

***Memorandum***

**Robertson Stromberg LLP**

To: College of Dental Surgeons

From: Sean M. Sinclair

Date: March 15, 2023

File No: 6130.157

**Subject:** **Options for Interim Suspension of Jason Lee**

1. **Introduction**

You have consulted our office for advice respecting an interim suspension of Dr. Jason Lee pending the investigation of his criminal matters. It’s our understanding that the College of Dental Surgeons (the “**College**”) does not wish to wait until the criminal proceedings have concluded before initiating a disciplinary action upon Dr. Lee.

It is our position that the court has the authority under *The Dental Disciplines Act* to grant an interim suspension of Dr. Lee prior to the conclusion of the criminal investigation. The more significant issue is whether an interim suspension will be granted by the court.

It is likely that a complaint against Dr. Lee will need to be initiated, followed by a decision of the Conduct Committee that the matter proceed to a disciplinary hearing. Dr. Lee can ask for a stay of the regulatory proceedings, but the court retains the ability to grant an interim suspension. This memorandum will address relevant caselaw and facts the courts will consider in determining whether an interim suspension of Dr. Lee is appropriate.

1. **Facts**

For the purpose of this memo, the facts I have assumed have been gathered from online news articles related to Dr. Lee and his arrest. These include:

* Jason Lee, his brother Jaeho (Jay) Lee, and Jay’s girlfriend, Jessica Tran, were arrested January 5, 2023 after four homes were searched. Jason’s house (estimated value of $700,000) was seized.
* Criminal charges against Dr. Lee include drug trafficking (cocaine and methamphetamine), conspiracy to traffic, possessing proceeds of crime and operating a criminal organization.[[1]](#footnote-1)
* Police also seized approximately $79,000 in cash, jewelry, financial documents, paraphernalia consistent with drug trafficking, as well as three vehicles.
* Dr. Lee was arrested at work: “… at a business in the 400 block of Second Avenue South that “is otherwise unrelated to the criminal charges””[[2]](#footnote-2)
* Dr. Lee’s information was removed from his dental office’s website.
* Dr. Lee may have been removed from the College’s online directory which lists dentists in good standing.
* Dr. Lee’s brother Jay was sentenced to five years in prison in 2014 after pleading guilty to cocaine trafficking.
	+ Jay has a history of drug dealing, and non-compliance with release conditions, including suspensions and revocations.
	+ His statutory release date was Aug 9, 2017, which was suspended in October 2017.
* Dr. Lee was released January 9th after posting $25,000 cash bail and agreeing to follow conditions, including staying at an approved residence and not travelling.
1. **Issues**
2. *What regulations, policies, and procedures can be relied on by the College to initiate an interim suspension?*
	1. *Professional Misconduct/Substance of Complaint*
	2. *Investigation*
3. *How have interim suspensions been approached by courts?*
	1. *Concurrent Proceedings*
	2. *Public Interest Argument*
4. **Analysis/Discussion**
5. *What regulations, policies, and procedures can be relied on by the College to initiate an interim suspension?*
6. *Professional Misconduct/Substance of Complaint*

The relevant complaint and discipline processes are outlined in both *The Dental Disciplines Act* (the “**Act**”)[[3]](#footnote-3) and through associated bylaws enacted pursuant to the Act.

Regulatory bylaws can be made for the association’s members (including but not limited to dental surgeons), which set standards of professional conduct, competency and proficiency.[[4]](#footnote-4) Additionally, bylaws can prescribe procedures for the review, investigation, and disposition of complaints by the professional Conduct Committee, or the mediation of complaints alleging that a member is guilty of professional misconduct.[[5]](#footnote-5)

Professional misconduct within the Act is described as any matter, conduct or thing, whether or not disgraceful or dishonourable if it (a) is harmful to the best interests of the public or the members of the association; (b) tends to harm the standing of the member’s profession; (c) is a breach of the Act or bylaws of that member’s association, or (d) a failure to comply with an order of the professional conduct committee, discipline committee, or council of the member’s association.[[6]](#footnote-6)

If relying on (c) above relating to a breach of bylaws, the bylaws outline the professional standards of members.[[7]](#footnote-7) Each member shall uphold the honour and dignity of the profession of dentistry and abide by the provisions of the Code of Ethics of the college.[[8]](#footnote-8) Further, the bylaws state that no member shall improperly use their authority to prescribe, sell or dispense a drug, or falsify a record in respect of a prescription or the sale of a drug.[[9]](#footnote-9) It is also a breach of the bylaws to be convicted of an offence that affects the ability of a member to engage in the practice of dentistry.[[10]](#footnote-10)

Based on the above, there are several sections of the bylaws that could be argued that Dr. Lee is in breach of. He has not upheld the honour or dignity of the profession at a general level with the alleged conduct. However, in saying that, there is an expectation that an individual charged is innocent until proven guilty.

