

2022 LSBC 11
Hearing File No.: HE20170056
Decision Issued: March 18, 2022
Citation Issued: September 12, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

MICHAEL MURPH RANSPOT

RESPONDENT

**DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION**

Hearing date: October 1, 2021

Additional written submissions: November 15, 2021

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

Discipline Counsel: Kieron G. Grady

Counsel for the Respondent: Patrick F. Lewis

Written reasons of the Panel by: Jamie Maclaren, QC

BACKGROUND

[1] In the decision on Facts and Determination, 2021 LSBC 24 (the “Facts and Determination Decision”), this Panel considered two separate allegations of misconduct against the Respondent, as cited by the Law Society:

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 allegation of conduct unbecoming the profession stemmed from an early morning altercation on December 31, 2015 between the Respondent and CC—his family law client and romantic partner at the time. The Respondent used excessive force in the course of the altercation, and caused several injuries to CC, for which she was treated at a nearby hospital.
- [3] On November 9, 2016, the Respondent plead guilty to one count of assault causing bodily harm to CC. He was given a 16-month conditional discharge on January 12, 2017. He also paid a victim surcharge fine, and complied with a DNA order and a mandatory five-year weapons prohibition order.
- [4] At his April 12, 2021 hearing on facts and determination (the “Facts and Determination Hearing”), the Respondent admitted that his assault on CC amounted to conduct unbecoming the profession, as outlined in section 38(4) of the *Legal Profession Act*. This Panel accepted the Respondent’s admission, and confirmed his criminal conduct as conduct unbecoming the profession in the Facts and Determination Decision.

- [5] The separate allegation of professional misconduct arose from the Respondent's decisions to represent CC in family law proceedings, and to lend her funds without ensuring she had independent legal advice, while they were involved in a romantic relationship.
- [6] At the Facts and Determination Hearing, the Respondent admitted that he had breached *Code of Professional Conduct for British Columbia* rules regarding conflicts of interest. In the Facts and Determination Decision, this Panel found that his rule breaches amounted to a marked departure from the conduct expected of lawyers, and therefore constituted professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

ISSUES

- [7] The issues for this Panel's determination are:
- (a) What disciplinary action to impose on the Respondent for his conduct unbecoming the profession (for having assaulted CC), in addition to his professional misconduct (for having engaged in conflicts of interest in his relations with CC);
 - (b) What amount of costs to award to the Law Society.

POSITION OF THE PARTIES

- [8] The Law Society submits that a four-month suspension is appropriate to address the Respondent's two instances of proven misconduct. It seeks \$12,087.24 in costs, payable within five months of the disciplinary action being issued.
- [9] The Respondent submits that a suspension in the range of two weeks to one month is appropriate. He did not advance a position on the issue of costs.
- [10] CC attended the Respondent's hearing on disciplinary action, and provided an oral statement on the lasting impacts of the Respondent's assault on her. She described living in transition houses after the assault, and managing her trauma over the following five years. She urged this Panel to impose a suspension of 18 months or more on the Respondent.

LAW AND ANALYSIS

- [11] The Law Society's disciplinary proceedings are designed to fulfill its mandate to uphold and protect the public interest in the administration of justice, as set out in section 3 of the *Legal Profession Act*.
- [12] In determining appropriate disciplinary action, Tribunal panels have long considered the non-exhaustive list of penalty factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17. In *Law Society of BC v. Lessing*, 2013 LSBC 29, at paras. 57 to 60, the review panel identified the two most important penalty factors from *Ogilvie* as: (i) the need to ensure the public's confidence in the integrity of the profession; and (ii) the possibility of remediating or rehabilitating the respondent. The *Lessing* review panel also observed that, where there is conflict between these two factors, protection of the public should take priority over rehabilitation of the lawyer.
- [13] In *Law Society of BC v. Dent*, 2016 LSBC 05, the hearing panel affirmed the prioritization of penalty factors in *Lessing*, and, at paras. 19 to 23, consolidated the wider list of *Ogilvie* factors into four general factors for determining appropriate disciplinary action: (i) the nature, gravity and consequences of the misconduct; (ii) the character and professional conduct record of the respondent; (iii) acknowledgement of the misconduct and remedial action; and (iv) public confidence in the legal profession, including public confidence in the disciplinary process.
- [14] This Panel considered each of the four general factors from *Dent* in assessing appropriate disciplinary action for the Respondent, with protection of the public foremost in mind.

