

THE LAW SOCIETY OF ALBERTA

RESIGNATION COMMITTEE REPORT

**IN THE MATTER OF THE *LEGAL PROFESSION ACT*,
AND IN THE MATTER OF AN APPLICATION TO RESIGN WHILE FACING
CITATIONS, INVOLVING MARY JO ROTHECKER
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

1. On December 9, 2013, a Resignation Committee (the “Committee”) of the Law Society of Alberta (the “LSA”) convened at the LSA offices in Calgary, Alberta, to hear an application by the Member, Mary Jo Rothecker, to resign from the LSA, pursuant to s. 32 of the *Legal Profession Act*. The Committee was comprised of Robert Harvie, Q.C., Chair, Rose Carter, Q.C., and Wayne Jacques, CA. The LSA was represented by Ms. Lois MacLean. The Member and her Legal Counsel, Mr. Doug Quirt, attended the hearing by teleconference.
2. The Member and the LSA submitted an Agreed Exhibit Binder, which contained an Admitted Statement of Facts which was signed by Ms. Rothecker. It contained certain admissions which were made part of Ms. Rothecker's application to resign. It was effectively a Joint Submission as to the appropriateness of the resignation under s. 32 of the Act in the face of the extant citations and the admissions made. The Resignation Committee was aware that such a joint submission should receive the deference of a committee such as this unless that submission is unfit, unreasonable in the circumstances, or contrary to the public interest.
3. The formal citations faced by Ms. Rothecker were set out in Exhibit 2. That Exhibit is appended to this Memorandum.
4. Ms. Rothecker's application was constituted by four documents that were entered as Exhibit 6:
 - a. EXHIBIT 6(A) - Application for Resignation
 - b. EXHIBIT 6(B) - Statutory Declaration
 - c. EXHIBIT 6(C) – Undertaking
 - d. EXHIBIT 6(D) – Admitted Statement of Facts

Exhibit 6 is appended to this Memorandum.

5. The decision of the Resignation Committee concerned two substantive applications raised during the hearing. At the outset of the hearing, there was an application by the Member to have part of these proceedings held in private with respect to certain evidence respecting the mental health of the Member, and including a medical report submitted on behalf of the Member by Dr. John Machry, entered into these proceedings as Exhibit 7.
6. The principal application of the Member, as indicated, was then the application brought under Section 32 of the *Legal Profession Act*, being an application by the Member to resign from the Law Society of Alberta.
7. The decision in this matter was given orally by the Chair and was as follows:

THE CHAIR: As indicated earlier, what we have before us is an application for resignation tendered under Section 32 of the Legal Profession Act. That request has been made by the member, Mary Jo Rothecker, and has been supported by representations by her counsel, Mr. Quirt, which application is not opposed by counsel for the Law Society.

With respect to the application, it should be noted that as part of the materials before this panel was provided a medical report that outlined to a great degree the history of mental and physical difficulties encountered by the member.

In that respect I can advise that, based upon review of all the material, this panel has determined that it would not be contrary to the public interest to allow the application for resignation under Section 32 of the Legal Profession Act, and that application is therefore allowed and accepted by this panel.

I would note for the record that in doing that, while we acknowledge receipt of the agreed statement of facts, the suggestion in the agreed statement of facts in some regard is that the circumstances of the member are -- and specifically her medical difficulties -- are a complete answer to the citations which were levied against her.

For the record, this panel takes some issue with that, although the panel acknowledges that the circumstances are mitigating factors that allow for this panel to consider that the Section 32 application is not inappropriate; so it is therefore allowed.

The resignation is, however, subject to several conditions, that I'll outline.

The first condition will require as a condition of that acceptance of resignation that the member will provide a written undertaking to the Law Society of Alberta and the Law Society of Upper Canada and a general undertaking not to apply for readmission as a lawyer in either Alberta, Ontario, or any other jurisdiction in Canada.

