

**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 THOMAS SCOTT  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

1. On January 28, 2014, a Resignation Committee of the Law Society of Alberta (“LSA”) (the “Committee”) convened at the Law Society offices in Calgary, Alberta, to hear an application by the Member, Mr. Thomas Scott, to resign from the Law Society of Alberta, pursuant to s. 32 of the *Legal Profession Act*. The Committee was comprised of Brett Code, Q.C., Chair, Robert Harvie, Q.C., and Wayne Jacques. The LSA was represented by Ms. Molly Naber-Sykes. The Member was present throughout the hearing and was not represented by legal counsel.
2. Mr. Scott and the LSA agreed on a Statement of Facts, and Mr. Scott signed an Agreed Statement of Facts and made certain admissions, which then were made part of his application to resign. He did those things as part of an agreement with the Law Society and as part of what 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 Mr. Scott were set out in Exhibit 2, as Amended during the application. That amended Exhibit is appended to this Memorandum.
4. Mr. Scott’s application was constituted by 4 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) - Statement of Facts

Exhibit 6 is appended to this Memorandum.

5. The decision of the Resignation Committee was given orally by the Chair and was as follows:

THE CHAIR: We have had time to consider the application and we are unanimous in acceptance of Mr. Scott's resignation under Section 32 of the *Legal Profession Act*. The Statement of Facts is in a form acceptable to us. The exhibits should be made available for inspection. The undertakings given by Mr. Scott are confirmed by us as listed in Exhibit 6, plus the undertaking to return the Certificate of Enrollment, if and when it is found by Mr. Scott. Costs in the amount listed in Exhibit 7 in the amount of \$3,664.50 are to be paid within four months of this date. The roll will announce the resignation, strike Mr. Scott from the roll, and include his application, the undertakings and the Statement of Facts. There will be no notice to the profession. And I believe that that covers all of the issues.

Chair: Are there any questions?

MR. SCOTT: A small question. Is that effective as of today?

THE CHAIR: It is effective as of today, sir.

MR. SCOTT: Thank you, sir.

THE CHAIR: You are no longer a member of the Law Society of Alberta. Your resignation has been accepted.

MS. NABER-SYKES: Mr. Code, you have ordered that Mr. Scott pay the costs in Exhibit 7. That's an Estimated Statement of Costs. I expect that the actual costs would be slightly less because we won't go for four hours today. Would you like to order that the actual costs be paid within four months of service of them on Mr. Scott?

THE CHAIR: Yes. If the actual costs are to benefit of Mr. Scott, this number should be a maximum. If the number is actually less, then you will let him know that it's a reduced number. Okay?

MS. NABER-SYKES: Thank you, sir.

THE CHAIR: Thank you. These proceedings are concluded. Thank you very much for your attendance here today, sir.

MR. SCOTT: Thank you.

THE CHAIR: Good luck to you and we wish you the best.

MR. SCOTT: Thank you.

Dated at Calgary, Alberta, the 28th day of February, 2014

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W.E. Brett Code, Q.C., Chair

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Robert Harvie, Q.C.

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Wayne Jacques

## **Exhibit 2**

### **THOMAS SCOTT**

#### **FORMAL CITATIONS**

1. IT IS ALLEGED THAT you failed to provide competent, conscientious, timely, and diligent service to your client L.G., and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from your client, L.G., which contemplated a reply, and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis or at all in the matter of a complaint by L.G., and that such conduct is conduct deserving of sanction.
4. IT IS ALLEGED THAT you failed to serve your client, B.U., and that such conduct is conduct deserving of sanction.
5. IT IS ALLEGED THAT you failed to respond to your client, B.U., in a timely manner, and that such conduct is conduct deserving of sanction.
6. IT IS ALLEGED THAT you failed to honour your undertakings, and that such conduct is conduct deserving of sanction.
7. IT IS ALLEGED THAT you failed to respond promptly to communications from other counsel, M.B., and that such conduct is conduct deserving of sanction.
8. IT IS ALLEGED THAT you failed to respond to communications from the Law Society, and that such conduct is conduct deserving of sanction.

