

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A RESIGNATION APPLICATION REGARDING
EZRA LEVANT
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Bencher Committee:

Sarah King D'Souza, Q.C., Chair (Bencher)
Hugh Sommerville, Q.C., Committee Member (Bencher)
Donald Cranston, Q.C., Committee Member (Bencher)

Appearances:

Counsel for the Law Society of Alberta – Norman Machida, Q.C. and Kelly Tang
Counsel for Ezra Levant – James Rooney, Q.C. and Robert Hawkes, Q.C.

Hearing Date:

March 2, 2016

Hearing Location:

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

RESIGNATION DECISION OF A COMMITTEE OF THE BENCHERS

The Application

1. This is an application by Mr. Levant pursuant to section 32 of the *Legal Profession Act* ("LPA") to resign as a member of the Law Society of Alberta ("LSA"). His application is dated February 17, 2016.
2. Counsel for the LSA and counsel for Mr. Levant both acknowledged and agreed that this Committee had jurisdiction to hear and decide this application. No application was made for a private hearing, and accordingly, the resignation application hearing was held in public.
3. A quorum of Benchers was present, and there was no objection to any member of the Committee.

4. The Committee received in evidence seven exhibits. One of those exhibits was a Statement of Facts signed by Mr. Levant.

The Applicable Provisions in the LPA and the Rules

5. Section 32 of the LPA says:

32(1) No member may resign from the Society unless the member's resignation is submitted to and approved by the Benchers or a committee of the Benchers.

(2) If the resignation is approved, the member's name shall be struck off the roll.

6. Rule 92(1) of the Rules of the LSA requires that ten matters be addressed on a resignation application:
 - a. There must be a written application by the member to resign from the LSA coupled with a statutory declaration of the member setting out those matters described in Rule 92(1)(b);
 - b. The Benchers may require the member to enter into undertakings and agreements with the LSA;
 - c. The member shall surrender to the LSA the member's certificate of enrollment;
 - d. The member shall be required to agree to a statement of facts in a form acceptable to the Benchers setting out the particulars of the facts which gave rise to the conduct proceedings or disciplinary proceedings and the fact that the member has resigned. The member shall be required to agree to publication of the statement of facts and to make the application to resign before the Benchers in public;
 - e. The Executive Director of the LSA shall comply with Rules 83 and 96 before the application is heard. At the hearing of the application, the Benchers must comply with Rule 98;
 - f. The Benchers shall consider whether the competence of the member is a factor that should be taken into consideration with respect to any term or condition upon which the member may make application for reinstatement;
 - g. The Benchers shall review all of the costs incurred by the LSA which may include the costs of investigation and the costs of the custodian if one has been appointed and shall decide if the member shall be required to pay some or all of the costs prior to acceptance of the resignation or prior to any later application for reinstatement;
 - h. The Benchers shall review all of the material and shall take into consideration the best interests of the members of the public and the members of the LSA. If the Benchers determine that it is appropriate in the circumstances to allow the member to resign, they may accept the resignation of the member;
 - i. The Benchers shall then give directions as to the information to be entered on the roll in relation to the member's resignation; and
 - j. If the Benchers are of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Benchers shall direct the Executive Director to comply with section 78 of the LPA.

7. Rule 92(2) gives a discretion to the Benchers on this application to require the member to enter into an undertaking or agreement:

"92(2) The Benchers may require the member to enter into undertakings and agreements with the Law Society, the terms and conditions of which may include the following:

- (a) the member shall undertake and agree to cooperate with the Law Society in the future with respect to any claim made against the member or against the Assurance Fund or Part B of the group policy; and/or
- (b) the member shall undertake and agree to pay any deductible with respect to any claim paid by the Law Society Insurer and to pay the Law Society any claim paid from the Assurance Fund or the indemnity program fund.";

