to you by e-mail. Notwithstanding your observations that it may be that the content of the recording might not be admissible in a Criminal Court, on which opinion I presently take no position as I have not researched the point. I can advise that there is strong authority from our Court of Appeal that the usual restrictions on evidence in criminal and civil matters do not apply in family matters. …
>
> In such event, I would expect my instructions will be to not resist any further the Court's referral of this matter to the Child Welfare director. Child Welfare would undoubtedly review my client's original affidavit as well as her reply, including her references to your client's threat with the gun, etc., and in the course of their investigation, the individuals who would become privy to that information would be totally out of my client's control.
>
> Please understand that the above is not any form of threat, but simply an indication of a series of events some of which will occur, and some of

> which may occur, flowing from your Client's alleged conduct and the denial of same under oath. It is simply a preview of a possible cause and effect series of events, which we would suggest your client consider seriously before reducing his materials to a sworn document.
>
> I will consult further with my client on the issue of supervised access in the short-term. However, it seems to me that your client has more far-reaching issues to consider as this matter unfolds then [sic] immediate access to his child. Notwithstanding his stated view and his professed acceptability of his (substandard) approach to child treatment, I would expect that the Court will be reluctant to provide anything more than supervised access until he goes through a risk assessment as a parent. I can almost guarantee, given my extensive experience in these matters, that, if child welfare becomes involved in this matter, that he will have to undergo significant psychological testing and a detailed risk assessment before being allowed anything more than supervised access.
> …
> In closing, please note that the enclosed is on a "'without prejudice" basis, as I take the position we are negotiating whether or not your client swears an affidavit in the form of the materials earlier provided to me, or whether he intends to negotiate a solution to this matter without forcing these issue to full-blown litigation. In short, we are negotiating the issue of forbearance. Accordingly, these materials are privileged and cannot be disclosed unless privilege is waived by both parties.

Tab 71 – Letter dated October 16, 2008

79. On October 17, 2008, [L.G.] wrote to Mr. Ouellette enclosing a draft Consent Order dealing with various issues of access to the child of the marriage and support of L.O.

Tab 72 – Letter dated October 17, 2008

80. On October 17, 2008, Mr. Ouellette responded with two letters, the first one of which stated in part:

> Please find enclosed herein my client's version of events regarding Paragraph 19 of your client's draft materials. If what my client says is true, and is accepted by the Court as being fundamentally what occurred on March 15, 2008, your client's life will be changed dramatically. As I understand it, in speaking with former counsel for [J.O.'s employer], his employment will come to an end. It might well be that his [supervisor] will have an affirmative duty to have criminal charges laid, which is my understanding of the protocol. Further, I am informed that there will be an internal investigation by [the employer], which will be suspended pending the outcome of the criminal charges. You and your client can take it from there.
>
> Clearly, my outlining of the above is not a threat, as there is no mention of my client laying an information. In the event that you might infer that from our correspondence to date, my client has given no indication whatsoever of bringing criminal charges, nor do I have any intention whatsoever of advising her to do so. What I have done, is simply, once

again, pointed, pointed out the possible domino effect of contested litigation on the points raised.

Further, my client advises that she will have the balance of the substance of any necessary affidavit in reply (should the need arise from your client's filing an affidavit along the lines of the materials provided by your office) by Monday, October 20. These materials will include, among other things, a description of what would appear to have been an assault on December 15. 2007, where your client threatened to "drill her head". Upon the preliminary investigation of that matter, which had been reported to 911, my client, in order to minimize the damage to yours, downplayed to the investigating officers her fears flowing from that threat, upon being advised that a further investigation would ensue. If necessary, this reported assault will once again become a live issue.

…

I look forward to your advice as to your client's position on the points raised, and we look forward to an orderly and non-litigious, as amicable is probably not available, resolution to this matter.

Tab 73 – Letters dated October 17, 2008

81. On October 23, 2008, a Consent Order was approved of by the Court, which set down procedural deadlines.

Tab 74 – Consent Order dated October 23, 2008

82. On November 5, 2008, Mr. Ouellette wrote a letter to [L.G.], which stated in part:

…

My client's present inclination is to allow your client to file his affidavit subject always to his paying for her legal costs in the cross-examination thereof, including preparations for cross-examination. The process to date, in light of the allegations of your client's assaults on my client, including the sexual assault, and my client's wishing to protect herself but not necessarily injure your client personally or financially, has been exceedingly expensive for my client. My client's version of events is, I strongly suggest, supported in large part by the recordings of the oral admissions of alleged sexual assault in the voice of your client, together with his admission that he called his son, 1½-year-old boy, a "prick". Your client, to put it mildly, does not appear to be a nice man.

…

I can advise that, as things now stand, my client will be bringing an additional motion returnable November 13, including an application for interim child support in the amount of $646 per month (based on income of $78,000 per year) interim spousal support in the amount of $2,000 per month, and an Order that your client continue to pay the mortgage on the matrimonial home in the amount of $1,500 per month, together with the costs of the Restraining Order and subsequent dealings associated therewith on a solicitor client basis (approximately $9,000).

As to the proposed supervised access of the infant boy to your client, my client will consider that (as earlier indicated) when she has reviewed the

contents of your client's affidavit, as the content thereof will provide her with a basis for what she considers to be the risk management of allowing contact between the child and your client.

