

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

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

-AND-

**IN THE MATTER OF A RESIGNATION APPLICATION BY
JAMES GREGORY BURKINSHAW
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

STATEMENT OF ADMITTED FACTS

1. I was admitted as a member of the Law Society of Alberta (the “Law Society”) on July 22, 1997.
2. I carried on a general practice of law in Edmonton, Alberta doing business as Burkinshaw Law Office.
3. On April 12, 2017, the Law Society applied for and obtained a Custodianship Order appointing a custodian of the property and business of my law practice.
4. Subsequent to the Custodianship Order, I applied to change my member status from active to inactive and have not since that time practiced law. I remain an inactive member to the date of this application.
5. I am facing the following citations, which were directed to hearing by a panel of the Conduct Committee on May 17, 2017:

CO20161403

1. IT IS ALLEGED THAT James G. Burkinshaw failed to act with integrity when, without his client’s knowledge or consent he paid his own legal fees with funds provided by his client for the sole purpose of satisfying a spousal support settlement and that such conduct is deserving of sanction.
2. IT IS ALLEGED THAT James G. Burkinshaw failed to follow his client’s instructions to provide settlement funds to the opposing party and that such conduct is deserving of sanction.
3. IT IS ALLEGED THAT James G. Burkinshaw charged his client legal fees that were unfair and unreasonable and that such conduct is deserving of sanction.
4. IT IS ALLEGED THAT James G. Burkinshaw breached Rule 119.21(4)(b) of the *Rules of the Law Society of Alberta* when he withdrew funds to pay the law firm’s legal fees prior to delivery of the invoice to the client and that such conduct is deserving of sanction.

6. I admit the following facts concerning the above citations:
- a. I was retained by J.S. in August 2015 to finalize an addendum to a Separation Agreement (the "Addendum").
 - b. There was no written retainer agreement governing my retainer.
 - c. I advised J.S. both verbally and in writing that my fees would amount to \$1200, payable upon completion of the matter.
 - d. The Addendum was executed in May 2016 and provided, among other things, that J.S. would pay \$15,000 to his former spouse as a lump sum spousal support settlement (the "Settlement Funds").
 - e. J.S. provided me with a cheque for \$15,000 and instructed me to pay the full amount to opposing counsel for full payment of the Settlement Funds. J.S. instructed me further that he would pay my fees by credit card when the matter was complete.
 - f. Without J.S.'s knowledge or consent, I applied \$7,000 of the Settlement Funds to my legal fees and sent \$8,000 to opposing counsel in partial payment of the Settlement Funds. I advised opposing counsel that J.S. was not able to pay the entire \$15,000 settlement amount and that he would be "making a deal to pay the remaining amount".
 - g. I transferred the amount of \$7000 from my trust account to my general account prior to sending J.S. a Statement of Account.
7. In addition to the above matter, four further complaints were submitted to the Law Society between April 7, 2017 and June 1, 2017, which complaints are briefly summarized below:
- CO20170844
- a. In a real estate matter closing in March 2017, I acted for the purchaser. The complainant is a lawyer who acted for the vendor. The complainant alleges that I:
 - i. Breached trust conditions by failing to provide registration, insurance and proof of payment documentation by the closing date;
 - ii. Took unfair advantage of opposing counsel's inaccurate statement of adjustments; and
 - iii. Provided a trust cheque for the funds to close that was returned NSF; and
 - iv. Delayed in providing a replacement cheque for the funds to close.
 - b. In an estate matter, I acted for the estate. Two of the beneficiaries to the estate submitted complaints in respect of this matter:
 - i. CO20171323: One beneficiary alleges that I delayed in providing her with a release; that the trust cheque for her portion of the estate was returned NSF and that I delayed in providing her with a replacement cheque; and
 - ii. CO20171048: Another beneficiary of the same estate alleges that I failed to distribute the estate to all the beneficiaries as dictated by the will.
 - iii. An LSA investigation advises upon a preliminary review that there are some inconsistencies in my accounting in relation to this matter including a

double payment to one beneficiary and an NSF cheque to another beneficiary.

- iv. The Law Society continues to investigate this matter.
- c. CO20170947: A complaint submitted by a former client alleges that I was provided with a \$2,500 retainer. The client alleges I did not contact him again and he seeks the return of his file and the amount of the retainer. The custodian was unable to find a client ledger for the client or confirm receipt of the retainer amount. The Law Society continues to investigate this matter.
8. I admit the allegations as set out in the summaries in paragraph 6 above and admit that such conduct is deserving of sanction pursuant to s. 49 of the *Legal Profession Act* (the "Act").
9. In addition to the complaints summarized above, the Law Society is investigating other concerns, which may be summarized as follows:
 - a. CO20170854: In February 2017, the trust safety department of the Law Society conducted an audit of my accounts and determined there were irregularities in my accounting and bank records. My trust account records and ledgers were not reconciled and there was a trust shortage. In response to a request for bank statements, I deliberately falsified a bank statement and submitted it to the Law Society.
 - b. CO20171018: A Writ of Enforcement for \$36,166.00 was registered against me at the Personal Property Registry on July 23, 2015. In breach of Rule 119.34 of the *Rules of the Law Society of Alberta*, I failed to advise the Law Society of the registration. The Law Society has made two requests for details concerning the debt, to which I have not yet responded.
10. Upon the appointment of the custodian, all my outstanding files were or are being either resolved, transferred to other lawyers, or remedied through ALIA.
11. The custodian has not yet fully reconciled my trust account records. The custodian estimates the trust shortage to be in the range of \$30,000 - \$35,000.
12. I have applied to resign as a member of the Law Society pursuant to section 61 of the Act prior to convening a hearing of the citations directed to hearing and prior to the resolution or completion of the outstanding complaints and ongoing investigations.
13. I admit the facts as set out in this statement and admit that my conduct as described in this statement is conduct deserving of sanction as defined in section 49 of the Act.
14. I acknowledge that if I was found guilty of the misconduct described in this statement, I would likely be disbarred.
15. I further acknowledge that I have read section 61 of the Act and have considered that my resignation application, if accepted, is a deemed disbarment pursuant to the definition of "disbar" in section 1(c) of the Act.
16. I tender this statement of facts to support my resignation application pursuant to s. 61 of the Act.

ALL OF THESE FACTS ARE ADMITTED, THIS 16 DAY OF August, 2017.

“James Burkinshaw”
James G. Burkinshaw