IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
UNDER PART 2 OF THE *LEGAL PROFESSION ACT*, RSA 2000, C.L-8
REGARDING BRIAN WARRINGTON
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Resignation Committee

Margaret Unsworth, QC – Chair (Bencher)
Elizabeth Hak – Committee Member (Lay Bencher)
Kathleen Ryan, QC – Committee Member (Bencher)

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Brendan Miller – Counsel for Brian Warrington

Hearing Date

June 22, 2020

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. Brian Warrington was admitted to the practice of law in the Law Society of Alberta (LSA) on November 7, 2002. At the time of this hearing, Mr. Warrington was engaged in an exclusive family law legal practice. He faced seven citations and there are also four outstanding complaints under investigation

2. Mr. Warrington applied for resignation from the LSA, pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (the *Act*). Because Mr. Warrington's conduct is the subject of citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application.

3. Mr. Warrington is an active member of the LSA and has a disciplinary record with the LSA. There are two prior conduct decisions respecting Mr. Warrington from 2011 and 2014.

4. Having reviewed the evidence, the exhibits, and the Agreed Statement of Facts (ASF) and having heard the submissions of counsel, the Committee:
    - Directed that exhibits 10 and 11, the report and addendum from the medical expert be marked private and that all other exhibits be redacted as to private and confidential medical information;
    - Asked LSA counsel for written submissions on the impact of a resignation on existing citations and complaints; and
    - Reserved its decision.

5. Having now received further submissions from the LSA and noting that Mr. Warrington's counsel declined to provide any response, the decision of the Committee follows:
    - The resignation application under section 32 of the *Act* is allowed and is effective July 1, 2020;
    - Costs are payable, and in any event prior to any readmission application, in the amount agreed upon of $17,832.50;
    - A Notice to the Profession shall be issued stating that Mr. Warrington has resigned, without mention of his health condition;
    - No referral to the Attorney General of Alberta shall be made; and
    - This decision shall be published but with redaction pursuant to the LSA's Publication and Redaction Guidelines for Adjudicators (Publication Guidelines).[1]

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Warrington's resignation application proceeded.

7. Twelve exhibits were entered by agreement. Mr. Warrington's Certificate of Enrollment is not an exhibit as Mr. Warrington continues to look for it. Once located, he undertakes to surrender it to the LSA.

Citations

8. Mr. Warrington faces the following seven citations and in addition the LSA is investigating four other matters which are detailed in the attached ASF:

    CO20170375

    1. It is alleged that Brian P. Warrington failed to act in a courteous and civil manner towards another lawyer and that such conduct is deserving of sanction;

[1] Publication and Redaction Guidelines for Adjudicators [February 2020 version]

2. It is alleged that Brian P. Warrington sent repeated written communications to another lawyer that were offensive and inconsistent with the proper tone of communications and that such conduct is deserving of sanction;

CO20172295

3. It is alleged that Brian P. Warrington exhibited a lack of professionalism in correspondence to a self-represented litigant and that such conduct is deserving of sanction;
4. It is alleged that Brian P. Warrington failed to be courteous and civil to another lawyer and that such conduct is deserving of sanction;

CO20181566

5. It is alleged that Brian P. Warrington failed to provide competent, timely, conscientious, diligent and efficient service to his client and that such conduct is deserving of sanction;
6. It is alleged that Brian P. Warrington sent written communication to another lawyer that was inconsistent with the proper tone of communications and that such conduct is deserving of sanction; and

CO20181699

7. It is alleged that Brian P. Warrington failed to repay money owing to his client, as a result of a review or assessment of his account(s), until ordered to do so by the Court and that such conduct is deserving of sanction.

Agreed Statement of Facts

9. The ASF attached to these reasons pursuant to Rule 92(4) details evidence of the current citations and current investigations.

10. It should be noted that the ASF deviates from the undertakings in one respect. In his undertakings, Mr. Warrington agrees not to apply for readmission to the LSA whereas in the ASF, Mr. Warrington agrees not to reapply for at least one year. LSA counsel took no exception to this alteration of the undertaking so the Committee understands the undertaking is not to reapply for at least one year.

The Evidence

11. In addition to the ASF, Mr. Warrington introduced a doctor's report (and addendum) which were marked as exhibits 10 and 11. The LSA did not object and introduced no responding material.

Private Hearing Application

12. One of the fundamental principles of the *Act* is to conduct all hearings in public unless a compelling privacy interest requires protection. Pursuant to Rule 98, upon its own motion, or the application of an interested party, the Committee may direct that portions of the records pertaining to that part of a hearing which is held in private are confidential and shall not be made available by the LSA for inspection or copying.

13. Counsel for the Mr. Warrington did not seek to have a private hearing. The Committee directed a public hearing.

14. The Committee further directed that those exhibits and portions of exhibits containing specifics relating to a medical diagnosis, and specifically exhibits 10 and 11 comprising medical reports be withheld from public disclosure and that all such portions of the hearing record be private and not be available to the public.

The Submissions of the Parties

15. Mr. Warrington:
    - Sought approval of his resignation application under section 32 of the *Act*;
    - Agreed to costs as specified by the LSA in the amount of $17,832.50, payable if he decides to seek reinstatement;
    - Agreed to a Notice to the Profession but asked that it make no mention of his medical issue; and
    - Sought a publication order in relation to the written decision identifying him by initials only so that his name would not be associated with the medical information entered into evidence.

16. Counsel for the LSA:
    - Made no objection to the resignation application under section 32 of the *Act* but did mention the need for a custodian to Mr. Warrington's legal practice;
    - Agreed costs are to be paid in the event of a reinstatement application;
    - Made no submissions in response to the request about the Notice to the Profession;
    - Objected to a written decision with initials only. LSA counsel argued the need for general deterrence and noted that medical information would normally be redacted pursuant to the Publication Guidelines.

Analysis

<u>Resignation Application</u>

17. LSA counsel supported Mr. Warrington's application for resignation, agreeing that the resignation pursuant to section 32 of the *Act* served the public interest. As such, the

Committee considers this application to be tantamount to a joint submission and therefore deserving of deference, unless it was demonstrably unfit or unreasonable, or contrary to the public interest.

18. Resignation committees of the LSA have permitted members who faced conduct proceedings to resign pursuant to section 32 where the public interest may still be served without requiring either a public hearing into outstanding citations or a deemed disbarment.

19. In this case, LSA counsel notes that the ultimate sanction anticipated for the seven outstanding citations would be a two month suspension and a fine. The suspension is far less than Mr. Warrington's undertaking that he will not reapply for admission to the LSA for at least one year from the effective date of his resignation.[2]

20. The Committee notes also that this resignation application obviates the need to proceed with a hearing on seven citations plus other investigated matters. Cost and time to all is removed.

21. The fundamental issue to be determined by this Committee is whether it is in the best interests of the public and in the interests of the profession to permit Mr. Warrington to resign prior to the resolution of the outstanding conduct matters. In considering whether to grant the resignation application this Committee has considered the following factors:
    (a) The nature of Mr. Warrington's alleged conduct, which related to communication issues and not matters of competency, breach of trust or a dishonest motive;
    (b) The prior discipline record for similar citations; and
    (c) The personal problems experienced by Mr. Warrington during the periods of time when the conduct occurred.

