

2021 LSBC 18
Decision issued: May 20, 2021
Citation issued: July 29, 2020

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

ERIC CHURK-MING CHOW

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: March 19, 2021

Panel: Jennifer Chow, QC, Chair
David Dewhirst, Public representative
Nina Purewal, QC, Lawyer

Discipline Counsel: Kathleen Bradley
Counsel for the Respondent: Michael P. Klein, QC

OVERVIEW

- [1] The Respondent assaulted AA on June 2, 2019. On December 3, 2019, he was found guilty of assault and received a one-year conditional discharge. He fulfilled the conditions of his discharge on January 23, 2021.
- [2] The Respondent has made a conditional admission of conduct unbecoming the profession and has consented to a proposed disciplinary action, pursuant to Rule 4-30 of the Law Society Rules (the “Rules”). Rule 4-30 has been substantially amended since the Respondent’s admission and the events that led to it. We refer to that rule and apply it as it was before the changes.

- [3] The Panel accepts the Respondent's admission of conduct unbecoming, as well as the proposed disciplinary action that the Respondent pay a fine of \$12,000. The Law Society did not seek costs.

PROCEDURAL HISTORY

- [4] On July 29, 2020, the Discipline Committee issued the following citation:

On June 2, 2019, [the Respondent] assaulted [AA], and on December 3, 2019, [the Respondent was] found guilty of assault, contrary to s. 266 of the *Criminal Code of Canada*, for which [he] received a one-year conditional discharge on January 24, 2020.

This conduct constitutes conduct unbecoming the profession, pursuant to s. 38(4) of the *Legal Profession Act*.

- [5] The Respondent admits, through his counsel, proper service of the citation on July 29, 2020, pursuant to Rule 4-19 of the Rules.

RULE 4-30 PROPOSAL

- [6] The Respondent admits that, on June 2, 2019, he assaulted AA. He also admits that, on December 3, 2019, he was found guilty of assault, contrary to s. 266 of the *Criminal Code of Canada*, for which he was sentenced to a one-year conditional discharge on January 24, 2020. The Respondent further admits that this conduct amounts to conduct unbecoming the profession, pursuant to s. 38(4) of the *Legal Profession Act* (the "Act"). The Respondent consents to a fine of \$12,000 (collectively, the "Rule 4-30 Proposal").
- [7] The Respondent expressly acknowledges that a summary of this decision will be published pursuant to Rule 4-48 and that such publication will identify him.
- [8] On December 10, 2020, the Discipline Committee considered and accepted the Rule 4-30 Proposal. Pursuant to Rule 4-30(4), discipline counsel is instructed to recommend its acceptance to the Panel.
- [9] On March 19, 2021, the Panel received the Law Society's application to have this hearing conducted in writing, with the Respondent's consent.
- [10] The Panel orders, by consent, that this Rule 4-30 hearing be conducted in writing. The Book of Exhibits was marked as Exhibit 1 and consists of the following:

Tab 1: The Citation;

Tab 2: Agreed Statement of Facts (“ASF”) dated November 17, 2020;

Tab 3: Letter from the Respondent to the Chair of the Discipline Committee dated November 13, 2020;

Tab 4: Letter from AA to the Chair of the Discipline Committee dated November 13, 2020; and

Tab 5: Letter from LM dated October 13, 2020.

AGREED STATEMENT OF FACTS

[11] The following facts generally mirror the ASF dated November 17, 2020.

The Respondent’s background

[12] The Respondent was called and admitted as a member of the Law Society on May 21, 2010. The Respondent is currently a full-time practising lawyer.

[13] From May 21, 2010 to April 26, 2011, the Respondent was a non-practising member of the Law Society.

[14] Since March 2012, the Respondent has been practising law at various small firms in Burnaby, Vancouver and West Vancouver, BC. The Respondent practises civil litigation, corporate law, creditors’ remedies law, property management law and administrative law.

The criminal proceedings

[15] In June 2019, AA and the Respondent were in a common law relationship. They lived together with their infant son who was born in August 2018.

