

**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 MAGGIE O'SHAUGHNESSY
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee

Buddy Melnyk - Chair (Bencher)
Elizabeth Hak - Committee Member (Bencher)
Stacy Petriuk – Committee Member (Bencher)

Appearances

Christine Blair – Counsel for the Law Society of Alberta (LSA)
Gavin Wolch – Counsel for Maggie O'Shaughnessy

Hearing Date

May 14, 2019

Hearing Location

500, 919 – 11th Avenue SW, Calgary, Alberta

RESIGNATION COMMITTEE REPORT

Overview

1. Maggie O'Shaughnessy applied for resignation from the Law Society of Alberta (LSA) pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c. L-8 (LPA). Because a complaint had been made under the LPA against Ms. O'Shaughnessy's conduct, this Resignation Committee (Committee) was constituted to hear this application.
2. At the time of this application, Ms. O'Shaughnessy was an inactive member of the LSA and she had no disciplinary record with the LSA. Ms. O'Shaughnessy had been admitted as a member of LSA on July 21, 2008 and she became inactive on October 2, 2017.
3. After reviewing all of the evidence and exhibits, and hearing arguments from counsel for the LSA and counsel for Ms. O'Shaughnessy, the Committee allowed the application pursuant to section 32 of the LPA and advised that a written decision would follow. This is that written decision.

Preliminary Matters

4. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing on Ms. O'Shaughnessy's resignation application proceeded.
5. During her submissions, counsel for the LSA advised that Ms. O'Shaughnessy had tendered to the Law Society her original Certificate of Enrollment, receipt of which was acknowledged.

Citations

6. Ms. O'Shaughnessy faced a total of one complaint as outlined in the Admitted Statement of Facts provided to this Committee and appended to this Report. Ms. O'Shaughnessy has denied the allegations in that complaint, but she acknowledges that if an LSA Hearing Committee determined that the complaint allegations were established, her conduct could be considered serious.

Admitted Statement of Facts

7. The complaint involved an allegation by a former client that Ms. O'Shaughnessy failed to provide competent and effective legal service at the second-degree murder trial of the client. The Alberta Court of Appeal appointed a Commissioner to inquire into the conduct of the trial and, in February 2017, that Commissioner determined that Ms. O'Shaughnessy did not follow the client's instructions and that Ms. O'Shaughnessy did not exercise reasonable professional judgment in her representation of the client.
8. The main issue at trial involved Ms. O'Shaughnessy's introduction of a third-party suspect during closing arguments to the jury. Ms. O'Shaughnessy recognizes that she should have obtained clearer instructions from her client before pursuing this defence.
9. Ms. O'Shaughnessy does not agree with a number of factual findings by the Commissioner and she feels she was unfairly treated as a witness.
10. Ms. O'Shaughnessy also points out that she suffered multiple soft tissue injuries and a concussion arising from a motor vehicle accident in January of 2016. After suffering constant headaches, nausea, difficulty in concentrating and memory issues, Ms. O'Shaughnessy sought medical treatment. In August 2017, she received a diagnosis of neurocognitive impairment. Ms. O'Shaughnessy believes that her medical condition

impacted her ability to testify as a witness at the Commission hearing and resulted in adverse findings.

The Submissions of the Parties

11. Counsel for Ms. O'Shaughnessy also put forward a number of submissions, including:
 - (a) Ms. O'Shaughnessy is unable to practice law due to her medical condition;
 - (b) There is only one outstanding complaint;
 - (c) Ms. O'Shaughnessy has no discipline record;
 - (d) There are no issues relating to integrity or dishonesty;
 - (e) Ms. O'Shaughnessy has been diligent and forthcoming with the Law Society;
 - (f) It would not be in the public interest to refuse the application; and
 - (g) Ms. O'Shaughnessy has a legacy of positive contributions to the legal profession.

12. Counsel for the LSA made a number of submissions, including the following:
 - (a) The LSA supports the section 32 resignation application;
 - (b) Ms. O'Shaughnessy has no discipline record;
 - (c) There was only one complaint, but no citation has been issued;
 - (d) The conduct, if proven, would not be worthy of disbarment; and
 - (e) The medical condition of Ms. O'Shaughnessy related to the alleged conduct.