Nature, gravity and consequences of the conduct

- [15] 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 at para. 39. It is difficult to imagine conduct more grave than when a lawyer assaults a vulnerable client who is also their intimate partner. In recent years, Law Society sanctions for lawyers who verbally or physically assaulted their intimate partner have ranged from a \$12,000 fine to a three-month suspension.
- [16] In *Law Society of BC v. Clarke*, 2021 LSBC 39, the lawyer was sentenced to a 12-month conditional discharge for uttering threats to cause death or bodily harm to his former intimate partner. The panel accepted the parties' joint proposal of a \$12,000 fine as appropriate disciplinary action, and remarked at para. 123 that the

fine was “not so unhinged from the circumstances of the discipline violation and the Respondent that its acceptance would lead reasonable persons aware of all the circumstances, including the importance of providing certainty in resolution discussions, to believe that the proper functioning of the discipline system had broken down.” The panel noted that the lawyer’s professional conduct record was minor and dated, and did not show a pattern of similar misconduct.

- [17] The *Clarke* decision was issued while this decision was on reserve, so this Panel invited submissions from the Law Society and the Respondent on what impact the decision should have on our deliberations. The Law Society took the position that *Clarke* should have little to no impact. It distinguished *Clarke* from the Respondent’s case on the basis that it involved threats of violence rather than actual physical violence, and that its subject lawyer had a shorter professional conduct record.
- [18] The Respondent questioned whether the sustained death threats in *Clarke* amounted to a more severe transgression than his single and spontaneous physical assault on CC. He referred to the fine issued in *Clarke* as an indication that the Law Society’s proposed four-month suspension exceeds a reasonable range of penalties.
- [19] In *Law Society of BC v. Chow*, 2021 LSBC 18, where the lawyer received a 12-month conditional discharge for physically assaulting their intimate partner, the panel commented at para. 55:

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.

- [20] In *Chow*, the panel noted that the victim avoided physical injuries from her assault, and that the assault appeared to be out of character for the lawyer. The panel also considered the lawyer’s lack of a professional conduct record, his full cooperation with the Law Society’s disciplinary processes, and his significant rehabilitation efforts as mitigating penalty factors. The panel accepted the parties’ joint proposal of a \$12,000 fine as appropriate disciplinary action.
- [21] *Law Society of BC v. Kang*, 2021 LSBC 23 is another recent decision involving a lawyer who physically assaulted his intimate partner. There, after returning home from a social function where he had consumed alcohol, the lawyer forcefully grabbed his wife’s arms and legs, struck her in the back of the head a few times,

and directed profane and abusive language toward her. The lawyer was charged with assault and mischief, and later entered into a six-month peace bond. The Crown eventually directed a stay of proceedings in relation to his charges. In a hearing on the written record regarding the lawyer's consent to proposed disciplinary action, the panel found the proposed two-month suspension to be appropriate.

