

2019

NOVA SCOTIA BARRISTERS' SOCIETY

IN THE MATTER OF: The *LEGAL PROFESSION ACT*, S.N.S. 2004, c.28 and the Regulations of the Nova Scotia Barristers' Society, as amended.

BETWEEN:

The Nova Scotia Barristers' Society

-and-

Eric B. Durnford QC, a Barrister and Solicitor of
Halifax, Nova Scotia

CONSENT TO REPRIMAND

Eric B. Durnford, QC, a member of the Nova Scotia Barristers' Society, hereby agrees and consents to the following in accordance with the *Legal Profession Act* S.N.S. 2004, c. 28, as amended by S.N.S. 2010, c. 56, and the Regulations made thereunder, the *Code of Professional Conduct* 2011, and *Legal Ethics and Professional Conduct: A Handbook for Lawyers in Nova Scotia*, 2nd ed. (Halifax: Nova Scotia Barristers' Society, 1998).

STATEMENT OF FACTS

1. Mr. Durnford was called to the Nova Scotia Bar in 1970. He practiced with McInnes, Cooper & Robertson (later McInnes Cooper) until 2008, when he left that firm to form a new firm, Ritch Durnford. In 2015, Mr. Durnford left Ritch Durnford to form a new law firm of Barteaux Durnford with his law partner Nancy Barteaux QC.
2. On November 30, 2018, Mr. Durnford entered into an agreement with the Society which included an undertaking to cease the practice of law until further notice. He retired from practice with Barteaux Durnford on December 1, 2018. As a result, on July 1, 2019 Mr. Durnford's practicing certificate was administratively suspended for non-payment of fees.
3. Mr. Durnford practiced primarily in the area of labour and employment law throughout his career.

4. A written complaint was filed on October 15, 2018 by B, a female member of the Bar. B alleged that Mr. Durnford sexually harassed her between 2010 – 2015, while B was an associate.
5. A power imbalance existed between B and Mr. Durnford, who was in a position to confer on, or withhold career-related benefits from, B. The conduct alleged by B included:
 - unwelcome touching,
 - inappropriate and unwelcome sexualized and sexually suggestive comments,
 - unwelcome attention including gift-giving and comments about her appearance, and
 - invasion of B's personal physical space,

all of which created significant discomfort and emotional stress for B for more than five years. The above conduct ended in 2015 and B and Mr. Durnford thereafter continued to work together until 2018.

6. During the course of the Society's investigation of B's complaint, additional allegations of sexual harassment and discrimination on the basis of gender were brought to the Society's attention involving two other female members of the Bar, as well as three female legal assistants, respecting conduct by Mr. Durnford which they allege occurred between 2014 to 2018.
7. Examples of this conduct included:
 - unwelcome touching,
 - inappropriate and unwelcome sexualized and sexually suggestive comments and materials directed to them,
 - unwelcome attention including gift-giving and comments about their appearance, and
 - invasion of these witnesses' personal physical space to the point of significant discomfort and emotional distress.

Mr. Durnford was also in a position of power in relation to most of these witnesses. Three female lawyers and one legal assistant reported resigning from their workplace, at least in part, as a result of the conduct of Mr. Durnford.

8. In addition, Mr. Durnford was found to have stored pornographic materials in various workplaces on five different occasions between approximately 2013 to 2017, despite warnings and internal disciplinary action by the firms to attempt to address this inappropriate behaviour.
9. The inappropriateness and unprofessionalism of Mr. Durnford's conduct was addressed with him to one extent or another in 2011, 2013, 2014, 2015 and 2017.

10. Since 2015, Mr. Durnford has been receiving professional and other counselling to obtain insight regarding proper boundaries in his interactions with women. He continues with that counselling.