Analysis

13. Under the LPA, a lawyer may apply to resign under either section 32 or section 61. The material distinction between these two sections is that pursuant to section 61 a lawyer's resignation amounts to a deemed disbarment. Under section 32, the application merely results in the resignation of the lawyer, but is not deemed a disbarment.

14. In considering whether to accept the application for resignation under section 32 this Committee considered a number of factors including: (1) the nature of Ms. O'Shaughnessy's alleged conduct; (2) whether such conduct would likely result in disbarment if the matter proceeded to a hearing and citations were proven; and (3) the existence of other factors that would mitigate against disbarment. Central to the analysis was the overarching goal of maintaining public confidence in the legal profession. In other words, would the acceptance of an application to resign under section 32 be in the best interests of the public and in the interests of the reputation of the profession?

15. It should also be noted that the LSA counsel supported the application and as such, this application was essentially treated as a joint submission and therefore deserving of deference. This Committee also had regard to the following:

- (a) Ms. O'Shaughnessy has no discipline record with the Law Society;
- (b) The alleged conduct does not relate to integrity or dishonesty concerns;
- (c) There was only one complaint, but no citation had been issued;
- (d) The alleged conduct would not be likely result in disbarment; and
- (e) The medical condition of Ms. O'Shaughnessy appears to be related to the alleged conduct.

Decision

- 16. The Committee finds that the Admitted Statement of Facts is in an acceptable form.
- 17. Based on the evidence established by the Admitted Statement of Facts, the Committee determined that it was in the best interests of the public to accept the application of Ms. O'Shaughnessy to resign pursuant to section 32 of the LPA, effective May 14, 2019.
- 18. The Committee accepted the undertakings and agreements made by Ms. O'Shaughnessy.
- 19. The LSA was not seeking costs and therefore no costs are awarded.
- 20. Pursuant to subsection 32(2) of the LPA, Maggie O'Shaughnessy's name will be struck off the roll. The roll shall reflect that Ms. O'Shaughnessy's application under section 32 of the LPA was allowed on May 14, 2019.

Notice to the Profession

- 21. Counsel for Ms. O'Shaughnessy had requested that the Notice to the Profession not be issued on the basis that such Notice might have a negative impact on the mental and emotional health of Ms. O'Shaughnessy. The Committee reviewed section 107(7) of the Rules of the Law Society, which states:

107(7) Before giving any specific directions respecting publication to the Executive Director, the tribunal

- (a) shall consider the potential consequences of the directions to the member, the member's clients and any of the witnesses who testified in the proceedings against the member, and
- (b) shall, unless the circumstances make it inappropriate to do so, allow the member or the member's counsel an opportunity to make representations respecting the matter of the directions and any peculiar or unique

consequences that any directions may have in relation to the member or his clients or any or all of the witnesses who testified in the proceedings.

22. The Committee felt it prudent to balance the issues of the mental health of Ms. O'Shaughnessy with the interests of the profession and the public in having some notice of the resignation. This was determined to be best achieved by way of a modified form of Notice to the Profession. In accordance with section 107(5) of the Rules, this Committee directs the Executive Director to issue the following Notice to the Profession:

Section 32 Resignation

On May 14, 2019 a Resignation Committee of the Law Society of Alberta accepted an application by Maggie O'Shaughnessy, a retired member of the Law Society who lives and practised in Calgary, Alberta, to resign pursuant to section 32 of the *Legal Profession Act*. Ms. O'Shaughnessy's resignation is effective immediately.

The full written decision of the Resignation Committee will be posted to the Law Society of Alberta website when it is issued.

Concluding Matters

23. 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 Ms. O'Shaughnessy will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, May 15, 2019.

Buddy Melnyk – Chair and Bencher

Stacy Petriuk- Bencher

Elizabeth Hak – Lay Bencher

IN THE MATTER OF THE LEGAL PROFESSION ACT

- AND -

**IN THE MATTER OF A RESIGNATION APPLICATION BY
MAGGIE M. O'SHAUGHNESSY
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ADMITTED STATEMENT OF FACTS

A. BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on July 21, 2008.
2. Between July 21, 2008 and April 8, 2010, I practiced at the Crown Prosecutor's Office in Calgary, Alberta. From April 8, 2010 to August 15, 2017, I practiced criminal law as a sole practitioner in Calgary, Alberta under the firm name of "O'Shaughnessy Criminal Law".
3. On October 2, 2017, I become an inactive/non-practising member, having elected to wind up my practice. I am also a member of the Law Society of British Columbia and have non-practicing status there as well.

