

CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF PAB CHETTY,
A LAWYER OF LLOYDMINSTER, SASKATCHEWAN

THE LAW SOCIETY OF SASKATCHEWAN
DISCIPLINE DECISION NO. 10-2
PAB CHETTY OF LLOYDMINSTER, SASKATCHEWAN
DECIDED APRIL 16TH, 2010

Tim Huber - on behalf of the Law Society of Saskatchewan
Morris Bodnar, Q.C. - on behalf of Pab Chetty

INTRODUCTION AND SUMMARY

1. Mr. Pab Chetty, a sole practitioner, is licensed to practice in Saskatchewan. He was not and is not licenced or authorized to practice in the Province of Alberta. At various times between 2005 and 2008 Mr. Chetty, whose office was located in Lloydminster, Saskatchewan, accepted clients and practiced law in the Province of Alberta. This unauthorized practice was found to be conduct unbecoming a lawyer.

JURISDICTION AND RESPONSIBILITY

2. The Law Society of Saskatchewan was established in 1907, and governs the legal profession in the Province of Saskatchewan under the *Legal Professions Act*, 1990.

3. The disciplinary process is usually undertaken on the basis of complaints received from clients, members of the public or other lawyers. However, the Law Society may undertake its own investigation where information comes to its attention which indicates inappropriate or unprofessional behavior.

4. Conduct unbecoming is defined as; "any act or conduct, whether or not disgraceful or dishonorable, that; (1) is inimical to the best interest of the public or the members; or (2) tends to harm the standing of the legal profession generally".

PROCEDURAL HISTORY

5. The matter proceeded before the Hearing Committee, consisting of Eileen V. Libby, Q.C. as Chair, and Susan B. Barber, Q.C. (hereinafter called the Hearing Committee). The Hearing Committee convened on October 27, 2009 and was subsequently adjourned for the filing of written argument by both the Investigation Committee and the member.

6. The parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it.

7. At the hearing an Amended Formal Complaint was presented which alleged as follows:

That Pab Chetty, of the City of Lloydminster, in the Province of Saskatchewan:

- 1) Is guilty of conduct unbecoming a lawyer, in that he engaged in the practice of law in the Province of Alberta without authorization to do so.
(Reference Chapters I and XIX of the *Code of Professional Conduct*.)

- 2) Is guilty of conduct unbecoming a lawyer, in that he did breach the terms of the Federation of Law Societies of Canada National Mobility Agreement by practicing law in the Province of Alberta while he was ineligible to do so pursuant to clauses 10(d) and 10(f) and without a mobility permit as required by clause 13. (Reference Chapters I and XIX of the *Code of Professional Conduct*.)
 3. Is guilty of conduct unbecoming a lawyer, in that he continued to practice law in the Province of Alberta without a permit after being specifically advised by the Law Society of Saskatchewan that he was not entitled to do so. (Reference Chapters I and XIX of the *Code of Professional Conduct*.)
8. The Hearing Committee found Mr. Pab Chetty guilty of conduct unbecoming in relation to all three allegations in the afore-mentioned Amended Formal Complaint as evidenced in the Report of the Hearing Committee dated April 1, 2010.
9. Pursuant to Section 55 of the *Legal Professions Act*, the Hearing Committee, not having assessed a penalty, referred the matter to the Chair of the Discipline Committee on April 1, 2010. The date for the hearing to determine the appropriate penalty was set for April 16, 2010 at Moose Jaw, Saskatchewan. The hearing proceeded before the Discipline Sentencing Committee on the basis of the Report of the Hearing Committee. Filed on behalf of the Investigation Committee was the Notice of Sentencing, Report of the Hearing Committee and a statement of costs all of which were marked as exhibits. Also filed before the Discipline Sentencing Committee were the submissions on behalf of the Investigation Committee along with attachments. Exhibit "D1" was filed on behalf of Mr. Chetty. All of the above documents were filed before the Discipline Sentencing Committee with the consent of both parties.
10. The Law Society was represented by Mr. Tim Huber. Mr. Pab Chetty was present and represented by Mr. Morris Bodnar, Q.C.
11. A quorum of the benchers was established at the hearing and no objection was taken to either the jurisdiction or the composition of the Discipline Sentencing Committee. The Discipline Sentencing Committee received the above-noted written submission from Mr. Tim Huber and oral submissions from Mr. Huber, Mr. Chetty and Mr. Bodnar, Q.C.

PRELIMINARY ISSUES

12. Mr. Bodnar, Q.C. made application to call evidence before the Discipline Sentencing Committee. The evidence that he wished to call was in relation to the practice in Alberta of agents appearing for clients. Mr. Huber objected to the calling of any further evidence. The Chair ruled that the evidence would not be admitted at the Hearing as it would be an attempt to diminish, contradict or minimize the findings of the Hearing Committee.

13. At the conclusion of all presentations the Benchers deliberated and on April 16, 2010 rendered an oral decision. These are the written reasons for that decision.

