

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

Resignation Committee

Bud Melnyk, KC – Chair (Bencher)
A. Danielle Bourgeois – Committee Member (Bencher)
Louise Wasylenko – Committee Member (Bencher)

Appearances

Will Cascadden, KC – Counsel for the Law Society of Alberta (LSA)
Simon Renouf, KC – Counsel for Lior Samfiru

Hearing Dates

July 30-31, 2024

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. Lior Samfiru applied to resign from the LSA, pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (*Act*). Because Mr. Samfiru's conduct is the subject of citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application.
2. After reviewing all of the evidence and exhibits and hearing the arguments of counsel for the LSA and for Mr. Samfiru, the Committee allowed the application pursuant to section 32 of the *Act* with oral reasons, with a written decision to follow. This is that written decision.

Background

3. Mr. Samfiru is a principal partner with Samfiru Tumarkin, which provides legal services in Ontario, British Columbia and Alberta. At the time of this application, Mr. Samfiru was an active member of the LSA and he had no disciplinary record with the LSA. Mr. Samfiru was admitted to the LSA on October 29, 2020, but he has never actively practiced in

Alberta. Mr. Samfiru has no open or closed files, and he does not handle trust funds or any client property in Alberta.

4. Mr. Samfiru is also a member of the Law Society of British Columbia, but he practices primarily in the Province of Ontario. Mr. Samfiru was admitted to the Law Society of Ontario on September 24, 2003.

Preliminary Matters

5. There were no objections to the constitution of the Committee, or its jurisdiction and a private hearing was not requested, so a public hearing into Mr. Samfiru's resignation application proceeded.

Complaint

6. Mr. Samfiru has one outstanding complaint with the LSA that arose from a dispute with a lawyer formerly employed with Mr. Samfiru's firm. There were three citations:
 - i. That Mr. Samfiru failed to promptly transfer the client file of N.W. upon the departure of N.W.'s lawyer from Mr. Samfiru's firm.
 - ii. That Mr. Samfiru attempted to influence N.W. to withdraw her Law Society complaint.
 - iii. That Mr. Samfiru failed to act honourably and with integrity.

Agreed Statement of Facts

7. The signed Statement of Admitted Facts, as required by Rule 92 of the Rules, sets out the following particulars:

Failure to Promptly Transfer File

- (a) K.H. was employed as a lawyer with Mr. Samfiru's law firm. K.H. was acting for N.W. in respect of an employment/wrongful dismissal matter.
- (b) K.H. ended her employment with Samfiru Tumarkin on May 3, 2021. K.H. commenced new employment on June 1, 2021.
- (c) N.W. first requested that her file be transferred to K.H. on May 27, 2021.
- (d) Mr. Samfiru delayed the delivery of N.W.'s file for a number of different reasons that included a requirement that the complaint filed by N.W. with the LSA be withdrawn, a fee payment issue and finally that the file could not be delivered due to a lack of a filed Notice of Change of Solicitors.

- (e) The file of N.W. was not sent over to K.H. for more than 6 months from the first request.

Demand that the LSA Complaint be Withdrawn

- (a) On July 6, 2021, upon being advised of the LSA complaint, Mr. Samfiru replied to K.H. that same day saying:

Please have her withdraw the complaint by 5 pm tomorrow. That is not negotiable.

...

While I have no issue, in principle, with your proposal [to protect our fees], nothing is going to happen until the law society complaint is withdrawn.

- (b) Mr. Samfiru stated to N.W. on July 9, 2021:

Despite that (*i.e. LSA complaint*), I reiterated my agreement to release the file, without advance payment of legal fees, but asked the the (sic) law society complaint be withdrawn. You have refused.

Failure to Act Honourably and With Integrity

- (a) Mr. Samfiru made numerous representations to N.W., that he knew, or should have known, to be untrue. Such statements included Mr. Samfiru telling N.W. on July 28, 2021, that:

- “no one is currently representing you”
- Mr. Samfiru learned at the same time as N.W. that K.H. had a new job.
- “we could not direct you to [K.H.]. She was an unemployed lawyer”.
- K.H. agreed to pay Samfiru Tumarkin’s fees without concern for the sum.

