

2021 LSBC 23  
Decision issued: June 2, 2021  
Citation issued: February 7, 2020

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**NARINDAR PAL SINGH KANG, QC**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL**

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Written submissions: January 28, 2021, March 3, 19 and 22, 2021

Panel: Kimberly A. Henders Miller, Chair  
Lisa R. Feinberg, Lawyer  
John Lane, Public representative

Discipline Counsel: Mandana Namazi  
Counsel for the Respondent: Peter Leask, QC

**BACKGROUND**

- [1] This is a hearing on the written record regarding the Respondent’s conditional admission of a discipline violation and consent to proposed disciplinary action, pursuant to Rule 4-30 of the Law Society Rules (the “Rules”).
- [2] The citation against the Respondent, Narindar Pal Singh Kang, contains five allegations (the “Citation”). It was authorized by the Discipline Committee on January 30, 2020 and issued on February 7, 2020.
- [3] The Respondent admits that he was properly served with the Citation.
- [4] The Law Society is not pursuing four of the five allegations in the Citation.

- [5] The Respondent has conditionally admitted to the remaining allegation, that he committed acts against his spouse on June 15, 2018 that led to the imposition of a common law peace bond on November 16, 2018.
- [6] The Respondent agrees that this allegation amounts to conduct unbecoming the profession, pursuant to section 38(4)(b)(ii) of the *Legal Profession Act* (the “Act”).
- [7] The Law Society and the Respondent jointly submit that the appropriate disciplinary action in this matter is a two-month suspension and costs in the amount of \$1,000.
- [8] The Discipline Committee accepted the parties’ proposal on January 28, 2021, and the matter is now before this Panel for consideration.
- [9] This Panel accepts the Respondent’s admission and finds that the proposed disciplinary action is appropriate for the reasons that follow.

## **ISSUES**

- [10] This Hearing Panel determined the following issues:
- (a) whether it is appropriate for this Panel to proceed with this matter on the written record;
  - (b) whether the amendments to Rule 4-30 have any application to this matter;
  - (c) whether the actions of the Respondent constitute conduct unbecoming the profession; and
  - (d) whether the penalty proposed by the parties is an appropriate sanction in the circumstances.

## **HEARING IN WRITING**

- [11] The parties requested that this matter proceed as a hearing on the written record, pursuant to the Practice Direction of April 6, 2018.
- [12] The parties filed written submissions and a joint Book of Authorities. They also filed a joint Book of Exhibits containing the Citation, an Agreed Statement of Facts (the “ASF”) and a letter from the Respondent to the Chair of the Discipline Committee outlining the conditional admission.

- [13] The Panel requested that the parties file additional submissions regarding the temporal application of Rule 4-30.
- [14] To proceed with a hearing in writing, this Panel must be satisfied that it can make a determination under section 38(4) of the *Act* as to whether there was a discipline violation and, if appropriate, take disciplinary action under section 38(5) of the *Act* on the basis of the material submitted.
- [15] The ASF sets out the essentials of the incident occurring between the Respondent and AB on June 15, 2018 and the legal proceedings that followed that incident.
- [16] However, the ASF also includes several facts and attachments “not for the truth of their contents” but rather “as proof of the statements made” (the “Extraneous Materials”).
- [17] The Extraneous Materials include:
- (a) a redacted Report to Crown Counsel;
  - (b) an audio-recording of the interaction between the Respondent and AB from the incident on June 15, 2018 (the “Audio-Recording”);
  - (c) a transcript, translated by police from Punjabi to English, of the Audio-Recording;
  - (d) the Respondent’s written response to the Law Society investigator dated January 30, 2019;
  - (e) transcripts of Law Society investigator interviews with the Respondent on April 3, 2019 and December 6, 2019; and
  - (f) a transcript of a Law Society investigator interview with AB on October 3, 2019.
- [18] This Panel decided that it could not rely on any of the facts set out in the Extraneous Materials, except where they were expressly accepted by both parties. Where facts were not expressly accepted elsewhere, the Extraneous Materials were of limited value, as they were filed with the caveat that this Panel could not consider “the truth of their contents.” As such, they are not properly characterized as agreed facts and cannot assist this Panel in its determination.
- [19] Despite this limitation, this Panel determined that it was able to make its determination on the basis of the materials filed. There was little public interest in

requiring a hearing with respect to additional contextual facts that were not expressly agreed by both parties.