The second condition would be that prior to applying for readmission, in the event that she requests to be relieved of that undertaking, that she would be required to pay costs as set out in Exhibit 8 in these proceedings, in the sum of **\$90,539.50**.

The next condition of acceptance of that resignation is that the member will provide an undertaking in writing not to act as agent on any legal matter before any court in Canada or any administrative tribunal or other quasi legal proceeding.

A further condition of acceptance of resignation would be that in the event that the member seeks to be relieved of her undertaking not to apply for readmission, that she would provide as a condition of that application a report of an appropriate psychiatrist or chartered psychologist affirming her mental stability to allow her to return to the practice, which report would be obtained at her own expense.

The next condition would be that the member will use her best effort to obtain and then return her certificate of admission to the Law Society of Alberta.

The next condition would be that in the event the member applies to be relieved of her undertaking not to seek readmission in Alberta or elsewhere that she would be required, as a condition of that readmission, to complete the full CPLED course or equivalent course for admission of law students in Alberta, or such jurisdiction as she may apply for readmission.

So that would be the order relative to the application for resignation.

With regard to the ancillary matter regarding effectively the application of the member to have the medical report considered private and not open to public scrutiny, the panel has considered that request and the panel is denying that application.

In a review of the report, we believe there is nothing in that report that is of what we would term significant embarrassment to the member. In many respects it is in some regard admirable that the member has undergone those trials and has succeeded in many respects in overcoming them, notwithstanding what brought her here.

We make that determination to a great extent based on the presumption that proceedings before this panel are public and that we as the Law Society have a duty of transparency to the public and in the public interest to allow the public to be aware of the basis upon which determinations are made at this level.

I would make comment in that regard as well that the citations that the member was facing were serious and numerous. And again in line with the obligation of transparency in the interest of the public, I think it's important in this case that public is aware of what we would call clearly mitigating factors that resulted in this matter not proceeding to an ultimate determination or by way of a Section 61 application that we've discussed.

So with regard to the substantive matters, that would conclude our determination.

The results of these proceedings shall be published as required by the executive director. So there will be a Section 32 notice to the profession. And the results of these proceedings will be entered on the roll of the member as well.

There is not a request for a referral to the Attorney General's office?

MS. MACLEAN: No, sir, there's no request for the referral to the Attorney General. Can I simply ask for confirmation, sir, that the names of any clients or third parties will be redacted from the record prior to publication with respect to the exhibits and the statement of facts and any other matters on the record?

THE CHAIR: And that will be the case. There will be an order that there will be a redaction of any identification of any third parties or clients that would otherwise be contained within the record.

MS. MACLEAN: And simply reviewing the guidelines, sir, I don't think -- competence is not an issue. And with respect to the member's practice, as I previously indicated, she has not been in practice since 2007, and the practice was dealt with by way of Ms. Edwards, who was formally appointed as a custodian. So I don't think that there's anything that you need to deal with with respect to any directions in that regard.

THE CHAIR: The only comment I would make, counsel, is we do believe the competence is a bit of an issue, and that was the basis of the order that if there's an application for readmission that there will be basically a retraining of this member in accordance with CPLED.

MS. MACLEAN: Okay. Then that -- will there be written reasons, sir?

THE CHAIR: There will be.

MS. MACLEAN: Then that would be addressed, presumably, in those written reasons, but there's nothing else that needs to be done?

THE CHAIR: No.

MS. MACLEAN: Then I think that those are all the matters that I need to ask you to deal with.

THE CHAIR: Anything further, Mr. Quirt?

MR. QUIRT: No. I would just like to thank you for your consideration in these circumstances.

THE CHAIR: And I thank you as well, Mr. Quirt, for your cooperation in allowing this matter to be concluded, and I thank counsel as well for the Law Society in that regard as well. Thank you very much.

MS. MACLEAN: Thank you, sir. Then --

THE CHAIR: That concludes these proceedings. We stand adjourned.