Tab 75 – Letter Dated November 5, 2008

83. On November 21, 2008, after a telephone call from [L.G.]'s assistant to L.O.'s father to arrange for somebody to supervise a visit between J.O. and his son, Mr. Ouellette wrote a letter to [L.G.], stating in part:

> …
> Prior to receiving your recent correspondence, I was advised by my client that your office had been in contact with my client's father. A number of issues arises [sic] from that contact:
> …
> 2. My client takes the position that the contact from your office to her father is a breach of Paragraph 3 of the Restraining Order of Justice Kent made September 19, 2006.
>
> 3. I have received instructions from my client to bring an application for contempt against your client in having your office contact my client's family (in this case her father) which is clearly a breach of the Restraining Order described above.
>
> 4. Regrettably, your assistant appears to have acted in breach of the Order. Parliamentary sovereignty may, however, excuse her from a contempt motion. I will leave to your own assessment how your governing body might respond to your having instructed your staff to act in breach of an Order of the Court. I would think that, at the very least, you would be precluded from acting for the Respondent in such a motion.
>
> …

Tab 76 - Letter dated November 21, 2008

84. Between November 25, 2008, and December 4, 2008, Mr. Ouellette and [L.G.] exchanged correspondence regarding access and visitation. On December 3, 2008, Mr. Ouellette wrote a letter to [L.G.] in which he stated:

> My client advises that it is too late for your client to aspire to be referred to as "keeper of the peace".

Tab 77 – Series of letters including letter dated December 3, 2008

85. On December 2, 2008, the Calgary Police Service were alerted to the allegations made by L.O against J.O. and started an investigation.

86. On December 9, 2008, Mr. Ouellette wrote to [L.G.], stating in part:

> …
> As by now you are well aware, your client is under investigation by the Calgary City Police Service in regards to four allegations of assault, two of which were alleged to be sexual assaults. These, together with two

threats with a weapon, one being a knife, and one being a gun, cause my client to be very careful about any issue having to do with .safety where your client is involved. He appears to be a dangerous man, and my client does not want to subject her child to any unnecessary risk. …

Tab 79 - Letter dated December 9, 2008

87. On December 10, 2008, [L.G.] wrote to Mr. Ouellette, stating in part:

> …
> l question how your client will be able to demonstrate need or that my client has the means to provide her with more support than she is already receiving from [J.O.]. You are in possession of my client's budget - as is the court. The income [J.O.] formerly appreciated will be significantly reduced now that he is on leave from [his employer] (as a result of your client's assertions brought as soon as [J.O.] made any formal application for access to [L.O.]).
> …
> I would appreciate a response to:
>
> a) my requests of November 14 for your client's personal bank accounts, RRSP savings, credit card debt as at time of marriage and date of separation/statement of claim;
> b) my numerous inquiries, most recently as at Dec 3rd, with respect to [L.O.]'s attendance at the mandatory Parenting after Separation program; and
> c) my inquiries with respect to the preparation, assessment and listing of the family home in my December 4th correspondence.

Tab 80 - Letter dated December 10, 2008

88. Between December 10, 2008, and December 11, 2008, Mr. Ouellette and [L.G.] exchanged a series of letters dealing with visitation and certain communications between Mr. Ouellette and [L.G.'s] local Calgary agent.

Tab 81 - Series of letters

89. On December 15, 2008, [L.G.],\ wrote to Mr. Ouellette and stated in part:

> I have not received responses to my correspondence dated November 14, December 3, December 4, and December 10th, 2009 [sic].
>
> Further, I await confirmation that you agree with the format and content of the Order we provided last week, so that it may be issued by the Court.
>
> Please advise when I may anticipate some written response.

Tab 82 - Letter dated December 15, 2008

90. Between December 19, 2008, and December 23, 2008, Mr. Ouellette and Ms. Gollan exchanged a series of letters dealing with the ownership of a vehicle, proof of having attended a parenting class, and an application filed by Mr. Ouellette with respect to the vehicle.

91. On December 23, 2008, Ms. Gollan wrote to Mr. Ouellette, stating in part:

> I have reviewed your correspondence received in my office during my absence on Friday, December 19th 2008 and have discussed the content of your correspondence with my client. My staff, as they have been instructed to do, provided your office with immediate notice that I was not in the office to respond to the demand/time line in your fax. My staff also advise that you left an abrupt voice message on the office answering machine, suggesting that my absence from the office and failure to immediately respond to your fax - was somehow 'game playing'.
>
> Please be advised that I have never been accused of acting in any manner that might be construed or interpreted as less than ethical, professional, and forthright and I take some exception to your unfounded verbal assertions received by my staff.
>
> …
>
> Thank you for providing [L.O.]'s Certificate of Completion of the Parenting After Separation today. I continue to await a response to the balance of my inquiries contained in my correspondence of November 14, December 3, December 4, December 10th, and December 15th 2009 [sic].
>
> …

Tab 84 - Letter dated December 23, 2008

92. On December 29, 2008, [L.G.] wrote to Mr. Ouellette, stating in part:

> …
>
> I continue to await a response to my various previous correspondence. I suggest that your continued failure to respond is verging on unethical and I ask that you respond soon to those and this correspondence.
>
> …

Tab 85 - Letter dated December 29, 2008

93. On December 30, 2008, [L.G.] wrote two letters to Mr. Ouellette, one of which stated in part:

> I have not had a response to my inquiries in my letter of December 23, 2008.
>
> …
>
> Neither of our clients can afford to divide their property 'one piece at a time'. The issue of who retains the car at the end of the day may be moot – [J.O.] is prepared to be very generous as outlined in our previous correspondence. We have asked you to outline what it is that your client wants in a property settlement. You have failed to do so. A negotiated settlement is not possible where only one party participates in the negotiation.

