

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A SECTION 61 RESIGNATION APPLICATION
BY JAMES BURKINSHAW
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Resignation Committee

Darlene W. Scott, QC – Chair (Bencher)
Margaret Unsworth, QC - (Bencher)
Glen Buick - (Lay Bencher)

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)
James Burkinshaw - self-represented

Hearing Date

October 11, 2017

Hearing Location

800,10104 - 103 Avenue, Edmonton, Alberta

RESIGNATION COMMITTEE REPORT

Summary of Conclusion

1. James Gregory Burkinshaw applied to resign from the LSA, pursuant to section 61 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (*Act*). At the time of this hearing, Mr. Burkinshaw was an inactive member of the LSA.
2. At the conclusion of the hearing, the Committee allowed the application pursuant to section 61 of the *Act*, for the reasons set out in this report.

Jurisdiction/Preliminary Matters

3. Exhibits 1, 2 and 3, consisting of the letter of appointment of the Committee, the Private Hearing Application Notice and the Certificate of Status of the Member with the LSA, established the jurisdiction of the Committee. There were no objections to the constitution of the Committee. The Committee determined that it had jurisdiction and was properly constituted to hear the application before it.
4. There being no application for any part of the hearing to be held in private, the hearing was held in public.

Exhibits

5. The Committee received and entered into the record, Exhibits 1-6 by consent as follows:
 - Exhibit 1 – Letter of Appointment
 - Exhibit 2 – Private Hearing Application Notice
 - Exhibit 3 – Certificate of Status
 - Exhibit 4 – Member’s Record
 - Exhibit 5 – Member’s Materials
 - 5a – Application for Resignation
 - 5b – Statutory Declaration
 - 5c – Undertaking
 - 5d – Statements of Facts – The initial Exhibit 5d was replaced at the Hearing (with the consent of all parties) with the form of Exhibit 5d attached to this report as Schedule “A”.
 - Exhibit 6 – Estimated Statement of Costs

Application

6. Mr. Burkinshaw has been a member of the LSA since July 22, 1997, carrying on a general practice.
7. The LSA obtained a Custodianship Order for Mr. Burkinshaw’s practice on April 12, 2017.
8. At the time of his application for resignation, Mr. Burkinshaw was an inactive member of the LSA and faced several serious citations, including:
 - Failing to act with integrity in applying trust funds provided for another purpose, to pay his own legal fees;
 - Failing to follow his client’s instructions;
 - Breach of trust conditions; and

- Issuing an NSF trust cheque and delay in replacing same.
9. There were also a number of outstanding complaints in respect of additional matters including:
- Failure to maintain complete and accurate trust and accounting records;
 - Falsification of bank records; and
 - Failure to report the registration of a Writ of Enforcement contrary to Rule 119.34 of the *Rules of the Law Society of Alberta*.

These matters were under investigation at the time of this hearing.

10. Mr. Burkinshaw provided a Statutory Declaration in support of his application for resignation in which he verified that he has not practiced law since the date of the above Custodianship Order.
11. Mr. Burkinshaw further provided a signed Undertaking, dated July 26, 2017, wherein he agreed to cooperate with the LSA and the Alberta Lawyers Insurance Association (ALIA) with regard to any claims, to pay any deductible in respect of any claim paid by ALIA and also to pay the amounts of any assurance fund claims arising from his conduct.
12. Mr. Burkinshaw has admitted that if he were found guilty of the conduct described in the Statement of Admitted Facts, it would likely result in disbarment. Mr. Burkinshaw confirmed that he understood that the effect of a resignation under section 61 of the *Act* was a deemed disbarment.

Decision

13. LSA counsel supported Mr. Burkinshaw's application for resignation pursuant to section 61 of the *Act*, which constitutes a deemed disbarment. LSA counsel agreed that Mr. Burkinshaw's resignation served the public interest, and avoided the cost, inconvenience to witnesses and delay which would be involved in a hearing.
14. The citations to which Mr. Burkinshaw has admitted are very serious, involving misappropriation of trust funds and breach of trust conditions. The outstanding complaints alleging falsification of bank records and failure to report to the LSA, are also extremely serious complaints, which suggest that Mr. Burkinshaw is not governable by the LSA. This type of behaviour clearly requires that the member lose his status as a member of the LSA, such that this conduct cannot recur and the public is protected.
15. There was clear evidence that Mr. Burkinshaw's practice was being attended to by a custodian and that there were therefore no trust accounts or trust fund issues to be dealt with by this Committee.

16. The Committee accepted that the undertakings offered by Mr. Burkinshaw provided adequate protection of the public interest. Mr. Burkinshaw does not avoid the financial implications of his actions by agreeing to resign pursuant to section 61 of the *Act*.
17. As a result, the Committee concluded that it was reasonable and appropriate, and in the public interest, to permit Mr. Burkinshaw to resign pursuant to section 61. The Committee provided its decision orally at the conclusion of the hearing, as follows:
 1. The Agreed Statement of Facts and Admissions were in a form satisfactory to the Committee;
 2. The proposed Undertakings and Agreements in Exhibit 6c were acceptable;
 3. The member's application to resign pursuant to section 61 of the *Act* was allowed, effective October 11, 2017;
 4. The roll shall reflect that Mr. Burkinshaw's application under section 61 of the *Act* was allowed on October 11, 2017;
 5. Costs of the investigation and the proceedings were to be paid by Mr. Burkinshaw forthwith and in any event prior to submission of an application to be reinstated as a member of the LSA.
 6. Mr. Burkinshaw's conduct was to be referred to the Minister of Justice and Attorney General;
 7. The decision, transcript and Exhibits in this hearing were to be made available to the public, redacted in accordance with LSA Policy; and
 8. A Notice to the Profession would be issued.

Dated January 26, 2018.

Darlene W. Scott, QC

Margaret Unsworth, QC

Glen Buick