- [22] In *Law Society of BC v. Suntok*, 2005 LSBC 29, the lawyer was convicted of assaulting his former girlfriend, and was given a suspended sentence with three years of probation. The lawyer had travelled from Victoria to North Vancouver to secretly enter the home where his former girlfriend was staying. There, he unplugged the telephone, and proceeded to punch and kick the victim several times in the head. He stopped and fled when a neighbor intervened after hearing the victim's screams. Noting that the lawyer had also been convicted of assaulting a former girlfriend while attending law school, the panel suspended the lawyer for three months, and ordered restrictions and counselling for alcohol consumption, as well as \$8,000 in costs.
- [23] This Panel found that the Respondent also engaged in professional misconduct for failing to guard against conflicts of interest in two ways:
- (i) By engaging in a romantic relationship with a client;
 - (ii) By making a loan to a client without ensuring they obtained independent legal advice.
- [24] In *Law Society of BC v. Jenab*, 2006 LSBC 30, the lawyer engaged in an intimate personal relationship with a man, while she acted for his spouse in various matters that affected their joint and separate financial interests. The lawyer had no professional conduct record. She admitted to professional misconduct, and consented to a one-month suspension, which the panel accepted as appropriate disciplinary action.
- [25] In *Law Society of BC v. Laughlin*, 2020 LSBC 47, the lawyer had engaged in conflicts of interest in multiple situations over several years as corporate counsel, while simultaneously acting for opposing shareholders. He had also acted as legal counsel in a divorce for one of the shareholders, and had helped to arrange the same shareholder's drug addiction treatments. The Law Society sought a review of the \$5,000 fine imposed by the hearing panel in *Law Society of BC v. Laughlin*, 2019 LSBC 42. The review board found the nature and gravity of the lawyer's misconduct to be serious because it involved multiple, overlapping and perpetuating conflicts of interests. However, it also considered the lawyer's

altruistic intention to help his client overcome financial and lifestyle challenges to be a mild mitigating factor. For those and other reasons, the review board substituted a \$12,000 fine.

Character and professional conduct record of the respondent

- [26] In his roughly 30 years of practice, the Respondent has been disciplined for professional misconduct on two previous occasions. In 1997, he committed professional misconduct by rendering false accounts to Legal Aid BC (then known as the Legal Services Society), by breaching an undertaking and various accounting rules, and by continuing to practise law when his fees were unpaid. At the time, he suffered from depression and extreme psychological stress. To some measure, he treated his depression and stress by consuming alcohol. The hearing panel suspended him for 18 months, and imposed a number of conditions on his re-entry to practice.
- [27] In *Law Society of BC v. Ranspot*, 2007 LSBC 32, the panel found the Respondent had failed to serve his estate law client with the quality of service expected of a competent lawyer in similar circumstances. He had also breached a Practice Supervision Agreement in the same client matter. The panel determined that his conduct amounted to professional misconduct. During the hearing on disciplinary action in *Law Society of BC v. Ranspot*, 2007 LSBC 56, the panel ordered the Respondent to pay a \$5,000 fine.
- [28] The Respondent underwent Practice Reviews in 2001 and 2009, to investigate and remedy several Law Society concerns, including the adequacy of his office systems, the appropriateness of his client communications, and his general fitness to practice.
- [29] The Respondent produced four character reference letters for this Panel's consideration. Each writer had known the Respondent for several years, and each portrayed him as a kind and thoughtful man whose assault on CC was out of character. Each writer also mentioned noticing the Respondent's ongoing shame and regret for his criminal actions.
- [30] The Respondent's character reference letters suggest that he is remorseful and dedicated to lasting rehabilitation, but they do not change the reality and impact of his actions. It was once within his character to enter into a solicitor-client relationship with his intimate partner while knowing it was contrary to Law Society rules, and then to assault her. These are indelible facts, and we can only give his character reference letters marginal weight as mitigating factors in assessing appropriate disciplinary action.