Tab 86 – Letters dated December 30, 2008

94. That same day, on December 30, 2008, Mr. Ouellette responded to [L.G.] in writing, stating in part:

> I have your three pieces of correspondence dated December 10, 2008. I now also have your elements of comparison dated December 15, 22, 28, 28 and 29, 2008. My instructions are to conserve funds, and not to debate with you further by letter. My client attempted to resolve these matters in the most amicable fashion, at considerable expense to herself, and attempted to refrain from disrupting your client any more than necessary other than for self protection, and yet your client, presumably with the benefit of your advice, chose to continue to be arrogantly aggressive in the process of divorce, just as he had been during the process of marriage. It is now possible that your client will have a few years "vacation" to contemplate what might have been the benefit of a resolution founded on an appropriate contrition and humility. His imprudent approach to these matters may now well attract an "arrogance tax" far exceeding his contemplation. Once the "allegations" of my client are adjudicated by the criminal justice system, it could very well be that Court ordered "supervision" of your client will continue, but involving no further access to Luka for the "vacation" period aforesaid. There would be no point in having the little fellow witness his father in striped pajamas.
>
> Further yet, if your client is convicted of the criminal allegations to which my client has deposed in her affidavit, he may then very well have to face the seriousness of his having sworn under oath in an affidavit that he had not performed the conduct of which he is accused.
>
> You now advise that your client is no longer employed in his original capacity. That may mean that he is suspended with pay, that may mean that he is suspended at lesser pay, we do not know. What we do know is that if your client is convicted of the offenses with which we anticipate he is being charged, he will no longer be working for [his employer]. He will then be in a position, as he so unkindly admonished my client, to (in his own words) "get a job". You seemed earlier to be enamored of the term "a blue-collar approach" to child rearing; the "blue-collar" response to parallel your client's approach would be "what goes around comes around".
>
> I trust my client has made her point. She will continue to do so.
>
> I strongly suggest that your client return to the bargaining table with a view to resolving the outstanding issues in a cost-effective fashion. If he does not, you can be sure that my client will be seeking considerable Court costs against your client, including solicitor client costs on certain issues, as this matter regresses. As you contemplate how you might wish to advise your client, you may wish to exercise the utmost in prudence, and to factor into the equation that your client would have been far better positioned today had he taken the benefit of the suggestions which I offered to you some months ago. Had he done so, this matter would

probably already have been resolved. Instead, we continue, at great expense to both parties. I suggest that you and your client "live and learn", and settle this matter without further needless expense.

…

Your client continues to breach the Restraining Order of Justice Kent. These breeches are now being reported to the Calgary City Police Service.

…

Tab 87 – Letter dated December 30, 2008

95. On January 3, 2009, [L.G.] wrote to Mr. Ouellette and stated:

> Please advise, both my office and the court, that you continue to consent to my appearance before the court by telephone conference.

Tab 88 – Letter dated January 3, 2009

96. On January 5, 2009, [L.G.] wrote to Mr. Ouellette and stated in part:

> …
> As a result of our obvious inability to agree with what transpires orally between our offices, in November I asked that all communication be in writing. When you advise that your "instructions me to conserve funds, and not to debate with me further by letter" are you advising that:
>
> a) I will not receive responses to my previous inquiries in my previous inquiries in my previous correspondence that you are now suggesting are "elements of comparison" …
> b) I will not receive the documentation you advised was to be served in the near future? …
> c) I will not receive responses to this or any future inquires related to this matter and the outstanding issues between our clients?
> d) All further decisions with respect to our client's and their issues are to be made by the courts? This will be significantly more costly to both our client's [sic] than merely responding to written inquiries.
>
> I do ask that you desist in labelling and name calling my client in any future correspondence you may provide as I forward copies of all correspondence received to my client. It is my experience that when counsel label clients behaviour or name calls, it only serves to further inflame already emotionally charged and difficult situations, and this is not in either of our client's best interests. I do not believe that the Alberta Code of Professional Conduct would support this labelling or name calling.
>
> …
> With respect to your 'invitation to treat', [J.O.] did provide a very generous offer to settle all outstanding issues in November. He advises he is prepared to consider [L.O.]'s request for interim spousal support above that which he offered in November if both the need and means for doing so can be demonstrated. You have not provided any materials from which you draw your proposed figures for support.
>
> …

97. On January 5, 2009, Mr. Ouellette wrote to [L.G.], stating the following in part:

> I have your three pieces of correspondence dated December 31, January 3, and January 5.
>
> You speak of ethical issues in the same series of correspondence as you inform that you have appeared to have advised your client to breach the Restraining Order yet again, by attending at the matrimonial home on January 8, 2009, with two of his [●] buddies in tow. Somehow, it would appear, the logic behind this anticipated breach, or lack of logic, more to the point, is that if he brings enough of his buddies who are also members of the [same employer], that he Is magically granted a window of immunity from the Order of Justice Kent. I suggest that you may be counseling an offense, and I strongly suggest you get some legal advice of your own.
>
> To place this in perspective, it is important that one realizes that in the first instance, your office was the agent or the breach of the Restraining Order. When we brought this to your attention, you were silent in response. Now you are advising your client to breach the Order yet once again, which anticipated breach will be, to the best or our knowledge, your client's seventh.
>
> As they say on the golf channel, where decorum and delicateness of tone are of the utmost importance, and understatement becomes "de rigueur":
>
> Oh my! Oh my!
>
> Please be advised that your letters regarding the anticipated January 8 breach are being sent to the Calgary City Police. Moreover, they are being sent to the [supervisor] overlooking a number of matters involving your client. I strongly suggest your client **not** attend at the matrimonial home, of which my client has exclusive possession. …
>
> I am advised by the practice adviser in Calgary, that when you appear on a file in this province, that your conduct is governed by the code of professional conduct of the Law Society of Alberta. I would refer you to the practice adviser in Calgary for what would appear to be some much-needed advice. Her name is [N.C.], and her telephone number is (403) [●●●●●●●]. She is a very nice lady, and will assist you in understanding in greater detail your anticipated course of action.
>
> Whereas I had initially been inclined to consent to your appearance in Court by telephone, as a result of what appears to be serious breaches of the code of conduct by you, my instructions are to **no longer consent to your appearance by telephone**. I do not want you giving evidence over the phone, or complicating this matter further by any other ethical breaches for which it would be too expensive to make you accountable.