### **RULE 4-30**

- [20] The parties' proposal under Rule 4-30 was made to the Discipline Committee on January 28, 2021.
- [21] Rule 4-30 was amended by the Benchers on March 5, 2021.
- [22] The version of Rule 4-30 in place at the time of the parties' proposal to the Discipline Committee allows for a respondent to conditionally admit misconduct and agree to a specified disciplinary action. A hearing panel should accept any proposal that is in the range of a fair and reasonable disciplinary action (*Law Society of BC v. Rai*, 2011 LSBC 02 at para. 7). This is known as the "fair and reasonable" test.
- [23] This Panel requested submissions in writing from the parties as to the temporal application of Rule 4-30. The parties provided very brief submissions to this Panel on March 19, 2021 and March 22, 2021, agreeing that the previous version of Rule 4-30 applied in its entirety. As such, this Panel has adopted the "fair and reasonable" test when examining the suitability of the proposed penalty.

### **FACTS**

- [24] The Respondent was called and admitted to the bar on May 17, 1991.
- [25] For the majority of his career, the Respondent has practised as the principal of his own law firm, Kang and Company.
- [26] On June 15, 2018, the Respondent got into an altercation with AB ("the Altercation"). The Altercation began when, after returning home from a social function where the Respondent had consumed alcohol, the Respondent and AB got into a heated verbal argument. The argument escalated, and the Respondent forcefully grabbed AB's arms and legs and struck AB in the back of the head two or three times. Throughout the Altercation, the Respondent used profane and verbally abusive language. The police attended after AB called 911. AB was not injured as a result of the Altercation.
- [27] On June 22, 2018, the Respondent reported to the Law Society that he had been charged with a criminal offence arising from the Altercation.

- [28] On June 26, 2018, an Information was laid against the Respondent, charging him with assault and mischief against AB on June 15, 2018, pursuant to sections 266 and 430(1) of the *Criminal Code*.
- [29] On November 16, 2018, the Respondent appeared with his counsel in court in relation to the criminal charges. At the hearing, the Respondent agreed to enter into a common law peace bond, accepting that his role in the Altercation was a “breach of the peace.”
- [30] The common law peace bond was imposed for a duration of six months. It had conditions that required the Respondent to keep the peace and be of good behaviour, immediately leave AB’s presence upon AB’s request and not to attend at AB’s residence.
- [31] At the conclusion of the hearing, the Crown directed a stay of proceedings in relation to the charges against the Respondent.

#### **WHETHER THE RESPONDENT’S ACTIONS CONSTITUTE CONDUCT UNBECOMING**

- [32] To accept the conditional admission pursuant to Rule 4-30, this Panel must be satisfied that the facts constitute conduct unbecoming the profession, pursuant to section 38(4) of the *Act*.
- [33] The Law Society bears the onus of proof on a balance of probabilities of establishing the conduct unbecoming the profession: *Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63.
- [34] Conduct unbecoming the profession is defined in section 1 of the *Act* as conduct that is considered to be “contrary to the best interests of the public or the legal profession” or to “harm the standing of the legal profession.”
- [35] Conduct unbecoming the profession typically occurs in a lawyer’s private life, in contrast to professional misconduct, which occurs in a lawyer’s practice: *Law Society of BC v. Berge*, 2005 LSBC 28 at para. 77, citing *Law Society of BC v. Watt*, 2001 LSBC 16 at p. 3.
- [36] In *Law Society of BC v. Suntok*, 2005 LSBC 29 at para. 16, the hearing panel explained the rationale for regulating lawyers outside the practice of law:

[T]he duty to regulate lawyers even when they are not engaged in practice is fundamentally because being a lawyer involves more than the practice

of a profession. ... To be a lawyer is to be granted a rare and not easily achieved privilege. Along with being a lawyer comes many advantages, both within the profession and in the wider community.