**Exhibit 6(A)**

**IN THE MATTER OF THE LEGAL PROFESSION ACT**

**IN THE MATTER OF AN APPLICATION BY  
THOMAS HENRY SCOTT  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**APPLICATION FOR RESIGNATION**

I, Thomas Henry Scott, 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 Calgary, in the Province of Alberta this 14 day of January, 2014.

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Thomas Henry Scott

**Exhibit 6(B)**

**IN THE MATTER OF THE LEGAL PROFESSION ACT**

**IN THE MATTER OF AN APPLICATION BY**

**THOMAS HENRY SCOTT**

**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

STATUTORY DECLARATION

I, Thomas Henry Scott, of the City of Calgary, in the Province of Alberta, DO SOLEMNLY  
DECLARE THAT:

1. I was born [REDACTED].
2. I was admitted to the bar in the Province of Alberta on December 20, 1962.
3. I reside in Calgary, Alberta.
4. I am currently Active/Practising since I was admitted to the bar on December 20, 1962.
5. The history of my practice status is as follows:
  - a) Scott Law Firm March 22, 1995 to present
  - b) Scott & Company April 1, 1987 to Mar-22-1995
  - c) Scott & Thomas June 1, 1985 to April 1, 1987
  - d) Scott, Thomas & Millar December 20, 1962 to June 1, 1985
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.

7. There are no outstanding claims against me in my professional capacity or in respect of my practice.

**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 Calgary, in the Province of  
Alberta, this 14 day of January,  
2014

\_\_\_\_\_  
Thomas Henry Scott

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A Commissioner of Oaths in and for the  
Province of Alberta

**Exhibit 6(C)**

**IN THE MATTER OF SECTION 32 OF THE LEGAL PROFESSION ACT**

**IN THE MATTER OF A RESIGNATION APPLICATION BY**

**THOMAS HENRY SCOTT**

**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Undertaking**

I, Thomas Henry Scott, 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 Calgary, Alberta, this 14 day of January, 2014.

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Thomas Henry Scott



## **Exhibit 6(D)**

### **IN THE MATTER OF THE LEGAL PROFESSION ACT**

### **IN THE MATTER OF A RESIGNATION APPLICATION BY**

**THOMAS HENRY SCOTT**

**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

### **STATEMENT OF FACTS**

#### **INTRODUCTION**

1. I was admitted to the Bar on December 20, 1962, and practiced in Calgary, Alberta.
2. I am a general practitioner. Real estate transactions comprise 60% of my practice.
3. I have applied to resign as a member of the Law Society of Alberta. I admit all of the contents of this Statement of Facts which is tendered as an admission of facts in support of my resignation application.

#### **CITATIONS**

4. On August 9, 2012, the Conduct Committee Panel referred the following conduct to hearing following a complaint by L.G. and M. G.:
  1. IT IS ALLEGED THAT you failed to provide competent, conscientious, timely, and diligent service to your client L.G., and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from your client, L.G., which contemplated a reply, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis or at all in the matter of a complaint by L.G., and that such conduct is conduct deserving of sanction.
5. On June 20, 2013, the Conduct Committee Panel referred the following conduct to hearing following a complaint by B.U.:
  4. IT IS ALLEGED THAT you failed to serve your client, B.U., and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED THAT you failed to respond to your client, B.U., in a timely manner, and that such conduct is conduct deserving of sanction.
6. On June 20, 2013, the Conduct Committee Panel referred the following conduct to hearing:
  6. IT IS ALLEGED THAT you failed to honour your undertakings, and that such conduct is conduct deserving of sanction.
  7. IT IS ALLEGED THAT you failed to respond promptly to communications from other counsel, M.B., and that such conduct is conduct deserving of sanction.
  8. IT IS ALLEGED THAT you failed to respond to communications from the Law Society, and that such conduct is conduct deserving of sanction.

