

**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 HELMUT BERNDT
A SUSPENDED MEMBER OF THE LAW SOCIETY OF ALBERTA**

Bencher Committee

Margaret Unsworth, KC – Chair and Bencher
Sony Ahluwalia, KC – Bencher
Glen Buick – Lay Bencher
Corie Flett, KC - Bencher
Kene Ilochonwu, KC – Bencher
Cal Johnson, KC – Bencher
Sharilyn Nagina, KC – Bencher
Louise Wasylenko – Lay Bencher

Appearances

Christine Blair – Counsel for the Law Society of Alberta
Brian Beresh, KC – Counsel for Helmut Berndt

Hearing Date

January 19, 2024

Hearing Location

Virtual Hearing

COMMITTEE REPORT

Overview

1. Mr. Berndt was called to the Alberta Bar on August 21, 1979. He practised civil litigation in Edmonton, Alberta from August 21, 1979, to July 11, 2019 at which time he elected to become an inactive member of the Law Society of Alberta (LSA).
2. On January 24, 2019, Mr. Berndt self-reported to the LSA that he had been charged with a number of indictable offences under the *Criminal Code*.
3. On June 9, 2022, Mr. Berndt was convicted in the Court of Queen’s Bench of Alberta of the following indictable offences under the CC:
 - Sexual assault [section 246.1 (currently s.271)]
 - Sexual interference [section 151]
 - Invitation to sexual touching [section 152]

- Sexual exploitation while being in a position of trust or authority [section 153(1)(a)]
4. On June 15, 2022, Honourable Justice E.C. Wilson ordered a global sentence of 14 years and, in addition, made the following orders: a 10-year section 109 CC Order (weapon prohibition), a lifetime SOIRA Order (lifetime registration on the *Sexual Offender Information Registry Act*) and a DNA order.
 5. Mr. Berndt appealed both the conviction and the sentence. His counsel reported to the LSA on September 15, 2022 that both appeals were abandoned and provided a report of Criminal Appeal.
 6. Mr. Berndt was automatically suspended from membership in the LSA on August 19, 2022 pursuant to section 83(7) of the *Legal Profession Act*, RSA 1980, c.L-8 (*Act*).
 7. On January 19, 2024, a Committee of the Benchers (Committee) held a hearing to consider the LSA's application for disbarment against Mr. Berndt pursuant to section 83(4) of the *Act*.
 8. After reviewing all of the evidence plus exhibits and considering the representations of the LSA and counsel for Mr. Berndt, the Committee has determined that Helmut Berndt should be disbarred.

Preliminary Matters

9. There was no objection 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 – Letter of Exercise of Discretion
10. A private hearing was not requested, so a public hearing proceeded.
11. The Committee confirmed receipt of written argument from the LSA and an email from counsel for Mr. Berndt advising that:
 - Mr. Berndt would not be present at the hearing; and
 - He did not contest the LSA application for disbarment.

Submissions

Disbarment

12. LSA counsel argued the criteria in section 83(4) of the *Act* were met and the Benchers should order disbarment on the following grounds;
 - There are certificates of conviction which establish convictions of the indictable offences noted in paragraph 3 of these reasons (Exhibit 9); and
 - A letter from counsel for Mr. Berndt dated September 15, 2022 and a Report of Criminal Appeal dated August 19, 2022 establish that appeals on conviction and sentencing were abandoned (Exhibit 8).
13. A letter from counsel for Mr. Berndt to Tribunal counsel dated January 12, 2024 states that “we will not be contesting the Law Society application for disbarment”. Counsel for Mr. Berndt confirmed this position orally before this Committee and submitted no further materials on this point.

Notice to the Profession

14. In his email of January 12, 2024 and orally before this Committee, counsel for Mr. Berndt applied to have the Notice to the Profession under section 85 of the *Act* provide minimal information. He argued that the Notice should merely state there was a conviction for sexual related offences and cite the section numbers of the CC of which Mr. Berndt was convicted, giving no further details.
15. The rationale for this position was detailed in the noted email and restated orally before the Committee:
 - Mr. Berndt has no plans to ever practice law again.
 - There is concern that publishing details:
 - Would have a negative impact on his wife and family;
 - May result in physical harm, harassment, and embarrassment at his place of incarceration; and
 - May negatively impact rehabilitation efforts.
 - There is no public interest or justification in greater publication.
 - The suggested limited publication would still have a deterrent factor and would not be misleading as there are published cases with details of his charges.
 - The LSA has taken such steps in other matters (example Notice of Disbarment of Ronald Steven Matheny)
16. The LSA opposed the application regarding the Notice to the Profession and argued:
 - Consistency with the overwhelming majority of other suspension notices is important.
 - Transparency in the LSA process is important.

- Details are in the notice of suspension which has been on the LSA website since August 2022 so it cannot be reasonably argued that publishing details now will have the negative impact alleged.

Analysis and Decision

17. The Committee finds that the LSA has met the test in section 83(4) of the *Act* for disbarment and that Mr. Berndt does not contest the application. Therefore Mr. Berndt shall be disbarred.
18. Centrally for reasons of consistency with the majority of Notices and transparency of the LSA process, the Committee rules that the Notice should be issued with details of the charges as is the usual practice.

Order and Concluding Matters

19. Pursuant to section 83 of the *Act*, the Committee orders that Helmut Berndt be disbarred, effective immediately.
20. The LSA shall issue a Notice to the Profession, pursuant to section 85 of the *Act*.

Dated March 15, 2024.

Margaret Unsworth, KC

Sony Ahluwalia, KC

Glen Buick

Corie Flett, KC

Kene Ilochonwu, KC

Cal Johnson, KC

Sharilyn Nagina, KC

Louise Wasylenko