

2022

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-

Daniel J. MacIsaac, a Barrister and Solicitor of Antigonish, Nova Scotia

CONSENT TO REPRIMAND

Daniel J. MacIsaac, 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, and the *Code of Professional Conduct*.

STATEMENT OF FACTS

1. Mr. MacIsaac was called to the Nova Scotia Bar on March 5, 1974 after completing his articles with A.D McInnis, QC. Mr. MacIsaac has been a sole practitioner for the majority of his legal career and he is currently working as a sole practitioner at DJMI Legal Services Limited.

Complaint

2. A complaint was filed against Mr. MacIsaac raising concerns about his conduct during the course of a family law matter in which Mr. MacIsaac represented the husband, and another lawyer represented the wife. The complaint related specifically to Mr. MacIsaac's conduct during a binding Settlement Conference with a Supreme Court Justice that took place on January 15, 2020 and continued on January 27, 2020.
3. The parties discussed during the January 15, 2020 Settlement Conference division of the parties' properties and assignment of debts. In particular, there was discussion about subdividing the parties' matrimonial property so that each party obtained a portion of the property.

4. Opposing counsel alleged that throughout the Settlement Conference, Mr. Maclsaac repeatedly interrupted when she tried to speak, saying 'I'm sorry to interrupt but...', and when she tried to clarify or continue what she had been saying before being interrupted, Mr. Maclsaac would interject again and say, 'Well, if you don't want to hear what I have to say that's fine'.
5. There was a break and opposing counsel and Mr. Maclsaac were able to speak to their clients privately. When the parties returned, the Justice suggested that they come back on January 27, 2020. He asked that counsel draft a proposed order.
6. Opposing counsel met with her client before the Settlement Conference continuation on January 27, 2020. Her client advised that she had concerns about settling the matter in the manner that had been discussed during the last Settlement Conference.
7. Opposing counsel met privately with Mr. Maclsaac before court on January 27, 2020 to explain the issues her client had recently raised with her. She told Mr. Maclsaac that her client no longer wanted to subdivide the property as discussed on January 15, 2020 and that she felt "discussions seemed to be breaking down on this point."
8. At the outset of the Settlement Conference continuation on January 27, 2020, opposing counsel noted the issues of concern to her client. She asked to caucus with the Justice to further discuss the issue of the property subdivision.
9. When all parties came back into the room, the Justice indicated that he would have the property subdivided so that the wife received a larger portion of the property than Mr. Maclsaac's client. The Justice then asked the parties to come back in February to finalize matters.
10. Opposing counsel alleged that after the Justice left the room, she and Mr. Maclsaac started to review the provisions that the Justice had outlined. Mr. Maclsaac interrupted her and said, "I thought we had an agreement. If that's how you want to practice, that's fine. If I did what you did, I would take my tie and hang myself." He made a gesture with his tie, pulling it towards the ceiling and holding it up. Both of the clients were still in the room.

Section 36(2) Meeting

11. The Committee met with Mr. Maclsaac on August 25, 2020 pursuant to section 36(2)(a) of the *Legal Profession Act*. He was asked about the comment and gesture that he made to opposing counsel prompting this complaint. Mr. Maclsaac explained that the Justice had spent a great deal of time with the parties during a settlement conference, and that an agreement on the division of property had finally been achieved.
12. Mr. Maclsaac explained that when he caucused with the Justice, he was advised that the deal had been reneged on. He stated that:

I came out and I told her simply that, Look, you can do it any way you want. But I said, If I did that ... and it was a serious matter, completely using a settlement conference to no avail and then an undertaking to provide minutes of settlement in breach of that, I said to her simply, You can do it any way you want but if I did

that I'm sure they would hang me by my necktie.

13. Mr. Maclsaac acknowledged that he may have touched his tie when he made the statement but denied making a gesture of hanging himself with his tie or suggesting that opposing counsel should hang herself.

DISPOSITION

The Complaints Investigation Committee reviewed this matter on May 19, 2022, and concluded that the evidence on file that could reasonably be believed supported a finding of professional misconduct. The Committee agreed that charges against Mr. Maclsaac could include the following:

1. Daniel Maclsaac failed to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity, contrary to rule 2.1-1 of the *Code of Professional Conduct* and failed to act in a manner that was courteous and civil to all persons with whom he had dealings, contrary to rules 5.1-5 and 7.2-1 of the *Code of Professional Conduct*. In particular, he:
 - (a) repeatedly interrupted opposing counsel during a Settlement Conference and was otherwise aggressive, rude and condescending;
 - (b) knowingly made comments and gestures to opposing counsel that were aimed at shaming or embarrassing her in front of their respective clients;
2. Daniel Maclsaac failed in his duty not to communicate in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer contrary to Rule 7.2-4 of the *Code of Professional Conduct*. In particular, he:
 - (a) made comments and gestures to opposing counsel and in the presence of clients that were intemperate and uncivil without regard to their impact on that lawyer, her client and his own client.

Pursuant to section 36(2)(c) of the *Legal Profession Act*, the Complaints Investigation Committee agrees that Mr. Maclsaac be issued a Reprimand with his consent.

ADMISSIONS

Mr. Maclsaac admits that he breached the Rules in the manner set out above, and that his conduct constitutes professional misconduct.

COMPLAINTS HISTORY

Mr. Maclsaac has a significant prior discipline history that includes three separate Reprimands by a Hearing Panel in 1990, 2001 and 2005, and received a two month suspension by a Hearing Panel in 2014.

INDEPENDENT LEGAL ADVICE

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

CONSENT TO REPRIMAND

Mr. Maclsaac hereby consents to a Reprimand.

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 September, 2022.

(signed) _____
WITNESS

(signed) _____
Daniel J. Maclsaac

ISSUED BY:

The Complaints Investigation Committee, this 21st day of September, 2022.

(signed) _____
Mark Scott QC
Chair, Complaints Investigation Committee