> Please get an agent, who presumably, regularly practices law in the province of Alberta.
>
> As a courtesy to you, I will recommend the matter be adjourned to January 14, 2009.
> [Emphasis in original]

Tab 90 – Letter dated January 5, 2009

98. On January 6, 2009, [L.G.] wrote to Mr. Ouellette, stating in part:

> I accept your offer to adjourn the current Chamber's application to January 14th, 2009. Please confirm in writing that you have advised the Court of this adjournment.
>
> Please also advise whether [L.O.] has reconsidered the needless expense [J.O.] will incur if she is not prepared to consent to my attendance by telephone.

Tab 91 – Letter dated January 6, 2009

99. On January 15, 2009, [L.G.] wrote to Mr. Ouellette, stating in part:

> I apologise [sic] that I did not advise your office that I had made arrangements to speak to your Chamber's application as at 9:30 instead of 10:00 on January 14, 2009.
>
> I contacted the court to confirm that I consented to the adjournment of your client's application with respect to the 2003 Pontiac Grand Am from the 7th to the 14th as I had not heard back from your office as requested. …
> Alternatively, if you do not wish to leave the matters to the Special Hearing date, I do ask that you provide your written consent to allow my appearance by telephone on which ever regular chambers date you may advise works for you and your client. Neither of our clients can afford the expense of having me appear in person if it is not necessary. I do affirm that I have made arrangements to travel to Calgary for the Special Chamber's Hearing scheduled for March 16th, 2009 @ 1:00 pm.
> …
> We continue to await your client's position with respect to a property settlement and her budget of expenses, amongst other items previously requested. We look forward to receiving these materials

Tab 92 – Letter dated January 15, 2009

100. On February 19, 2009, a Notice of Change of Solicitor was filed on behalf of J.O.

Tab 63 – Procedure Card

101. On July 5, 2011, a Notice of Change of Representation was filed on behalf of L.O.

Tab 63 – Procedure Card

102.

103. The matrimonial litigation continued until 2014 with a Certificate of Divorce being entered on June 10, 2014.

Tab 63 – Procedure Card

e) Involvement of the LSA

104. On January 30, 2012, J.O. submitted a Lawyer Complaint Form to the LSA.

Tab 96 – Lawyer Complaint Form

105. On February 22, 2012, [K.W.], Manager-Conduct, wrote to Mr. Ouellette pursuant to section 53 of the *Act* and requested that he provide her with a written response to the complaint within 14 days of receipt of her letter.

Tab 97 – Letter dated February 22, 2012

106. Over the next two months, Mr. Ouellette requested, and [K.W.] granted, extensions of time for him to provide his response.

107. On April 17, 2012, Mr. Ouellette provided his response to the complaint.

Tab 101 – Letter dated April 17, 2012, with attachments

108. On November 26, 2012, the LSA received a letter from J.O. which contained responses to Mr. Ouellette's letter of April 17, 2012.

Tab 99 – Letter dated November 20, 2012

109. On June 18, 2013, a Conduct Committee Panel considered Mr. Ouellette's conduct and directed that it be dealt with by a Hearing Committee.

3. Complaint CO2013.2299 (Complainant: M.M.)

a. Introduction

110. On October 8, 2013, the LSA received a Lawyer Complaint Form from M.M. on behalf of himself and his spouse, V.M., who were former clients of Mr. Ouellette.

Tab 100 – Lawyer Complaint Form

111.

b. Facts

112. On August 2, 2003, M.M. and his spouse took possession of a residential property in Calgary that they had recently purchased. Shortly thereafter, they discovered mould and a mouse infestation within the property.

113. On January 20, 2004, M.M. and V.M. met with Mr. Ouellette. During the course of this meeting, Mr. Ouellette suggested filing a Statement of Claim and an Attachment Order. They agreed with this recommendation and instructed Mr. Ouellette to proceed accordingly. They signed a retainer agreement that day formalizing the retainer.

Tab 101 – Account dated May 19, 2004
Tab 104 – Letter dated May 19, 2004
Tab 102 – Retainer Agreement dated January 20, 2004

114. Between January 20, 2004, and May 18, 2004, Mr. Ouellette and a lawyer named [C.L.] performed preparatory legal work.

Tab 101 – Account for Services dated May 19, 2004
Tab 101 – Account for Services dated July 29, 2004

115. On May 18, 2004, M.M. and Mr. Ouellette spoke over the telephone. Mr. Ouellette requested that M.M. provide him with a $2,500.00 retainer. Later that day, Mr. Ouellette sent a second retainer agreement to M.M., which was signed and returned to Mr. Ouellette.

Tab 103 – Retainer Agreement dated May 18, 2004
Tab 104 – Letter dated May 19, 2004

116. On May 19, 2004, Mr. Ouellette wrote to M.M. to advise that they should make arrangements to attend his office to swear the Affidavits in support of the application for the Attachment Order. Mr. Ouellette also enclosed a copy of their account to date in the amount of $3,946.53, for services rendered and disbursements incurred between January 6, 2004, and May 4, 2004.

Tab 104 – Letter dated May 19, 2004

117. On May 21, 2004, Mr. Ouellette received payment of $2,500.00 from M.M, which was deposited it to his trust account.

Tab 105 – Receipt of Payment dated May 21, 2004

118. On June 15, 2004, M.M. and V.M. met with [C.L.] and V.M. swore her affidavit in support of the application for the Attachment Order.

Tab 101 – Account for Services dated July 29, 2004
Tab 106 – Affidavit of V.M. (without exhibits)

119. On June 18, 2004, M.M. and V.M. again met with [C.L.]. M.M. swore his affidavit in support of the application for the Attachment Order and both signed the Undertaking in support of the application for the Attachment Order.