FACTS PURSUANT TO LAW SOCIETY RULE 450(10) AND RULE 470(7)

14. The facts before the Discipline Sentencing Committee were as found by the Hearing Committee and evidenced in the Report of the Hearing Committee. Pursuant to Rule 450(10) and Rule 470(7), the Discipline Sentencing Committee is bound by the facts as found. Submissions which seek to diminish, change or alter the findings of fact cannot be accepted by the Discipline Sentencing Committee in its deliberations. The following is a brief recitation of the facts as found by the Hearing Committee:

- a) Mr. Chetty was a member of the Law Society of Saskatchewan at all material times conducting his practice from his offices in Lloydminster, Saskatchewan.
- b) Mr. Chetty has never been a member of the Law Society of Alberta (LSA).
- c) On March 23, 2004 Mr. Chetty submitted an application for enrollment as member of the LSA. After a hearing Mr. Chetty was denied membership in the LSA.
- d) By letter dated June 11, 2007, the Law Society of Saskatchewan, through its complaints counsel, Donna Sigmeth, advised Mr. Chetty about his unauthorized practice in the Province of Alberta.
- e) By letter dated June 19, 2007 Mr. Chetty replied to Ms. Sigmeth's concern regarding the unauthorized practice.
- f) By letter dated June 19, 2007 Mr. Chetty corresponded with LSA inquiring about practicing in Alberta.
- g) By letter dated September 19, 2007 again Mr. Chetty corresponded with the LSA about practicing in Alberta.
- h) On September 25, 2007 LSA responded to Mr. Chetty and specifically directed him that he is not entitled to provide legal services in Alberta without a permit.
- i) In October of 2007 Mr. Chetty advanced an application to the LSA for a permit to practice in Alberta as a visiting lawyer pursuant to Section 72.5 of the *Rules of the LSA*.
- j) By letter dated November 15, 2007 Mr. Chetty's application for a permit to practice in Alberta was denied.

15. The Hearing Committee found that Mr. Chetty was engaged in the practice of law in the Province of Alberta at various times between 2005 and 2008 as a result of engaging in the following:
- a) providing legal advice in relation to the laws of Alberta (*Family Law Act and Matrimonial Property Act*) and the laws of Canada (*Divorce Act* as they relate to the Province of Alberta);
 - b) having contact and communicating with Alberta clients in relation to legal matters;
 - c) writing letters to other lawyers and the Courts on behalf of his Alberta clients in relation to their legal matters;
 - d) billing and receiving money for his services in relation to his Alberta clients' legal matters;
 - e) appearing in both the Court of Queen's Bench in St. Paul and the Provincial Court in Lloydminster and Vermillion;
 - f) making applications and obtaining Orders in both the Court of Queen's Bench in St. Paul and in Provincial Court in Lloydminster or Vermillion;
 - g) filing documents on behalf of Alberta clients in various Courts;
 - h) paying filing fees and other disbursements on behalf of his Alberta clients and billing for those disbursements to recover them; and,
 - i) framing legal documents (applications and statements of claim for divorce) that were intended to have legal operation in relation to Alberta legal matters for Alberta clients.
16. Mr. Chetty's Alberta clients, AS and MC, were left without representation in the midst of legal proceedings.
17. Prior to being retained, Mr. Chetty did not tell his Alberta clients AS, MC and WV that he was not authorized to practice in Alberta.

POSITION OF THE PARTIES

Investigation Committee

17. Mr. Huber, on behalf of the Investigation Committee, argued that Mr. Chetty's conduct was of a grave nature and engaged integrity issues. He argued that a suspension from practice for a period of two months or greater was required for the following reasons:

- a) Mr. Chetty began practicing law in Alberta after being denied a membership in the LSA and continued to do so until 2008 despite being specifically told he was not allowed to do so by both the Law Society of Saskatchewan and LSA;
- b) Mr. Chetty has and continues to refuse to take responsibility for this conduct;
- c) Mr. Chetty has a discipline record in British Columbia and Saskatchewan;
- d) Mr. Chetty's conduct, specifically his disregard for Law Society direction, calls into question the ability of the Law Society to govern its members and has the effect of diminishing public confidence in the legal professions;
- e) Mr. Chetty's conduct meant that some of his clients were left without counsel in the midst of legal proceedings and were left with a choice of hiring new counsel or proceeding without representation.

18. Mr. Huber also referred to three cases which suggest a range of penalties from reprimand to a suspension for 12 months.

19. Mr. Huber asked the Committee to order restitution of the fees paid to Mr. Chetty by his clients in relation to this matter.

20. Costs in the amount of \$9,442.50 as set out in Exhibit P3 were also requested by counsel for the Investigation Committee.

The Member

21. Mr. Pab Chetty's argument was put before the Committee orally by Mr. Chetty himself and by his counsel, Morris Bodnar, Q.C. It was suggested by the member that this was not a serious matter and that a minimal penalty was all that was required. In part, the reasons suggested for that position are as follows:

- a) Mr. Chetty held a belief that he had a right to do what he did;
- b). He was not wilfully disregarding the rules and that the complaints officer had no authority to tell him that he was practicing in Alberta without authority;
- c). He is not refusing to take responsibility, however, he still does not believe that he did anything wrong;
- 4. That he is going to phase out his practice in Lloydminster and move to Prince Albert.

22. In regard to the request for restitution, the member takes the view that the services for which the clients paid were provided.

23. In regards to costs, the member suggests that the costs should not be ordered or at least not in the amount requested for the following reasons:

- a) That the member does not have the resources to pay the costs;
- b) The counsel fees are excessive in that Mr. Huber is in house counsel and is already being paid by the fees of the members of the Law Society.

