

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A SECTION 83 APPLICATION
REGARDING RENU S. PRITHIPAUL, QC
A SUSPENDED MEMBER OF THE LAW SOCIETY OF ALBERTA**

Bencher Committee

Margaret Unsworth, QC – Chair
Ryan Anderson – Bencher
Robert Dunster – Lay Bencher
Corie Flett – Bencher
Bud Melnyk – Bencher
Robert Philp, QC – Bencher
Amal Umar – Lay Bencher
Louise Wasylenko – Lay Bencher

Appearances

Candice Ross (counsel) and Lucas Wojakowski (student) – Representing the Law Society of Alberta (LSA)

Simon M. Renouf, QC – Counsel for Renu S. Prithipaul, QC

Hearing Date

August 23, 2018

Location

800,10104 - 103 Avenue, Edmonton, Alberta

COMMITTEE REPORT

Overview

1. On October 2, 2017, Renu S. Prithipaul entered guilty pleas to three counts of assault on [...] contrary to s.266 of the *Criminal Code of Canada*. The assaults occurred over many years. That same date, sentencing submissions were made to the court.
2. On October 6, 2017, the court gave its decision on sentencing. Mr. Prithipaul received concurrent sentences of 12 months imprisonment for each of the three charges, to be served in the community pursuant to s.742.1 of the *Criminal Code* (a conditional sentence). By virtue of s. 83(7) of the *Legal Profession Act*, RSA 2000, c.L-8 (the *Act*), Mr. Prithipaul was automatically suspended from the practice of law for the duration of his conditional sentence. That suspension ends October 6, 2018. No appeal from the

criminal conviction or sentence was taken and the time period for appealing has long since expired. Mr. Prithipaul has filed the requisite Application for Reinstatement with the LSA.

3. There is an existing ban on publication of any information that could identify a victim under the age of 18, pursuant to s.486.4(2.1) of the *Criminal Code*.
4. Waiting until toward the end of the year's statutory suspension, the LSA now applies to have Mr. Prithipaul disbarred or further suspended. We note that the LSA has provided no explanation why it waited until the end of the mandatory suspension to make this application. Counsel for the LSA refer to the s.83(7) suspension as being 'temporary' and not a disciplinary response of the regulator but took no steps until recently to commence these proceedings. Having now done so, the LSA is applying in the circumstances where Mr. Prithipaul has already been suspended for almost one year.
5. On August 23, 2018, this Committee of the Benchers (the Committee) held a hearing to consider the LSA's application for disbarment or a further suspension, pursuant to section 83 of the *Act*.
6. After reviewing all of the evidence and exhibits, and hearing the submissions of LSA counsel and Mr. Renouf, counsel for Mr. Prithipaul, the Committee:
 - Is unanimously of the view that, contrary to the LSA's statutory interpretation argument, the use of the word 'may' in s.83(4) of the *Act* does not require the Committee to either suspend or disbar Mr. Prithipaul; rather, the use of 'may' in this section is properly interpreted to be permissive and discretionary;
 - Unanimously dismisses the application of the LSA to disbar Mr. Prithipaul; and
 - Unanimously agrees that a further period of suspension is warranted in the circumstances of this matter.
7. The Committee's views are divided, however, on the appropriate length of suspension. These reasons explain the views of the majority that a further one-year suspension starting October 6, 2018, is appropriate. The minority reasons, which would have set a lesser time, follow.

Preliminary Matters

8. There were no objections to the constitution of the Committee or its jurisdiction. The following exhibits were introduced, and the Committee ruled that jurisdiction had been established:
 - Exhibit 1 - Letter of Appointment of the Committee
 - Exhibit 2 - Notice of Meeting
 - Exhibit 3 - Certificate of Status
 - Exhibit 4 - Certificate of Exercise of Discretion
9. A private hearing was not requested, so a public hearing proceeded.

10. The Committee confirmed receipt of written arguments from the LSA and Mr. Prithipaul. The transcripts from the Preliminary Inquiry and Sentencing, the agreed statement of facts entered at Queen's Bench and documents noting conviction, sentencing and confirmation of no appeal were all entered onto the record, as Exhibits 5-11.

