

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

MICHAEL MURPH RANSPOT

RESPONDENT

**DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION**

Hearing Date: April 12, 2021

Panel: Jamie Maclaren, QC, Chair
Lindsay R. LeBlanc, Lawyer
Lance Ollenberger, Public representative

Discipline Counsel: Kieron G. Grady
Counsel for the Respondent: Patrick F. Lewis

CITATION

[1] On September 12, 2017, a citation was issued against the Respondent pursuant to the *Legal Profession Act* (the “Act”) and the Law Society Rules (the “Citation”). The Citation provides as follows:

1. On or about December 31, 2015, you assaulted CC, and on or about November 9, 2016, you pled guilty to assault causing bodily harm on CC.

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

2. Between approximately March 2013 and December 31, 2015, when you represented CC in family law proceedings, you acted in a conflict of

interest contrary to one or more of rules 3.4-26.1, 3.4-28 and 3.4-34 of the *Code of Professional Conduct for British Columbia* because you:

- (a) were in a personal romantic relationship with CC from approximately April 2012 until December 31, 2015; and
- (b) loaned funds to CC between approximately May 2013 and October 2014, without ensuring CC had independent legal advice regarding the loans.

This conduct constitutes professional misconduct or conduct unbecoming a lawyer, pursuant to section 38(4) of the *Legal Profession Act*.

- [2] The Citation was authorized on August 24, 2017 and issued on September 12, 2017, and the Respondent admits that he received notice of the Citation.
- [3] The Panel was provided with an Agreed Statement of Facts (the “ASF”) dated April 2, 2021 that comprised the entirety of the evidence put before the Panel. The ASF incorporated a document agreement wherein the parties agreed any documents were admitted for authentication, but not for the truth of their content.
- [4] Since his call to the Bar, the Respondent has practised primarily in the areas of civil litigation, criminal law, family law, creditor’s remedies, wills and estates, and administrative law.
- [5] The Respondent first met CC in approximately 2008 or 2009, when she contacted him for legal advice. The Respondent and CC were in a personal romantic relationship from approximately April 2012 to December 31, 2015.

Family law matter

- [6] In March 2013, CC commenced a family law proceeding against her common-law husband, JM.
- [7] A solicitor-client relationship between the Respondent and CC in the family law proceeding initially commenced in March 2013 and continued to mid-August 2013. CC was represented by separate counsel at an August 21, 2013 Judicial Case Conference, at examinations for discovery in October 2013 and January 2014, and at certain interlocutory appearances in the court prior to the trial of the matter in February 2014. In November 2013, CC retained another lawyer to represent her in the family law proceeding.

- [8] The family law proceeding went to trial in February 2014. The Respondent did not represent CC at trial.
- [9] Although the Respondent did not have conduct of the family law proceeding from mid-August 2013 to April 2014, he provided assistance to CC's counsel during that time and incurred disbursements on CC's behalf.
- [10] Reasons for judgment in the family law proceeding were released in May 2014. In June 2014, JM filed a Notice of Appeal in relation to the May 2014 judgment.
- [11] In April 2015, the Respondent acted for CC at a costs hearing in the family law proceeding, and the Respondent admits that he was in a solicitor-client relationship with CC in April 2015.
- [12] In late September 2015, the Respondent filed two Notices of Appointment naming himself as counsel in relation to CC's two appeals. On October 7, 2015, the Respondent appeared as counsel for CC at the hearing of her appeals. On February 15, 2016, the Respondent filed a Notice of Withdrawal in relation to the appeals.
- [13] The Respondent admits that he was in a solicitor-client relationship with CC from March 2013 to February 2016, though without providing legal services at certain periods when she had other legal counsel.
- [14] The Respondent did not charge any fees for the legal services he provided to CC as detailed above.
- [15] On November 10, 2014, the Respondent provided CC with an invoice for disbursements incurred in the family law proceeding, the payment of Bell Canada monthly bills for her internet usage, as well as for cash that he had lent to her for living expenses.
- [16] On November 17, 2014, CC provided the Respondent with a cheque in the amount of \$7,152.02 against the \$14,304.04 invoiced to her on November 10, 2014.
- [17] The Respondent had been in a personal relationship with CC for approximately 13 months when he first loaned her money to help her out, and he did not charge interest on the monies lent.
- [18] The Respondent admits that he never advised CC to seek independent legal advice in relation to monies borrowed from him.
- [19] On July 9, 2015, the Respondent provided CC with a statement of disbursements in relation to the appeal of the family law proceeding.