Analysis

24. It is the view of the Discipline Sentencing Committee that the conduct of Mr. Chetty constitutes "an integrity offence" and therefore is serious matter requiring a suspension from practice. A lawyer must at all times conduct his affairs with integrity. Integrity in this context includes but is not limited to honesty, truthfulness, candor and sincerity. Any conduct which brings into question any of the above impacts on the lawyer's personal integrity as well as the profession as a whole. Mr. Chetty's actions by omitting to tell his clients he was not authorized to practice in Alberta, allowed his Alberta clients to believe that he was so authorized. In doing so, he was not acting with total candor and forthrightness. Any reasonable person looking at the situation could only conclude that the Alberta clients did not receive that which they paid for, and that is a lawyer licenced or authorized to practice in the Province of Alberta.

25. The Committee makes note of the following aggravating factors:

- a) the conduct continued for a considerable period of time;
- b) Mr. Chetty was advised that he was engaged in unauthorized practice;
- c) Some of his clients were left without legal counsel in the midst of legal proceedings;
- d) Mr. Chetty has a previous discipline record.

26. The Committee as well takes note of the following mitigating factors:

- a) Mr. Chetty did not attempt to conceal his conduct;
- b) Records were kept for the Alberta clients in the same manner as his Saskatchewan clients.

27. The Committee does not accept as a mitigating factor Mr. Chetty's apparent belief that he has a right to engage in the conduct complained of because in his view it is not "practicing law". Further, the Committee does not accept as an excuse or a mitigating circumstance, the assertion that the Complaints Officer does not decide what is or is not unauthorized practice. The relevance of the Complaints Officer's correspondence with Mr. Chetty, as well as the correspondence with the LSA, is that Mr. Chetty was alerted to the dangers of the course of action he was embarking upon.

Decision

28. After considering all of the submissions of counsel, both written and oral, and taking into account the aggravating and mitigating factors, it is the decision of the Committee that the primary sentencing principle engaged in this particular case is that of deterrence, both specific and general.

29. Therefore, it is the decision of the Committee that Mr. Chetty be suspended for a period of 60 days commencing two months from April 16, 2010.

Restitution

30. It is the decision of the Committee that in this particular case no restitution be ordered. The Committee was of the view that while in the proper circumstances a restitution order could be made, there was insufficient evidence before the Committee on which to make a restitution order.

Costs

31. After having considered the submissions by both parties in relation to costs, it is the decision of the Committee that costs be ordered in the amount of \$9,442.50.

DATED at the City of Prince Albert, in the Province of Saskatchewan, this 13th day of May, A.D. 2010.



Peter A. Hryhorchuk,
Discipline Committee Chair

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF PAB CHETTY,
A LAWYER OF LLOYDMINSTER, SASKATCHEWAN**

REPORT OF THE HEARING COMMITTEE

Hearing Committee Members:

Eileen V. Libby, Q.C., Chair
Susan B. Barber, Q.C.

Member's Counsel:

Morris P. Bodnar, Q.C.

Investigation Committee Counsel:

Timothy F. Huber

1. An Investigation Committee of the Law Society of Saskatchewan was struck comprised of Robert Kennedy, Q.C. as a result of a series of complaints against the member. Following the completion of the Investigation Committee report, a Hearing Committee was struck by John Will, Vice-Chair of the Discipline Committee of the Benchers of the Law Society of Saskatchewan, for the purposes of determining whether the member, Pab Chetty is guilty of conduct unbecoming a lawyer. The Hearing Committee was initially comprised of Eileen V. Libby, Q.C. as Chair, Susan B. Barber, Q.C. and Janice Wall. Subsequently, with the consent of all involved, the Hearing Committee's composition was reduced to Eileen V. Libby, Q.C., Chair, and Susan B. Barber, Q.C.
2. The hearing of the Amended Formal Complaint against the member commenced in Saskatoon, Saskatchewan on October 7, 2009. By agreement between counsel, written argument was subsequently filed on behalf of the Investigation Committee and the member without reconvening the hearing.
3. At the outset of the hearing, counsel for Mr. Chetty raised as a preliminary matter the lack of precision as to dates in the allegations outlined in the amended formal complaint, submitting in the result that the complaint was void. Mr. Bodnar argued that the same manner of presentation of charges must exist in this case as is required in Informations advanced for prosecution in the criminal courts. Mr. Huber, on behalf of the Investigation Committee of the Law Society, submitted that full disclosure of information had been provided to the member in relation to the charges advanced in the amended formal complaint and that, in any event, the within matter was not a criminal matter but rather an administrative proceeding which did not require that the complaint be presented in the same fashion as a criminal Information. With

respect to the preliminary issue raised, the Hearing Committee agreed with the submissions of Mr. Huber, in that the same level of particularity is not required in complaints advanced for the purposes of administrative proceedings as is the case in criminal proceedings. In the result, the Hearing Committee ruled that the hearing would proceed on the basis of the amended formal complaint. We also note that no issue was taken by Mr. Bodnar with respect to the adequacy of the disclosure described by Mr. Huber as having been provided in connection with the matter.

4. Beyond the preliminary matter referred to above, both parties acknowledged and agreed to the constitution of the Hearing Committee. Counsel for the Investigation Committee tendered a Statement of Admissions of the Member and referenced attachments as Exhibit P-1. With respect to the issue of jurisdiction of the Hearing Committee and service of the complaint, in particular the member "acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Formal Complaint and the Notice of Hearing (attached at Tab 3) and takes no issue with the constitution of the Hearing Committee."¹

5. In addition to Exhibit P-1, by consent of the parties, court certified copies of extracts from 3 Alberta court files for A.S., W.V. and G.D. were entered as Exhibits P-3, P-4 and P-5 respectively. Additional documentary evidence was tendered through the two witnesses who testified in the hearing, namely, Donna Sigmeth on behalf of the Investigation Committee, and the Member.