22. The Committee concludes, particularly in light of no objection by the LSA, that there is no regulatory interest served in taking this matter to hearing. The section 32 resignation application is allowed effective July 1, 2020.

Costs

23. LSA counsel submits an estimated bill of costs at $17,832.50. Counsel for Mr. Warrington agrees while pointing out that costs are at the discretion of the Committee. The Committee agrees that this amount is a fair and accurate reflection of the costs in this matter and sets it as the costs owing in the event Mr. Warrington seeks reinstatement.

[2] *Law Society of Alberta v. Sefcik,* 2013 ABLS 25

24. The Committee agrees with several decisions[3] of similar panels of the LSA that the costs are payable prior to any reinstatement application.

Publication

25. Rule 106 of the LSA establishes the requirement to make public the decision of this Committee and the Notice to the Profession, subject to "a publication order directing the Executive Director to publish or withhold certain information, on application by a member or Society counsel" [Rule 106(5)].

26. Counsel for Mr. Warrington requested that the Notice to the Profession not make mention of the health issues of his client. He also sought to have our decision issued identifying the member with initials only. The LSA took no position on the first application. LSA counsel did object to the decision being issued with initials only, speaking of denunciation and deterrence.

27. The Committee felt it prudent to balance the issues of Mr. Warrington's health with the interests of the profession and the public in having some notice of the resignation[4]. This was determined to be best achieved by way of a modified form of Notice to the Profession. In accordance with section 106(5) of the Rules, this Committee directs the Executive Director to issue a Notice to the Profession without identification of the reasons in the following, or some similar, terms:

> On June 22, 2020 a Resignation Committee of the Law Society of Alberta accepted an application by Brian Warrington, a member of the Law Society who lives and practised in Calgary, Alberta, to resign pursuant to section 32 of the *Legal Profession Act*. Mr. Warrington's resignation is effective July 1, 2020.
> The written decision of the Resignation Committee will be posted to the Law Society of Alberta's website when it is issued.

28. On publication of this decision, Mr. Warrington argues there is an emerging principle of a "right to be forgotten" and suggests that the full decision be published but using his initials rather than full name. He did not identify any legal disciplinary decision in Alberta or elsewhere in Canada which has used that principle or published using initials of the member.

[3] *Law Society of Alberta v. Park*, 2013 ABLS 30 (para 18); *Law Society of Alberta v. Meiklejohn*, 2014 ABLS 35 (para 22); *Law Society of Alberta v. Adler*, 2015 ABLS 8 (para 30); *Law Society of Alberta v. MacGregor*, 2016 ABLS 39 (para 26); *Law Society of Alberta v. Watzke*, 2017 ABLS 10 (para 23); *Law Society of Alberta v. Wood*, 2019 ABLS 28 (para 31)

[4] *Law Society of Alberta* v. *O'Shaughnessy*, 2019 ABLS 11 (para 22)

29. There is little doubt, particularly in light of the additional medical material introduced, that Mr. Warrington's long-standing untreated medical condition played a significant role in the issues that have led to both past and present complaints to the LSA. The doctor's report emphasizes that not only medication but also ongoing counselling may assist Mr. Warrington in managing his condition.

30. In light of the fact that a 'right to be forgotten' is not recognized in any other LSA decision and that the LSA does have a redaction policy in relation to health information, it is our opinion that neutralizing the decision by using initials is not appropriate.

31. The Publication Guidelines note that transparency and accessibility of the decisions of LSA tribunals "protects the public interest, builds the public trust and ensures stakeholder confidence in the Law Society." It is our view that the routine redactions followed by the LSA when publishing decisions in relation to medical and mental health information best meet Mr. Warrington's concerns while enforcing transparency[5].

Decision

32. The Committee finds that the ASF is in an acceptable form.

33. Based on the evidence, the Committee determined that it was in the best interests of the public to accept the application of Mr. Warrington to resign pursuant to section 32 of the *Act*, effective July 1, 2020.

34. The Committee accepted the undertakings made by Mr. Warrington.

35. The Committee has reviewed the costs of hearing this application, as prepared by the LSA. The Committee has determined that Mr. Warrington must pay these costs prior to any later application for reinstatement.

36. Pursuant to subsection 32(2) of the *Act*, Mr. Warrington's name will be struck off the roll. The roll shall reflect that his application under section 32 of the *Act* was allowed on July 1, 2020.

Concluding Matters

37. Exhibits 1-9,12, plus other hearing materials and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Warrington will be redacted and further redactions will be made to preserve client confidentiality and

[5] Publication and Redaction Guideline for Adjudicators – Special considerations for Medical and Mental Health Information [February 2020 version] (paragraphs 55-57)

solicitor-client privilege (Rule 98(3)). To clarify, exhibits 10 and 11 are private and are not to be disclosed.

38. A Notice to the Profession will be issued but will be limited to the decision of resignation without mention of health issues.

39. A Notice to the Attorney General is not required.

Dated Calgary Alberta, September 15, 2020.

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Margaret Unsworth, QC (Chair)

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Elizabeth Hak

_____

Kathleen Ryan, QC

Schedule 1

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF BRIAN WARRINGTON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

INTRODUCTION

1. I have been a member of the Law Society of Alberta (the "LSA") since November 2002.

2. There are 7 citations directed to a hearing by a Conduct Committee Panel as follows:

Matter CO20170375

Citation 1: It is alleged that Brian P. Warrington failed to act in a courteous and civil manner towards another lawyer and that such conduct is deserving of sanction;

Citation 2: It is alleged that Brian P. Warrington sent repeated written communications to another lawyer that were offensive and inconsistent with the proper tone of communications that such conduct is deserving of sanction;

Matter CO20172295

Citation 3: It is alleged that Brian P. Warrington exhibited a lack of professionalism in correspondence to a self-represented litigant and that such conduct is deserving of sanction;

Citation 4: It is alleged that Brian P. Warrington failed to be courteous and civil to another lawyer and that such conduct is deserving of sanction;

Matter CO20181566

Citation 5: It is alleged that Brian P. Warrington failed to provide competent, timely, conscientious, diligent and efficient service to his client and that such conduct is deserving of sanction;

Citation 6: It is alleged that Brian P. Warrington sent written communication to another lawyer that was inconsistent with the proper tone of communications and that such conduct is deserving of sanction; and

Matter: CO20181699

Citation 7: It is alleged that Brian P. Warrington failed to repay money owing to his client, as a result of a review or assessment of his account(s), until ordered to do so by the Court and that such conduct is deserving of sanction.

3. In addition to the matters summarized above, the Law Society is reviewing and investigating four other complaint matters, which may be summarized as follows:

CO20190183: Mr. [H] is a former client of Mr. Warrington in relation to a family law matter. He claims that Mr. Warrington did not properly serve him. Mr. [H] retained Mr. Warrington a few weeks before a custody trial. Mr. [H] participated in a settlement conference with Mr. Warrington and all matters settled which avoided trial. Two comprehensive court Orders were filed terms of which Mr. [H] consented to. Over one year after Mr. Warrington ceased to act Mr. Warrington engaged in conversation with his ex-spouse, via a dating web site, something of which Mr. [H] took objection to. The object of the conversation revealed that the sister to Mr. [H]'s ex-spouse sought Mr. Warrington's opinion for an unrelated matter.

