

**THE LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*,**  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF SHIRLEY MCNEILLY,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee:**

Darlene W. Scott

**Appearances:**

Nicholas Maggisano, Counsel for the Law Society

Shirley McNeilly, QC, appearing in person

**Hearing Date:**

February 17, 2016

**Hearing Location:**

Law Society of Alberta at 800, 10104 – 103 Avenue, Edmonton, Alberta

**HEARING COMMITTEE REPORT**

**Introduction**

1. On February 17, 2016, a single bencher (the “Bencher”) of the Law Society of Alberta (the “LSA”) convened at the offices of the LSA in Edmonton, Alberta, to conduct a hearing regarding two citations against Ms. Shirley McNeilly, QC.

2. The Statement of Facts and Admission of Guilt is attached hereto as Exhibit A (the "Agreed Statement"). This Agreed Statement has been found to be in an acceptable form by a Conduct Committee Panel on December 16, 2015 and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
3. Mr. Maggisano established the jurisdiction of the Bencher pursuant to the following Exhibits which were entered by consent of the parties:  
  
Exhibit 1 – Letter of Appointment  
Exhibit 2 – Notice to Solicitor  
Exhibit 3 – Notice to Attend  
Exhibit 4 – Certificate of Status
4. There were no applications to hold the hearing in private and there were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise.

### **Citations**

5. Ms. McNeilly faced the following citations:
  1. It is alleged that Ms. McNeilly failed to serve her client and that such conduct is conduct deserving of sanction; and
  2. It is alleged that Ms. McNeilly failed to respond to her client's communications and that such conduct is conduct deserving of sanction.
6. The remaining Exhibits 5 – 14 were entered by consent.
7. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Ms. McNeilly, and confirming Ms. McNeilly's understanding that the Bencher was not bound by the Joint Submission on Sanction, the Bencher confirmed the Agreed Statement of Facts and the Admission of Guilt constituted a finding of conduct deserving of sanction on both citations pursuant to s. 49 of the *Legal Profession Act*.

### **Joint Submission on Sanction**

8. The Bencher was provided with oral submissions by counsel for the LSA and by Ms. McNeilly in support of the joint submission which proposed a sanction by way of a reprimand, and the costs of the hearing in the agreed amount of \$2000.00.
9. The LSA submitted the Member's Disciplinary Record which reflected no discipline record. This was entered by consent as Exhibit 15.

### **Sanction, Reprimand and Concluding Matters**

10. The Bencher determined that the joint submission on sanction was reasonable in the circumstances and directed the following sanctions:
  - (a) Ms. McNeilly received a reprimand;
  - (b) Ms. McNeilly was directed to pay hearing costs in the amount of \$2000;
11. Hearing exhibits shall be made available to the public, with the exception that they shall be redacted to prevent the disclosure of confidential or privileged information.
12. The Bencher reprimanded Ms. McNeilly, reminding her of the privilege she is afforded in belonging to the legal profession and the corresponding ethical obligations to comply with all the Rules of the LSA. She was reminded of the importance of serving all her clients, irrespective of the level of difficulty which may be encountered in dealing with them. The Bencher further noted that Ms. McNeilly is a recipient of a QC designation, which carries with it an increased obligation to conduct herself professionally and observe the very highest ethical standards.

Dated at the City of Edmonton, in the Province of Alberta, this 22nd day of April, 2016

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Darlene W. Scott, Q.C.

## Appendix 1



IN THE MATTER OF THE LEGAL PROFESSIONS ACT

AND

IN THE MATTER OF A HEARING INTO THE CONDUCT

OF SHIRLEY MCNEILLY, QC,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

### **STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT**

#### **INTRODUCTION**

1. Shirley McNeilly, QC (“Ms. McNeilly”) was admitted to the Law Society of Alberta (“LSA”) on July 25, 1980.
2. She practices in Edmonton, primarily in matrimonial/family law.
3. The following conduct is being referred to a Hearing:
  1. It is alleged that Ms. McNeilly failed to serve her client and that such conduct is conduct deserving of sanction; and
  2. It is alleged that Ms. McNeilly failed to respond to her client’s communications and that such conduct is conduct deserving of sanction.

#### **INTRODUCTION**

4. Ms. McNeilly acted for JVS in relation to her divorce matter between January 2008 and September 2010, and again between November 2011 and March 2014. JVS had asked that the matter be put on hold in September 2010 to allow her to engage in discussions directly with her husband to resolve the matter.

#### **FAILURE TO SERVE AND RESPOND**

5. In November 2011 JVS retained Ms. McNeilly to proceed with divorce, custody and support matters. She advised that she had moved with her children to England and that the matrimonial home had been sold. JVS was originally from England and wanted the

support of family there. Ms. McNeilly agreed to represent JVS and requested a \$10,000.00 retainer, which JVS provided to her.

6. Starting in February 2012 JVS made requests for information and updates from Ms. McNeilly. Ms. McNeilly did not respond and JVS filed a complaint with the LSA on July 17, 2012. On August 16, 2012, Ms. McNeilly sent an email to JVS, apologizing for her delay in responding to her. Prior to that time the last correspondence JVS received from Ms. McNeilly was on December 18, 2011.
7. In her August 16, 2012 email, Ms. McNeilly advised that she sent JVS's husband a letter requesting his answers to undertakings (which he had given at Examinations for Discovery on August 5, 2010) and had not received a reply (the request had been sent on December 8, 2011) and prepared documents necessary to bring an application to compel his answers. She further advised that she had prepared a draft of an application for custody, child support and spousal support and required additional information from JVS to finalize it. On August 21, 2012 they had a phone conference (JVS in England) and discussed the difficulties associated with an application to move with children outside of the jurisdiction and JVS provided responses to the information requested. As communication was re-established the LSA file was closed.
8. Communication between Ms. McNeilly and JVS resumed in August 2012 and continued until October 5, 2012 when Ms. McNeilly sent JVS an email informing her that she would provide JVS with a status update in November 2012. This did not occur.
9. On November 6, 2013 JVS sent Ms. McNeilly an email asking for the status of her file and noting that it had been 13 months since Ms. McNeilly's last correspondence. Ms. McNeilly did not respond. JVS did not receive any information or updates about her file between October 2012 and March 2014.
10. Ms. McNeilly's husband passed away on December 10, 2013. Ms. McNeilly did not advise JVS that she was not able to address her file or suggest new counsel.
11. Ms. McNeilly did not file a court application. No steps were taken by Ms. McNeilly to move the matter forward between October 2012 and March 2014.
12. On March 28, 2014 JVS sent a complaint to the LSA and requested that Ms. McNeilly cease acting and return her \$10,000.00 retainer. Ms. McNeilly filed a Notice of Withdrawal as requested and returned the \$10,000.00 retainer to JVS.
13. As a result of the lack of progress on her matter, JVS was delayed in seeking an Order allowing her to move with the children to England and delayed in obtaining an Order for child support and spousal support and had to seek new counsel to proceed with the matter.

## **CONCLUSION**

14. Ms. McNeilly admits as fact the statements contained within this Statement of Admitted Facts and Admission of Guilt and admits that her conduct set out in the Statement of Admitted Facts and Admission of Guilt is deserving of sanction.

**ALL OF THESE FACTS ARE ADMITTED THIS 24<sup>th</sup> DAY OF NOVEMBER, 2015.**

**'Shirley McNeilly'**

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**SHIRLEY MCNEILLY, QC**