

**IN THE MATTER OF PART 2 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
REGARDING KELLY SINN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee

Margaret Unsworth, QC - Chair (Bencher)
Karen Hewitt, QC - Committee Member (Bencher)
Bud Melnyk, QC - Committee Member (Bencher)

Appearances

Candice Ross – Counsel for the Law Society of Alberta (LSA)
Kelly Sinn – Unrepresented

Hearing Date

March 27, 2018

Hearing Location

LSA office, at 800,10104 - 103 Avenue, Edmonton, Alberta

RESIGNATION COMMITTEE REPORT

Overview

1. Kelly Sinn applied for resignation from the Law Society of Alberta, pursuant to either section 32 or section 61 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (the *Act*). Because Mr. Sinn's conduct is the subject of three outstanding citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application, and to determine whether to accept the application for resignation, and if so, under section 32, section 61, or both.
2. At the time of this hearing, Mr. Sinn was an inactive member of the LSA. Mr. Sinn did not have a disciplinary record with the LSA.
3. After reviewing all of the evidence and exhibits, and hearing submissions from LSA Counsel and Mr. Sinn, the Committee allowed the application pursuant to section 32 of

the *Act* with oral reasons, and advised that a written decision would follow. This is that written decision.

4. In addition, the Committee accepted the submissions of LSA Counsel that costs would not be ordered and would only be paid should Mr. Sinn re-apply to the LSA to become an active member.

Preliminary Matters

5. Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Attend, the Certificate of Exercise of Discretion, and the Certificate of Status of the Member with the LSA, as filed, established jurisdiction of the Committee. There were no objections to the constitution of the Committee, on the grounds of bias or otherwise. As jurisdiction was established and there were no objections, the hearing proceeded.
6. The Certificate of Discretion pursuant to Rule 96(2)(a) and (b) of the *Rules of the Law Society of Alberta* (the Rules) established that in addition to Mr. Sinn, three other individuals, CO, HM, and CB, had been served with a Private Hearing Application Notice. LSA Counsel advised that the LSA did not receive a request for a private hearing and the parties did not request a private hearing. Accordingly, the Chair directed that the hearing be held in public.
7. At the outset of the hearing, Exhibits 5 and 6, contained in the Exhibit Book that had been provided to the Committee in advance, were entered into evidence with the consent of the parties. Exhibit 5 is the Lawyer Record and Exhibit 6 is the Formal Citations faced by Mr. Sinn.
8. Also provided to the Committee in advance and filed as full exhibits were: Exhibit 7.1, the signed Application for Resignation, Exhibit 7.2, a Statutory Declaration by Mr. Sinn setting out his particulars and the status of trust funds and claims, Exhibit 7.3, setting out the undertakings made by Mr. Sinn to the LSA in support of his Application, Exhibit 7.4, an Agreed Statement of Facts, and Exhibit 8, an Estimated Statement of Costs.
9. Mr. Sinn was unrepresented and the Chair verified with Mr. Sinn that he was choosing to proceed without counsel.

Citations and Agreed Statement of Facts

10. At the time of the hearing, Mr. Sinn faced 9 citations arising from three separate matters, as detailed in the Agreed Statement of Facts, a redacted version of which is attached to this decision as Appendix A.

11. Mr. Sinn has admitted to a number of citations, as detailed in paragraphs 9-44 of the Agreed Statement of Facts, which included failing to serve his client, failing to respond to communications from his client, and failing to respond promptly and completely to communications from the LSA.

Additional Evidence

12. At the request of one of the Committee members, LSA Counsel provided information, by way of confirmatory emails, that at the time of the hearing, all monies withheld by Mr. Sinn pursuant to the original retainers paid by each of the complainants had been accounted for and returned to the complainants. No additional evidence was called by either party.

The Submissions of the Parties

13. Mr. Sinn and LSA Counsel both submitted that the Committee should accept Mr. Sinn's resignation pursuant to section 32 of the *Act* on the grounds that doing so was in the best interest of the public. Counsel for the LSA submitted that the citations Mr. Sinn was facing would not, in the circumstances of this case, attract disbarment. Both Mr. Sinn and the LSA jointly submitted that accepting Mr. Sinn's resignation would also avoid unnecessary cost, delay and inconvenience to the three individuals involved as complainants.