An extensive investigation was conducted but did not reveal any serious concerns with the handling of the Complainant's legal matter. While Mr. Warrington acknowledged that he had a friendship with Mr. [H]'s ex-spouse, after he ceased to act for Mr. [H], there was no evidence that any confidential information had been disclosed. Finally, Mr. Warrington stated that the "trial prep" discussed on the online dating website related to a legal matter he wanted to discuss with the ex-spouse's sister.

This matter has been investigated.

CO20190611: Ms. [S] was an opposing lawyer on a family matter. A trial was avoided and instead proceeded to mediation, at Mr. Warrington's insistence and all terms settled successfully. Following closure, Ms. [S] questioned Mr. Warrington's competence, professionalism and tone in his correspondence. The Dispute concerned whether the parties had an obligation to observe Rule 1.2(3) of the Rules of Court. Mr. Warrington insisted that mediation was a compulsory event. Ms. [S] resisted this suggestion for approximately six months, responding that her client did not want to attend mediation. Eventually, the parties agreed to attend the mediation, as Mr. Warrington had suggested from the beginning, and the matter was brought to a close which avoided trial.

This matter may be determined to be suitable for alternative resolution.

CO20190953: Mr. [B] is an opposing party in a family law matter. He states that Mr. Warrington accused him of "criminal extortion". At the time, Mr. [B] had unilaterally withdrawn spousal support to Mr. Warrington's client, despite a court Order leaving Mr. Warrington's client in a difficult financial situation. Mr. [B] eventually relented and resumed paying spousal support and a court application was not necessary. The correspondence revealed that Mr. Warrington had levelled an accusation of "extortion" not criminal extortion against Mr. [B]. Mr. Warrington also later qualified the accusation as "financial extortion". There was no accusation of criminal extortion levelled against Mr. [B]. Mr. Warrington agreed that next time he would employ a less inflammatory term and that he did not intend to cause ill will.

The status of the matter is to determine whether the allegations not rise to a level of conduct deserving of sanction.

CO20191024: Ms. [E] is a former client of Mr. Warrington and entered into a retainer agreement for $8,000 which she states included preparing for and attending a family law mediation/arbitration and questioning. She alleges that Mr. Warrington failed to follow her instructions or take steps to advance the file. Contrary to the allegations, there is evidence that to suggest that Mr. Warrington took a number of steps and that Ms. [E] declined Mr. Warrington's suggested terms of settlement and that perhaps Ms. [E]'s expectations might be unreasonable. Mediation was preceded by Mr. Warrington responding to the opposing party's application in preparing for an affidavit for his client, several phone conferences with the mediator/arbitrator which then led to a full day of mediation which Ms. [E] attended. The matter did not settle at mediation and Ms. [E] declined her spouse's offer of settlement and she insisted that the matter proceed to arbitration.

The status is to determine whether the allegations are substantiated or whether that the complaint should be dismissed.

Matter CO20170375

4. CO20170375 consists of 2 citations meaning and limited to:

Citation 1: It is alleged that Brian P. Warrington failed to act in a courteous and civil manner towards another lawyer and that such conduct is deserving of sanction; and

Citation 2: It is alleged that Brian P. Warrington sent repeated written communications to another lawyer that were offensive and inconsistent with the proper tone of communications that such conduct is deserving of sanction.

The following are the facts in relation to that conduct

5. [KK] acted for the husband effective January of 2017, and Brian Warrington acted for the wife since 2015, in a divorce and family matter. An arbitrator had been used by the parties in the hope of settling certain issues prior to litigation.

6. Throughout arbitration and mediation in 2015 and in 2016, with [SK], Q.C. the husband had been represented by [EM], a colleague to Ms. [KK]. At the parties mutual and written request, submitted by counsel, Arbitration ceased effective June 23, 2016, and as confirmed in writing by Arbitrator, [SK], Q.C. The matter of costs remained outstanding before the Arbitrator.

7. Thereafter, the matter moved from private arbitration to litigation in the court of Queen's Bench. Mr. Warrington's client and Mr. [EM]'s client brought applications before the court in 2016 both of which resulted in Consent Orders.

8. In January 2017, Mr. Warrington followed his client's instructions, brought an application for a Mareva Injunction. During that application, and unexpectedly, it was Ms. [KK] not Mr. [EM] who appeared in court, and who stated to the Court that the matter was still in arbitration. Mr. Warrington was confused over this as the parties had desisted with arbitration six months earlier and the arbitrator had confirmed this. Mr. Warrington expressed his disagreement with Ms. [KK] stating that arbitration had ceased. Justice [U] dismissed the injunction application and ordered Mr. Warrington's client to pay $750.00 in costs directing the parties to continue with Arbitration.

9. Justice [U]'s direction was contrary to the Arbitrator's June 2016 decision, and the parties express written request to desist with arbitration effective June of 2016.

10. Parties cannot conduct private arbitration and litigate a matter in the court at the same time (Arbitration Act).

11. January […], 2017, following court, Mr. Warrington attempted to rectify the situation, writing [EM] in request that the misunderstanding of Ms. [KK] be corrected and that Justice [U] also be properly informed.

12. Mr. Warrington indicated that Ms. [KK] had made misrepresentations to the Court and demanded that she admit her error, write an apology to the Court and consent to an Order vacating the cost award against his client. Ms. [KK] informed Mr. Warrington that it was her view and interpretation that the matter was still subject to arbitration and no misrepresentation had been made. She stated that Mr. Warrington failed to understand that having a different interpretation or understanding of events does not amount to a misrepresentation.

13. January 23, 2017, Mr. Warrington wrote [EM] in a second request that he assist Mr. Warrington in correcting the court's misapprehension.

14. Mr. Warrington raised his concerns about the alleged "misrepresentation" with Justice [U], enclosing the arbitrator's letter in confirmation that arbitration had ceased effective June 23, 2016. In view of Mr. Warrington's letter and the former arbitrator's June letter, Justice [U] stayed his January […], 2017 Order and directed the parties to proceed to a Special Hearing to deal with the issue of whether or not the parties were still subject to arbitration. Ms. [KK] protested Mr. Warrington's letter citing it as inaccurate.

15. At Mr. Warrington's request, on January 23, 2017, the former Arbitrator, [SK], Q.C., re-circulated her letter of June 23, 2016, in confirmation that her services had come to an end, and at the request of both parties, Ms. [KK]'s client.

    Ms. [SK]'s letter of June 23, 2016 stated;

    > *"…it was agreed that, at this point, I will no longer have arbitration powers in this matter".*

16. January 23, 2017, Mr. Warrington copied Ms. [KK] with the Arbitrator's letter. Mr. Warrington requested of Ms. [KK] that she correct the court's misapprehension stating that she had been provided opportunity to correct her misdeeds and that she will made be to account. Ms. [KK] wrote Mr. Warrington that she felt his letters were misleading, inaccurate and that Mr. Warrington was the one in error. Mr. Warrington stated he would take the matter up with the Law Society.

17. Mr. Warrington had by now expected that Mr. [EM] had corrected Ms. [KK], in confirmation that arbitration had in fact ceased.