## **FACTS**

### Purchase by L.G. and M.G.

7. I was retained by L.G. and M.G. in March 2007. They were purchasing a home at XX A. Place SE in Calgary.
8. It was a condition of closing that the vendors would provide my clients a Real Property Report. I required the vendors' lawyer to hold back \$1,500.00 of the purchase price by my clients pending provision of the Real Property Report.
9. At closing, my clients learned that the gazebo at XX A. Place was not compliant. The vendors undertook to seek a relaxation from the City of Calgary. The vendors' relaxation request was denied and their appeal of that denial was unsuccessful.
10. By June 6, 2008, I told the vendors' lawyer of my clients' request that the vendors appeal the relaxation request denial. I also told the vendors' lawyer my clients would suffer severe damages if the gazebo had to be removed and in that eventuality would seek damages from the vendors.
11. In November 2008, I sent my clients the appeal decision.
12. By April 27, 2009 letter, M.G. asked me to help her hold the vendor responsible for damages resulting from the offending gazebo.
13. By May 19, 2009 letter, I advised my clients to submit plans to the City and to meet its demolition deadline. I also advised my clients about their potential damage claim against the vendors.
14. By July 20, 2009 letter, I asked my clients to provide me a \$1,500.00 retainer before I would take action against the vendors.
15. By August 27, 2009 letter, I wrote to the vendors' lawyer to alert them again that my clients had suffered damages and to ask them to acknowledge they were still holding the \$1,500.00 holdback.

16. By December 7, 2009 letter, the vendors' lawyer sent me a Real Property Report containing a Certificate of Compliance. The vendors' lawyer asked me to allow him to release the \$1,500.00 holdback.
17. By January 4, 2010 letter, the vendors' lawyer again asked me for permission to release the \$1,500.00 holdback.
18. On January 4, 2010, I sent the vendors' lawyer's letter to my clients asking for their instructions.
19. I did not authorize the vendors' lawyer to release the \$1,500.00 holdback to his clients.
20. On March 25, 2010, my clients paid me \$1,500.00 as a retainer.
21. I did not pursue my clients' claim for damages resulting from the gazebo.
22. My clients complained to the Law Society of Alberta on February 5, 2011.
23. By March 30, 2012 letter, Kathy Whitburn of the Law Society asked me for more information about my clients' purchase and the \$1,500.00 holdback.
24. By April 26, 2012 letter, I sent a trust cheque for \$1,500.00 to Ms. Whitburn asking her to return it to my clients. I did not provide Ms. Whitburn the additional information she requested.
25. By March 26, 2013 letter to the Law Society, I provided the additional information requested by Ms. Whitburn. In my view, this information shows that I requested instructions on a number of occasions from my clients and received no replies.

#### The Purchase by B.U.

##### Citation 4

26. I was retained by B.U. in July 2011. B.U. was purchasing a residential property that had been vacant for approximately one year.
27. The signed Residential Real Estate Purchase Contract (the "Contract") included a provision that the vendors would mow the lawn by the closing date of August 15, 2011 and that, in the event that the lawn was not mowed, \$500.00 would be held back to cover the cost of having the lawn cut.
28. I did not discuss the \$500 holdback with counsel for the vendor before the closing.
29. When B.U. took possession of the property on August 15, 2011, he discovered that the lawn had not been mowed. B.U. told the Law Society he left a detailed message with my assistant Jennifer that day that the lawn had not been mowed. My file does not indicate on what date this information was communicated to me.
30. On September 14, 2011, I wrote to counsel for the vendor and advised him that the lawn had not been mowed and requested the \$500 holdback.
31. On September 23, 2011, counsel for the vendor replied to my correspondence advising that the \$500 had not been held back and stating that it was too late to address the matter. He also advised that his client stated the yard work required was done.

32. On October 4, 2011, I sent counsel for the vendor a receipt for lawn cutting that B.U. provided me and asked that he send me the \$500 holdback required by the Contract. I do not believe the receipt was a true statement of the cost for cutting the lawn.
33. On October 6, 2011, counsel for the vendor replied to my correspondence and advised that there was no undertaking or \$500 holdback but, nevertheless, they would forward B.U.'s receipt to their client.
34. The \$500 holdback was never paid.