[16] On July 24, 2019, the Respondent self-reported to the Law Society that he had been charged with assault against AA, contrary to s. 266 of the *Criminal Code of Canada*. The criminal charge alleged that, on or about June 2, 2019, the Respondent committed assault against AA.

[17] As the Respondent entered a plea of not guilty, the matter went to trial.

[18] A two-day trial occurred on November 5, 2019 and December 3, 2019 before the Honourable Judge Gordon of the Provincial Court of British Columbia in

Vancouver. AA and a police officer testified for the prosecution. The Respondent testified in his own defence. On December 3, 2019, Judge Gordon found the Respondent guilty of assault as charged.

[19] On January 24, 2020, the Respondent was sentenced to a one-year conditional discharge with the following conditions:

- (a) Keep the peace and be of good behaviour;
- (b) Report to probation services as directed;
- (c) Contact with AA is only allowed by text message or email for the purpose of arranging parenting time or to discuss financial matters; face-to-face contact only in the presence of legal counsel, a professional family justice counsellor or mediator, as well as at any court appearance;
- (d) Not attend at any residence, place of employment, place of education or place of worship of AA;
- (e) Advise the probation officer of any counselling taken to date and attend any other additional counselling as directed by the probation officer; and
- (f) Not possess any weapons for a period of five years.

[20] At the sentencing hearing, the Respondent provided Judge Gordon with six character reference letters.

The assault

[21] The Respondent and AA first met when she began working at his law firm in May 2017. They began a relationship and started living together in July 2017. Their son was born in August 2018.

[22] A few days before the assault occurred, the Respondent and AA began an argument. The Respondent went to a soccer game with a friend after work. AA was upset about how much time he would be away from home.

[23] The Respondent's friend texted the Respondent while he was at the soccer game and asked for help fixing a computer or computer keyboard the following day. The Respondent and AA had planned to go to a friend's house together later the following day to watch a soccer match and eat with friends.

- [24] The Respondent woke up the next morning and went to his friend's house. AA was upset that the Respondent had gone to his other friend's house in the morning. AA texted the Respondent while he was returning from the other friend's house. The Respondent perceived the text messages to mean that she was cancelling their plans for the afternoon.
- [25] When the Respondent returned to the couple's apartment, he was upset by AA's text. He threw a dry sponge at AA. He then picked up a cup of cold coffee and threw it at AA. The coffee hit AA in her face as well as the wall behind her. AA threw dog food at the Respondent. AA then left the house for most of the day, returning at about 11 pm.
- [26] At some point between 3 am and 7 am, the Respondent woke AA, who was sleeping in the living room. He wanted to make her more comfortable by having her sleep in the bedroom. AA became angry at the Respondent, so he pulled the pillow she was lying on out from under her.
- [27] Shortly afterwards, the Respondent began feeding the baby. AA was worried that the baby would choke because she thought the food was too big. The Respondent tossed the tube of baby food at AA. AA took the tube of baby food and poured it all over the Respondent's keyboard. The Respondent grabbed AA by the wrist.
- [28] The Respondent testified that he wrapped both arms around AA, dragged her into the bedroom, pushed her on the bed so that she was lying on her back, straddled her and held her hands down for a period of time. AA started screaming. The Respondent then let her go. AA then called the police.
- [29] The police arrived shortly afterwards. The Respondent was arrested and charged.
- [30] At trial, the Respondent claimed he had acted in self-defence. Judge Gordon did not accept this defence. He found that the only reasonable act was for the Respondent to have walked away from the situation.
- [31] During the sentencing hearing on January 24, 2020, Judge Gordon made the following comment:

When I heard the evidence I actually thought that – I don't know why, maybe because it was a new and exciting relationship, but I thought the two of you reverted to – I'll say this, shockingly childish behaviour, particularly from a professional. But I'm not going to say that [AA] walked around as an innocent person. Her behaviour was equally as childish; you just happened to assault her in a serious way. But it is

remarkable that almost immediately after you started taking counselling, and I have no doubt that you wish to ensure that whenever you're in another committed relationship you're going to present as an adult and not as a child, and I have no – no doubt that that's your intention.