18. Mr. Warrington submitted an application in request that the matter be scheduled for trial. Mr. Warrington had attempted to enlist then opposing counsel's cooperation, Mr. [EM], in moving the matter along to trial since Arbitration had ceased the previous June. Mr. Warrington had sent Mr. [EM] a Form 37, a trial request in November and again in December of 2016 to which there was no response.

19. On February 2, 2017, Justice [M] directed that the parties apply for case management. Counsel disagreed over the procedure in having the matter set down for case management;

20. Mr. [EM] did not heed Mr. Warrington's letter requests submitted in January to May that Ms. [KK] be apprised that arbitration had ceased the previous June or that he cooperate in correcting the court's misapprehension.

21. Mr. Warrington admits he was frustrated with trying to move the file along, that he was frustrated with Ms. [KK]'s conduct of the litigation and admitted he should not have made certain comments including that she lacked the ability or experience to handle the file and he apologized for those and all inappropriate comments.

22. The following are examples of the comments made by Mr. Warrington to Ms. [KK] in his communications between January 20 and February 7, 2017:

January 20, 2017:

> "…it has been asked of you before to refrain from guffawing in court; Please do so. Please, in your own interest, take time to be properly educated on this file and ensure to abide by the conditions we expect to be met within one week of today; No response within one week, will be interpreted as a failure to correct this misapprehension you permitted the court to come under today"
>
> "We expect a letter of atonement within one week of today; We will not be sending a reminder"

January 24, 2017 (to Ms. [KK] and Mr. [EM]):

> "You will correct these misrepresentations submitted to Justice [U] within 24 hours and you will apologize to me.
>
> If you choose not to, I will consider this yet another endeavor to mislead the court and a violation of our code of conduct.
>
> You will issue a retraction, meet each condition above within 24 hours, or you will both face the consequences. I will not warn either of you again.
> …
> I consider this behavior unbecoming of an officer of the court and reprehensible of both of you."

January 31, 2017:

> "Please read the file; Please prepare accurate statements of fact and law; Please refrain from guffawing/laughing; Please submit a written apology to me for having guffawed and laughed in court; Please explain yourself to your senior Mr. [EM], for having laughed and guffawed in court the previous occasion; … Please advise your client to compensate [my client] $1000 in costs; Further, owing to the misrepresentations before Justice [U] please prepare an Order vacating the $750 in costs. The above is a minimum requirement and in accordance with how an office (sic) of the court ought conduct oneself"

February 1, 2017:

> "Ms. [KK], if it is your experience that does not accord with the experienced necessary for trial then please refer this file to counsel more senior"

February 3, 2017:

> "in having misled the court January […] we ask that you compensate our client $1000.
>
> It is troubling that you not only see nothing wrong in your actions, but that you justify it.
>
> I have referred you to Mr. [EM], your senior, as I believe someone with more years at the bar than you might offer some counselling which I urge you to take advantage of"

February 7, 2017:

> "…It is your wrong advice and your misapprehension of the facts which have caused me significant time and also expense to my client. Personally you are a difficult person to deal with and I did not did not (sic) find you imbued with a significant amount of common sense to assist opposing counsel in moving this matter forward. At every level I did not find your knowledge of the law sufficient and you seem to want to make a game of obstructing this matter as much as possible. I have already pointed out to you that your laughing and guffawing in court is not in keeping with professional practice.
> …
> And do not think that the misleading information providing (sic) to Justice [U] is simply going to go away. Inaccurate information was relayed to the court and you were provided an opportunity to atone for that. You failed to do so. There will be consequences"

23. The following are examples of the comments communicated by Mr. Warrington to Mr. [EM]:

January […], 2017:

> "Whilst the submissions of your junior, [KK], are zealous, that enthusiasm permitted Justice [U] to come under a misapprehension today.
> …
> I will afford Ms. [KK] to make amends and correct the misapprehension. This will be her one opportunity to do so and providing the following conditions are met within one week of today. I will not be providing a reminder of these obligations, obligations of which I consider incumbent upon her as an officer of the court and our Code of Conduct.
>
> 1. A letter to Justice [U], signed by her as well as myself, in apology expressly pointing out that she was mistaken and that this matter is and in fact has twice been before the court after Arbitration (save for costs) in the fall of 2016.
>
> 2. A consent Order is entered into by which the $750 in costs is no longer payable."

24. Mr. [EM] responded to Mr. Warrington correcting his understanding of Ms. [KK] as "junior" and informing him that she is his partner and was called to the Bar in 2000. It was his opinion that Mr. Warrington's January application was denied because he did not have pleadings to support it and due to the short notice of the application and Mr. Warrington's refusal to adjourn, costs were awarded against his client.

January 23, 2017:

> "Ms. [KK] desires senior counsel provide assistance to her, I suggest she do so and soon. The matter was brought on court motion with an Affidavit under the court action number. As confused and mistaken as Ms. [KK] is, and likely remains, confusing Justice [U] on this matter is neither professional nor good advocacy.
>
> It is incumbent upon you, as counsel of record, to counsel your junior colleague and to have her correct the court's misapprehension"

January 30, 2017 (Mr. [EM] and Ms. [KK]):

> "Be on notice that you have both been provided ample and repeated opportunity to correct the misapprehension before Justice [U].
>
> In failing to correct that, and in trying to cover it up, you will both deal with the consequences"

February 2, 2017 (Mr. [EM] and the Arbitrator, [SK]):

> "…on January 20th, 2017, Justice [U] directed us to proceed again with Ms. [SK] based upon the explicit, ill informed, and untrue baseless representation of Ms. [KK] that "**no**" letter from Ms. [SK] exists suspending Arbitration.
> …
> I permitted Ms. [KK] time to write a letter of atonement to me and to Mr. Justice [U]. Not only did she not do so, she justified her position in misleading the court…
>
> There will be consequences to Ms. [KK]'s actions.
> …
> Although I am loathe to continue this litigation opposite Ms. [KK], who again misled the court today, we take some comfort that Ms. [KK] will be held accountable for her repeated misrepresentations to the court and that she has at least two counsel of this office able to guide her"
>
> [Emphasis in original]

25. On February 17, 2017, Mr. Warrington e-mailed Mr. [EM] a link to a document entitled "A Lawyer's Duty to Opposing Counsel" and stated, "please review the enclosed link and please ensure that you review each page with Ms. [KK]; From her court submissions she was counselled to make accurate submissions, and refrain from guffawing/laughing while in chambers".

26. Ms. [KK] responded requesting that Mr. Warrington refrain from sending these types of communications. Mr. Warrington responded to her stating, "it is intended to assist you**"**. Mr. Warrington remained hopeful that Mr. [EM] would inform Ms. [KK] that arbitration had ceased.

27. On February 20, 2017, Mr. Warrington e-mailed Mr. [EM] another link to a CBA document entitled "Civility in the Legal Practice: Practical Tips" and requested that he review the document with Ms. [KK]. He ended the e-mail by stating, "The matter of her permitting the court to come under a misapprehension will not be going away and it is deemed a violation of the Code of Conduct".

28. January 31, 2017, Mr. Warrington initiated the request for a phone conference with the Arbitrator for the purposes of dealing with outstanding costs of arbitration. Several phone conferences were booked, then re-rescheduled before a phone conference took place in July at which time the Arbitrator awarded costs to Mr. Warrington's client.