Submissions

8. The parties agreed that Mr. Levant is an inactive member of the LSA. He has no disciplinary record at the LSA. There are currently two complaints outstanding against Mr. Levant, and two matters that were dismissed, but are now on review in the Courts.
9. As submitted by counsel for the LSA, and agreed by counsel for Mr. Levant, there are three ways a member may seek resignation:
- a. Pursuant to section 61 of the LPA. If a resignation is ordered under section 61, that constitutes disbarment, pursuant to section 1(c) of the LPA. Accordingly, section 61 resignations occur when the member's conduct is so egregious that it warrants disbarment, the most serious penalty a lawyer can face under the LPA;
 - b. Pursuant to section 32, a resignation can be ordered when there are no outstanding conduct issues or complaints. That is not the case before us;
 - c. Pursuant to section 32 of the LPA, a resignation can be ordered where there are outstanding conduct issues that do not warrant disbarment. The effect of the resignation, if ordered, is to end those outstanding complaint proceedings.
10. We were advised by LSA counsel that he was able to find 14 reported decisions involving resignations accepted by a Bencher Committee under section 32 of the LPA where there were outstanding conduct complaints between 2013 and 2015, the timeframe for his research.
11. As submitted by counsel for the LSA, section 32 provides the Benchers with an unlimited jurisdiction to accept the resignation of a member. It is clear that in doing so the Bencher Committee must act in the best interests of the public and the best interests of the members of the LSA.
12. The pivotal question on this application accordingly is whether or not this Committee should grant the application under section 32 of the LPA. That in turn requires us to consider whether the outstanding complaints against Mr. Levant could reasonably give rise to disbarment if they were to proceed.
13. Mr. Levant actively practised law in Alberta in 2002 and 2003. He did a small amount of in-house work and *pro bono* work since 2004, and has not practised law in any capacity since March of 2010.

14. In 2004 Mr. Levant founded a magazine called the Western Standard. In 2006, he published the Danish cartoons depicting Mohammed. That led to a complaint against him to the LSA. In fact, the LSA has received 26 complaints regarding Mr. Levant's conduct in connection with his work and activities as a journalist, broadcaster, television commentator and political pundit. There have been no convictions arising from those complaints. It is fair to observe the necessary investigation of those complaints has engaged considerable resources of the LSA.
15. The Statement of Facts, entered as an exhibit before us, outlines Mr. Levant's perspective on the complaints which are currently outstanding against him. It has been argued before us that the complaints are politically motivated, and attempt to utilize the LSA's disciplinary process to curb Mr. Levant's activities as a journalist. Whether that is so or not, our task is to determine whether or not the alleged conduct is the kind that could merit disbarment. In our view, the answer is clearly no. There are significant issues of freedom of speech and Charter rights. LSA counsel has advised us that there are substantive defences available to Mr. Levant with respect to those complaints, particularly when one considers that they relate to Mr. Levant's conduct as an inactive lawyer and not a person practising law.
16. In considering Mr. Levant's Statement of Facts, the Committee invited submissions regarding its content. We do not wish to appear to be endorsing Mr. Levant's statements about complainants or third parties, nor do we wish to provide Mr. Levant an opportunity to republish those statements. For that reason, we have attached a redacted version of the Statement of Facts as Appendix "A". We have removed references to complainants and third parties, and to the description of the circumstances which have given rise to complaints and citations. The Statement of Facts is to be published pursuant to Rule 92.

Findings

17. In all of the circumstances, it is our view that even if the charges were made out, they would not lead to disbarment as a possible sanction.
18. LSA counsel made us aware that there have been communications received from certain of the current complainants who take the position that the Benchers of the LSA do not have jurisdiction to order a resignation under section 32 of the LPA when there are outstanding citations. We do not accept that view.
19. Clearly, an application under section 61, if granted, is by definition a disbarment. Presumably for that reason, Mr. Levant has not applied to resign under section 61 of the LPA. He has instead made his application under section 32 of the LPA. There is nothing in section 32 that constrains the jurisdiction of the Benchers to allow a resignation when there are outstanding complaints.
20. Mr. Levant has complied with the requirements of Rule 92 in making his resignation application. In addition, Mr. Levant has provided to the LSA an undertaking which reads as follows:
 - "1. That I will not, for a period of five years, apply to be re-instated to membership in the Law Society of Alberta. If and when I choose to reapply for reinstatement with the Law Society of Alberta, or to apply for membership to any other law society in Canada, I will only do so in order to practice law actively and on a full time basis.
 2. To cooperate with the Law Society of Alberta in the future in respect to any claim made against me or the Assurance Funds regarding me.
 3. That I will pay the Law Society of Alberta, on its demand, any amount of any claim paid on my behalf by the Law Society's Assurance Fund, or

any deductible with respect to any claim paid on my behalf by the Law Society's insurer."

21. It is in both the public's interest and the interests of the member of the LSA that this application pursuant to section 32 of the LPA should be granted. Mr. Levant has been an inactive practitioner for a number of years. The citations currently outstanding are, at least in significant part, focused on statements Mr. Levant has made as a journalist and public broadcaster. While the LSA may regulate lawyers for conduct arising from activities outside the practice of law, in this case the public is not served by having these issues debated within the disciplinary process of the legal regulator in the Province of Alberta.