B. COMPLAINT BY W.R

4. The LSA received a complaint about my conduct from a former client, W.R., on December 16, 2016.
5. I represented W.R. in relation to criminal charges he was facing. He was ultimately convicted at trial of second degree murder.
6. W.R. appealed his conviction. He asked for a new trial as he argued that I failed to provide him competent and effective legal assistance, resulting in a miscarriage of justice.
7. The Court of Appeal appointed a Commissioner to inquire into and report on the circumstances of the matter. The Commission hearing occurred in February 2017.
8. The Commissioner found that my memory and evidence were not reliable and he preferred the factual assertions of W.R. over my own. As a result he found that I did not follow W. R.'s instructions and did not exercise reasonable professional judgment in my representation of W.R.

9. The main issue that led to the Commission hearing was the introduction to the jury of a third-party suspect in my closing submissions at W.R.'s trial. In hindsight I should have obtained clearer instructions from W.R. before mounting a 3rd party defence.
10. Pursuant to a Consent Judgment, the Court of Appeal quashed W.R.'s conviction on the basis of ineffective legal representation and a new trial was ordered.
11. I do not agree with many of the findings in the Commissioner's report. I feel I was unfairly treated as a witness.
12. I do recognize that if a LSA Hearing Committee made similar findings to the Commissioner, it could be considered serious misconduct. I deny these allegations and believe that a fair and impartial LSA hearing, with a thorough review of my records including other written instructions from W.R., would vindicate me.

C. OTHER COMPLAINT

13. In my view a more serious allegation, that I advised my client he would benefit from absconding, resulted in a Law Society complaint and investigation beginning in December 2017. I fully complied with the investigation and the complaint was dismissed. It however took a great toll on me emotionally and I believe it adversely affected my health.
14. Because I no longer intend to practice law given my health, and given that I believe it would have a significant, further adverse effect on my health to go through another investigation or a hearing, I am seeking to resign my membership with the Law Society of Alberta as laid out below.
15. There are no other outstanding complaints against me.

D. MY MEDICAL CONDITION

16. In January 2016, I was hit by another vehicle while I was driving my car. I sustained multiple soft tissue injuries and also a [...]. I would later be advised, that having had a previous serious [...], a further complex [...] would be a significant problem in my recovery.
17. I repeatedly attended my doctor in 2016 because I just wasn't myself nor was I getting better. I finally saw a [...] in January 2017. Further tests and treatment were scheduled. These would continue until the final tests in August, 2017. At the time of the Commission hearing I did not fully understand what my [...] injury was, nor how my [...] would respond under severe stress. I only knew I had [...].
18. In August 2017 following further medical testing, I was diagnosed with significant [...],

which I was advised may be progressive. I had already curtailed my practice over time to only a handful of clients, and when I received the confirmation diagnosis in August, I transferred my few remaining files and voluntarily shut down my practice. Given my medical diagnosis I did not believe I could ethically continue to practice law.

19. I believe that my medical condition affected my ability to participate at the Commission hearing, and may have directly contributed to the adverse findings against me.

E. APPLICATION FOR RESIGNATION

20. I am applying to resign as a member of the LSA pursuant to section 32 of the *Legal Profession Act*.
21. I am making this application to avoid the emotional hardship of a Law Society hearing; to prevent the corresponding inconvenience to witnesses and panel members; and because I am unable to practice law due to my medical condition, in any event.
22. I admit the facts contained in this Admitted Statement of Facts and have signed it voluntarily, without any compulsion or duress, and with the benefit of legal advice.

**ALL OF THESE FACTS ARE ADMITTED TO THIS 9th DAY OF OCTOBER,
2018.**

"Maggie O'Shaughnessy"
MAGGIE M. O'SHAUGHNESSY