6. The Amended Formal Complaint alleges as follows:

THAT Pab Chetty, of the City of Lloydminster, in the Province of Saskatchewan:

1. Is guilty of conduct unbecoming a lawyer, in that he engaged in the practice of law in the Province of Alberta without authorization to do so.

Reference Chapters I and XIX of the *Code of Professional Conduct*.

2. Is guilty of conduct unbecoming a lawyer, in that he did breach the terms of the Federation of Law Societies of Canada National Mobility Agreement by practicing law in the Province of Alberta while he was ineligible to do so pursuant to clauses 10(d) and 10(f) and without a mobility permit as required by clause 13.

Reference Chapters I and XIX of the *Code of Professional Conduct*.

3. Is guilty of conduct unbecoming a lawyer, in that he continued to practice law in the Province Alberta without a permit after being specifically advised by the Law Society of Saskatchewan that he was not entitled to do so.

Reference Chapters I and XIX of the *Code of Professional Conduct*.

¹ Exhibit P-1, para. 3.

Facts

7. The relevant facts were admitted in the Statement of Admissions of Pab Chetty dated October 2, 2009 and supplemented by the *viva voce* evidence of Mr. Chetty and Donna Sigmeth.

8. Mr. Chetty was a member of the Law Society of Saskatchewan at all material times. He received his law degree in London, England. Subsequently, in 1965 he came to Saskatchewan, completed his articles of clerkship and was admitted to the Law Society of Saskatchewan. For a number of years predating the allegations raised in the Formal Complaint, Mr. Chetty has been conducting his law practice from his offices in Lloydminster, Saskatchewan. Mr. Chetty has never been a member of the Law Society of Alberta (the "LSA").

9. On March 23, 2004, Mr. Chetty submitted an application for enrollment as a member of the LSA. The application led to the establishment of a Panel of the Credentials and Education Committee of the LSA, to inquire into "good character and reputation of the applicant, Pab Chinnapa Chetty". The recommendations of the Panel of the Credentials and Education Committee was that the transfer application for enrolment of Mr. Chetty as a member of the LSA be denied in that Mr. Chetty had not met the mandatory pre-condition of good character and reputation for membership. Mr. Chetty did not obtain membership in the LSA.

10. By letter dated June 11, 2007², the Law Society of Saskatchewan, through its Complaints Counsel, Donna Sigmeth, corresponded to Mr. Chetty about unauthorized practice in the Province of Alberta. The correspondence stated:

I attempted to telephone you late the week of June 4th and I have been advised that you are out of the office the week of June 11th, 2007.

It has come to the attention of the Law Society of Saskatchewan that you are engaging in the unauthorized practice of law in the province of Alberta. You have confirmed to Greg McCullagh, Law Society of Saskatchewan Investigator that you are, indeed, practicing in Alberta. I am writing to advise that you are unauthorized to practice in Alberta.

As you are not a member of the Law Society of Alberta, nor are you eligible to practice under the "Interjurisdictional Mobility Agreement" you are engaging in "unauthorized practice" if you are practicing in Alberta at this time. You are not eligible under the "Interjurisdictional Mobility Agreement as you have a discipline history. If you wish to practice in the province of Alberta, you must contact the Law Society of Alberta to obtain information about how to go about obtaining permission from the Law Society

² Exhibit P-6.

to practice in Alberta on a case by case basis or becoming a member in Alberta.

11. Ms. Sigmeth testified that the Law Society of Saskatchewan had received concerns expressed from the courts, particularly in St. Paul, Alberta, as to whether or not Mr. Chetty was a lawyer in Alberta or eligible to practice law in Alberta.

12. In replying to Ms. Sigmeth's correspondence dated June 11, 2007, Mr. Chetty confirmed in his response dated June 19, 2007³ that "I informed Mr. Greg McCullagh that only ten percent of my clients are from Alberta. I also informed him that the onerous conditions placed on my ability to practice prevents me from applying to the Law Society of Alberta for admission. In order for my application in Alberta to be successful I need you to remove conditions you placed on my practice." On June 19, 2007, Mr. Chetty also corresponded to the LSA, with a copy of his letter to Ms. Sigmeth, about practicing in Alberta, as follows:

As you know I practice on the Saskatchewan side of Lloydminster. Ninety percent of my practice involves clients from Saskatchewan.

Occasionally I have to appear in Queen's Bench in St. Paul and in Provincial Court in Lloydminster on behalf of clients from Saskatchewan and / or from the Alberta side of Lloydminster.

Because I have been disciplined by the Law Society of Saskatchewan I am instructed to apply to you for permission to practice in Alberta. Please advise as to how I should go about getting permission.

13. Mr. Chetty corresponded again to the Law Society of Alberta on September 19, 2007⁴, in the following terms:

I am a practicing member of the Law Society of Saskatchewan. My office is located on the Saskatchewan side of Lloydminster. Occasionally I am consulted by clients from the Alberta side of Lloydminster. The majority of the people in Lloydminster live on the Alberta side and almost all lawyers practicing in Lloydminster belong to the Bar of Saskatchewan and the Bar of Alberta.

I intend re-applying (sic) to the Law Society of Alberta for full membership as soon as I resolve some outstanding issues with the Law Society of Saskatchewan. As I have a discipline record I need your permission to appear occasionally in the courts in Alberta.

³ Exhibit P-7.

⁴ Exhibit P-1, Tab 18.