Decision

22. It is the decision of this Committee of the Benchers that Mr. Levant's application for resignation pursuant to section 32 of the LPA is granted. Pursuant to that section, Mr. Levant's name shall be struck from the LSA roll.
23. Pursuant to Rule 92:
- a. Mr. Levant shall surrender to the LSA his certificate of enrolment;
 - b. We have considered whether the competence of Mr. Levant is a factor that should be taken into consideration, and given Mr. Levant's longstanding status as an inactive member, we have decided that it is not such a factor;
 - c. This Committee was provided with the LSA's estimate of costs. This Committee received a joint submission on costs from LSA counsel and Mr. Levant's counsel, and subsequently accepted a Statement of Costs in the amount of \$5,332.30, dated August 10, 2016. These costs shall only become payable if and when Mr. Levant should apply for reinstatement as a member of the LSA;
 - d. Pursuant to Rule 92(10), we are of the view that there are no reasonable or probable grounds to believe that Mr. Levant has committed a criminal offence and accordingly there shall be no requirement to make a referral to the Attorney General pursuant to section 78 of the LPA;
 - e. Members of the public may inspect or obtain a copy of the transcript of these proceedings and the exhibits. The transcript and exhibits shall first be redacted to prevent the identification of complainants and third parties, in a manner consistent with the redactions made to the attached Statement of Facts.

- f. The information to be entered on the roll in relation to his resignation shall be that the Benchers accepted his resignation pursuant to section 32 of the LPA. The roll shall also reflect the undertakings set forth in paragraph 20 of this report, and the condition that Mr. Levant pay the costs set forth in paragraph 23(c) prior to any future reinstatement application.

Dated at the City of Calgary, in the Province of Alberta this 11th day of August, 2016.

Sarah King D'Souza, Q.C., Chair

Hugh Sommerville, Q.C.

Donald Cranston, Q.C.

APPENDIX “A”

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A RESIGNATION

OF EZRA LEVANT

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF FACTS

INTRODUCTION

1. I was admitted to the Law Society of Alberta on August 14, 2000.
2. I actively practiced law in the Province of Alberta in 2002 and 2003. I have practiced law only in house or on a pro bono basis since 2004, with one exception. I took on a minor retainer in 2008 that resolved in approximately one week. Even taking into account pro bono work, I have not practiced law in any capacity since March of 2010, when I wrote to the Alberta Human Rights Commission to try to help someone out. I am registered as a non-active lawyer.
3. I applied to resign as a member of the Law Society of Alberta in early July of 2014, but my application was put on hold when a new complaint was filed against me.
4. I now apply to resign as a member of the Law Society of Alberta pursuant to s. 32 of the Legal Profession Act.
5. I admit the contents of the Statement of Facts, which is tendered in support of my resignation application.
6. To the best of my recall and knowledge, my work as a lawyer has never been the subject of a complaint to the Law Society.
7. In 2004, I founded the Western Standard magazine, and in 2006 I published the Danish cartoons depicting Mohammed. That led to complaints against me to the Alberta Human Rights Commission, one of which was abandoned and one of which was dismissed.
8. A complaint about the Mohammed cartoons was also filed against me to the Law Society of Alberta. Since that time, it is my understanding that there has never been a moment since where a complaint against me has not been before the Law Society. In total, the Law Society of Alberta received 26 complaints regarding my conduct in connection with my work and activities as a journalist, broadcaster, television commentator and political pundit.
9. Excepting the present complaints, 12 were dealt with and closed through informal process and 12 were referred to formal process. Of the 12 complaints that were referred to formal process, three

were dismissed by the Executive Director,¹ three were dismissed by the Conduct Committee Panel,² one was unproven,³ and two were dismissed by the Appeal Committee Panel.⁴ Three complaints were directed to a hearing, in which the Conduct Committee Panel subsequently accepted an application for discontinuance that is now subject to judicial review.⁵

Complaints Subject to Judicial Review ([XX] and [YY])

10. The complaints that were discontinued but are now subject to judicial review relate to comments that I made about [XX] and [YY].

[XX] Complaint (CO●)

11. [XX] is a ● in ● and has worked at the ●, the ●, and the ●. He is a ● and a former ●.
12. As a journalist, I discussed and criticized [XX]'s activities and tactics on my blog and included a ●.
13. Specifically, my comments regarding [XX] included the following opinions and statements:
- (a) That [XX] is a ●;
 - (b) That [XX] is a member of ● groups; and
 - (c) That [XX] has repeatedly published hateful comments about people of ●, people of ● and people of ●.