Dated at Calgary, Alberta, the 20th day of March, 2014

Robert G. Harvie, Q.C.,
Chair

Rose Carter, Q.C.

Wayne Jacques, CA.

MARY JO ROTHECKER - FORMAL CITATIONS

CITATION 1:

It is alleged that you failed to meet your commitments to your clients and that such conduct is deserving of sanction.

CITATION 2:

It is alleged that you withdrew funds from trust without forwarding an account to the complainants and that such conduct is deserving of sanction.

CITATION 3:

It is alleged that you misappropriated the complainants' trust funds bringing discredit to the profession and that such conduct is deserving of sanction.

CITATION 4:

It is alleged that you failed to respond on a timely basis to communication from the Law Society that contemplated a reply and that such conduct is deserving of sanction.

CITATION 5:

It is alleged that you rendered an account without instructions and without having provided any services to the client and that such conduct is deserving of sanction.

CITATION 6:

It is alleged that you applied funds from trust for an account that had not been rendered to the client and that such conduct is deserving of sanction.

CITATION 7:

It is alleged that you failed to respond to the Law Society and that such conduct is deserving of sanction.

CITATION 8:

It is alleged that you failed to fulfill a financial commitment incurred in the business aspects of your practice and that such conduct is deserving of sanction.

CITATION 9:

It is alleged that you failed to respond to communications from the Law Society that contemplated a reply and that such conduct is deserving of sanction.

IN THE MATTER OF THE LEGAL PROFESSION ACT

**IN THE MATTER OF AN APPLICATION BY
MARY JO ROTHECKER
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

APPLICATION FOR RESIGNATION

I, Mary Jo Rothecker, hereby make application to the Benchers of the Law Society of Alberta to resign as a member of the Law Society of Alberta pursuant to Section 32 of the *Legal Profession Act*.

DATED at the City of Milton, in the Province of Ontario this 9th day of December, 2013.

Mary Jo Rothecker

IN THE MATTER OF THE LEGAL PROFESSION ACT

**IN THE MATTER OF A RESIGNATION APPLICATION BY
MARY JO ROTHECKER
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

STATUTORY DECLARATION

I, Mary Jo Rothecker, of the City of Mississauga, in the Province of Ontario, DO
SOLEMNLY DECLARE THAT:

1. I was born [REDACTED].
2. I was admitted to the bar in the Province of Alberta on June 30, 1988.
3. I reside in Mississauga, Ontario.
4. I am currently suspended, effective June 24, 2010. The suspension resulted from a Hearing Committee decision. I was previously suspended since November 30, 2007, due to non-payment of hearing fines and/or costs.
5. The history of my practice status is as follows:
 - a) Dawe & Company August 12, 1988 to November 1, 1988
 - b) Rothecker Law Office November 1, 1988 to August 8, 1998
 - c) Franchi-Rothecker Law Office August 12, 1998 to November 30, 2007.
6. All trust funds and client property for which I was and am responsible have been accounted for and paid over or delivered to the persons entitled thereto, or have been transferred to Brenda Edwards as the Custodian of my former practice.

7. I am not aware of any current outstanding claims against me in my professional capacity or in respect of my practice.
8. I make my resignation application pursuant to section 32(1) of the *Legal Profession Act*.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME at the
City of Milton, in the Province of
Ontario, this 9th day of December,
2013

Mary Jo Rothecker

A Notary Public

IN THE MATTER OF SECTION 32 OF THE LEGAL PROFESSION ACT

**IN THE MATTER OF A RESIGNATION APPLICATION BY
MARY JO ROTHECKER
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Undertaking

I, Mary Jo Rothecker, undertake and agree to cooperate with the Law Society of Alberta in the future in respect to any claim made against me or the Assurance Fund regarding me.

I undertake and agree to 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.

Signed at the City of Milton, in the Province of Ontario this 9th day of December, 2013.

Mary Jo Rothecker