Please advise me whether I should apply on a case by case basis or whether I could practice occasionally in Alberta until I make an application for full membership in the near future.

Are there any special forms to fill out for my occasional appearance in Alberta? Please send them to me.

I look forward to hearing from you.

14. The LSA corresponded to Mr. Chetty on September 25, 2007⁵ and specifically directed that Mr. Chetty was not entitled to provide legal services in Alberta without a permit, as follows:

I am in receipt of your letter of September 19, 2007.

I understand from your letter that you are occasionally consulted by Alberta clients. Please note that at this point in time you are **not** entitled to provide legal services in Alberta.

Given the fact that you have a disciplinary record in Saskatchewan, you do not qualify to provide legal services in Alberta without a permit. You must apply for a permit pursuant to Rule 72.5 of the *Rules of the Law Society of Alberta*. If your application is approved, you will be entitled to provide legal services as a visiting lawyer in Alberta for no more than 100 days in one year. A permit is effective for one year from the date it was issued.

As indicated in my e-mail response to your letter of June 19, 2007, you must provide an application to the Law Society of Alberta. I have enclosed a copy of my e-mail and a copy of the required application form. In addition, I would suggest that you review Rules 72 and 73 of the *Rules of the Law Society*.

15. In October of 2007, Mr. Chetty advanced an application to the LSA for a permit to practice in Alberta as a visiting lawyer pursuant to rule 72.5 of the Rules of the LSA. By letter from the LSA dated November 15, 2007⁶, Mr. Chetty's application for a permit to practice in Alberta was denied, concluding in part:

Your Certificate of Standing, extensive discipline record, adverse character findings in B.C., NWT and Alberta, as well as the allegation of your continued unauthorized practice in Alberta raise significant concerns regarding your character. I do not believe that it is consistent with the public interest as required by Rule 72.5(2)

⁵ Exhibit P-1, Tab 19.

⁶ Exhibit P-1, Tab 20.

to grant your application for a permit as a visiting lawyer. Your application for a permit pursuant to Rule 72.5, is therefore, denied.

A.S.

16. Mr. Chetty was hired to represent an Alberta resident, A.S., in relation to a custody and access matter being dealt with in the Family Court in Vermillion, Alberta. A.S. retained Pab Chetty after their first meeting which took place on or about June 2, 2007. Mr. Chetty acknowledges that his involvement with A.S. was at least from June 26, 2007. Mr. Chetty provided A.S. with legal services until the beginning of October, 2007 when he advised A.S. that he could no longer represent her because he was not licensed to practice in Alberta.

17. Mr. Chetty's involvement with A.S.'s legal matter included court appearances on her behalf⁷, meetings with her, writing letters to her and on her behalf to others, as well as telephone conversations. In particular, on August 16, 2007 Mr. Chetty wrote to opposing counsel and consented to an adjournment on behalf of his client of a court matter. As well, on August 31, 2007 Mr. Chetty again wrote to opposing counsel and advised that he would be asking the court to dismiss an application as against A.S. Finally, on or about October 1, 2007 Mr. Chetty wrote to the Clerk, Family Services Division, Court House, Vermillion, Alberta and stated that "I regret to advise I am instructed by the Law Society of Alberta not to appear on this matter until I obtain a certificate. A.S.⁸ will be representing herself and wants to go ahead with this pre-trial conference."

18. During her involvement with Mr. Chetty, A.S. was billed \$5,467.88, paid \$4,770.00, and had returned to her by Mr. Chetty the amount of \$795.00 by letter dated October 23, 2007. Mr. Chetty did not advise A.S. prior to October, 2007 that he was not licensed to practice law in the province of Alberta.

W.V.

19. Pab Chetty was hired by an Alberta resident, W.V., to represent him firstly in 2005 in relation to an Alberta Small Claims matter and then later in 2006 in relation to a divorce matter being dealt with in the Court of Queen's Bench in St. Paul, Alberta. Mr. Chetty provided legal services to W.V. from July, 2004 to January 18, 2008 at which time Mr. Chetty sent W.V. a letter and returned the balance of money he held in trust on behalf of W.V. in the amount of \$1,590.00. At that time, Mr. Chetty provided a detailed account for legal services totalling \$11,702.17 which included all services provided by Mr. Chetty to W.V. between 2004 and 2008. In November, 2007, for the first time, Mr. Chetty advised W.V. that he was not licensed to practise law in Alberta and could not continue to represent him.

⁷ See Exhibit P-3 where Pab Chetty certifies that he is "the lawyer for the Applicant", A.S., (June 27, 2007); is noted as making appearances on behalf of A.S. in court on June 27, 2007, July 25, 2007 and August 29, 2007. In addition, Mr. Chetty corresponds to the Clerk of the Court referencing Alberta legislation and indicating that he will be bringing a motion on behalf of A.C.

⁸ Full name of client used in the original.

M.C.

20. Mr. Chetty was engaged by an Alberta resident, M.C. to represent him on or about December 9, 2008 in relation to an Alberta motor vehicle accident which led to a traffic offence pursuant to *The Alberta Highway Traffic Act* to be dealt with in the Provincial Court in Lloydminster, Alberta.

21. Mr. Chetty met with M.C. on December 9, 2008 and provided legal advice to him in relation to the matter and billed M.C. \$105.00 for services and provided an account with payment reflected. Mr. Chetty advised M.C. to appear in court on the first appearance date and plead not guilty and to set a trial. Mr. Chetty advised that he would represent him in the matter through trial, which was scheduled for February 24, 2009 in Lloydminster, for \$1,200.00. On February 9, 2009 Mr. Chetty provided further legal advice and advised that he would contact the Crown Prosecutor to attempt to negotiate a resolution to the matter. During the meeting the \$1,200.00 retainer, plus \$60.00 GST previously quoted, was paid to Mr. Chetty by M.C. and a receipt was provided.