Analysis

14. Under the *Act*, a member may apply to resign under either section 32 or section 61. There is a material distinction between these applications. Pursuant to section 61 of the *Act*, the member's resignation amounts to a deemed disbarment if accepted. Under section 32 of the *Act*, the application is merely one of resignation.
15. In considering whether to accept the application for resignation under section 32, a Committee of the Benchers of the LSA considers a number of factors, including the nature of the lawyer's alleged conduct, whether such conduct would likely result in disbarment if the matter proceeded to a hearing and the citations were proven, including the existence of other factors that would which would mitigate against disbarment and make it an unlikely outcome. Central to the analysis and the final decision is an overarching goal of maintaining public confidence in the legal profession: whether permitting resignation under section 32 is in in the best interests of the public, and in the interests of the reputation of the profession that serves the public.

16. The facts of this case reveal that Mr. Sinn was in practice a short period of time, had no prior record for discipline, and had the benefit of the LSA practice review process prior to the conduct which was the subject of complaints. There is a temporal connection between the three complaints made to the LSA, the neglect demonstrated by Mr. Sinn underlying the conduct forming the basis of the citations before the Committee, and his timely report to the LSA wherein he acknowledges suffering an ongoing medical condition for which he has sought treatment and counselling for a lengthy period of time.
17. Mr. Sinn took immediate steps to change his status to inactive/non-practicing and his practice was transferred to a custodian. There is no evidence of financial loss to the public. There are no reasonable grounds to believe that Mr. Sinn has committed a criminal offence.
18. LSA counsel supported Mr. Sinn's application for resignation, effective immediately, agreeing that Mr. Sinn's resignation pursuant to section 32 of the *Act* served the public interest.

Decision

19. The Committee considered this application to be tantamount to a joint submission and therefore deserving of deference, unless it was demonstrably unfit or unreasonable, or contrary to the public interest. In the circumstances of this case, the joint submission for resignation, effective March 27, 2018 was appropriate. The Committee unanimously accepted the application, as presented.

Concluding Matters

20. The Committee finds that the Agreed Statement of Facts, filed as Exhibit 7.4 in the proceedings, is in an acceptable form to the Committee.
21. The Committee accepted the undertakings made by Mr. Sinn, dated March 8, 2018, as set out in Exhibit 7.3, filed and attached to this decision as Appendix B.
22. The Committee has reviewed the costs of hearing this application, as prepared by LSA Counsel. The Committee has accepted the joint submission of Mr. Sinn and LSA Counsel that costs as set out in the Estimated Statement of Costs, Exhibit 8, filed in these proceedings, shall only be paid should Mr. Sinn re-applies for membership to the LSA.
23. Pursuant to subsection 32(2) of the *Act*, Mr. Sinn's name will be struck off the roll. The roll shall reflect that Mr. Sinn's application under section 32 of the *Act* was allowed on March 27, 2018.

24. The exhibits and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Sinn will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).
25. A Notice to the Profession will be issued and Mr. Sinn's resignation shall be entered into the roll.
26. A Notice to the Attorney General is not required.

Dated at Edmonton, Alberta, May 17, 2018

Margaret Unsworth, QC

Karen Hewitt, QC

Buddy Melnyk

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY

KELLY SINN

A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS AND ADMISSIONS

A. BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on November 1, 2013.
2. Between November 1, 2013 and November 19, 2013, I practiced law with the firm [CC] in Edmonton, Alberta. From December 5, 2013 to December 19, 2016, I practiced criminal and family law as a sole practitioner in Calgary, Alberta under the firm name of "Sinn Law". I also operated a professional corporation which was incorporated on December 19, 2013.
3. On December 19, 2016, I made the decision to become inactive/non-practising and my practice was transferred to a custodian for the LSA on the same date by court order.

B. APPLICATION FOR RESIGNATION

4. I am applying to resign as a member of the LSA pursuant to section 32 of the *Legal Profession Act* (the "Act").
5. This application arises out three complaints against me, which have resulted in 9 citations being referred by a Conduct Committee Panel (a "CCP") to a Hearing Committee.
6. I am making this application to avoid a hearing into the merits of these matters; to prevent the corresponding inconvenience to witnesses and panel members; and because I no longer wish to practice law.
7. I admit the facts contained in this Agreed Statement of Facts ("ASF") and where I make specific admissions to the conduct described herein, I agree that I am also admitting that the described conduct is deserving of sanction pursuant to section 49 of the *Act*.
8. I have signed this ASF voluntarily and without any compulsion or duress.