Regarding the sale or dispensing of drugs, it is unclear based on the wording of the bylaw that you are only in contravention of that section if the sale of drugs occurs when the member is engaged in their position as a member (i.e., in this case, in Dr. Lee’s capacity as a dentist). The College should rely on a broad interpretation of this bylaw and state that selling illegal drugs, even though perhaps not done while at work or through Dr. Lee’s capacity as a dentist, should still be a bylaw breach.

In conclusion, it is likely that the College could argue that Dr. Lee is guilty of professional conduct because his actions are harmful to the best interests of the public/members of the association, his actions have tended to harm the standing of the profession, and there is potential for an argument that Dr. Lee is in breach of bylaws.

1. *Investigation*

In order for an investigation to be undertaken, a complaint must be directed to the professional Conduct Committee.[[11]](#footnote-11) Council (of the College) can ask the Conduct Committee to consider a complaint, or, if not directed by council, a written complaint alleging that a member is guilty of professional misconduct.[[12]](#footnote-12)

The Conduct Committee is required to review the complaint and to investigate the complaint by taking any steps it considers necessary – this can include summoning before it the member whose conduct is the subject of the complaint or assessing the member’s conduct.[[13]](#footnote-13)

On completion of its investigation, the Conduct Committee must then make a written report to the Discipline Committee recommending either that (a) the Discipline Committee hear and determine the formal complaint set out in the written report; or (b) that no further action be taken with respect to the matter under investigation.[[14]](#footnote-14)

The Act outlines two procedures for suspensions:

* The Act states that where the Conduct Committee is of the opinion that, on the basis of the allegations of the nature of the case, the member’s licence should be suspended or the member should be prohibited from performing any procedure authorized by the practice pending the outcome of the investigation or hearing, the Conduct Committee may, with the prior approval of its council, apply to a judge of the court for an order (a) suspending the licence of a member whose conduct is the subject of an investigation, or against whom a formal complaint has been made; or (b) temporarily prohibiting a member described in clause (a) from performing any specified procedure or authorized practice.[[15]](#footnote-15) There are, however, timeline limitations related to these suspensions, though the College can apply to extend suspensions.
* The Act also identifies that a judge of a court, on the application of the College’s Council, may direct that a member be suspended pending the disposition of a criminal charge where (a) a criminal charge has been laid against a member; and (b) the member has applied to the court for a stay of any disciplinary proceedings against the member.[[16]](#footnote-16)

To summarize, the relevant procedure for the College in initiating an interim suspension of Dr. Lee is as follows:

1. A complaint must be directed internally by council, or via a formal written complaint respecting the above breaches of the code of ethics and allegations of professional misconduct to the Conduct Committee.
2. The Conduct Committee will need to assess the allegations. The College could at this stage apply to the court for an order directing an interim suspension of Dr. Lee. However it is unlikely at this point that they would grant an indefinite suspension pending the outcome of the criminal investigation. Alternatively, the Conduct Committee could direct that the complaint proceeds to the Discipline Committee. The recommendation must be in writing and follow the procedures outlined in the Act and Bylaws.
3. Once this matter proceeds to discipline, the College could apply under section 37 of the Act to have Dr. Lee suspended. Dr. Lee may, by application to the court, require a stay of disciplinary proceedings pending his criminal investigation. Alternatively, he may not, and then it will be incumbent upon the Discipline Committee to proceed with a detailed internal investigation.

Most self-regulated professions have similar procedures and related laws for internal investigations respecting interim suspensions. Caselaw is also illustrative as to additional facts the court may consider in approving orders for interim suspensions.

1. *How have interim suspensions been approached by the courts?*
	1. *Concurrent Proceedings*

Generally, interim suspensions do not affect a regulatory body from conducting further investigations or taking additional disciplinary action after individuals are convicted of criminal offences.[[17]](#footnote-17) The main concern exists with concurrent criminal and regulatory investigations.

Though relating to the investigation of a lawyer, in *Stromberg v Law Society (Saskatchewan)*, police were conducting a concurrent investigation related to the same conduct as the disciplinary body.[[18]](#footnote-18) The Court quashed the discipline complaint and witness subpoenas as intruding on the federal power over criminal law. The court stated that the law society was not prevented from taking further disciplinary action if appropriate once the issue of possible criminal conduct had been dealt with by the court. This is an important consideration if Dr. Lee does not apply for a stay of proceedings regarding the regulatory investigation.