29. In March and in April Mr. Warrington expressed his frustration to both Mr. [EM] and Ms. [KK] in his requests for a final phone conference, that Ms. [KK] cooperate in moving the matter along via case management, that she read the file and correct her misrepresentation to Justice [U].

30. In several e-mails in March 2017, Ms. [KK] requested that Mr. Warrington cease sending her and Mr. [EM] "harassing" e-mails and to limit his comments to substantive issues on the file. Despite those requests, Mr. Warrington continued to communicate to her in that manner, examples of which are as follows:

March 3, 2017:

> "This is referred to as 'ethics' Ms. [KK], the start of which is found at our Code of Conduct, which I ask you read, and read several times, in addition to the material on civility sent you"

March 6, 2017:

> "Your opinion of the law is incorrect; The opinion suggests to me that you ought consult a lawyer with more experience, if not pass this file altogether to alternate counsel"

31. The correspondence in April;

April 9, 2017 to Mr. [EM]:

> "assuming Ms. [KK] remains under your tutelage, I leave you with this letter.
>
> Ms. [KK] continues to experience difficulty in what has transpired in court and what has not transpired in court, let alone court room protocol as she

> continues to guffaw and giggle in court. As previous letter advised me that she is a 'partner'. I have advised well before that, and after that, of Ms. [KK]'s demeanor which is highly inappropriate and I do not consider such antics worthy of an officer of the court.
> …
> I will assume that some correct tutelage will be imparted to Ms. [KK] before the session and that my reminding you to tell her to desist from guffawing and giggling will not be necessary"

April 24, 2017:

> "…you will continue to hear from me on this file and if you do not wish to, you are invited to pass the file to a colleague, irrespective of their year of call to the bar."

April 26, 2017 letter to Ms. [KK] and Mr. [EM] regarding an upcoming teleconference with Ms. [SK]:

> "…I trust this phone conference, which you apparently will attend, accompanying Mr. [EM], will provide enlightenment as to not only the file but civil discourse and litigation procedure. I remind as much because on several occasions, admonishment of which was provided, it was requested that you refrain from guffawing and laughing in the midst of a live court session. I trust we will not hear that kind of vocal submissions on this or on any other occasion."

32. Mr. Warrington became aware of Ms. [KK]'s complaint on or about May 15, 2017.

33. Ms. [KK] stated that Justice [U] did not make a finding or determine that Ms. [KK] had made a misrepresentation to the Court.

34. If she had laughed or giggled in court, Justice [U] did not overhear Ms. [KK] laugh in court. Mr. Warrington asserts that he overheard Ms. [KK] giggle or guffaw.

35. Overall, Ms. [KK] complained that Mr. Warrington demonstrated a lack of knowledge or understanding as to the proper conduct of a litigation file, was unprofessional and lacking in integrity.

36. She stated that his communications overall were unsolicited, harassing, demeaning and misogynistic.

37. Mr. Warrington responded to the complaint stating that it was clear from written correspondence from both Mr. [EM] and Ms. [SK] in June 2016 that arbitration had ceased as of 2016. In addition, in the fall of 2016, Mr. Warrington's client submitted a court application, followed by the Husband's court application through Mr. [W], an associate to Mr. [EM]'s. The court applications would not have been permitted if arbitration had not

ceased. Despite this being clear to all involved, Ms. [KK] misrepresented to the Court that the parties were still in arbitration. The transcript of his injunction application showed that Justice [U] had granted the application and then reversed his decision due to Ms. [KK]'s misrepresentations.

38. Mr. Warrington requested that Ms. [KK] and Mr. [EM] correct the Court's misapprehension and enter into a Consent Order vacating costs, but they refused to do so. He indicated he was at times was frustrated and angry and ultimately reached the point of exasperation with Ms. [KK]'s lack of familiarity with the file and her refusal to admit or correct her error. Mr. Warrington believes he made no misogynistic comments and his intentions were not to demean or bully Ms. [KK]. Ms. [KK] was new to the file and Mr. Warrington did submit a letter request that Ms. [KK] familiarize herself with the file and that she correct her misrepresentation. Had she done so Mr. Warrington was prepared to consider the matter settled. Mr. Warrington suggested that Ms. [KK] had little or no experience at arbitration and had not had time to become familiar with the file. He simply asked her to apprise herself of the facts and become educated on the file a matter of which had had substantive history at arbitration.

39. Mr. Warrington suggested Ms. [KK]'s unfamiliarity with the file prejudiced Mr. Warrington's client and he therefore suggested she refer the matter to Mr. [EM], a more senior lawyer and the lawyer more familiar with the file for discussion before proceeding. In light of Justice [U] eventually staying the Order, Mr. Warrington invited Ms. [KK] to compensate his client $1,000.00 in costs.

40. Mr. Warrington acknowledged that it was still necessary for the parties to meet with the Arbitrator concerning costs. Between September 2016 and June 2017, he said he attempted to schedule a mutually agreeable date and was repeatedly told that the suggested dates were not suitable for both Ms. [KK] and/or Mr. [EM] or their client. He requested assistance of the arbitrator in scheduling the phone conference. As such, he informed Mr. [EM] that the attendance of both he and Ms. [KK] was not required.

41. Mr. Warrington admitted that his letters were tersely written and that he need not have written that Ms. [KK] was Mr. [EM]'s junior, that she lacked litigation experience, that she lacked common sense to move the file along, that her knowledge of the law was insufficient, and that he was loathe to continue the file opposite her. He apologized to Ms. [KK] for those comments.

Matter CO20172295

42. CO20172295 consists of 2 citations meaning and limited to:

Citation 3: It is alleged that Brian P. Warrington exhibited a lack of professionalism in correspondence to a self-represented litigant and that such conduct is deserving of sanction; and

Citation 4: It is alleged that Brian P. Warrington failed to be courteous and civil to another lawyer and that such conduct is deserving of sanction.

The following are the facts in relation to that conduct:

Citation 3: It is alleged that Brian P. Warrington exhibited a lack of professionalism in correspondence to a self-represented litigant and that such conduct is deserving of sanction;

43. Mr. Warrington acted for the father, [MF], in a family access matter in which the mother and opposing party, [DH], was self-represented.

44. The parties attended before Judge [L] on April […], 2017 to reschedule a JDR. During that application, Ms. [DH] raised a concern about a comment made by Mr. Warrington in an e-mail to her wherein he referred to an MRI scheduled for her daughter as a "health photo shoot". Judge [L] indicated that the comment was disrespectful to Ms. [DH]. Mr. Warrington apologized on the court record, attempting to explain that he had been trying to obtain cooperation in having the parties attend mediation via a judicial dispute resolution (JDR).

45. As the parties were unable to reach an agreement concerning summertime access, Judge [L] suggested that the three of them go outside the courtroom and try to reach an agreement. After the parties had left the courtroom, he directed Duty Counsel, [JC] to join them and assist Ms. [DH].

46. The complaint arises from the conversation that took place in the hallway outside the courtroom between Mr. Warrington and Ms. [JC]. Ms. [JC] and two other independent witnesses allege that Mr. Warrington yelled at Ms. [JC] and made a sexist remark to her.