- (b) Since May 7, 2021 K.H. had continued to represent N.W., which was more than two months prior to when the above representations were made.

Undertakings

8. Mr. Samfiru provided the following Undertakings:

- (1) That he will not apply for reinstatement of his membership in the LSA.
- (2) That he will not advise Alberta clients.

- (3) That he will neither provide legal services in Alberta nor appear before any Alberta Court, tribunal, panel, or other adjudicator.
- (4) That he will pay the LSA's costs of these proceedings.
- (5) That he will not represent on the Samfiru Tumarkin website or anywhere else that he practices law in Alberta or provide legal services to Alberta clients.
- (6) That he will remit his certificate of membership with the LSA, if it can be located.

Applicable Provisions of the LPA and Rules

9. Section 32 of the *Act* states:

32(1) No Member may resign from the Society unless the member's resignation is submitted to and approved by the Benchers or a committee of the Benchers.

(2) If the resignation is approved, the member's name shall be struck off the roll.

10. Where a member is seeking to resign in the face of conduct proceedings Rule 92(8) of the Rules of the LSA states:

92 (8) The Benchers shall review all of the material and shall take into consideration the best interests of the members of the public and the members of the Society. If the Benchers determine that it is appropriate in the circumstances to allow the member to resign, they may accept the resignation of the member.

Submissions of the Parties

LSA Counsel

11. LSA counsel supported Mr. Samfiru's application for resignation, agreeing that Mr. Samfiru's resignation pursuant to section 32 of the *Act* served the public interest. As such, the Committee considered this application to be tantamount to a joint submission and therefore deserving of deference, unless it brings the administration of justice into disrepute or is otherwise contrary to the public interest.
12. Counsel for the LSA submitted:
 - (a) Mr. Samfiru has no prior disciplinary record.
 - (b) That the alleged misconduct, if proven, is unlikely to result in disbarment. If the matter proceeded to a Hearing, LSA would likely be seeking a two-month suspension.

13. LSA Counsel referred to the decision in *Law Society of Alberta v Levant*, 2016 (unreported) where the resignation committee stated at paragraph 3:
- a. Pursuant to section 61 of the LPA if a resignation is ordered under section 61, that constitutes disbarment, pursuant to section 1(c) of the LPA. Accordingly, section 61 resignations occur when the member's conduct is so egregious that it warrants disbarment, the most serious penalty a lawyer can face under the LPA;
 - b. Pursuant to section 32, a resignation can be ordered where there are outstanding conduct issues that do not warrant disbarment. The effect of the resignation, if ordered, is to end those outstanding complaint proceedings.
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- As submitted by counsel for the LSA, section 32 provides the Benchers with an unlimited jurisdiction to accept the resignation of a member. It is clear that in doing so the Bencher Committee must act in the best interests of the public and the best interests of the members of the LSA.
14. LSA Counsel noted that this was an unusual situation for a section 32 application given that Mr. Samfiru was intending to carry on practicing in Ontario. In most section 32 applications the member is usually retiring. However, LSA Counsel felt that these concerns were addressed by the Undertakings provided by Mr. Samfiru (which are set out later herein).

Counsel for Mr. Samfiru

15. Counsel for Mr. Samfiru noted that:
- Mr. Samfiru has no prior disciplinary record with the LSA.
 - Mr. Samfiru never actively practiced in Alberta, and he has no open or closed files.
 - Mr. Samfiru does not handle trust funds or any client property in Alberta.
 - Mr. Samfiru currently has no outstanding insurance or assurance claims.
 - This is the only outstanding complaint matter before the LSA.
 - The complaint would not reasonably result in disbarment.
16. Mr. Samfiru's Counsel relied upon the following decisions, all of which resulted in approval permitting the member to resign under section 32 of the LPA:
- Law Society of Alberta v Ezra Levant*, March 2, 2016 (unreported)
Law Society of Alberta v O'Shaughnessy, 2019 ABLs 11
Law Society of Alberta v Wood, 2019 ABLs 28
Law Society of Alberta v Clair, 2020 ABLs 22
Law Society of Alberta v Warrington, 2020 ABLs 25