Tab 101 – Account for Services dated July 29, 2004
Tab 110 – Affidavit of M.M. (without exhibits)
Tab 108 – Undertaking

120. On July 6, 2004, M.M. faxed a letter to Mr. Ouellette asking about the status of the litigation. He also requested that the legal fees be capped at $6,000.00.

Tab 109 - Letter dated July 6, 2004

121. On July 19, 2004, the materials were filed in Court, including the Statement of Claim, the Affidavits, and the Undertaking. That day, [C.L.] appeared before Master Alberstat *ex parte* and obtained the Attachment Order, which was later amended.

Tab 110 – Procedure Card in Action Q.B. [●]
Tab 111– Statement of Claim
Tab 106 – Affidavit of V.M. (without exhibits)
Tab 110 – Affidavit of M.M. (without exhibits)
Tab 108 – Undertaking
Tab 112 – Attachment Order
Tab 114 – Amended Attachment Order

122. On July 20, 2004, Mr. Ouellette received a payment of $3,000.00 from M.M., which was deposited into his trust account.

Tab 113 – Receipt of Payment dated July 20, 2004

123. On July 29, 2004, Mr. Ouellette rendered an account in the amount of $3,377.49 for services rendered and disbursements incurred between May 18, 2004, and July 29, 2004.

Tab 115 – Statement of Account dated July 29, 2004

124. The Statement of Claim was served on the Defendants on August 4, 2004.

Tab 118 – Letter from [J.F.] dated August 11, 2004

125. On August 9, 2004, Mr. Ouellette appeared before Master Laycock to obtain an Order for Substituted Service and an Order adjourning the review of the Amended Attachment Order.

Tab 116 - Order for Substituted Service
Tab 117 – Order Adjourning Review dated August 9, 2004
Tab 101 – Account for Services dated November 19, 2004

126. On August 11, 2004, [J.F.] of [●] Law Office wrote to Mr. Ouellette to advise him that he had been retained by the Defendants.

Tab 118 – Letter from [J.F.] dated August 11, 2004

127. On August 17, 2004, Mr. Ouellette received a payment of $2,000.00 from M.M., which he deposited in trust.

Tab 119 – Receipt of Payment dated August 17, 2004

128. On August 23, 2004, [C.L.] appeared before Master Waller for approval of a Consent Order adjourning the review of the Amended Attachment Order *sine die*.

Tab 101 – Account for Services dated November 19, 2004
Tab 120 – Consent Order

129. On September 27, 2004, Mr. Ouellette faxed a letter dated September 24, 2004 (but drafted on August 18, 2004) to [J.F.] explaining why a Substituted Service Order had been obtained and discussing next steps in the litigation.

Tab 121 – Letter from Mr. Ouellette faxed on September 24, 2004

130. On November 19, 2004, Mr. Ouellette rendered an account in the amount of $1,848.63 for services rendered between August 9, 2004, and September 24, 2004, and for disbursements incurred between August 5, 2004 and October 30, 2004.

Tab 122 – Account for services dated November 19, 2004

131. On November 30, 2004, Mr. Ouellette received a payment of $2,000.00 from M.M., which was deposited into his trust account.

Tab 123 – Receipt of Payment dated November 30, 2004

132. On February 3, 2005, [L.M.] of the [●] Law Office wrote to Mr. Ouellette and included two affidavits (one per Defendant) filed on February 1, 2005, with her letter. No corresponding application was filed. In her cover letter, she requested information about the home inspection company, including the Home Inspection Report, and suggested that additional parties should be added to the pleadings. According to the Affidavit of [J.F.] filed on May 1, 2012, no response was received from Mr. Ouellette. According to Mr. Ouellette's time entries in his account for services dated October 5, 2006, he responded to this letter and also wrote to his clients about it.

Tab 124 – Letter dated February 3, 2005
Tab 110 – Procedure Card
Tab 146 – Affidavit of [JF] filed on May 1, 2012
Tab 101 – Account for services dated October 5, 2006

133. On April 15, 2005, [L.M.] telephoned Mr. Ouellette's office and left a message. Mr. Ouellette did not respond to this message, nor did he inform his clients about it.

Tab 125 – Telephone note dated April 15, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

134. On April 19, 2005, [L.M.] telephoned Mr. Ouellette's office and left a message. Mr. Ouellette did not respond to this message, nor did he inform his clients about it.

Tab 125 – Telephone note dated April 19, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

135. On April 28, 2005, [L.M.] wrote to Mr. Ouellette and requested a response to her previous correspondence and messages. Mr. Ouell te did not respond to this letter, nor did he inform his clients about it.

Tab 126 – Letter dated April 28, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

136. On June 24, 2005, [L.M.] wrote to Mr. Ouellette and requested a response to her previous correspondence and messages. Mr. Ouellette did not immediately respond to this letter, nor did he inform his clients about it.

Tab 127 – Letter dated June 24, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

137. On July 6, 2005, Mr. Ouellette called [L.M.]. After discussing her recent correspondence, [L.M.] reiterated her request for the Home Inspection Report. Mr. Ouellette did not respond to this request, nor did he inform his clients about it.

Tab 128 – Telephone note dated July 6, 2005

Tab 146 – Affidavit of [JF] filed on May 1, 2012

138. On July 20, 2005, [L.M.] wrote to Mr. Ouellette and requested a response to her request for the Home Inspection Report. Mr. Ouellette did not respond to this letter, nor did he inform his clients about it.

Tab 129 – Letter dated July 20, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

139. On August 30, 2005, [L.M.] wrote to Mr. Ouellette and requested a response to her request for the Home Inspection Report. Mr. Ouellette did not respond to this letter, nor did he inform his clients about it.