The Respondent's explanation to the Law Society

[32] By letter dated April 13, 2020, the Respondent provided the following explanation to the Law Society:

My relationship with [AA] has been a tumultuous relationship. She would often get angry with me and this would escalate until she would hit me or throw things at me. This would not stop until one of us either left the building or I tried to grab her ...

Conflicts about time management became more and more frequent with our son. This was a source of conflict that resulted in a 3-day argument culminating in my arrest.

[33] The Respondent also explained that he hoped counselling would provide him and AA with the tools to communicate effectively and co-parent their son. He explained that he needed to take better care of himself in order to take better care of his son.

[34] In terms of the future, the Respondent explained:

I'd like to say that this will never happen again. I don't expect it to as I now have a much better sense of what values matter in my life and how to take care of myself so I can be the best person I can be for my son. As well as how to attempt to defuse stressful situations before they become explosive and also to simply avoid them if I feel they are escalating. In the end, my only hope is that I continue to strive to be the best person I can be and as good a parent as a [*sic*] I can be for my son.

Rehabilitative measures

[35] Following his arrest, the Respondent attended counselling sessions as follows:

- (a) Between August 7, 2019 and November 23, 2019, the Respondent completed 12 counselling sessions through a program called Men-In-Change;

- (b) Between July 2019 and October 2020, the Respondent participated in 29 individual and couples counselling sessions provided by the Dixon Transition Society; and
- (c) The Respondent's counsellor has indicated that the Respondent is actively involved in each session and that the Respondent is motivated to grow and change.

[36] On June 19, 2020, the Respondent's probation officer advised the Law Society that the Respondent was abiding by his conditions.

[37] AA wrote a letter of support for the Respondent dated November 13, 2020. In her letter, AA describes how the Respondent is attending counselling and working on becoming a more empathetic and understanding person. She expresses hope for a better relationship once the probationary period is over. She also states that, because she has gone back to school, the Respondent is now the sole provider for herself and their child.

[38] The Respondent is remorseful and deeply regrets his behaviour. He continues to attend counselling in an effort to improve himself.

ISSUES

[39] The issues before the Panel are:

- (a) Whether the conduct admitted by the Respondent amounts to conduct unbecoming the profession; and
- (b) Whether the proposed \$12,000 fine is the appropriate sanction.

DISCUSSION

[40] The Panel agrees with the Law Society's written submission. Accordingly, we have relied extensively on its submission.

Onus of proof

[41] The Law Society bears the burden of proof on a balance of probabilities, that is, whether it is more likely than not that the event occurred: *Foo v Law Society of British Columbia*, 2017 BCCA 151, para. 63.

Test for conduct unbecoming the profession

[42] Section 1 of the *Act* defines “conduct unbecoming the profession” as follows:

“conduct unbecoming the profession” includes a matter, conduct, or thing that is considered, in the judgment of the benchers, a panel or a review board,

(a) to be contrary to the best interests of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

[43] The Benchers have adopted a “useful working distinction” between professional misconduct and conduct unbecoming a lawyer, namely: professional misconduct refers to conduct occurring in the course of a lawyer’s practice, while conduct unbecoming refers to conduct in the lawyer’s private life: *Law Society of BC v. Laarakker*, 2011 LSBC 29, para. 29; see also *Law Society of BC v. Suntok*, 2005 LSBC 29, para. 16.

[44] Criminal conduct in a lawyer’s private life is an obvious example of conduct unbecoming the profession. As discussed in *Law Society of BC v. Berge*, 2007 LSBC 07, para. 38:

The Benchers find that lawyers in their private lives must live up to a high standard of conduct. A lawyer does not get to leave his or her status as a lawyer at the office door when he or she leaves at the end of the day. The imposition of this high standard of social responsibility, with the consequent intrusion into the lawyer’s private life, is the price that lawyers pay for the privilege of membership in a self-governing profession. Conduct unbecoming not only includes the obvious examples of criminal conduct and dishonesty, but it also includes “any act of any member that will seriously compromise the body of the profession in the public estimation.”