17. Mr. Samfiru's Counsel noted that the matters before us are only allegations that have not been proven or tested at a hearing. Counsel's view was that if the allegations were proven, matters would not amount to a two-month suspension or may not engage any disciplinary action.
18. Counsel for Mr. Samfiru also argues that the documents contained in the Statement of Admitted Facts do not amount to misrepresentations by Mr. Samfiru. Counsel provided a number of examples such as when N.W. was told that no one was currently representing her, that this was, in fact, correct. The new firm that K.H. had gone to had told Mr. Samfiru that they were not currently representing N.W.

Legal Test

19. Under the *Act*, a member may apply to resign under either section 32 or 61. There is a material distinction between these two sections. Resignation pursuant to section 61 of the *Act*, which resignation would constitute a disbarment pursuant to section 1(c) of the *Act*. Alternatively, resignation pursuant to section 32, where such resignation is not a deemed disbarment. Regardless of whether the application for resignation is made under section 32 or section 61, the fundamental issue to be determined is whether it is in the best interests of the public and in the interests of the profession to permit the lawyer to resign prior to resolution of the outstanding conduct matters.
20. In considering whether to accept an application for resignation under section 32 this Committee agrees that it is appropriate to consider the nature of the lawyer's conduct and whether it would likely result in disbarment if the matter were to proceed to a hearing and the citations proved. This factor has been expressed in the *Levant* decision, and subsequently followed in other resignation matters. In order to determine if a disbarment is likely, it is appropriate for a resignation committee to review those factors that would mitigate against disbarment and make it an unlikely outcome if the matter proceeded to a hearing. Those factors are more particularized in the LSA's Pre-Hearing and Hearing Guideline (Guideline).
21. Resignation committees of the LSA have permitted members who faced serious conduct proceedings to resign pursuant to section 32 where the public interest may still be served without requiring either a public hearing into outstanding citations or a deemed disbarment. In those cases, resignation committees were satisfied that the member's conduct had been investigated and that certain mitigating factors existed that offer understanding and even explanation for the member's conduct. Equally importantly, in most instances, the applications for resignation were supported by the member's undertaking never to re-apply for admission to the LSA.

Analysis

22. The fundamental question to be addressed by this Committee is whether the resignation application of Mr. Samfiru is in the best interests of the public and the members of the LSA as required by Rule 92(8) of the Rules. The fundamental and overarching consideration is the imperative to maintain public confidence in the legal profession.
23. The Committee finds that the conduct of Mr. Samfiru would not likely result in disbarment if the matter were to proceed to a hearing and the citations proven. In reaching this conclusion the Committee has considered a number of factors including: (1) the nature of the alleged conduct; (2) whether such conduct would likely result in disbarment if the matter proceeded to a hearing and the citations were proven, and; (3) the existence of other factors that have a mitigating effect on the decision of disbarment.
24. On this last point, the existence of factors that have a mitigating effect on the decision of disbarment, this Committee has considered those elements which are more particularized in the Guideline. The relevant factors in this case, with a mitigating effect on the decision of disbarment, are as follows:
 - (a) Mr. Samfiru has no disciplinary record.
 - (b) The misconduct does not constitute a risk to the public.
 - (c) While the conduct does, to some degree, amount to a risk to the reputation of the profession, that risk is not significant.
 - (d) There was no breach of trust involved in the conduct or any integrity issues.
 - (e) There was no noticeable harm to the client.
25. The Committee is cognizant of the concerns raised by LSA counsel, namely that Mr. Samfiru seeks to avoid the following:
 - (a) The completion and determination of the within conduct proceedings.
 - (b) A suspension that is likely to be duplicated in Ontario.
 - (c) A Notice to the Profession.
 - (d) Payment of the LSA's costs.
 - (e) A published decision.