Based on the above, a primary concern is that Dr. Lee may oppose an interim suspension. Criminal investigations can take a long time especially when proceedings advance all the way to a trial. In *Dua v College of Veterinarians of Ontario* (“*Dua*”), Dr. Dua sought a stay and judicial review of an interim suspension.[[19]](#footnote-19) Dr. Dua had been charged with sexual touching in relation to a female minor who was the daughter of the owner of the veterinary facility where Dr. Dua practiced. Beyond arguing that the relevant committee did not have the jurisdiction to make an interim order for suspension, Dr. Dua argued that there was no satisfactory evidentiary basis for making the order.

In response, the College in *Dua* argued that Dr. Dua’s application should be dismissed on the basis of prematurity – an argument that was not accepted by the court. The court recognized that the time spent suspended pending the outcome of the criminal proceedings was lengthy and the imposition had to be justified by evidence. However, the court noted that the Committee did have the jurisdiction to make interim orders and stated that there was a sufficient evidentiary basis for granting the order. That said, the court relied on the fact that Dr. Dua has a discipline and criminal history for similar sexually inappropriate conduct. In our circumstances, Dr. Lee may argue that the evidentiary basis is insufficient, solely because the College is relying on media-reported evidence in initiating this interim suspension.

* 1. *Public Interest Argument*

In some cases, suspension from practice of a professional accused of misconduct pending the outcome of disciplinary proceedings is in the public interest. However, courts will consider that suspensions have the effect of depriving the member of his or her livelihood before guilt or innocence has been determined. Balancing these competing interests is difficult and will often depend on the factual circumstances of each particular case. The law in Saskatchewan is that interim suspensions can be imposed only when authorized by legislation – section 37 of the Act does allow for interim suspensions as outlined above.

It has been noted that getting a court to grant interim suspensions based on a “public interest” argument can be difficult, and that some courts have required evidence of probable “irreparable harm” to the public if the suspension is not granted.[[20]](#footnote-20) Interim suspensions on the basis of protection of the public will generally only be permissible if there are no other less intrusive means available to provide that protection.[[21]](#footnote-21)

In *Law Society of Upper Canada v Lesiuer* (“*Lesiuer*”), a lawyer had been charged with several counts of sexual assault.[[22]](#footnote-22) He continued to practice and the Law Society sought an interim suspension relying primarily on the detailed press coverage and arguing that there was a significant risk of harm to members of the public and/or the public interest in the administration of justice if the lawyer was not suspended. Mr. Lesiuer argued that the interim suspension was not appropriate on two grounds, the first being that he had not received the Crown’s disclosure so he could not provide the Law Society with relevant information respecting the criminal charges, and second that there was no direct connection between Mr. Lesiuer’s legal practice and the criminal charges.

The court in *Lesiuer* stated that there were limited cases where a tribunal had considered whether serious criminal charges against a licensee were sufficient to establish reasonable grounds for believing that there is a significant risk of harm to members of the public if an interim suspension is not made.[[23]](#footnote-23)

In considering whether criminal charges against a licensee are sufficient to warrant an interlocutory order/suspension, the court directed a consideration of several factors. These specifically include:

1. *The nature of the criminal charges that have been brought against the licensee. For example, more serious criminal offences such as murder are likely to be of greater concern than less serious offences such as, for example, simple possession of marijuana;*
2. *Whether the criminal offences are directly or indirectly related to the practice of law. For example, criminal charges arising out of the misappropriation of trust funds are likely to raise greater concerns than criminal charges unrelated to the practice of law;*
3. *It is important to recognize that while the criminal charges may be serious, they are charges, not convictions. Accordingly, the panel will necessarily have to weigh the strength of the evidence relating to the criminal charges. However, it is important for the panel, in considering the strength of the evidence, to recognize that its role is not to determine guilt. or innocence, but rather to determine whether there is a serious risk of harm to members of the public or to the public interest; and*
4. *Finally, it must be recognized that the prosecution of criminal charges to a final conclusions can often take considerable time. An interlocutory order pending completion of the criminal proceeding and subsequent Law Society proceedings, if any, that is more onerous for the licensee than the ultimate penalty could realistically be, would be unreasonable.*

In comparison to Dr. Lee’s facts and in consideration of the above framework, it would be imperative to argue that the severity of the crimes and the evidence, including the trafficking paraphernalia, bring it into a public interest concern, even though the police have stated that the charges are unrelated to Dr. Lee’s dentistry practice.