[45] The commentary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*, entitled “Integrity”, provides:

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer’s irresponsible conduct. Accordingly, a lawyer’s conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

- [3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

The positions of the parties

- [46] The Law Society submits that, based on the facts set out in the ASF and the Respondent's admissions, a finding of conduct unbecoming the profession is appropriate. It further submits that the Respondent's actions were contrary to the best interests of the public, as public confidence in the administration of justice and the legal profession is eroded when a lawyer contravenes the laws of the state. The Respondent's actions also harmed the standing of the legal profession, as dishonourable or criminal conduct on the part of a lawyer reflects adversely upon the integrity of the profession. Knowledge of such conduct is likely to impair a client's trust in lawyers.
- [47] The Law Society further submits that the appropriate disciplinary sanction is a fine of \$12,000.
- [48] The Respondent admits that his conduct is unbecoming the profession and consents to the fine of \$12,000.

Rule 4-30 analysis

- [49] Based on the ASF and the Respondent's admissions, we find that it has been proven on the balance of probabilities that the Respondent has committed conduct unbecoming the profession.
- [50] In a Rule 4-30 proceeding, the panel has a limited role with respect to disciplinary action. The question the panel is to ask is whether the proposed disciplinary action falls within the range of a fair and reasonable disciplinary action in all the circumstances, even where the panel may prefer a different disciplinary action: *Law Society of BC v. Rai*, 2011 LSBC 02, paras. 6-8.
- [51] The primary purpose of disciplinary proceedings is to fulfill the Law Society's mandate to uphold and protect the public interest in the administration of justice: the *Act*, section 3; *Law Society of BC v. Ogilvie*, 1999 LSBC 17, paras. 9 and 10; *Law Society of BC v. Lessing*, 2013 LSBC 29, para. 55.

[52] It is well-established that the following factors from the *Ogilvie* case are to be considered in disciplinary actions (“*Ogilvie* Factors”):

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact upon the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public’s confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[53] In *Law Society of BC v. Faminoff*, 2017 LSBC 04, paras. 83, 84 and 87, the review board confirmed that not all the *Ogilvie* Factors need be given the same weight. Only those factors that are relevant to the particular circumstances of the misconduct and to the respondent may apply. A decision on sanction is an “individualized process that requires the hearing panel to weigh the relevant factors in the context of the particular circumstances of the lawyer and the conduct that has led to disciplinary proceedings.” Finally, the review board explained that, while there is no prescribed formula, consideration of aggravating and mitigating circumstances will assist in determining the range of appropriate sanctions.

[54] The Panel agrees with the Law Society that in this case, the following *Ogilvie* Factors are relevant to a determination of the appropriate sanction:

- (a) the nature and gravity of the misconduct;
- (b) the previous character of the respondent;
- (c) the impact on the victim;
- (d) the presence or absence of other mitigating or aggravating factors;
and
- (e) the range of sanctions imposed in similar cases.

Nature and gravity of the misconduct

[55] The nature and gravity of the misconduct is the prime determinant of the disciplinary action to be imposed: *Law Society of BC v. Gellert*, 2014 LSBC 05, para. 39. The nature and gravity of the Respondent's misconduct is serious, as it involved an assault against an intimate partner. The seriousness of this aspect of the misconduct is reflected in section 718.2(a)(ii) of the *Criminal Code*, which provides that it is a mandatory aggravating factor if an offender, in committing the offence, abused the offender's intimate partner.

[56] We accept the Law Society's submission that the assault against AA was at the lower end of the spectrum of assault as AA was not physically injured and the assault occurred on one occasion. There is no indication that it was part of a pattern of assaults against AA or that the Respondent has a history of such misconduct. To the contrary, the character reference letters consistently state that the Respondent's misconduct was not typical of his character.