Tab 130 – Letter dated August 30, 2005
Tab 146 – Affidavit of [JF] filed on May 1, 2012

140. On May 31, 2006, [P.H.W.], of the [●] Law Office, wrote to Mr. Ouellette and requested a copy of the Home Inspection Report. He also advised Mr. Ouellette that he would be filing a Statement of Defence on behalf of the Defendants. Mr. Ouellette did not respond to this letter, nor did he inform his clients about it.

Tab 131 – Letter dated May 31, 2006.
Tab 146 – Affidavit of [JF] filed on May 1, 2012

141. On July 12, 2006, a Statement of Defence and Counterclaim was filed on behalf of the Defendants. Later that day, [P.H.W.] served the Statement of Defence and Counterclaim on Mr. Ouellette. Mr. Ouellette did not inform his clients about service of the Statement of Defence and Counterclaim.

Tab 132 – Letter dated July 12, 2006

142. On July 19, 2006, [P.H.W.] telephoned Mr. Ouellette. Mr. Ouellette advised [P.H.W.] that he would seek instructions from his clients to produce the Home Inspection Report. [P.H.W.] never received a response to this request. Nor did Mr. Ouellette ever contact his clients to ask for the Home Inspection Report.

Tab 133 – Telephone notes dated July 19, 2006

143. On October 5, 2006, Mr. Ouellette rendered an account in the amount of $162.63, for services rendered in 2005, and for disbursement incurred in 2004 and in 2005. The account was paid in full from trust, leaving a zero balance owing on the account, and balance of $164.72 in trust.

Tab 134 – Account for Services dated October 5, 2006

144.

145. Mr. Ouellette did not serve a written notice of his intention to withdraw from the record upon opposing counsel in accordance with Rule 555(1) of the *Alberta Rules of Court* and thus remained the solicitor of record of his clients.

Tab 110 – Procedure Card

146. On January 23, 2008, [A.S.] of the [●] Law Office, wrote a letter to Mr. Ouellette suggesting that Mr. Ouellette's delay was "inordinate, inexcusable and prejudicial" to the Defendants and threatened to bring an application to strike for want of prosecution if she did not hear back from him February 1, 2008. Mr. Ouellette did not respond to this letter, nor did he inform M.M. or V.M. about it.

Tab 137 – Letter dated January 23, 2008
Tab 146 – Affidavit of [JF] filed on May 1, 2012

147. On February 4, 2008, the [●] Law Office called Mr. Ouellette's office and received a fax stating that he was away on a 5-day trial and would address this matter upon his return to the office. Mr. Ouellette did not respond to this message, nor did he inform M.M. or V.M. about it.

Tab 146 – Affidavit of [JF] filed on May 1, 2012

148. On April 29, 2011, [J.F.] filed and served on Mr. Ouellette's office an application on behalf of the Defendants to dismiss the action for want of prosecution, with a return date of May 5, 2011 (the "**Application to Strike**"). The Application to Strike was supported by an affidavit filed by his legal assistant.

Tab 138 – Service Letter, Application, and Affidavit dated April 29, 2011

149. The premise for the Application to Strike was that at least five years had elapsed since the last thing done to have significantly advanced the action. However, the last thing done to have significantly advanced the action was the filing and serving of the Statement of Defence and Counterclaim on July 12, 2006. Consequently, the "drop dead" date was July 12, 2011, and the filing of the Application to Strike was premature by approximately 2½ months.

Tab 110 – Procedure Card

150. Following service of the Application to Strike on Mr. Ouellette's office, he contacted opposing counsel and requested an adjournment of the hearing so he could seek instructions from M.M. and V.M. about agreeing to a Discontinuance of the action.

Tab 139 – Telephone notes dated May [illegible], 2011
Tab 146 – Affidavit of [JF] dated May 1, 2012

151. Mr. Ouellette never contacted M.M. or V.M. to advise them about the Application to Strike, nor did he ever seek their instructions about agreeing to a Discontinuance of the Action.

152. On November 9, 2011, [J.F.] wrote a letter to Mr. Ouellette confirming a recent conversation and advising that his client would accept a discontinuance on a with costs basis. Mr. Ouellette did not respond to this letter, nor did he contact M.M. or V.M. about it.

Tab 140 – Letter dated November 9, 2011
Tab 146 – Affidavit of [JF] dated May 1, 2012

153. On January 4, 2012, [J.F.] re-faxed the letter dated November 9, 2011. Mr. Ouellette did not respond to this letter, nor did he contact M.M. or V.M. about it.

Tab 140 – Letter dated January 4, 2012
Tab 146 – Affidavit of [JF] dated May 1, 2012

154. On February 1, 2012, [J.F.] re-faxed the letter dated November 9, 2011. Mr. Ouellette did not respond to this letter, nor did he contact M.M. or V.M. about it.

Tab 140 – Letter dated February 1, 2012
Tab 146 – Affidavit of [JF] dated May 1, 2012

155. On February 7, 2012, Mr. Ouellette filed a Notice of Withdrawal of Lawyer of Record and served a copy of it on the [●] Law Office.

Tab 141 – Notice of Withdrawal of Lawyer of Record
Tab 146 – Affidavit of [JF] filed on May 1, 2012

156. Mr. Ouellette did not serve a copy of the Notice of Withdrawal on M.M. or V.M. as per Rule 2.29(1)(a), nor did he file an Affidavit of Service of the Notice as per Rule 2.29(1)(b).

Tab 110 – Procedure Card

157.

158. On April 12, 2012, and several times thereafter, [J.F.] left messages with Mr. Ouellette's office. Mr. Ouellette did not respond to [J.F.]'s messages, nor did he contact M.M. or V.M.