Physical altercation and criminal charges

- [20] On December 31, 2015, the Respondent and CC engaged in a physical altercation.
- [21] On January 1, 2016, the Respondent was charged with one count of assault causing bodily harm to CC, contrary to section 267 of the *Criminal Code of Canada*.
- [22] On November 9, 2016, the Respondent pleaded guilty to one count of assault causing bodily harm of CC. The Crown proceeded summarily. The sentencing hearing occurred on January 12, 2017.
- [23] At the sentencing hearing, an agreed statement of facts was entered as an exhibit, and the following content of it was read into the record at the sentencing hearing:
1. The complainant, CC, and the accused, Michael Ranspot, had been in a relationship for approximately four years until the date of the incident underlying the criminal charge.
 2. The relationship between the parties was, at times, volatile.
 3. On December 30, 2015, the parties had planned to spend the evening together at the complainant's home in East Vancouver, which she rented from the accused. The apartment is approximately 520 sq. feet in size; it is a small one bedroom unit.
 4. The accused spent the day working in West Vancouver. He attended at a walk-in clinic in North Vancouver sometime after 5:00 p.m. to obtain some outstanding test results.
 5. He arrived at the complainant's apartment around 7:30 or 8:00 p.m. They had dinner together and spent the evening watching TV and listening to music in the living room. The complainant was sitting in the armchair and the accused was lying on the couch. Both of them were drinking wine.
 6. An argument arose sometime after 2:00 a.m. The verbal argument led to a physical interaction between the accused and the complainant; which began with the accused properly defending himself while sitting on the couch which caused some of the complainant's injuries. The complainant and the accused then continued to engage in a physical interaction while both on their feet in and around the couch. In the course of the exchange on

their feet, the accused's use of force exceeded what was reasonable in the circumstances and caused injury to the complainant.

7. When the interaction ended, after some minutes, the complainant went to the bedroom.
8. The accused retrieved his clothes and changed out of his pyjamas in the living room.
9. The complainant telephoned her friend around 3:05 a.m.
10. The accused collected some personal items and left the apartment.
11. The complainant telephoned the police around 3:13 a.m. The police attended the apartment shortly thereafter, immediately noting that the apartment was in disarray with broken glass on the floor, an upended coffee table and blood smeared on the carpet. [This is the accused's blood, as a result of his thumb being bitten during the altercation].
12. The complainant was transported to St. Paul's Hospital by ambulance. She was observed to have the following injuries: bruising to her left forehead; lump on right lateral side in hair; laceration at the left eye tear duct; an approximate 3" scratch-type abrasion below right eye extending to her upper cheekbone, very light bruising to right jaw, as well as light bruising to right elbow, left tricep, and left calf.
13. The accused attended the Cambie Police Station on December 31, 2015 where he was arrested. He was observed to have the following injuries: left eye bruise; right bicep bruise; left arm/bicep bruise; bite mark to left thumb; scratches to left wrist; scratches to upper right back/shoulder.

[24] The Law Society and the Respondent have agreed to adopt the contents of the agreed statement of facts from the Respondent's sentencing hearing as agreed facts in this hearing.

[25] The sentencing judge, Judge Giardini, delivered her reasons for sentence on March 8, 2017. Judge Giardini granted a conditional discharge and imposed a 16-month probation order on the Respondent.

- [26] In addition, Judge Giardini ordered the Respondent to respect a mandatory five-year weapons prohibition order and a DNA order, and pay a victim fine surcharge.
- [27] The Respondent complied with all of the foregoing orders of the court. He was ordered by his probation worker to take one course, which he did. Probation services offered a second voluntary course, which the Respondent took. He also voluntarily participated for approximately two and a half years in individual and group sessions through the Lawyers Assistance Program, and was counselled for approximately 18 months.

ONUS AND STANDARD OF PROOF

- [28] The Law Society has the onus of proving the allegations in the Citation, and the standard of proof is the balance of probabilities: *Foo v. Law Society of BC*, 2017 BCCA 151, at para. 63 and *Law Society of BC v. Schauble*, 2009 LSBC 11, at para. 43.
- [29] The Respondent admits that his conduct as stated in allegation 1 constitutes conduct unbecoming of a lawyer, and that his conduct as stated in allegation 2 amounts to professional misconduct.

TEST FOR CONDUCT UNBECOMING

- [30] Until 2018, “conduct unbecoming a lawyer” was defined in section 1 of the *Act* as:
- “conduct unbecoming a lawyer” 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 interest of the public or the legal profession,
- or
- (b) to harm the standing of the legal profession.

Since the Citation was issued, amendments to the *Act* have changed the terminology to “conduct unbecoming the profession.” We use the term in use at the time of the Citation.

- [31] Section 2.2 of the *Code of Professional Conduct of British Columbia* (“the *Code*”) is entitled “Integrity”. Commentaries 2 and 3 to rule 2.2-1 state:

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.

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.

- [32] In *Law Society of BC v. Berge*, 2007 LSBC 07, at para. 38, the Benchers on review made the following comments regarding the standard of conduct expected of lawyers in their private lives:

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.

- [33] The hearing panel in the decision confirmed in *Berge* (2005 LSBC 28) cited with approval the following passage from *Law Society of BC v. Watt* 2001 LSBC 16, at p. 3, in which the Benchers considered the concept of conduct unbecoming:

In this case the Benchers are dealing with conduct unbecoming a member of the Law Society of British Columbia. We adopt as a useful working distinction that 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.