[57] The Panel notes that there are no suggestions that the Respondent's misconduct involved dishonesty, respective acts of deceit or negligence or significant personal or professional conduct issues that would warrant a suspension: *Law Society of BC v. Martin*, 2007 LSBC 20, para. 41.

Previous character and professional conduct record

[58] At the time of the assault, the Respondent was called to the bar for nine years. He does not have a prior professional conduct record. At his sentencing hearing, the Respondent provided six character reference letters to the judge. The letters consistently state that the misconduct was out of character for the Respondent.

Impact on the victim

- [59] AA provided the Law Society with a letter of support dated November 13, 2020. In her letter, AA describes how the Respondent was not able for a very long time to understand her fear, pain and sadness she felt over the incident he was convicted for. However, AA acknowledges that with counselling, the Respondent is “slowly changing, growing, and bettering himself.” She explains that the Respondent is trying to work harder to be a more empathic and understanding person “so maybe we can have a better relationship once his probation is over.”
- [60] AA also describes her worries for their financial situation, as she has gone back to school and their child may incur increased medical expenses due to developmental issues. The couple do not have extended health benefits to cover specialists for their child. The Respondent is the sole provider for the family.
- [61] Finally, AA provides some insight into the Respondent’s actions. She attributes his inability to express himself to childhood trauma and unhappiness, but notes that he is working on this and is confident that he is getting better. AA explains that the Respondent “deeply regrets” how his conduct has affected the family and understands the impact his conduct has on the Law Society and the public.
- [62] The Respondent admitted his misconduct and is remorseful. By letter dated November 13, 2020, the Respondent specifically recognizes that his actions have “caused harm to the trust and faith that the public has in lawyers.” He also apologized to AA, the Law Society and the public for his actions. We agree with the Law Society that his admission mitigates against the need for more significant measures to ensure that specific deterrence is met.

Other aggravating or mitigating factors

- [63] The Respondent fully cooperated with the disciplinary process and made key admissions. This is a key mitigating factor that supports accepting the Rule 4-30 Proposal.
- [64] We agree with the Law Society that the Respondent has also taken significant steps to rehabilitate himself. Following the assault, he started attending counselling sessions with a clinical counsellor. He completed 29 sessions of individual and couples counselling. According to his counsellor, his sessions have focused on learning more tools to manage stress, create healthier boundaries, and gain more knowledge and skills around parenting. The counsellor has advised that the Respondent is actively involved in each session and is motivated to grow and

change. In addition, the Respondent completed 12 counselling sessions through a program called Men-In-Change.

- [65] The Panel understands that the Respondent abided by the terms of his conditional discharge order and that his conviction was discharged on January 24, 2021. The Respondent's probation officer confirmed that he was complying with the terms of his probation. That means that, once the conviction is discharged, the Respondent will not be left with a permanent criminal record.

Range of sanctions imposed in similar cases

- [66] The jurisprudence regarding lawyers and domestic assaults is fairly limited. Additionally, each case turns on its unique facts. Based on our discussion above, we agree with the Law Society that the proposed \$12,000 fine is within the range of fair and reasonable disciplinary actions.
- [67] Only two prior disciplinary cases in BC have involved a lawyer and spousal assault in British Columbia: *Suntok* and *Law Society of BC v. Ranspot*, 2019 LSBC 17. However, we agree with the Law Society that, as a new facts and determination hearing was recently ordered in *Ranspot*, 2020 LSBC 46, that case is of little precedential value.
- [68] We also agree that the *Suntok* case is distinguishable and of little assistance. In *Suntok*, a then-Crown prosecutor argued with his girlfriend over the phone, and then immediately travelled from Victoria to Vancouver and broke into her family home unannounced. The lawyer unplugged the telephone before assaulting and threatening to kill his girlfriend. He grabbed her by the neck with enough force to leave a mark, pulled her by her ponytail, and threw her to the ground while saying, "Today you die." He then kicked and punched her in the head several times. After a neighbour intervened, the lawyer threw a coffee table into a grandfather clock.
- [69] The lawyer turned himself in later that day and was arrested and charged. While out on bail, he violated his conditions by attending the victim's convocation ceremony. Before and after the assault, the lawyer attended counselling and treatment for depression, and after the assault, he started attending Alcoholics Anonymous (although not regularly). The victim remained fearful and traumatized by the events. The lawyer pleaded guilty to assault and uttering threats and was sentenced to a conditional discharge with a three-year probation order. On appeal, the conditional discharge was substituted with a three-year suspended sentence.
- [70] With respect to disciplinary action, the lawyer's history was an aggravating factor because it included a previous assault charge (resulting in a conditional discharge),