47. Mr. Warrington denies the allegations stating that he uttered one angry remark to Ms. [JC] in response to belittling and unnecessary comments from her towards Mr. Warrington personally. [MF] and [DH] with Mr. Warrington, reached an agreement in the court room hallway and thereafter summarized the consented to terms before Judge [L].

48. The background to this court appearance is that Judge [C] had issued an Order on December […], 2016 and Mr. Warrington and Ms. [DH] had several e-mail communications trying to draft the terms of the Order. In an e-mail response to Ms. [DH] March 8, 2017, Mr. Warrington stated:

> "[DH], as far as your use of the English language goes, precisely, with employment of very basic terms, how would you like this Order termed; what you stated below, is what I used to re-draft this Order. Be clear, try not to be a smart ass"

49. Mr. Warrington was trying to work with Ms. [DH] but was on the receiving end of remarks from Ms. [DH] which he did not feel were earned, reminding Ms. [DH] the same day that she can write to him without such unnecessary remarks.

> March 08, 2017:
> [DH],
>
> actually, I just asked you to respond without (without a smart ass remark [DH]. That is all;
>
> Do understand something; the Order specifies that you have the child at all times, except when [MF] has parenting time;
>
> So continue to tell me when you have time does not do me any good;
>
> I need to know when "[MF]" has parenting time;
>
> see the attachment; try to fill this in yourself and I will edit;

50. A JDR and a subsequent docket appearance had been scheduled for April 21, 2017 commencing at 2pm. On April 13, 2017, Ms. [DH] informed Mr. Warrington she had just been informed that her other daughter, who had been on a waiting list for four months, had been scheduled for a brain MRI on April 21, 2017, overlapping with the scheduled JDR. She stated the MRI could not be rescheduled as it was to confirm whether a lump in her daughter's brain was benign or if it was growing. She enquired of Mr. Warrington how the JDR could be rescheduled.

51. Mr. Warrington suggested she attend the JDR via teleconference as it would take three to four months to reschedule. She responded stating that would not be possible and indicated she had spoken with the trial coordinator, adjourned the JDR and docket court and had sent a letter to the Judge explaining why she was unable to attend the JDR.

52. Mr. Warrington continued in his attempt to get Ms. [DH] to attend via teleconference and made the following comments to her in several e-mails on April 13 and 14, 2017:

> "[DH], my sympathies, but this procedure is not all day. We can restrict the JDR to 45 minutes. You can visit the hospital cafe and speak from there"
>
> "I am just pointing out to you, that you will not be pre-occupied all day, and that we have been trying to make this JDR happen even prior to the last

court date. It is in your own interest to spare a wee 45 minutes"

"Let me know when you have arrived the (sic) hospital cafeteria. Being mindful that if you tried, you can visit your daughter 'and' participate in this JDR, and mindful of the fact that this health procedure is not life threatening, is quite routine, and that the hospital staff are the ones who conduct the procedure".

Mr. Warrington included in this e-mail a google search of 'How long will it take to do a CT scan?' and highlighted 'most scans take just a few minutes to complete'. Ms. [DH] pointed out to Mr. Warrington that his google search was offensive and was not even for the correct medical test.

"[DH], a brain scan is a routine procedure, non-invasive and amounts to not much more than a health photo shoot, which does not take all day. So in communicating the health appointment to the court clerk it would be our preference that you not attempt to excuse yourself all day, because you are giving a reason not a viable excuse. You can attend both the JDR and the court appearance"

53. Mr. Warrington then agreed to adjourn the JDR and a court docket date was scheduled for the purposes of re-scheduling and to attempt for Mr. Warrington's client and Ms. [DH] to come to terms. During that appearance, Ms. [DH] raised her concern about Mr. Warrington's comment to her that the scheduled MRI was simply a "health photo shoot". Judge [L] stated that the comment was very disrespectful. Mr. Warrington apologized on the court record. Exiting the court room Mr. Warrington apologized again to Ms. [DH]. Ms. [DH], hearing Mr. Warrington's apology, then discussed the matter with Mr. Warrington and Mr. [MF] in the court room hallway where the parties came to an agreement.

54. Mr. [MF] had scheduled to travel outside the country with his daughter during the summer and needed a letter from Ms. [DH] giving her permission for that travel. Several e-mails went back and forth between Mr. Warrington and Ms. [DH] at the end of May 2017 wherein he informed her that the letter had to be notarized and stated it could be done for no charge at his office. Ms. [DH] argued that according to the Government of Canada website, notarization of the document was not required.

55. Mr. Warrington informed Ms. [DH] if the document was not notarized by June 14, 2017, he would bring the matter back to court and seek costs. When she refused to agree to have the letter notarized, he wrote to her stating in part as follows:

"...Either you accept my opinion that that document is to be notarized or you do not except (sic) my opinion. If I do not have your pledge by Monday, June 5 that the travel letter will be notarized and delivered by June 9 then I will be bringing this matter forward before the court and you can ask for yourself what is the general policy concerning travel letters.

…
…That is purely a matter of evidence and a notarized letter is a much better piece of evidence. It is quite ridiculous that you argue with me and defying some 17 years of experience based upon your google search…If researching the law was merely a matter of Google searching I am sure law schools will be very much out of business and very soon…"

56. Mr. Warrington's choice of words concerning the brain scan was not wise and he apologized to the Court and to Ms. [DH] upon exiting the courtroom for making such a comment. He said he did not intend to diminish the importance of the appointment nor state that Ms. [DH] should not attend or that the JDR was more important. When he was informed of the MRI, he was not aware of the time of the appointment and knowing that an MRI is not a full day appointment, he was simply trying to convey to Ms. [DH] that she may be able to attend both the MRI and JDR. He states that he was also attempting to bring the parties to a JDR to assist both parties in mediating their differences. He stated that had Ms. [DH] told him that the time of the appointment conflicted with the time of the JDR, he would not have requested that she try to attend both.

Citation 4: It is alleged that Brian P. Warrington failed to be courteous and civil to another lawyer and that such conduct is deserving of sanction.

57. During the court appearance on April […], 2017, the parties were unable to agree on visitation and travel dates for summertime access. Judge [L] suggested the parties and Mr. Warrington go outside the courtroom and try to reach an agreement. After they left the courtroom, Judge [L] asked duty counsel, [JC] to see if she could assist Ms. [DH] as she was self-represented.

58. Ms. [JC] made allegations against Mr. Warrington regarding his conduct towards her at this time, of which Mr. Warrington denies.

Matter CO20181566

59. CO201703 consists of 2 citations meaning and limited to:

Citation 5: It is alleged that Brian P. Warrington failed to provide competent, timely, conscientious, diligent and efficient service to his client and that such conduct is deserving of sanction; and

Citation 6: It is alleged that Brian P. Warrington sent written communication to another lawyer that was inconsistent with the proper tone of communications and that such conduct is deserving of sanction.

The following are the facts in relation to that conduct:

60. Ms. [O] retained Mr. Warrington in May 2016 to assist her with a divorce and division of matrimonial property.

61. Her complaint is that he failed to move her matter forward, failed to respond in a timely manner to her communications, attended at a court appearance without her prior knowledge, repeatedly suggested mediation to opposing counsel despite the opposing party's refusal to engage in that process, and failed to follow her instructions.