22. On February 20, 2009 Mr. Chetty left a phone message for M.C. stating that he was unable to appear in court on M.C.'s behalf due to prior engagements on February 24, 2009. Mr. Chetty told M.C. in the message to simply show up and show his evidence to the prosecutor at the trial. With no other options, M.C. did as Pab Chetty advised and attempted to resolve matters with the prosecutor before the hearing. Although the prosecutor was unwilling to withdraw the charges and the matter proceeded to trial, the main Crown witness did not appear on time and the matters against M.C. were stayed.

23. On January 26, 2009 Mr. Chetty phoned M.C. to ask how the matter turned out. Mr. Chetty refused to return the \$1,200.00 retainer that was initially paid to handle the matter through trial.

24. On March 3, 2009 Mr. Chetty billed for his services and processed the \$1,200.00 retainer from his trust account. The particulars on the bill did not include a time breakdown, however, identified entries for "attendances upon yourself", "advising you", "attendances on Crown counsel" and "obtaining resolution you wanted".

25. Mr. Chetty did not at any time advise M.C. that he was not licensed to practice law in the province of Alberta.

National Mobility Agreement

26. The National Mobility Agreement ("NMA"), implemented, inter alia, by both the Law Societies of Saskatchewan and Alberta allows lawyers, subject to certain exceptions, to practice law in jurisdictions other than their home jurisdiction. The Law Society of Saskatchewan similar to the LSA has enacted rules to implement the NMA and, in both provinces, the rules contain similar provisions relating to jurisdiction and enforcement against lawyers who are alleged to have breached the mobility rules, as is alleged by the Investigation Committee in this case. The applicable Rules of the Law Society of Alberta provide as follows:

73.2(3)(a) the Society shall assume responsibility for the conduct of the disciplinary proceedings against the lawyer, including the cost of those proceedings, unless the Society and the home governing body agree to the contrary, and

(b) the Society and the home governing body will consult respecting the manner in which the disciplinary proceedings will be taken against the lawyer, each participating governing body agreeing to be bound by an agreement reached.

27. The applicable Rule of the Law Society of Saskatchewan is found in Rule 202 which state that the Law Society will:

- (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted; and
- (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings.
- (2) the Society may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including expenses of the proceeding.

28. The Saskatchewan and Alberta Rules represent a reciprocal enforcement protocol between Alberta and Saskatchewan (as well as the various other signatory provinces covered under the NMA) to be followed when breaches of the NMA rules occur. In the present case, the Law Society of Saskatchewan relies on Rule 202(b) to proceed with the disciplinary proceedings identified in the Amended Formal Complaint.

Decision

Count 1

Is guilty of conduct unbecoming a lawyer, in that he engaged in the practice of law in the Province of Alberta without authorization to do so.

29. The Committee finds that Mr. Chetty was not authorized to practice law in Alberta, that he was engaged in the practice of law and that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990* (the "LPA").

Count 2

Is guilty of conduct unbecoming a lawyer, in that he did breach the terms of the Federation of Law Societies of Canada National Mobility Agreement by practicing law in the Province of Alberta while he was ineligible to do so pursuant to clauses 10(d) and 10(f) and without a mobility permit as required by clause 13.

30. The Committee finds that Mr. Chetty breached the terms of the NMA by practicing law in the Province of Alberta when he was ineligible to do so pursuant to clauses 10(d) and 10(f) and without a mobility permit as required by clause 13 and that such conduct constitutes conduct unbecoming under the LPA.

Count 3

Is guilty of conduct unbecoming a lawyer, in that he continued to practice law in the Province Alberta without a permit after being specifically advised by the Law Society of Saskatchewan that he was not entitled to do so.

31. The Committee finds that Mr. Chetty continued to practice law in the Province of Alberta without a permit after being specifically advised by the Law of Society of Saskatchewan that he was not entitled to do so and that such conduct constitutes conduct unbecoming under the LPA.

Analysis

32. In the circumstances of this case, the NMA and the related rules are the only basis upon which Mr. Chetty would be entitled to practice law in Alberta without membership in, or a permit from, the LSA.

33. Although Mr. Chetty submitted an application for enrollment in the LSA on March 23, 2004 a hearing before a Panel of the Credentials and Education Committee of the LSA ultimately resulted in Mr. Chetty's application for membership being denied. Moreover, Mr. Chetty does not currently hold and has never held an interjurisdictional practice permit from the LSA; nor has he received any other special permission to practice in the province of Alberta from the Executive Director of the LSA.

34. Given that Mr. Chetty was not a member of the LSA and did not have a permit from the LSA, he was required to satisfy the mobility requirements of the NMA and the LSA Rules in order to be able to practice law in the province of Alberta. The Rules of both the LSA and the Law Society of Saskatchewan restrict the mobility of any lawyer who has a discipline history in any jurisdiction as well as members who are the subject of conditions restricting their legal practice.