involving a different girlfriend. The lawyer was accepted into the Law Society's admission program on the condition that he continue with counselling, but failed to do so. The panel in that case ordered that the lawyer be reprimanded and suspended from the practice of law for 90 days. Additionally, on his return to practice, the lawyer was to provide an undertaking requiring him: (i) to enter a monitored recovery program; (ii) abstain from alcohol; and (iii) submit quarterly reports from his physician.

- [71] We agree with the Law Society that *Suntok* is distinguishable in that the level of violence involved was much greater, the assault was accompanied by other criminal conduct such as threats, trespass, and breaching bail conditions, the lawyer had a history of spousal assault, the misconduct resulted in a criminal conviction, and the assault was fueled by alcohol. The hearing panel also noted that the lawyer continued to be "manipulatively compliant", and that he displayed emotional arrogance and paternalism – all of which required personal deterrence.
- [72] In other Canadian jurisdictions, the limited jurisprudence demonstrates that Law Society sanctions for domestic assaults have ranged from a \$2,500 fine to disbarment, turning on the particular circumstances of the case.
- [73] In *Law Society of Manitoba v. Bjornson*, November 26, 1996, Discipline Case Digest Case 96-25, a lawyer repeatedly contravened a family law order by attempting to contact his wife and attending at her residence. He was arrested and released on an undertaking that included conditions that he not contact or communicate with her, but he attended at her residence one morning and assaulted her by pulling her hair. The lawyer was again arrested and released on an undertaking that included a condition that he not attend within two blocks of his wife's residence. However, the lawyer again contravened his undertaking, this time under the influence of alcohol. He was arrested and held in custody for six days. The lawyer pleaded guilty to three charges, received fines totalling \$3,250, and was placed on three years' probation, with conditions. The hearing panel in *Bjornson* determined that the lawyer's conduct constituted conduct unbecoming a lawyer, and ordered a fine of \$2,500.
- [74] In *Re Morgan*, 1998 CanLII 2446 (ON LST), a lawyer was disbarred for convictions for assaulting, harassing, and uttering threats to his ex-wife, committing contempt of court by failing to abide by a family law order, and two counts of disobeying a Revenue Canada order. The assault involved punches to the head and neck. The lawyer also lied under oath and hid his assets from his wife in an attempt to defeat her family law claim. The court sentenced the lawyer to probation for 18 months for the assault and a six-month term of imprisonment for

contempt of court. The lawyer had a lengthy professional conduct record. The hearing panel found that the lawyer's actions were conduct unbecoming a lawyer and that his conduct was not precipitated by and confined to his matrimonial situation. The hearing panel found that the lawyer's response to his matrimonial proceedings was typical of his response to a challenge by any authority or person who disagreed with him.

DECISION ON DISCIPLINARY ACTION

- [75] Based on our discussion above, the Panel finds that the proposed disciplinary action falls within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel accepts the Rule 4-30 proposal and directs the Executive Director to record the Respondent's admission on his professional conduct record.
- [76] Pursuant to section 38(5)(b) of the *Act*, the Panel hereby orders a fine of \$12,000 to be paid by the Respondent within three months of the issuance of this decision.