C. FACTS AND ADMISSIONS

1. CO20162691 (Complainant: CB)

a. Facts

9. I was retained by CB in April 2016 to assist him in a divorce action with his wife. I was paid a \$3,000 retainer by CB.
10. I accepted service of the Statement of Claim and Notice to Disclose on behalf of CB. Thereafter, I attended court on April [...], 2016 at which time a Consent Interim Without Prejudice Parenting Order was granted.
11. During the month of August, 2016, I was contacted several times by CB and CB's bank which was seeking information regarding CB. I did not respond to either CB or the bank.
12. On September 29, 2016, CB terminated my services and requested a receipt and refund of the retainer. I responded that day by email stating "Sure, C, sorry things haven't worked out for you. I have notified C's lawyer; would you like me to pass on your contact information to her lawyer as well?"
13. Since then, I have not responded to any subsequent communications from CB and did not reimburse CB's retainer.

b. LSA Involvement

14. On November 16, 2016, the LSA received a Lawyer Complaint Form from CB.
15. On December 16, 2016, a Complaints Resolution Officer ("CRO") wrote to me requesting a response to CB's complaint. I did not respond to his letter.
16. On February 2, 2017 and February 27, 2017, Conduct Counsel for the LSA wrote to me pursuant to section 53 of the *Act* requesting a formal response to the complaint. I did not respond to either letter.

c. Citations

17. On December 13, 2017, a CCP issued the following citations:
 - a. It is alleged that Kelly Sinn failed to serve his client and that such conduct is deserving of sanction;
 - b. It is alleged that Kelly Sinn failed to respond to communications from his client and that such conduct is deserving of sanction;

- c. It is alleged that Kelly Sinn failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction;

d. **Admissions**

18. I admit that I failed to serve CB by failing to advance his divorce, including:
 - a. Failing to take timely steps in the proceedings after the Consent Interim Without Prejudice Parenting Order was granted;
 - b. Failing to provide CB with a receipt and return of his retainer.
19. I admit that I failed to communicate with CB including:
 - a. Failing to respond to several communications from CB and his bank in August 2016; and
 - b. Failing to respond to requests from him to provide a receipt and return of his retainer.
20. I admit that I failed to respond promptly and completely to communications from the LSA and that I failed to provide a response to the complaint.

2. **CO20162499 (Complainant: CO)**

a. **Facts**

21. I was retained by CO on April 5, 2016 to assist with her previously scheduled application to revise child support. A Notice to Disclose had also been filed prior to my involvement in the matter.
22. I contacted opposing counsel and we agreed to adjourn the application to April 26, 2016, and I advised CO of the adjournment.
23. The matter was adjourned again to a date in June 2016, but I did not advise CO of the adjournment and I did not attend court on the date scheduled for the application.
24. Other than speaking to opposing counsel to adjourn the matter, I took no steps to advance CO's application to revise child support.
25. CO attempted to contact me numerous times to request a status update. I did not respond to CO's communications.

b. **LSA Involvement**

26. On October 13, 2016, the LSA received a Lawyer Complaint Form from CO.

27. On December 16, 2016, a Complaints Resolution Officer (“CRO”) wrote to me requesting a response to CO’s complaint. I did not respond to his letter.
28. On February 2, 2017 and February 27, 2017, Conduct Counsel for the LSA wrote to me pursuant to section 53 of the *Act* requesting a formal response to the complaint. I did not respond to either letter.

c. **Citations**

29. On December 13, 2017, a CCP issued the following citations:
 - a. It is alleged that Kelly Sinn failed to serve his client and that such conduct is deserving of sanction;
 - b. It is alleged that Kelly Sinn failed to respond to communications from his client and that such conduct is deserving of sanction;
 - c. It is alleged that Kelly Sinn failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction;

d. **Admission**

30. I admit that I failed to serve my client, CO, by failing to provide the services for which I was retained, including:
 - a. Failing to take any steps to advance her application to revise child support;
 - b. Failing to attend court;
31. I admit that I failed to respond to communications from my client, CO.
32. I admit that I failed to respond promptly and completely to communications from the LSA and that I failed to provide a response to the complaint.

3. **CO20162612 (Complainant: HM)**

a. **Facts**

33. I was retained by HM on August 25, 2015 to assist her with a divorce action and Notice to Disclose application filed by her husband. HM paid me a \$2,500 retainer.
34. I was to respond to the Notice to Disclose application filed by HM’s husband and to also file a cross-application for disclosure on behalf of HM. I took no steps on either application.