Submissions

11. The LSA advances two main arguments.
12. First, the LSA argues the word 'may' in s. 83(4) means 'must' and that this Committee therefore has only two options in respect of this application, disbar or suspend. The LSA asserts we have no other options due to the purpose of section 83 and of the entire *Act* to serve the public interest in promoting and enforcing a high standard of professional and ethical conduct by Alberta lawyers.
13. The LSA also states that the automatic suspension that occurred here, under s. 83(7), is not an action taken by the LSA - so there has been no denunciation or deterrence action taken by the LSA. The automatic suspension under s. 83(7) cannot therefore be taken into account in determining which of the two mandatory actions under s.83(4) is to be taken.
14. The second main argument by the LSA is that disbarment is appropriate in this application because:
 - Lawyers are sworn to uphold the Rule of Law and Mr. Prithipaul did not do so when he acted as he did to [...], contrary to the *Criminal Code*;
 - Mr. Prithipaul's actions were a breach of trust to [...] and thus undercut the trust the public may have in him;
 - The LSA must denounce Mr. Prithipaul's actions and consider deterrence of him and others.
15. The LSA argues in the alternative for a minimum two-year suspension.
16. On behalf of Mr. Prithipaul, Mr. Renouf argues in response to the statutory interpretation urged by the LSA that the decision of *Achtem*¹ is binding and there is no decision in which s. 83(4) is interpreted as anything other than permissive. In addition, the Committee is referred to Rule 103(7), paragraph 34 of the draft Section 83 and Section 84 Suspensions and Disbarments Guideline, and s. 28(2) of the *Interpretation Act*, RSA 2000, c. I-8.
17. In response to the application for disbarment or suspension, Mr. Renouf argues that the application should be dismissed. He points to five factors found at pages 69-70 of the Law Society Hearing Guide (April 2016), which he argues this Committee must consider when concluding whether disbarment, suspension, or neither are appropriate. These

¹ *Achtem v. Law Society of Alberta*, [1981] AJ 576 (ABCA)

factors are protection of the public, acceptance of responsibility, restitution, rehabilitation and the societal value of having a lawyer reintegrated into the profession.

18. Mr. Renouf submits that protection of the public and restitution are not relevant in this case. The final factor, he says, is obvious. In relation to the matters of responsibility and rehabilitation, Mr. Renouf notes the following events, which he says satisfy these factors:
 - Guilty pleas were entered to the charges of assault and Mr. Prithipaul has throughout accepted full responsibility for his behavior;
 - Mr. Prithipaul has been and continues to attend personal counselling sessions with a [doctor];
 - Mr. Prithipaul voluntarily engaged and continues to participate in the Changing Ways Program, a family violence prevention program;
 - Mr. Prithipaul has had recent contact with [...] and is hopeful to reestablish contact with [...];
 - Mr. Prithipaul has been volunteering with the Mustard Seed Church in Edmonton; and
 - Mr. Prithipaul has enrolled as an open student at McEwan University and has successfully, with high marks, completed three courses.
19. Finally, Mr. Renouf cites several cases, none of which impose a sanction as high as the one sought by the LSA in this case. In fact, he argues Mr. Prithipaul has already been suspended for one year, which is more than the sentence in any of the cases referenced.
20. Thirty-two letters in support were presented by Mr. Prithipaul, all of which speak against action being taken in this case. These letters are from prominent members of the Alberta Bar across all spectrums of legal practice, as well as members of the judiciary and other professionals.

Analysis and Decision

Interpretation of s.83(4) of the LPA

21. The Alberta Court of Appeal in *Achtem* considered the precursor to s. 83 of the *Act*, s. 73. Section 73 provided, in part, that in relation to a member convicted of an indictable offence, without notice, the Benchers could
 - 73(1)(b) upon conclusion of an appeal...
 - (i) suspend the member... or
 - (ii) order that the name of the member be struck off the roll...
22. The issue before the Court of Appeal in *Achtem* was the validity of lack of notice in such proceedings. However, on the interpretation of subsection (b) of s. 73(1), the majority of the Court was clear:
 - ...the section does not mandate suspension or disbarment. [paragraph 10]

[...]

I cannot over-emphasize the empowering, permissive nature of the section because I do not want this judgement to be taken as conveying any suggestion that a suspension or disbarment ought necessarily be given.
[paragraph 13]

Justice Kerans, in dissent, did not address interpretation of the provision, given his finding that no action of the LSA should be taken at all on the facts of the case.

23. Following the *Achtem* decision, amendments were made to section 73 (now section 83), which amended the “without notice” aspect of the section. However, there were no amendments altering the state of the law as expressed in *Achtem*.
24. In addition to the *Achtem* decision, which in our view would be binding on its own, we find further support for the permissive nature of s. 83(4) in:
 - *Interpretation Act*, s. 28(2), which says that in an Act or regulation or any part thereof “may” shall be construed as permissive and empowering and “shall” is to be construed as imperative;
 - Rule 103(7), which states the Benchers may decide to make an order under s.83(4) or not; and
 - The draft Section 83 and Section 84 Suspensions and Disbarments Guideline,² which notes Benchers may decide to make an order under s.83(4) or not.
25. Section 83(4) clearly allows us to dismiss the application of the LSA or disbar or suspend.

Appropriate Sanction

26. The facts that bring us to this point are tragic and we would be remiss not to clearly state our denunciation of Mr. Prithipaul’s conduct. As noted by the sentencing Justice at the Court of Queen’s Bench:

There is not the faintest justification for Mr. Prithipaul’s conduct. It was abuse of a brutal, controlling, oppressive and selfish nature. It occurred repeatedly over many years and despite occasional promises to stop.
[Exhibit 6, October 6, 2017 at page 94, lines 13-16]
27. In sentencing, Justice Poelman noted the primary sentencing objectives of denunciation and general deterrence and took into account Mr. Prithipaul’s sincere rehabilitation efforts in sentencing. Carefully considering all factors and reviewing numerous

² Provided as part of the Exhibit Binder.

authorities, he imposed three 12-month sentences to be served concurrently in the community.