- [37] The parties agree that the Respondent's conduct constitutes conduct unbecoming the profession. However, they disagree in their characterization of that conduct.
- [38] The Law Society has characterized the Respondent's conduct as criminal and violent conduct.
- [39] The Respondent expressed concern with the language used by the Law Society, pointing out that the criminal charges against the Respondent were stayed. He submits that the common law peace bond is not a criminal offence but rather a tool for preventing future problems.
- [40] This Panel's role is not to determine whether a criminal offence occurred. Rather, it is to determine whether conduct unbecoming the profession occurred.
- [41] The conduct in question is the Respondent's actions in forcefully grabbing AB's arms and legs and striking AB in the back of the head two or three times. This Panel characterizes this conduct as intimate partner violence.
- [42] Canadian courts have censured intimate partner violence, noting that it occurs in the privacy of one's home, where one expects to be safe and often away from the assistance of the public (see for example, *R. v. Donnelly*, 2010 BCSC 1786 at paras. 28 and 29). The seriousness of such acts is also reflected in legislation, for example, s. 718.2(a)(ii) of the *Criminal Code*, which mandates that abusing an intimate partner is an aggravating factor on sentence.
- [43] This Panel has no hesitation in finding that, in participating in an act of intimate partner violence, the Respondent engaged in conduct unbecoming the profession.

#### **WHETHER THE PROPOSED PENALTY IS APPROPRIATE**

- [44] As the Respondent's admitted facts support a finding of conduct unbecoming, this Panel must next determine whether to accept the proposed disciplinary action.
- [45] Section 38(5) of the *Act* sets out the range of potential disciplinary action, including a reprimand, fine, the imposition of practice conditions, suspension or disbarment.
- [46] The proposed disciplinary action in this case is a two-month suspension and costs in the amount of \$1,000.

- [47] As noted above, when considering a proposal under Rule 4-30, this Panel must determine whether this proposal is “within the range of a fair and reasonable disciplinary action”: *Rai* at para. 7.
- [48] Disciplinary action must be consistent with the Law Society’s statutory mandate under section 3 of the *Act* to protect the public interest in the administration of justice: *Law Society of BC v. Lessing*, 2013 LSBC 29 at para. 54.
- [49] This statutory mandate to protect the public is reflected by consideration of a number of factors that are set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 at para. 10 (the “*Ogilvie* factors”).
- [50] In *Lessing* at para. 56, the review board explained that not all of the *Ogilvie* factors are relevant to every case and that they can each be given different weight.
- [51] Similarly, in *Law Society of BC v. Faminoff*, 2017 LSBC 04, the review board explained at para. 84 that a decision on the appropriate penalty 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.”
- [52] The review board in *Faminoff* also held that the consideration of aggravating and mitigating circumstances assists in determining the appropriate penalty (para. 87).
- [53] In this case, the Law Society submits that the following *Ogilvie* factors are the most relevant:
- (a) the nature and gravity of the conduct proven;
  - (b) the impact on the victim;
  - (c) the acknowledgement of the misconduct by the respondent; and
  - (d) the range of penalties imposed in similar cases.
- [54] The Respondent submits that the following *Ogilvie* factors are also relevant:
- (a) the previous character of the respondent;
  - (b) the number of times the offending conduct occurred;
  - (c) the impact of other sanctions;
  - (d) the impact of proposed penalty; and

(e) the need for specific and general deterrence.

[55] This Panel has considered the *Ogilvie* factors raised by the parties and outlines their analysis as follows.

#### **Nature and gravity of the conduct proven**

[56] The nature and gravity of the conduct proven is critical to determining the appropriate sanction: *Law Society of BC v. Gellert*, 2014 LSBC 05 at para. 39.

[57] Participation in intimate partner violence, as noted above, is recognized by our courts and through legislation as a serious violation.

[58] The disciplinary action imposed in this case must reflect the seriousness of the Respondent's conduct.

#### **Previous character of the respondent**

[59] The Respondent asserts that his previous good character is critical to assessing the appropriate penalty.

[60] In support of his submission as to his previous good character, the Respondent has provided this Panel with several character reference letters (the "Reference Letters").

[61] The Reference Letters outline the Respondent's contributions both to the profession and to society broadly. They speak to the Respondent's devotion to *pro bono* work, mentorship and various social causes. The Respondent has successfully represented many clients who are marginalized due to linguistic, class, cultural, religious and gender barriers. The Respondent was recognized for his work with a Queen's Counsel designation in 2015.

[62] This Panel is impressed by the breadth of the Respondent's contribution to the profession and society broadly. That said, this Panel notes that intimate partner violence occurs in the private sphere and is may be perpetrated by persons who have excelled in their public lives.

#### **Impact upon the victim**

[63] Given the limited agreed facts, there was little specific evidence upon which this Panel could rely in regard to this factor. However, this Panel accepts it as trite that intimate partner violence has a negative impact on the victim – in this case, on AB.