35. I failed to file a Statement of Defence on behalf of HM.
36. I did not respond to numerous communications from HM.
37. HM advised me that she intended to file a complaint to the LSA. In response, on October 6, 2016, I emailed HM stating that I mailed her retainer and documents back to her but they had been returned as undeliverable. I confirmed HM's address and advised that I would resend the retainer and documents, but I did not.

b. **LSA Involvement**

38. On October 17, 2016, the LSA received a complaint from HM.
39. On February 2, 2017 and February 27, 2017, Conduct Counsel for the LSA wrote to me pursuant to section 53 of the *Act* requesting a formal response to the complaint. I did not respond to either letter.

c. **Citation**

40. On December 13, 2017, a CCP issued the following citations:
 - a. It is alleged that Kelly Sinn failed to serve his client and that such conduct is deserving of sanction;
 - b. It is alleged that Kelly Sinn failed to respond to communications from his client and that such conduct is deserving of sanction;
 - c. It is alleged that Kelly Sinn failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction;

d. **Admission**

41. I admit that I failed to serve my client, HM, by failing to provide the services for which I was retained, including:
 - a. Failing to take steps to respond to a Notice to Disclose application and make a cross-application;
 - b. Failing to file a Statement of Defence;
 - c. Failing to return HM's retainer and documents;
42. I admit that I failed to respond to communications from my client, HM.
43. I admit that I failed to respond promptly and completely to communications from the LSA and that I failed to provide a response to the complaint.

44. I admit that I failed to respond to communications from the LSA and that I failed to provide a response to the complaint.

D. COMPLAINT AND PRACTICE REVIEW HISTORY

45. The LSA has recorded a total of 15 complaints against me, 5 of which were classified as formal complaints. Of these 5 formal complaints,
- a. Three are the subject matter of this resignation; and
 - b. Two were dismissed by the Executive Director of the LSA.
46. As a result of the fact that I had attracted a large number of complaints during my very short period of practice, I was referred to the LSA's Practice Review in August 2015. A practice review file was opened in September 2015. In approximately November 2016, I advised the LSA that I was experiencing [a medical condition] and that I desired to wind up my practice. On December 19, 2016, I changed my status to inactive/non-practising and my practice was transferred to a custodian by court order.
47. I have been dealing with [medical condition] for several years and have sought counselling and other treatment for my condition.

ALL OF THESE FACTS ARE ADMITTED TO THIS 8 DAY OF MARCH, 2018.

"Kelly Sinn"

KELLY SINN

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY

KELLY SINN

A MEMBER OF THE LAW SOCIETY OF ALBERTA

UNDERTAKINGS AND AGREEMENTS

I, **Kelly Sinn**, undertake and agree to the following terms and conditions of resignation:

1. I will cooperate with the Law Society of Alberta (the “**LSA**”) in the future with respect to any claim made against me or against the Assurance Fund or Part B of the group policy.
2. I will endeavour to pay any deductible with respect to any claim paid by the LSA Insurer and to pay the LSA any claim paid from the Assurance Fund or the indemnity program fund.
3. I will endeavour to locate and surrender to the LSA my Certificate of Enrolment issued by the Law Society pertaining to my admission to the Bar.
4. I will cooperate with the LSA to submit a Self-Report, an Accountant’s Report or a data Upload should any of these documents be needed in the future.
5. I will not be retained or employed in any capacity having to do with the practice of law or the provision of legal services.
6. I will not appear on behalf of any person before any Court, tribunal, or administrative body performing any judicial or quasi-judicial function, including any appearance pursuant to section 106(2)(l) of the *Legal Profession Act*, RSA 2000, c L-8, as amended.
7. I will not engage in or perform any service or activity of a paralegal nature, including any activity or service usually provided by an articling student, law clerk, legal assistant, research assistant, or legal secretary.
8. I will not re-apply for admission to the LSA. If I wish to be relieved of the undertaking not to re-apply for admission to the LSA, I will first pay to the LSA the sum set out in the final Statement of Costs approved by the Resignation Committee before being able to file an application for relief from this undertaking, which will precede any application for re-instatement.

SIGNED AT EDMONTON, ALBERTA, THIS 8 DAY OF MARCH, 2018.

“witness signature”

Witness to the Signature of

“**Kelly Sinn**”

KELLY SINN