A court will likely ask whether the suspension is necessary to provide appropriate public protection and whether allowing the registrant to remain in practice would harm the public image of the profession or lessen the public’s confidence in the professional regulatory body’s ability to regulate its registrants in the public interest.[[24]](#footnote-24) Operating a ‘criminal organization’ as Dr. Lee was charged with while in a position of privilege, and as a member of a professional community could make a ‘public interest’ argument valid.

1. **Summary**

In conclusion, the College must initiate a complaint highlighting alleged professional misconduct of Dr. Lee. It should include that Dr. Lee’s actions are harmful to the best interests of the public/members of the association, that his actions have tended to harm the standing of the profession and that his actions are in breach of certain professional competence bylaws.

If it is determined by the Conduct Committee that the complaint has merit, the College/Council would have to apply to the court for an interim suspension and will have to justify that an interim suspension is appropriate based on the above analysis, particularly that it is within the public interest that Dr. Lee not be allowed to practice until his criminal proceedings have resolved.

1. [Saskatoon dentist, brother charged in drug trafficking and money laundering investigation | CBC News](https://www.cbc.ca/news/canada/saskatoon/dentist-twin-brother-charged-drug-trafficking-1.6708089) [↑](#footnote-ref-1)
2. [Police allege twin brothers, woman, ran drug operation in Saskatoon | The Star Phoenix](https://thestarphoenix.com/news/local-news/police-allege-twin-brothers-woman-were-running-large-scale-drug-operation-in-saskatoon) [↑](#footnote-ref-2)
3. *The Dental Disciplines Act,* SS 1997, c D-4.1. [↑](#footnote-ref-3)
4. *Ibid* at s 15(2)(c). [↑](#footnote-ref-4)
5. *Ibid* at s 15(2)(f)(i)-(iii). [↑](#footnote-ref-5)
6. *Ibid* at s 27. [↑](#footnote-ref-6)
7. See attached for Bylaws enacted pursuant to the Act here: [CDSS\_Bylaws\_and\_Code\_Of\_Ethics\_20148.pdf (saskdentists.com)](https://saskdentists.com/wp-content/uploads/2022/04/CDSS_Bylaws_and_Code_Of_Ethics_20148.pdf). [↑](#footnote-ref-7)
8. Bylaws at s 9.2(1)(c). [↑](#footnote-ref-8)
9. Bylaws at s 9.2(2)(o). [↑](#footnote-ref-9)
10. Bylaws at s 9.2(2)(n). [↑](#footnote-ref-10)
11. The Act at s 29(1) [↑](#footnote-ref-11)
12. *Ibid*. See also section 9.4 of the bylaws which state that any complaint received by the College or referred by the committees shall be reviewed by the registrar who shall conduct such investigations as deemed necessary, which includes referring the complaint to the professional conduct committee. [↑](#footnote-ref-12)
13. The Act at s 29(1)(a)-(b). [↑](#footnote-ref-13)
14. The Act at s 29(2)(a)-(b). [↑](#footnote-ref-14)
15. The Act at s 31. [↑](#footnote-ref-15)
16. The Act at s 37. [↑](#footnote-ref-16)
17. *Achtem v Law Society (Alberta)*, 1981 ABCA 145. [↑](#footnote-ref-17)
18. 44 Admin LR (2d) 65. [↑](#footnote-ref-18)
19. 2021 ONSC 6917. [↑](#footnote-ref-19)
20. *Chiropractors’ Association (Saskatchewan) v Potapinski*, 2001 SKQB 194 at para 31. [↑](#footnote-ref-20)
21. Bryan Salte, The Law of Professional Regulation (Markham: LexisNexis Canada Inc., 2015) at 92. [↑](#footnote-ref-21)
22. 2016 ONLSTH 173. [↑](#footnote-ref-22)
23. Though the court did highlight the case of *Chen v Law Society of Manitoba*, 1999 CanLII 14541 (MB KB) where the Manitoba Court of Queen’s Bench upheld the Law Society of Manitoba’s Complaints Investigation Committee’s decision to suspend a lawyer from the practice of law, based on the fact that she was charged with two criminal offences. [↑](#footnote-ref-23)
24. Bryan Salte, The Law of Professional Regulation (2nd Edition) (Markham: LexisNexis Canada Inc., 2023) at 138. [↑](#footnote-ref-24)