### **Number of times the offending conduct occurred**

- [64] The Respondent points out that his misconduct was a one-time aberration.
- [65] This Panel agrees that this factor is relevant. However, it is to be viewed as the absence of an aggravating factor, rather than the presence of a mitigating one.

### **Acknowledgment of misconduct by the respondent**

- [66] This factor is very relevant as it addresses both the protection of the public and the Respondent's own rehabilitation.
- [67] The Respondent cooperated with the disciplinary processes and admitted the facts underlying the misconduct. He has taken responsibility for his actions and expressed both shame and remorse.
- [68] By admitting his misconduct, the Respondent has spared AB from having to testify at a hearing.
- [69] As the Law Society notes in its submissions, the Respondent's admissions mitigate against the need for more severe measures to achieve specific deterrence.

### **Impact on the respondent of sanctions and the need for deterrence**

- [70] The Respondent submits that general and specific deterrence would be adequately served by a two-month suspension of his practice. The Respondent is a well-respected lawyer with a long career, and this Panel accepts that specific and general deterrence will be achieved by the penalty proposed.
- [71] The Respondent also points out that he has already had his behaviour restricted for six months by the common law peace bond. This Panel accepts that the Respondent was bound by the peace bond but finds this factor to be neutral, noting that the conditions of the peace bond were not onerous.

### **Range of penalties in similar cases**

- [72] The determination of an appropriate sanction is an individualized process and must consider the specific facts associated with the misconduct at issue and the lawyer at issue.
- [73] Reflecting this, Law Society decisions dealing with violence, both in British Columbia and in other Canadian jurisdictions, present a wide range of penalties, varying from a reprimand to disbarment.

- [74] This Panel agrees with the Respondent's submission that none of the cases presented are equivalent to the case at bar. That said, it is helpful to examine other intimate partner violence cases to get a sense of the range of penalties available.
- [75] Only two prior citation cases involving intimate partner violence in British Columbia have been cited by the parties: *Suntok* and *Law Society of BC v. Ranspot*, 2019 LSBC 17. As a new facts and determination hearing was recently ordered in *Law Society of BC v. Ranspot*, 2020 LSBC 46, the *Ranspot* case is of little precedential value.
- [76] *Suntok* was decided 15 years ago; societal intolerance for intimate partner violence has since increased. That said, *Suntok* involves more aggravating factors than the case at bar. The lawyer in *Suntok* had a history of intimate partner violence. He broke into the victim's home, the assault was protractedly physically violent, and the lawyer then proceeded to breach his bail conditions. The hearing panel ordered a reprimand and a suspension from practice for 90 days, and upon his return to practice, the lawyer was required to provide an undertaking to monitor his treatment of his alcohol addiction.
- [77] In *Law Society of Manitoba v. Bjornson*, November 26, 1996, Discipline Case Digest, Case 96-25, a lawyer was fined for repeatedly breaching court orders prohibiting him from contacting his former spouse, including by assaulting her.
- [78] In *Law Society of Upper Canada v. Morgan*, 1998 CanLII 2446, a lawyer was disbarred for convictions of assault, harassment and uttering threats against his former spouse, as well as disobeying various court orders. The lawyer had a lengthy professional conduct record.
- [79] This Panel finds that a two-month suspension of the Respondent's right to practise is within the range of appropriate disciplinary action. This suspension will impact the Respondent's ability to practise. It signals to the public that the profession does not tolerate intimate partner violence.

## **CONCLUSION ON DISCIPLINARY ACTION**

- [80] Based on a consideration of the relevant *Ogilvie* factors and the range of sanctions imposed previously, this Panel finds that a two-month suspension is within the range of a fair and reasonable disciplinary action.

**COSTS**

- [81] The Respondent has agreed to pay the Law Society costs in the amount of \$1,000.
- [82] Item 25 of Schedule 4 - Tariff for Discipline Hearing and Review Costs sets out a range of costs for a Rule 4-30 hearing from \$1,000 to \$3,500.
- [83] The Respondent admitted to his conduct at an early stage in the proceeding. This hearing was conducted in writing on the basis of admissions. As such, costs in the amount of \$1,000, though on the lower end of the scale, is an appropriate amount.

**ORDERS**

- [84] For the reasons set out above, this Panel orders that:
- (a) the Respondent is suspended from the practice of law for a period of two months, commencing July 1, 2021 or such other date agreed to by the parties; and
  - (b) the Respondent pay costs in the amount of \$1,000 on or before July 30, 2021.