62. Mr. Warrington acted for Ms. [O] between May 2016 and July 2017, and again, from January to March of 2018. Due to his frustration with opposing counsel, he turned the file over to an associate who handled the matter between July 2017 and January 2018. Mr. Warrington then resumed conduct of the file at Ms. [O]'s request. Ms. [O] had requested that Mr. Warrington come back on the file in January of 2018 since his associate had asked for a significant retainer which Ms. [O] felt she was unable to pay. Mr. Warrington handled the file until March 2018, at which time Ms. [O] terminated his services.

63. Ms. [O] expressed her frustrations. She stated that in her communications to him, she repeatedly requested that he move the file along faster but that he would often not respond to those communications.

64. Despite Mr. Warrington's letters Ms. [O] did not provide sufficient financial information. The financial information did not fully arrive as complete until November of 2016, six months after retention. A house appraisal was obtained in December 2016. Mr. Warrington followed client instruction, and drafted a form of settlement in January of 2017 which the client approved. In March opposing counsel responded rejecting the offer. In April, opposing counsel insisted upon an exchange of an affidavit of records which was completed in May. Mr. Warrington again suggested to opposing counsel that the parties attempt mediation in May or June, suggestions of which opposing counsel rejected. Ms. [O] approved of Mr. Warrington's request to settle the matter by way of mediation.

65. In August 2016, Ms. [O] was informed by her husband that his counsel had filed an application returnable August […], 2016 concerning her incomplete outstanding disclosure. In answer to her inquiries, Ms. [O] was repeatedly told by Mr. Warrington's office that they had received no notice of such application. In fact, there was an application scheduled and Mr. Warrington did attend court on August […], 2016 and spoke to the matter. Opposing counsel was able to produce a fax sent to Mr. Warrington's office in July 2016 notifying him of the application. Mr. Warrington stated he only found out about the application at the last minute. At the application, he agreed to have Ms. [O] provide the outstanding disclosure and agreed to $300.00 in costs, which he personally paid.

66. Mr. Warrington claimed that he had no prior knowledge of the application until the morning of August […], 2016. He telephoned Ms. [O] the same day of court in the evening as well as e-mailed her with the results of court. He claimed that her phone number was inoperative despite Ms. [O] pointing out in this complaint that he had successfully phoned her several times on other matters prior to August […], 2017.

67. Ms. [O] apologized to Mr. Warrington for her missing disclosure which was the object of the court application. In November Mr. Warrington reminded Ms. [O] that her financial disclosure was still outstanding which Ms. [O] complied with that month.

68. Mr. Warrington had returned from vacation days prior to the court application and suspects that the faxed court application misplaced as he shares the office with six other lawyers. Ms. [O] was not prejudiced.

69. On October 24, 2016, Ms. [O] informed Mr. Warrington that according to her husband, the $300.00 in costs had not yet been paid. Mr. Warrington did pay these costs to opposing counsel from his own account.

70. Upon Ms. [O]'s request that Mr. Warrington resume conduct of the file January 23, 2018, Mr. Warrington re-drafted a settlement proposal and submitted it to Ms. [O] for review on February 13, 2018. The offer was edited on February 14th, by Mr. Warrington at Ms. [O]'s request and sent opposing counsel. Opposing counsel did not respond. On March 8th Mr. Warrington answered Ms. [O]'s query with an e-mail to his assistant copied to Ms. [O];

> [L],
>
> Let's send a reminder to the opposing lawyer. This time let's enclose dates, available dates with our usual mediator [DP].
>
> Whitney, i'm afraid this kind of delay, it's kind of back-and-forth between the parties and the lawyers is all too common. This matter does not warrant to trial, another party can for a trial. Therefore we are stuck with this back and forth.
> Eventually, almost all things do settle.
>
> I must confess that I have found his lawyer to be quite unreasonable. If you recall, over one year ago and with a number of reminders, I was asking for them to come to mediation. It is my experience that with almost any family lawyer in Calgary such dates Are responded to relatively quickly and usually a mediation date is set up. And we conclude the matter. I suspect his lawyer is not only engaged in family law, but also other areas of law and he is perhaps not accustomed to the fact that virtually any family file required some kind of mediation at some stage to bring about closure

71. March 15, 2018, Ms. [O] elected to proceed with alternate counsel;

72. In response to this complaint, Mr. Warrington stated that he was in regular communication with Ms. [O] throughout the file, that she received on average four communications from him each month, and that she was kept apprised of the steps taken and was copied on correspondence with opposing counsel. Upon being retained, he filed and served a Claim and Notice to Disclose. Ms. [O] did not provide complete disclosure until November 2016. On Ms. [O]'s instructions, a settlement offer was sent to opposing counsel in February 2017 and again in February of 2018. Both were rejected. Ms. [A], who had coverage of the file from July 2017 to January 2018 also submitted an offer in July of 2017 which was also rejected.

73. Mr. Warrington's numerous attempts to get opposing counsel to agree to mediation or some form of settlement meeting were rejected. He lost count of the number of times he tried to speak to opposing counsel by phone, but he repeatedly failed to return his calls. His associate, Ms. [A] had some experience in dealing with the opposing counsel on this file and Mr. Warrington believed that she may be in a better position to negotiate settlement with him; taking care of the file from July 2017 to January 2018. Unfortunately, she experienced the same lack of co-operation from opposing counsel and the file did not progress.

74. On Ms. [O]'s instructions, he again sent a settlement offer to opposing counsel in March 2018 but then his services were terminated by Ms. [O] later that month.

75. Ms. [O]'s file did not settle until November of 2019, 21 months after she elected to proceed with alternate counsel.

76. Mr. Warrington wrote to opposing counsel on July 7, 2017 expressing frustration that his repeated offers of mediation were being rejected and opposing counsel's insistence on proceeding with Affidavits of Records. In that letter, he stated, in part:

> "It has been my experience that counsel, at least those experienced in family law, practically never bother with an affidavit of records nor discovery. Those steps are rare, part of the reason being is that the financial disclosure is sufficient disclosure. And that should be sufficient. And it should have been made clear that it was sufficient in the many months that has passed since it was provided; assuming that it has been read. Has it? Being but all of a few documents and in fact, simply being largely the house, a sufficient grasp of the English language and a rudimentary understanding of the basics to arithmetic would inform any family lawyer, at least an experienced family lawyer, how this matter ought settle (sic). Now that you have invoked the time consuming, and I say absolutely needless step for an affidavit of records, would you please impart to me precisely how either receipt of an AOR has enlightened you? Please also impart precisely how a discovery session might enlighten you.

> And please take note of the fact that quite a few months passed from the close of pleadings before an AOR discovery date is called for. One has to ask, and assuming our settlement offer was not so esoteric and the arithmetic was not of a complicated nature, precisely what is the hold up. For I have am (sic) not able to impart to my client what a so very simple file, with so simple disclosure, with so very simply (sic) facts has not either settled, nor why there is not an agreement to meet nor why there is an absolute violate of the inaugural rules of court much less common sense."

77. Opposing counsel was away at the time this letter was received but another lawyer from his office responded to Mr. Warrington that same day pointing out lawyers' responsibility for courtesy and good faith when communicating with other lawyers.