[YY] Complaint (CO●)

14. [YY] is ● in ● and is a ● at the ●. He is a ● and ●.
15. In 20●●, [YY] appeared on ● to disclose that his client was ●. A quasi-judicial inquiry into the matter later found no evidence of this.
16. In 20●●, I communicated with [YY] as a journalist and via email to attempt to set up an on-air interview on my television show to discuss ●.
17. The interview with [YY] never took place, but I discussed ● on my television show on ●, 20●●.
18. Specifically, my comments included the following opinions and statements:
- (a) That [YY] should not have relied on solicitor-client privilege ●;
 - (b) That [YY] placed unreasonable conditions on my requested interview of him;
 - (c) That [YY] is a “●”; and
 - (d) That [YY] is “●”.
19. The complaints by [XX] and [YY] (collectively “[XX]/[YY] Citations”)⁶ were directed to one Hearing (file HE●), along with a third complaint (CO●).

¹ Complaints ●, ●, ●

² Complaints ●, ●, ●

³ Complaint ●

⁴ Complaint ●, ●

⁵ Complaints ●, ●, ●

⁶ The [XX]/[YY] Citations are attached as Schedule A. [Committee Note: Schedule A is referenced but was not attached to the original Statement of Facts.]

20. In 2014, I applied for a discontinuance of these proceedings pursuant to s. 62 of the Legal Profession Act, on the basis that the prosecutors had determined that there was not a reasonable prospect of a conviction. In particular I argued that my free speech rights would be infringed if the Rules were interpreted in the manner required to gain a conviction. This application was granted by the Conduct Committee Panel and all three complaints were discontinued.

Present Complaints

21. The present complaints (CO● and CO●) were investigated by the Law Society of Alberta. Complaint CO● was directed by the Formal Complaints Reviewer pursuant to a s.53 Report to a Conduct Panel. Complaint CO● was dismissed by the Formal Complaints Reviewer, and then subsequently appealed to the Appeal Panel. The Appeal Panel allowed the appeal and the Conduct Committee Panel directed the matter to a Hearing Committee.
22. As a result of the present complaints, the Law Society of Alberta's investigation and the decision of the Appeal Panel, 2 of the 26 complaints have been directed to a Hearing Committee (the "Hearing") to determine whether I am guilty of conduct deserving sanction in relation to the citations (collectively the "Current Citations")⁷.
23. The Hearing (file number HE20150107) has been scheduled for 3 days commencing February 29, 2016.

BACKGROUND

● v ●

24. In 20●●, the ● Tribunal issued a decision, ● v ● ["●"].
25. The ● decision was heard before a one-person Tribunal, with Mr. ● acting as Chair.
26. Through my occupation as a journalist, I have discussed and criticized the ● decision in my newspaper column, on my website and on my television program.
27. My comments regarding the ● decision included criticisms of the ● Commission, the ● Tribunal, Mr. ●, Mr. ●, and Mr. ●, who at the time was ● for the ● of the ● Commission.
28. Specifically, my comments included my opinion and commentary that the ● Commission and Tribunal process is "●" and a "●". I also opined and commented that Mr. ● is a "●" and a "●" (based in part on his rulings, but more on a series of ● and similarly objectionable ● he had published).
29. Shortly after the revelation of Mr. ●'s twitter comments, he was, to the best of my knowledge, ●. Later that year, Mr. ● was ●.
30. On ●, 20●●, the Court of Queen's bench issued a decision in the ● case, which was a case in which ● appealed the ● Tribunal decision of Commissioner ● under the ● Act.⁸ The Court reversed the ● tribunal decision and did not remit the matter back to the Tribunal. Mr. ●'s cross-appeal was also dismissed.
31. The provincial cabinet minister responsible for the ● Commission in 20●●, the Honourable ●, also made public statements characterizing the ● Commission as a "●".

⁷ The Current Citations are attached as Schedule B. [Committee Note: Schedule B is referenced but was not attached to the original Statement of Facts.]