35. The restrictions material to Mr. Chetty's ability to practice on a temporary basis in Alberta are comprised in the LSA Rule 72.2(1) as follows:

72.2 (1) In addition to the requirements of Rule 72, to qualify to provide legal services without a permit, a visiting lawyer:

(a) must not be subject to conditions or restrictions on the lawyer's practice or membership of the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency, capacity, admission or reinstatement;

(b) must not be the subject of:

- (i) criminal proceedings or
- (ii) disciplinary proceedings in which a matter has been directed to a hearing in any jurisdiction;
- (c) must have no disciplinary record in any jurisdiction;
- (d) must comply with Rule 72.3; and
- (e) must be entitled to practise law in the jurisdiction of an IJP governing body or an NMA governing body of which the visiting lawyer is a member.

36. In that Mr. Chetty had a discipline record in British Columbia and additional disciplinary proceedings in Saskatchewan, he was not eligible to practice in Alberta without a permit.

37. Mr. Bodnar submitted that Mr. Chetty was not engaged in the "practice of law" in that non-lawyers are permitted to make court appearances in the Provincial Courts of Alberta under various pieces of provincial legislation including *The Alberta Family Court Act*, *The Provincial Court Act of Alberta*, *The Traffic Safety Act of Alberta*, *The Provincial Offences Procedure Act* and as agents in summary conviction matters under the *Criminal Code of Canada*.

38. In a reply written submission, Mr. Huber submits that the common theme in the pieces of legislation referred to by Mr. Bodnar, is that they refer to agents or non-lawyers being allowed to "appear" in court on behalf of others in very limited and specific situations. Mr. Huber argues that these narrow exceptions to the unauthorized practice of law do not extend to anything beyond the physical appearance of one person on behalf of another inside the courtroom and that the evidence is that the services that Mr. Chetty provided to his clients as confirmed by the facts extend well beyond the narrow confines of the legislation referred to by Mr. Bodnar. The Committee agrees with Mr. Huber's submission on this point.

39. Section 30 of the LPA also provides some assistance in what constitutes the "practice of law". Although the provision deals with the criminal prosecution of unauthorized practice, it highlights a number of activities, including among others, as elements of the practice of law, appearing in court, providing advice or services in relation to the laws of any jurisdiction; carrying on a proceeding in court; and recovering any fee, reward or disbursement.⁹

⁹ 30(1) No person, other than a member who holds a subsisting certificate, shall:

- (a) practice at the bar of any court of civil or criminal jurisdiction in Saskatchewan;
- (b) advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or of any jurisdiction outside Saskatchewan;
- (c) sue out any writ or process; or
- (d) commence, carry on or defend any action or proceeding in any court.

40. In Alberta, s. 106 of the *Alberta Legal Profession Act* details the kinds of activities which are elements of the practice of law including practicing as a barrister or solicitor, appearing in court, commencing, carrying on or defending an action or proceeding before a court or judge on behalf of any person.¹⁰

41. In addition to the legal profession legislation of each of Saskatchewan and Alberta, the common law is replete with examples of the type of activities which are included in the practice of law¹¹, many of which are the type of activities that were being engaged in by Mr. Chetty in this case.

42. We find that Mr. Chetty was clearly engaged in activities that fall within the rubric of the practice of law in the province of Alberta (regardless of whether or not he was physically in Saskatchewan) and held himself out as a lawyer. The evidence is that Mr. Chetty at various times between 2005 and 2008 engaged in the following:

- Provided legal advice in relation to the laws of the Province of Alberta (*The Family Law Act* and *The Matrimonial Property Act*) and the laws of Canada (the *Divorce Act*) as they relate to the Province of Alberta;
- Had contact and communicated with Alberta clients in relation to their legal matters;
- Wrote letters to other lawyers and the courts on behalf of his Alberta clients in relation to their legal matters;

(2) A person, other than a member who holds a subsisting certificate, who commences, prosecutes or defends an action or proceeding in a court of civil or criminal jurisdiction or acts as counsel or lawyer in an action or proceeding is:

- (a) incapable of recovering any fee, reward or disbursement on that account; and
- (b) deemed to be guilty of a contempt of the court in which the proceeding has been commenced, carried on, defended or prosecuted, and may be proceeded against for contempt before the Court of Appeal or a judge of the court sitting in chambers.

¹⁰ 106(1) No person shall, unless the person is an active member of the Society,

- (a) practice as a barrister or as a solicitor,
- (b) Act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,
- (c) Commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or
- (d) Settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

¹¹ See *R. v. Nicholson*, [1979] A.J. No. 589; *Law Society of Upper Canada v. Tassiopoulos*, [2005] O.J. No. 4425 (note here at paragraph 67 that the Court concluded that the practice of law clearly does not require an appearance in court); and *R. v. AI Legal Services & Training Ltd.*, 2005 ONCJ 534.

- Billed and received money for his services in relation to his Alberta client's legal matters;
- Appeared in both the Court of Queen's Bench in St. Paul and the Provincial Court in Lloydminster and Vermillion;
- Made applications and obtained orders in both the court of Queen's Bench in St. Paul and the Provincial Court in Lloydminster or Vermillion;
- Filed documents on behalf of Alberta clients in various courts;
- Paid filing fees and incurred other disbursements on behalf of his Alberta clients and billed for those disbursements to recover them; and
- Framed legal documents (Applications and Statements of Claim for Divorce) that were intended to have legal operation in relation to Alberta legal matters for Alberta clients.