Tab 142 – Telephone note dated April 12, 2012
Tab 146 – Affidavit of [J.F.] filed on May 1, 2012

159. On April 26, 2012, [J.F.] filed another Application to Strike on behalf of the Defendants, returnable on May 1, 2012.

Tab 143 – Application to Strike filed on April 26, 2012

160. On April 27, 2012, [J.F.] contacted M.M. by telephone. M.M. told him that they hadn't heard from Mr. Ouellette in years.

Tab 146 – Affidavit of [J.F.] filed on May 1, 2012

161. On or about April 27, 2012, M.M. contacted Mr. Ouellette, who advised him that he was no longer their lawyer and that they would have to pay him a retainer of $500.00 to rehire him, which M.M. provided to him that day.

Tab 100 – Lawyer Complaint Form
Tab 101 - Account for Services dated May 16, 2012

162. On April 28, 2012, the Application was served personally on M.M.

Tab 144 – Affidavit of Personal Service filed on May 1, 2012

163. On April 30, 2012, Mr. Ouellette contacted [J.F.] to request an adjournment and offered to discuss the costs of filing a discontinuance of claim. [J.F.] declined these requests, preferring to proceed to Court the next day.

Tab 144 – Affidavit of [J.F.] filed on May 1, 2012

164. On April 30, 2012, [J.F.] wrote to Mr. Ouellette, outlining the conditions to which the Defendants would agree to forego the Application to Strike the next day.

Tab 145 – Letter dated April 30, 2012

165. On May 1, 2012, [J.F.] filed his Affidavit sworn in support of the Application to Strike.

Tab 146 - Affidavit of [J.F.] filed on May 1, 2012

166. On May 1, 2012, before attending Court, M.M. spoke with Mr. Ouellette and Mr. Ouellette requested that M.M. advise the Court that Mr. Ouellette had told [J.F.] a few years earlier that Mr. Ouellette had ceased to represent them.

167. On May 1, 2012, [J.F.] and M.M. and his spouse appeared in Court before Mr. Justice Wilkins. Mr. Ouellette had not provided a copy of the file to them, nor did he appear in Court that morning. Wilkins J. ordered that the action be dismissed for want of prosecution, that the Attachment Orders be removed from title of the Plaintiffs' lands, and that costs be awarded in the amount of $406.00 + GST ($426.30) against M.M. and V.M.

Tab 147 – Order dated May 1, 2012, and filed on May 9, 2012

168. On June 4, 2012, M.M. paid the costs of $426.30 to the [●] Law Office.

Tab 148 – Receipt dated June 4, 2012

169. On May 16, 2012, Mr. Ouellette rendered an account for legal fees in the amount of $500.00, which he paid from his trust account, which then showed a final balance of $0.00.

Tab 149 – Statement of Account dated May 16, 2012

170.

171. On December 19, 2012, M.M. wrote a letter to Mr. Ouellette advising him that his services were no longer required.

Tab 153 – Letter dated December 19, 2012

c. LSA Involvement

172. On October 8, 2013, M.M. submitted a written complaint to the LSA.

Tab 151 – Lawyer Complaint Form

173. On December 11, 2013, [D.M.], a Complaints Resolution Officer with the LSA, wrote to Mr. Ouellette requesting a written response to the complaint by January 10, 2014.

Tab 152 – Letter dated December 11, 2013

174. On January 7, 2014, Mr. Ouellette telephoned [S.D.], a Complaints Resolution Officer with the LSA, and requested an extension to January 30, 2014. [S.D.] agreed and the deadline was extended.

Tab 153 – Complaint Inquiry Notepad

175. On January 31, 2014, Mr. Ouellette wrote to [D.M.] advising that "the combination of the demands of my practice, together with childcare responsibilities, rendered it impossible to finalize my response by the 30th." Mr. Ouellette stated that he would be able to provide his response by February 3, 2014. No response was received by February 3, 2014.

Tab 154 – Letter dated January 31, 2014

176. On February 6, 2014, [S.D.], wrote to Mr. Ouellette and advised him that requested he had not provided a response and that the complaint had been referred to the Manager of the LSA Conduct Department for her consideration.

Tab 155 – Letter dated February 6, 2014

177. On February 7, 2014, Mr. Ouellette telephoned [S.D.] and advised her that he needed to retrieve his file from storage before being able to respond to the complaint. He also asked her if he should respond to her letter. [S.D.] told him that he could wait until he receives correspondence from the Manager of the LSA Conduct Department.

Tab 153 – Complaint Inquiry Notepad

178. On February 10, 2014, [K.W.], Manager of the LSA Conduct Department, wrote to Mr. Ouellette pursuant to section 53 of the *Act* and requested that he provide the LSA with his written response to the complaint within 14 days of receipt of her letter. The letter was mailed on February 11, 2014. No response was received by February 25, 2014.

Tab 156 – Letter dated February 10, 2014
Tab 153 – Complaint Inquiry Notepad

179. On February 28, 2014, Mr. Ouellette wrote to the LSA and apologized for the delay in providing his response, stating that he was "currently in the middle of a very serious and complicated trial preparation and have been dealing with urgent family matters involving children, there [sic] I am unable to respond until my Trial comes to an end, which is scheduled for March 14, 2014." Mr. Ouellette then requested that he be granted an extension and stated that he would respond at his very first opportunity.

Tab 157 – Letter dated February 28, 2014

180. On March 19, 2014, Mr. Ouellette wrote to the LSA to advise that he was in the process of "retrieving the box from our storage facility" and that he would keep the LSA posted.

Tab 158 – Letter dated March 19, 2014

181. On April 11, 2014, Mr. Ouellette wrote to [K.W.] to advise that he was "under a doctor's care at the moment and will hopefully be able to contact you either by telephone or by correspondence on Monday, April 14, 2014."