28. A careful review of paragraphs 69 and 70 of the Hearing Guide (April 2016) identifies a number of factors that we are urged to take into account, with weight dependent on the nature of the case. The following appear to us to be the relevant factors in this matter:
- Public confidence in the profession and its reputation to self-govern;
 - Denunciation of the conduct;
 - Rehabilitation of the member;
 - Avoiding disparity with sanctions from other cases;
 - The number of incidents and the length of time involved; and
 - Potential breach of trust.
29. The LSA seeks to have Mr. Prithipaul disbarred, however we see that proposed sanction as being far in excess of both what was imposed in Mr. Prithipaul's criminal case and in other LSA decisions. LSA counsel referred us to various LSA decisions in which lawyers were disbarred following convictions for indictable offence: *Viccars*; *Sidhu*; *Elander*,³ and *Sychuk*. However, a careful review of each of those cases notes the lawyer in each case was sentenced to federal penitentiary time of three years or more. None of those cases involve a member directed to serve less than federal time, in the community.
30. Looking then to the alternative proposed by the LSA of a minimum two-year suspension, we start with the general comment that a reasonable member of the public, properly apprised of all the circumstances, would understand that by virtue of the mandatory automatic suspension in s. 83(7) of the *Act*, Mr. Prithipaul has already been suspended for one year.
31. The nature of Mr. Prithipaul's conduct, the number of incidents, the length of time involved, and the breach of trust were all reviewed carefully by this Committee, as was Mr. Prithipaul's significant involvement in rehabilitative steps, including individual and group counselling and steps to regain contact with his children.
32. That said, the reputation of the legal profession and the public's confidence in it remains of concern. "As a self-governing profession, we are all too aware that the public sometimes sees us as self-serving rather than fulfilling our mandate which is to govern in the public interest and to protect the public interest."⁴
33. It is not easy to evaluate public confidence in the profession. However, faced with a lawyer who appears to have taken full responsibility for his actions and to have determinedly sought help, and carefully reviewing all the authorities brought to our

³ *Viccars, Elander and Sidhu*, Law Society Notices, Tab 23 of LSA Authorities; *Sychuk* see footnote 4

⁴ *Law Society of Alberta v. Sychuk*, [1999] LSDD no 15 at para 48 [Tab 19 of LSA Authorities]

attention,⁵ it is our opinion that a total two-year suspension would satisfy the factors we are to consider.

34. Given that Mr. Prithipaul has already been suspended for one year, albeit as a statutory automatic suspension, a further one-year suspension will be imposed by this Committee. The suspension will start October 6, 2018.
35. We note that Mr. Prithipaul has already applied for reinstatement. We strongly encourage and expect the LSA to deal expeditiously with that application, and well before October 6, 2019, so that the imposed suspension does not extend beyond the term imposed by this Committee.

Order and Concluding Matters

36. Pursuant to section 83 of the *Act*, the Committee orders that Renu S. Prithipaul, QC be suspended, effective starting October 6, 2018, for a period of one year.
37. The LSA shall issue a Notice to the Profession, pursuant to section 85 of the *Act*.
38. The exhibits and other hearing materials, transcripts, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality, solicitor-client privilege (Rule 98(3)) and to comply with the court-imposed publication ban.
39. We strongly encourage and expect the LSA to deal expeditiously with the reinstatement application already filed by Mr. Prithipaul well before October 6, 2019, so that the imposed suspension does not extend beyond the term imposed by this Committee.

Reasons of the Minority (R. Philp, QC and A. Umar)

40. We are in full agreement with other members of the Committee as to the facts, the interpretation of the law and the application of the law in these circumstances.
41. We disagree however with the sanction proposed by the majority. In our view, a further suspension of 6 months will achieve all the objectives sought by the majority. It is, in our view, appropriate to have Mr. Prithipaul return to practice as soon as possible.
42. The suspension we propose would not be contrary to the public interest. Returning the member to practice as soon as possible would indeed be in the public interest. Fully-informed members of the public would not find our suggested sanction unreasonable.

⁵ *R v. Koval*, [1988] AJ No 1347; *Torske*, 2015 ABLs 13; *Law Society of Alberta v. Holder*, [2007] LSDD No 130; *Law Society of Alberta v. Abbi*, [1995] LSDD No 291 [Tabs 2-6 of Prithipaul Authorities]

43. Furthermore, it is in the public interest to practice restorative justice by returning Mr. Prithipaul to the practice of law in a timely manner. This is particularly true given that he has proven himself competent and capable lawyer as was attested to in the many letters of support submitted by members of the profession to this Committee.

Dated at Edmonton, Alberta, October 2, 2018.

Majority:

Margaret Unsworth, QC – Chair

Ryan Anderson

Robert Dunster

Corie Flett

Bud Melnyk

Louise Wasylenko

Minority:

Amal Umar

Robert Philp, QC