43. In the written argument filed on behalf of the member by Mr. Bodnar, counsel argues that the Agreement on Internal Trade (the "AIT") which was executed by the Federal, Provincial and Territorial Governments of Canada on July 18, 1994 and came into force on July 1, 1995 prescribes full labour mobility within Canada effective April 1, 2009, and that all provinces should have fully implemented the labour mobility provisions of the AIT. In short, Mr. Bodnar submits that theoretically as of April 1, 2009, full labour mobility existed in Canada, and that "any worker certified for an occupation by a regulatory authority of one province or territory is to be certified for that occupation by all others." Mr. Bodnar argues that this means that since Mr. Chetty is certified to practice law in Saskatchewan, he should also be able to practice law in any other Canadian jurisdiction, since the AIT does not provide an exception for professionals who have a disciplinary record. Further, it was argued on behalf of the member that the provisions of the NMA contravene the AIT.

44. In a reply brief filed on behalf of the Investigation Committee of the Law Society of Saskatchewan, Mr. Huber submits that the terms of the AIT itself contemplate and permit the Law Societies of Saskatchewan and Alberta to restrict mobility of lawyers in circumstances such as exist in this case and in particular section 706, which states as follows:

- (1) Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.
- (2) Subject to paragraphs 3, 4 and Article 708, each Party shall recognize any worker holding a jurisdictional certification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

...

(3) Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of a Party to:

- (a) refuse to certify a worker or impose terms, conditions or restrictions on his or her ability to practice where such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct or character of that worker;

[Emphasis added]

45. We agree that the AIT does not prohibit the ability of regulatory authorities, such as the Law Societies of Saskatchewan and Alberta in this case, from restricting the mobility of lawyers on a variety of bases. In fact the AIT specifically contemplates the jurisdiction of regulatory authorities like law societies to refuse to certify and/or impose terms, conditions and restrictions on a lawyer's ability to practice.

46. In the written argument filed on behalf of Mr. Chetty, it is also submitted that the Canadian Charter of Rights and Freedoms (s. 6) grants the right to an individual to pursue a livelihood in any province and further that human rights legislation in Alberta¹², Saskatchewan¹³ and Canada¹⁴, allow an individual to engage in and carry on any occupation without discrimination on the basis of any prohibited ground identified in the respective legislation.

47. The written argument submitted on behalf of the member does not state that the provisions in the enumerated pieces of legislation are engaged by the facts in this matter. In any event, there was clearly no evidence in this case that established that there was any breach of the member's rights under the referenced legislation.

48. As stated in the decision of the Benchers in *Michael Nolin* made the 3rd day of October, 2008, No. 08-04, the definition of "conduct unbecoming" is cast only in general terms by section 2(1)(b). As the authorities cited in "*Rault*"¹⁵ suggest, it is the responsibility of the Benchers in the first instance to apply this definition and to then determine what constitutes conduct unbecoming in a given circumstance.

49. We conclude that the evidence clearly establishes that:

1. Mr. Chetty practiced law in the province of Alberta while he was not authorized to do so by the LSA or mobility rules established pursuant to the NMA;

¹² *The Alberta Human Rights, Citizenship and Multiculturalism Act* (s. 9)

¹³ *The Saskatchewan Human Rights Code* (s. 9)

¹⁴ *The Canadian Human Rights Act* (s. 3(1))

¹⁵ Law Society of Saskatchewan benchers discipline decision 08-02 decided on April 18, 2008 [*Rault*]

2. Mr. Chetty accepted and continued to act in Alberta legal matters for Alberta clients after his failed applications to practice in Alberta were determined by the LSA; and
3. That Mr. Chetty continued to practice law in the province of Alberta even after being specifically advised by the Law Society of Saskatchewan in June of 2007 that he was not entitled to do so.

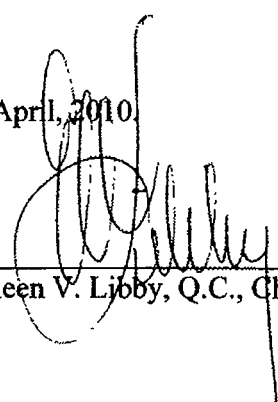
50. Mr. Chetty's conduct in engaging in the above noted behavior in our view constitutes conduct unbecoming under *The Legal Profession Act* in that it constitutes "an act or conduct that is inimical to the best interests of the public or the members and tends to harm the standing of the profession generally". The proven charge as detailed in the Amended Formal Complaint references Chapters I and XIX of the Code of Professional Conduct (the "Code"), "Integrity" and "Avoiding Questionable Conduct" respectively. Although it is not required that a specific breach of the Code be present in the circumstances to base our conclusions in this matter, the Code does represent a guide to the membership and the Benchers called upon to determine discipline matters. We are particularly mindful of paragraph 10 of Chapter XIX of the Code which states:

The lawyer should try at all times to observe a standard of conduct that reflects credit on the legal profession and the administration of justice generally and inspires the confidence, respect and trust of both clients and the community.

51. We view the Member's conduct in the circumstances as a breach of both the spirit of the Code, the NMA and the Rules. Mr. Chetty's conduct serves to undermine the ability of the profession to effectively regulate its membership. Mr. Chetty, like other members, cannot be allowed to ignore the Rules surrounding National Mobility and certainly cannot be allowed to ignore directions from the Law Society. We conclude that this type of conduct falls squarely within the definition of conduct unbecoming a lawyer and is deserving of sanction.

52. The Hearing Committee makes no sentencing recommendation and refers the matter to the Benchers of the Law Society of Saskatchewan at the convocation of their choosing, for sentencing to be concluded.

Dated at Regina, Saskatchewan, this 1st day of April, 2010.



Eileen V. Libby, Q.C., Chair