78. In response to this complaint, Mr. Warrington stated that throughout the file, he found opposing counsel uncooperative and difficult to deal with and he became impatient that opposing counsel repeatedly refused to entertain the idea of mediation or a settlement meeting. During a telephone call with opposing counsel, he found him to be rude and he took offence when Mr. Warrington reminded him of his duty to try to settle the matter out of court. Mr. Warrington stated that he "gave him [opposing counsel] a piece of my mind before hanging up".

79. Concerning the July 7, 2017 letter, Mr. Warrington stated that he regretted that his impatience got the better of him in imploring opposing counsel to move the file forward and he apologized for the tone of the letter.

Matter CO20181699

80. CO20181699 consists of 1 citation meaning and limited to:

> ***Citation 7:*** It is alleged that Brian P. Warrington failed to repay money owing to his client, as a result of a review or assessment of his account(s), until ordered to do so by the Court and that such conduct is deserving of sanction.

The following are the facts in relation to that conduct

81. Mr. Warrington was retained by Ms. [R] in February 2016 to represent her at a binding JDR. Her complaint about Mr. Warrington's conduct on the file is that he agreed to a settlement that was not in her best interests, resulting in costs against her and a forced sale of her residential property. The property had been sold following from a court Order issued prior to Mr. Warrington's retention. The Judicial Dispute Resolution was a binding JDR and the presiding Justice issued her Order.

82. Ms. [R] had Mr. Warrington's account reviewed and in June 2017, the Review Officer reduced his account and directed Mr. Warrington to pay Ms. [R] $11,109.00. He did not appeal the decision. Ms. [R] declined to provide an address in response to Mr. Warrington's request that she do so in order that he might mail the cheque. Ms. [R] departed the country in the month following. In August of 2018, one year later, Ms. [R] served Mr. Warrington with a court application. Mr. Warrington wrote Ms. [R] that the application was not contested and offered to draft the Judgment. Ms. [R] did not respond. At court Mr. Warrington also stated to the court that the application was not contested. A court Order ensued and Mr. Warrington was directed to refund Ms. [R] a certain sum.

83. After the adjournment of a trial that had commenced in January 2016, Mr. Warrington was retained by Ms. [R] for the period February to June of 2016 with respect to a two-day binding JDR and subsequent costs application. Ms. [R] terminated Mr. Warrington's services after the cost application was decided. It is noted that Ms. [R] was not successful at the JDR and the opposing party sought costs of approximately $138,000. In response to opposing counsel's brief, Mr. Warrington own brief on behalf of Ms. [R] was submitted. Ms. [R] was ultimately ordered to pay costs of just under $48,000.

84. In November 2016, Ms. [R] filed an Appointment for Review of Mr. Warrington's accounts. Ms. [R] alleged the matter was delayed by Mr. Warrington so he could obtain transcripts.

85. The Review proceeded on June […], 2017. Of the $29,142.75 that Ms. [R] had paid towards Mr. Warrington's accounts, the Review Officer allowed fees and disbursements of $18,033.75 and directed Mr. Warrington to return to Ms. [R] the amount of $11,109.00.

86. In the afternoon following the Review, Mr. Warrington sent Ms. [R] an e-mail stating that he was willing to settle the matter, without prejudice for $5,500 and that he was appealing the decision. Ms. [R] did not accept his offer and Mr. Warrington did not file an appeal.

87. Ms. [R] declined to provide an address and left the country.

88. As no payment was forthcoming from Mr. Warrington, Ms. [R] filed an application seeking a Judgment against him. On September […], 2018, Master [P] granted that Judgment in the amount of $11,109.00 and directed Mr. Warrington to pay that amount by October 1, 2018, failing which, he should appear in Court on October 19, 2018 to show reason why he should not be held in contempt.

89. Mr. Warrington complied with the Order and Ms. [R] picked up a cheque from his office dated October 1, 2018.

90. In response to this complaint, Mr. Warrington stated that he spent over 78 hours on Ms. [R]'s file and disagreed that it should have been reduced. He stated that Ms. [R] showed

a complete disregard for the hours he put into the file and instead complained to the Review Officer that she had been billed excessively and that the binding JDR decision and costs awarded against her was the result of Mr. Warrington's failure to act in her best interests.

91. He stated that he barely had a chance to speak during the Review and despite the Review Officer making no objection to any entry of time on the file, he simply directed a refund to Ms. [R].

92. Despite stating that he would have appealed the decision of the Review Officer, he did not do so. Without an address Mr. Warrington could not forward a cheque and Ms. [R] departed the country for approximately one year.

CONCLUSION

93. Mr. Warrington admits as fact the statements contained within this Statement of Admitted Facts for the purposes of these proceedings.

94. Mr. Warrington admits Citations 1, 2, 3, and 6 and admits that the conduct is conduct deserving of sanction.

95. Mr. Warrington admits the facts in relation to Citations 4, 5, and 7, but denies that these facts constitute conduct deserving of sanction.

96. Mr. Warrington acknowledges that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

STATEMENTS

97. Mr. Warrington makes the following statements:

(I) I acknowledge that the Law Society of Alberta, as my regulator, has concerns about my involvement and conduct in connection with matters as described in this Statement of Facts.

(II) I acknowledge my conduct in Citations 1, 2, 3, and 6 as outlined in this Statement of Facts, were not in accordance with the expectations of my regulator, the Law Society of Alberta.

(III) I acknowledge that if it were not for the Law Society bringing the proceedings against me, I would not have obtained the assessment which brought to light my underlying health difficulties, nor obtained the proper treatment for them.

(IV) I acknowledge the balance of my issues as admitted in Citation 1, 2, 3 and 6 as well as the other allegations and outstanding matters in this Statement of Facts relate to my inappropriate communication with other people, including other counsel, clients, and opposing parties.

(V) I acknowledge I need help and assistance in learning to maintain appropriate interactions with people, not just in the practice of law, but in life generally, and intend to continue to get help in that regard.

(VI) I acknowledge that at the end of the Disciplinary Hearing if certain of the citations were proven, the prosecution was seeking a sanction that included a two (2) month suspension.

(VII) In order to:

(a) seek further treatment and counseling;

(b) take time to reflect for no less than a year if I should re-apply for a license to practice law in Alberta or if it is something my personality and underlying health difficulties are not compatible with;

(c) explore other areas of employment that I might enjoy and excel at;

And in the interest of:

(d) avoiding a further lengthy continuation of the Hearing;

(e) avoid the inconveniencing of further witnesses; and

(f) bring a resolution to the citations dealt with in the Hearing;

I am hereby agreeing to resign from the Law Society of Alberta pursuant to s.32 of the *Legal Professions Act* and undertake to not reapply for a license until at least July 1, 2021.

(VIII) I also acknowledge that should I re-apply to practice in Alberta, that I will consider an area of law other than family law given some of my personality traits.

(IX) I have executed this Statement of Facts for the sole purpose of applying to resign from the Law Society of Alberta, and for no other purpose. I have executed this Statement of Facts on my own free will and with the full understanding of its meaning and consequences. I have either obtained independent legal advice in relation to my execution of the Statement of Facts or I have elected to forego obtaining independent legal advice.

ALL OF THESE FACTS ARE ADMITTED THIS 15 DAY OF June, 2020

"Brian Warrington"
BRIAN P. WARRINGTON