DISPOSITION

The Complaints Investigation Committee reviewed this matter on October 29, 2019 and concluded that the evidence on file that can reasonably be believed could support a finding of professional misconduct and conduct unbecoming. The Committee agreed that charges against Mr. Durnford could include the following:

1. Mr. Durnford engaged in a course of sexual harassment and sexual discrimination involving six women including member B, between 2010 and 2018, contrary to Chapter 24 of the *Legal Ethics Handbook* and Rule 6.3 of the *Code of Professional Conduct*. In particular, he:
 - (a) engaged in unwelcome touching,
 - (b) made inappropriate and unwelcome sexualized and sexually suggestive comments,
 - (c) gave unwelcome attention, including comments about women's appearance,
 - (d) gave unwanted gifts including wine,
 - (e) gave sexualized or otherwise inappropriate materials including a poem, notes and cards,
and
 - (f) invaded witnesses' personal physical spaces,

in circumstances in which he knew or ought to have known were unwanted and would cause discomfort and stress.

2. Mr. Durnford failed to carry on the practice of law and discharge all responsibilities to the public and other members of the profession honourably and with integrity, contrary to Chapter 1 of the *Legal Ethics Handbook*, and Chapter 2.1 of the *Code of Professional Conduct*. In particular, by engaging in the conduct described in (1) above, he:
 - (a) Conducted himself within and outside the law firm workplace in a manner which failed to uphold the reputation of the legal profession for integrity and honour, failed to inspire the confidence, respect and trust of the legal community, and which created an appearance of impropriety.

Pursuant to s. 36(2)(c) of the *Legal Profession Act*, the Complaints Investigation Committee agrees that Mr. Durnford be issued a Reprimand with his consent, and that he shall formally retire from the practice of law.

ADMISSIONS AND APOLOGIES

Mr. Durnford admits that he breached the Rules in the manner set out above, and that his conduct constitutes professional misconduct and conduct unbecoming. He expressed his sincere apology to B, the other women and the Society.

COMPLAINTS HISTORY

Mr. Durnford has no discipline history.

INDEPENDENT LEGAL ADVICE

Mr. Durnford confirms that he has had independent legal advice regarding the terms of this Reprimand, prior to its execution.

CONSENT TO REPRIMAND

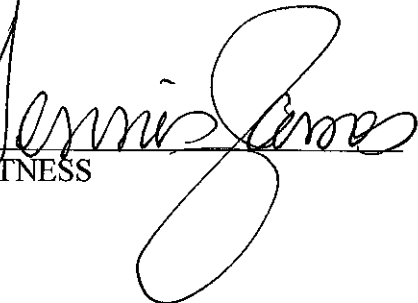
Mr. Durnford hereby:

- i. Consents to a Reprimand,
- ii. Undertakes to apply to change to retired status concurrent with execution of this document, and
- iii. Acknowledges that in the event he wishes to apply for reinstatement of his practicing certificate that the complete investigation file in this matter will be available to the Executive Director and/or the Credentials Committee, if requested.

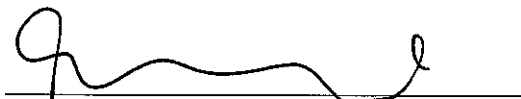
EFFECTIVE DATE

This Reprimand shall only become effective upon its acceptance by the Complaints Investigation Committee.

This **CONSENT TO REPRIMAND** is made as of the 21ST day of **NOVEMBER**, 2019.



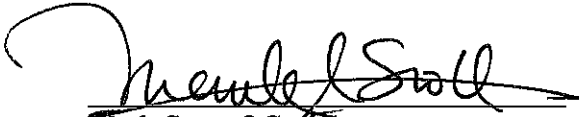
 WITNESS



 Eric B. Durnford, QC

ISSUED BY:

The Complaints Investigation Committee, this 21st day of November, 2019.

A handwritten signature in black ink, appearing to read "Mark Seott". The signature is written in a cursive style with a large initial 'M' and a long horizontal stroke at the end.

~~Mark Seott QC~~
Acting Chair, Complaints Investigation Committee