⁸ [case citation redacted from Statement of Facts]

● v ●

32. In commenting on the ● Commission as a journalist, I also referred to the decision of ● v ● [“●”]. In the ● decision, Mr. ● appeared as ● for the ● of the ● Commission. Mr. ● acted as the Tribunal Chair.
33. My comments regarding the ● decision included my opinions which were critical of the ● Commission, the ● Tribunal, Mr. ● and Mr. ●.
34. Specifically, my comments included the following opinions and commentary:
 - (a) That Mr. ●, Mr. ● and Mr. ● are all ●;
 - (b) That Mr. ●, Mr. ● and Mr. ● all agreed that Mr. ● was a ● and that there was enough cause to prosecute Mr. ● for discrimination on the basis of ●; and
 - (c) That Mr. ● had written in a ● publication that he believes in a ●, and disparaged the countries of ●, ● and ● as ●.
35. I have also discussed and criticized the ● Commission and ● Tribunal in my 20●● book, entitled “●.”
36. As will be apparent, I believe I am free to criticize, give opinions and comment on the ● Commission, the ● Tribunal, the ● Commission, the Courts, the individuals involved in the Current Citations, and the individuals involved in the [XX]/[YY] Citations. I did this solely in my capacity as a journalist, broadcaster, television commentator and political pundit.

CONCLUSIONS

37. I acknowledge that I was mistaken in referring to Mr. ● as a ● as I now understand he was ●.
38. My comments about an agreement between Mr. ●, Mr. ● and Mr. ● in respect of the ● decision, was a reference to all of them being of like mind on the issue of ●, in that Mr. ● brought his complaint, Mr. ● prosecuted it and Mr. ● found in Mr. ●’s favour. I did not state or imply that there was a formal agreement between the three of them to proceed in any particular manner.
39. I obviously do not agree with the Current Citations nor the [XX]/[YY] Citations. The complaints brought against me have been almost entirely political in nature, and often by individuals with political views diametrically opposed to my own. In [XX]’s case, he has admitted publically that his philosophy when dealing with ● includes, what he calls “●”, being the ●.
40. Another LSA complainant, an ● named ZZ who ●, advises ●. Specifically, he ●:
 - (a) ●;
 - (b) ●; and
 - (c) ●.ZZ’s personal complaint against me was dismissed and it is unknown ●.
41. None of the 26 complaints against me have ever gone before a Hearing Panel. Each of the complaints disposed of by the Law Society of Alberta, being 24 of the 26 complaints, have been dismissed or discontinued. Despite this, I acknowledge that the manner in which I conduct myself as a journalist outside the practice of law provides repeated opportunities to those who disagree

with my style or my politics to submit complaints to my regulator, the Law Society of Alberta. This has happened repeatedly.

42. I acknowledge and do accept my counsels' advice that I have a good defense in that the Law Society of Alberta Code of Conduct from which the Current Citations arise, violate my free speech rights under s. 2 of the *Canadian Charter of Rights and Freedoms*, Part 1 of The Constitution Act, 1982, Schedule B to the Canada Act, 1982 (the "*Charter*").
43. In particular, I accept my counsels' advice that restrictions on my free speech rights, while acting as a journalist and criticising ● Tribunals and Commissions, with respect to proceedings in which I am neither counsel nor a party, quite likely violate my Charter rights and are unlikely to be found to be a reasonable restriction under the common law that has developed over the years interpreting the Charter in Canadian Courts.
44. Despite this, I acknowledge that if I was found guilty of the Current Citations I could be facing modest sanctions, including a reprimand, fine and costs.
45. If my application to resign is accepted I will still have to deal with these matters civilly, as Mr. ● and Mr. ● have ●. I and my employer have ● and will continue to ●. I believe that the ●.
46. In order to:
 - (a) Avoid a lengthy hearing;
 - (b) Avoid inconveniencing witnesses;
 - (c) Avoid future appeals of the Hearing by ● litigants;
 - (d) Avoid future complaints arising from similar circumstances;
 - (e) Avoid the costs to the Law Society of Alberta and the public, because unlike civil court, nuisance complaints to the Law Society do not have cost consequences; and
 - (f) Bring a resolution to the Citations and any future complaints that may arise because of my professional status as a non-active lawyer;

I am hereby agreeing to resign from the Law Society of Alberta. I also hereby agree and undertake not to apply for reinstatement with the Law Society of Alberta for a period of five (5) years.

47. If and when I choose to reapply for reinstatement with the Law Society of Alberta or to apply for application to any other law society in Canada, I will only do so in order to practice law actively and on a full-time basis.
48. Although I have not practiced law for many years, I have enjoyed the privilege of calling myself a lawyer. However, until Canada develops summary processes for dealing with professional complaints for political activities outside of one's professional practice, it simply makes no sense for me or any other outspoken political journalist to continue holding a membership in a Law Society that is so vulnerable to nuisance litigants.

49. 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 obtained independent legal advice in relation to my execution of the Statement of Facts.

ALL OF THESE FACTS ARE ADMITTED THIS "17" DAY OF FEBRUARY, 2016.

"E Levant"

EZRA LEVANT