Tab 160 – Letter dated April 11, 2014

182. No response was received from Mr. Ouellette by April 14, 2014.

183. On April 23, 2014, Mr. Ouellette wrote to [K.W.] and provided her with a note from Dr. [P.A.M.] dated April 11, 2014, which stated that Mr. Ouellette was suffering from "extreme emotional and mental stress" and has been advised to take "complete rest for 2 weeks due to medical reasons. Return to normal duties effective April 28, 2014."

Tab 161 – Letter dated April 23, 2014

184. On May 8, 2014, [K.W.] received a cover letter from Mr. Ouellette to which was attached an addendum to previous note from Dr. [P.A.M.] dated May 7, 2014, in which Dr. [P.A.M.] states that Mr. Ouellette was "not yet fully recovered. He has been advised to extend the recovery period for another 3 weeks – until May 28, 2014."

Tab 162 – Letter received on May 8, 2014

185.

186. On June 5, 2014, Mr. Ouellette wrote a letter to [K.W.] to which was attached a doctor's note dated May 28, 2014, from Dr. [P.A.M.], stating that Mr. Ouellette was not yet fully recovered, that he was attending counselling, that "he is under extreme emotional and mental stress", and that "he has been advised to take rest for further 4 weeks due to medical reasons. Return to normal duties effective July 1, 2014."

Tab 164 – Letter dated June 5, 2014

187. On June 6, 2014, [K.W.] wrote to Mr. Ouellette and requested that he provide his response by July 21, 2014.

Tab 165 – Letter dated June 6, 2014

188. On June 27, 2014, Mr. Ouellette wrote a letter to [K.W.] to which was attached a Statutory Declaration dated June 27, 2014, in which he explains that he has been under "overwhelming stress" because of the Crown's conduct in a serious criminal file in which his client faces a lengthy period of incarceration. He also explains that he was dealing with certain "extreme family issues (not of my making) which have constituted both serious time and energy drains as well as a source of major distraction …". Mr. Ouellette also attached a letter from Dr. [B.F.], a psychologist, who stated that Mr. Ouellette was suffering from "severe anxiety and stress and has reached a point that he is now suffering from burnout." Dr. [B.F.] also stated that " … I feel that this time would be most beneficial for Mr. Ouellette to take time to focus on dealing with his issues rather than trying to carry a full case load".

Tab 168 – Letter dated June 26, 2014

189. On July 10, 2014, [K.W.] wrote to Mr. Ouellette and requested that he provide his response by July 31, 2014.

Tab 170 – Letter dated July 10, 2014

190. No response was received from Mr. Ouellette by July 31, 2014.

191. During the week of August 11, 2014, [K.W.] and Mr. Ouellette discussed the timing of his response over the telephone. Mr. Ouellette stated that he would contact [K.W.] by August 18, 2014, to advise her when she could expect to receive his response.

Tab 153 – Complaint Inquiry Notepad

192. No telephone call was received from Mr. Ouellette by August 18, 2014.

193. On August 25, 2014, Mr. Ouellette telephoned [K.W.] and they agreed that his response would be provided to her by September 3, 2015.

Tab 153 – Complaint Inquiry Notepad

194. On September 4, 2014, [K.W.] received a letter from Mr. Ouellette's office stating that he was "away all week on an urgent family matter. He will be in contact as soon as possible."

Tab 173 – Letter dated September 4, 2014

195. On September 5, 2014, [K.W.] wrote to Mr. Ouellette to advise that the Conduct Department was ready to begin its final review of complaint.

Tab 174 – Letter dated September 5, 2014

196. On October 30, 2014, Mr. Ouellette wrote to [K.W.] and stated that "The distracting matter previously discussed with you has now come to an end. I will be responding to the … complaint by close of business day tomorrow."

Tab 175 – Letter dated October 30, 2014

197. On November 19, 2014, [K.W.] wrote to Mr. Ouellette to advise that she had completed her review of the complaint and that it had been referred to a Conduct Committee Panel for determination as to the next step in the process.

Tab 176 – Letter dated November 19, 2014

198. On December 10, 2014, Dr. [B.F.] drafted a letter to the "Alberta Court System" at the request of Mr. Ouellette, in which he stated that Mr. Ouellette sought assistance from [●] "for stress and anxiety as a result of significant personal issues. His personal issues include issues with [●] and a death in his immediate family." Dr. [B.F.] repeated that Mr. Ouellette was suffering from "severe anxiety and stress" and "… I feel that this time would be most beneficial for Mr. Ouellette to take time to focus on dealing with his personal family issues rather than trying to carry a full client load".

Tab 177 – Letter dated December 10, 2004

199. On January 16, 2015, a Conduct Committee Panel considered Mr. Ouellette's conduct and directed that it be dealt with by a Hearing Committee.

D. INDEPENDENT LEGAL ADVICE

200. Mr. Ouellette acknowledges that he has had the opportunity to obtain independent legal advice in respect of this matter and has in fact consulted independent counsel.

E. ADMISSION OF FACTS

201. Mr. Ouellette admits the facts contained in this Agreed Statement of Facts and acknowledges that they shall be used during the course of the hearing of these proceedings HE.2013.0044.

202. Mr. Ouellette agrees that he has signed this Agreed Statement of Facts voluntarily and without any compulsion or duress.

203. Mr. Ouellette and the LSA agree that this Agreed Statement of Facts is not exhaustive that that Mr. Ouellette or the LSA may lead additional evidence not inconsistent with the facts contained in this Agreed Statement of Facts.

ALL OF THESE FACTS ARE ADMITTED THIS 4 DAY OF APRIL 2016.

Witness to Signature of
CHRISTIAN S. OUELLETTE

[“Christian S. Ouellette”]
CHRISTIAN S. OUELLETTE