- [34] The *Berge* review panel confirmed "criminal conduct" as an "obvious example" of conduct unbecoming.

TEST FOR PROFESSIONAL MISCONDUCT

- [35] The test for what constitutes professional misconduct is "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members": *Law Society of BC v. Martin*, 2005 LSBC 16, at para. 171.

- [36] In *Re: Lawyer 12*, 2011 LSBC 11, at para. 14, the hearing panel summarized previous applications of the *Martin* test as follows:

In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.

ANALYSIS

Allegation 1 – Criminal conduct

- [37] As found in *Berge*, criminal conduct is an “obvious example” of conduct unbecoming, and the conduct alleged in Allegation 1 is no exception to this principle.
- [38] The Law Society referred the Panel to *Law Society of BC v. Suntok*, 2005 LSBC 29, which involved a lawyer charged under the *Criminal Code* with assault and uttering threats. At paras. 15 and 16 of the decision, the hearing panel noted:

The Law Society is given the authority to regulate a lawyer's behaviour outside of the court room and the office, by virtue of Section 38(4)(b)(ii) of the *Legal Profession Act*. The mandate to regulate this non-practice related behaviour flows from Section 3, which is the core section of the *Legal Profession Act*.

This Panel concludes that the 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. The *raison d'être* of the Law Society is to regulate the profession in the public interest. The Legislature must have concluded that lawyers cannot engage in the practice of law with all the responsibilities that that entails without them being responsible members of the community. 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. They include prestige in the community, respect in most right thinking quarters, the right to audience before the courts and the right to self regulation.

- [39] The Respondent's criminal conduct amounts to conduct unbecoming a lawyer, and the Panel accepts the Respondent's admission in this regard.

Allegation 2 – Conflict of interest

- [40] Allegation 2 relates to the Respondent having acted in a conflict of interest by acting as counsel for CC in a family law proceeding while in a personal relationship with her and by providing loans to CC without ensuring that she had obtained independent legal advice about the loans.
- [41] A lawyer is prohibited from entering into a transaction with a client unless the client has received independent legal representation with respect to the transaction. A lawyer is also prohibited from providing legal services if there is a substantial risk that the lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's relationship with the client or the subject matter of the legal services.
- [42] Rule 3.4-28 of the *Code* provides as follows:

3.4-28 Subject to this rule, a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

Commentary

[1] This provision applies to any transaction with a client, including:

- (a) lending or borrowing money;

...

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

- [43] Rule 3.4-34 of the *Code* provides:

Lawyers in loan or mortgage transactions

3.4-34 If a lawyer lends money to a client, before agreeing to make the loan, the lawyer must

- (a) disclose and explain the nature of the conflicting interest to the client;

- (b) require that the client receive independent legal representation; and
- (c) obtain the client's consent.

[44] The *Code* also prohibits a lawyer from providing legal services if there is a substantial risk that the lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's relationship with the client or the subject matter of the legal services.

[45] In particular, rule 3.4-1 of the *Code* provides:

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

[46] The Commentary to this provision provides, in part, as follows:

Commentary

Examples of areas where conflicts of interest may occur

[8] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations or circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

...

- (e) A lawyer has a sexual or close personal relationship with a client.
 - (i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the

firm who is not involved in such a relationship with the client handled the client's work.

[47] Rule 3.4-26.1 of the *Code* provides:

Conflicts with clients

3.4-26.1 A lawyer must not perform any legal services if there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's

- (a) relationship with the client, or
- (b) interest in the client or the subject matter of the legal services.

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

[48] In *Kam v. Hermanstynne*, 2011 ONCJ 101, the lawyer was in a romantic relationship and living with her family law client. Justice Spence of the Ontario Court of Justice removed the lawyer from the record, and found at para. 19 as follows:

In the present circumstances, the court cannot have that confidence in Ms. Da Fonte, not because the court necessarily believes that she would intentionally mislead the court but, rather, because human nature being what it is, mischief may inevitably result. In my view, Justice Zuker and Justice Gray were correct in deciding that lawyers cannot act for clients with whom they are in an intimate and close personal relationship, and I adopt their reasoning without reservation.

[49] Hearing panels have also found that there is no bright line rule regarding when a lawyer can or cannot engage in a personal relationship with their past or present client. Each case must be decided on its own factual matrix.

[50] The combination of the Respondent's representation of CC in the family law proceeding and his making of loans to her without counselling her to seek independent legal advice amounts to professional misconduct. The Panel accepts the Respondent's admission in this regard.

DECISION

- [51] The Panel accepts the Respondent's admission with regard to Allegation 1, and we find his conduct to be conduct unbecoming a member of the Law Society.
- [52] We find the Respondent's conduct described in Allegation 2 to be a marked departure from the conduct expected of lawyers, and we therefore find that he committed professional misconduct.