#### Citation 5

35. B.U. alleges that he called my office on August 15, 2011 and left a detailed message with my assistant about the uncut lawn and asked that I call him regarding the matter. There is no evidence on my file that B.U. called me on that day.
36. B.U. alleges that, between August 15, 2011 and the time he filed his complaint to the Law Society on November 9, 2011, he called my office three to five times per week asking that I return his calls. The only evidence on my file regarding phone calls from B.U. is two phone messages from August 30, 2011 and September 6, 2011. There is nothing on my file to indicate that I returned these calls but I had spoken to my client advising and requesting receipt to which he replied.

#### The Complaint by Mandeep Badyal

#### Citation 6 and 7

37. I acted for the vendor of a residential property and Mr. Badyal acted for the purchaser. The sale was to close on August 3, 2011.
38. By letter to Mr. Badyal dated August 2, 2011, I undertook to discharge four non-permitted encumbrances from the title: [REDACTED] and to provide a certified copy of title. I also undertook to provide a Real Property Report ("RPR") with Compliance.
39. By December 8, 2011 letter, Mr. Badyal advised me one of the mortgages was in arrears. He asked me when he would receive clear title to the property. I did not respond to Mr. Badyal.
40. On December 13, 2011, Mr. Badyal wrote to me, again asking when I would be providing clear title evidencing discharge of the non-permitted encumbrances and advising that the mortgagee had begun foreclosure proceedings against his client.
41. On December 15, 2011, Mr. Badyal and I spoke. I told him that I would review my file and get back to him that day or the following day. He told me that the mortgagee's counsel had extended the deadline for remedying the situation to January 9, 2012, failing which; they would proceed with the foreclosure action. I did not call Mr. Badyal on that day or the day following.
42. On January 3, 2012, I told Mr. Badyal's assistant, Mr. G., that I would shortly be providing clear title evidencing discharge of all non-permitted encumbrances. Mr. Badyal wrote to me the same day confirming the conversation with Mr. G. and advising me that, subsequent to the conversation, Mr. G. had obtained a copy of the title which showed that only one of the non-permitted encumbrances had been discharged and that

three remained outstanding. He also asked me to advise him if I was not in a position to discharge the encumbrances.

43. On January 4, 2012, the mortgagee's counsel told Mr. Badyal that no payment had been made on the mortgage and that he would extend the deadline to January 16, 2011 but would proceed with the foreclosure action if the matter had not been resolved by that date and, that no further extensions would be granted.
44. On January 6, 2012, Mr. Badyal sent me a letter marked "URGENT", advising that he was still awaiting my response regarding the provision of clear title evidencing discharge of all non-permitted encumbrances.
45. On January 9, 2012, I wrote to Mr. Badyal and the mortgagee's counsel advising them that, prior to acceptance, the vendors had made arrangements with the mortgagee wherein the mortgagee agreed to accept the net proceeds of the sale (after payout of the other encumbrances) in discharge of its mortgage which I believe was eventually accomplished.
46. On January 10, 2012, Mr. Badyal complained to the Law Society.
47. I discharged those non-permitted encumbrances that I could. The mortgagee discharged at least one of the encumbrances and was supposed to discharge one more. I did not provide Mr. Badyal a RPR with compliance but money was allocated from the purchase for that purpose.

#### Citation 8

48. By April 25, 2012 letter, the Law Society asked me when I would be in a position to provide the receipt of the discharge of caveat and the RPR with compliance. I did not respond to the Law Society.
49. By May 17, 2012 letter, the Law Society told me my response to the letter of April 25, 2012 was still outstanding and that a response was due no later than June 14, 2012, failing which, the review of the complaint would be completed without my response. I did not respond to the Law Society.
50. On total review of my file, I have no copies of either of the above two letters and my last reply was March 23<sup>rd</sup>.

#### **ADMISSION OF FACTS**

51. I admit the statements in the Statement of Facts for the purpose of providing a record of the events which preceded and precipitated my application to resign.

This Statement of Facts is made this 14<sup>th</sup> day of January, 2014.

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**Thomas Henry Scott**