(f) Further LSA conduct proceedings arising from Mr. Samfiru's failure to report Ontario citations.

26. The Committee concurs with counsel for the LSA that the Undertakings given by Mr. Samfiru properly address these concerns.

27. In considering the cases as presented by Counsel we would note the following material aspects:

Levant

- Mr. Levant had substantive defences in respect of the complaints.
- Mr. Levant (who was an inactive lawyer) undertook not to apply to be reinstated for a period of five years.
- The citations, if proved would not amount to a disbarment.
- LSA was consenting to the application under section 32.

O'Shaughnessy

- Ms. O'Shaughnessy was an inactive lawyer.
- Ms. O'Shaughnessy had no disciplinary record.
- The citations, if proven, would not amount to a disbarment.
- The alleged conduct did not relate to integrity or dishonesty concerns.
- LSA was consenting to the application under section 32.

Wood

- Ms. Wood signed an undertaking not to practice law.
- Ms. Wood had no disciplinary record.
- Ms. Wood was facing a number of serious complaints.
- There was medical evidence that "bridges the gap between the allegations of misconduct and Ms. Wood's previously unblemished record of service."
- LSA was consenting to the application under section 32.

Clair

- Mr. Clair was 75 years old at the time and his status was retired.
- Mr. Clair was to refrain from applying for readmission to the LSA without first paying LSA costs.
- Mr. Clair's stated intention was that he was retired and not intending to practice.
- The LSA was consenting to the section 32 application.

Warrington

- Mr. Warrington had two prior disciplinary matters.
- The disciplinary issues related to communication issues and not matters of competency, breach of trust or a dishonest motive.
- Mr. Warrington's long-standing untreated medical condition played a significant role in the issues both past and present.
- Mr. Warrington agreed not to apply for admission as a lawyer for at least one year.
- LSA Counsel was consenting to the resignation application.

Johnston

- The member was inactive and had no prior disciplinary record.
- There was no evidence that the member acted intentionally, knowingly or recklessly.
- There was no evidence of actual harm to the public or clients.
- There was no breach of trust or integrity issues.
- The LSA was consenting to the application.

28. This matter is unusual in that most section 32 applications involve retiring members or members who have undertaken not to practice. In this case Mr. Samfiru will continue to be a practicing lawyer in Ontario. Despite this distinguishing fact, the Committee is relying upon the Undertakings of Mr. Samfiru, including that he will not apply for reinstatement in Alberta.
29. Based on the evidence established by the Statement of Admitted Facts, the Committee has determined that it is in the best interests of the public to accept the application of Mr. Samfiru to resign pursuant to section 32, effective July 31, 2024. We find that it is not likely that Mr. Samfiru would have been disbarred had the citations been proven. The Committee is of the view that the public interest will still be served without requiring either a public hearing or a deemed disbarment.

Concluding Matters

30. The Committee finds that the Statement of Admitted Facts is in an acceptable form.
31. The Committee accepts the Undertakings made by Mr. Samfiru as required under Rule 92.
32. The estimated costs of hearing this application, as prepared by the LSA were determined by the Committee to be reasonable and payable by Mr. Samfiru pursuant to his Undertakings. The Committee understands that Mr. Samfiru has already paid the costs of \$18,377.65 in full.
33. Pursuant to section 32(2) of the *Act*, Mr. Samfiru's name will be struck off the roll. The roll shall reflect that Mr. Samfiru's application under section 32 of the *Act* was allowed on July 31, 2024.
34. Mr. Samfiru has no active files in Alberta and as such there will be no direction for the closing and disposing of client files.
35. The exhibits, other hearing materials, 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. Samfiru will be redacted

and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

36. A Notice to the Profession was ordered by the Committee. It was issued on August 14, 2024.
37. A Notice to the Attorney General is not required.

Dated January 6, 2025.

Bud Melnyk, KC

A. Danielle Bourgeois

Louise Wasylenko