Acknowledgement of the misconduct and remedial action

- [31] After entering an early guilty plea to his charge of assault causing bodily harm to CC, and subsequently fulfilling the terms of his 16-month probation order, the Respondent took it upon himself to complete a corrections program on how to manage his emotions and behaviour to avoid violence in future personal relationships. He also participated in individual and group counseling sessions with the Lawyers Assistance Program for about two and a half years.
- [32] In December 2020, the Respondent and CC entered into a confidential agreement to settle a civil claim that CC brought against him for damages arising from the December 2015 assault. The exact settlement amount paid by the Respondent to CC is not for this Panel to disclose, but we note that it is not insignificant.
- [33] The Respondent presented affidavit evidence to this Panel that outlines circumstances that led to the original decision on Facts and Determination in *Law Society of BC v. Ranspot*, 2019 LSBC 17 being set aside in *Law Society of BC v. Ranspot*, 2020 LSBC 46. Essentially, the Respondent's former legal counsel failed to relay critical Law Society communications to him, and neglected to inform him of the date of his original Facts and Determination hearing, or any hearing thereafter. His original Facts and Determination hearing proceeded in his absence, and he only learned of the decision in *Law Society of BC v. Ranspot*, 2019 LSBC 17 when his neighbour brought resulting media reports of the decision to his attention.
- [34] The Respondent's former counsel also neglected to advise him of the Law Society's April 25, 2018 proposal to complete an Agreed Statement of Facts, and to consent to a one-month suspension for the two allegations of misconduct. Had counsel relayed this critical proposal to the Respondent, it is possible (though far from certain) that this matter would have culminated in a consent agreement for the original hearing panel to consider. As this matter instead proceeded, the Respondent admitted to the two allegations of misconduct at the Facts and Determination Hearing before this Panel.

Public confidence in the legal profession including public confidence in the disciplinary process

- [35] To maintain public confidence in the self-regulation of the legal profession, any instance of professional misconduct as grave as the Respondent's assault on CC, and as compounded by a failure to guard against conflicts of interest, must meet with a firm expression of specific deterrence to the offending lawyer, and general deterrence to other lawyers. The Law Society must levy a sanction that is

proportionate to the violent breach of trust between lawyer and client, and is fair and reasonable in all of the circumstances, including the range of sanctions levied in prior similar cases.

- [36] The Respondent has undergone a series of criminal, civil and prolonged regulatory proceedings in relation to his criminal conduct. Their significant financial and reputational impacts have some mitigating influence on the need to communicate deterrence, since they already serve to remind the Respondent and other lawyers of the far-ranging consequences of engaging in violent and impulsive behaviour. Nonetheless, the Law Society must take a hard line on lawyers who inflict violence on vulnerable clients.
- [37] Previous sanctions for lawyers who assaulted their intimate partner have ranged from a \$12,000 fine to a three-month suspension, and a sanction at the high end of this range is appropriate to serve as specific and general deterrence in the particular circumstances of the Respondent's criminal conduct alone.
- [38] We find the Respondent's professional conduct record to be an aggravating factor in assessing appropriate disciplinary action. He has been disciplined for professional misconduct on two previous occasions, and he has undergone two Practice Reviews over concerns about his general fitness to practice. We note, however, that the Law Society did not submit any evidence of concern over the Respondent's conduct in the six years and two months since his assault on CC.
- [39] We find the Respondent's altruistic intention in making an interest-free loan to CC, and the absence of any financial benefit to him, to be neutral factors in assessing appropriate discipline. His professional misconduct did not relate to fraudulent or exploitative intentions, but rather to his failure to guard against conflicts of interest when he engaged in a romantic relationship with CC, and then again when he loaned her money without ensuring she had the benefit of independent legal advice.
- [40] Whether considered together or apart from his failure to avoid conflicts of interest, the nature and gravity of the Respondent's assault on CC can only be described as severe. We heard from CC that the memory of the assault continues to traumatize her, and that she cannot forgive the Respondent for his actions. These are aggravating factors in assessing appropriate discipline.
- [41] CC urged this Panel to suspend the Respondent for 18 months or more. Such a lengthy suspension would stretch far beyond the range of Law Society sanctions previously imposed on lawyers who physically assaulted their intimate partner. It would also far exceed the four-month suspension sought here by the Law Society. In similar circumstances of physical assault on an intimate partner, the lawyer in

Kang received a two-month suspension. In more egregious circumstances involving premeditation and prolonged physical assault on a former intimate partner, the lawyer in *Suntok* received a three-month suspension.

DISPOSITION

[42] Having considered the circumstances of the Respondent's two instances of misconduct, the protracted nature of these regulatory proceedings, and the range of sanctions imposed in the decisions mentioned above, we order the Respondent to serve a three-month suspension.

COSTS

[43] The Law Society requested an order of costs in the amount of \$12,087.24 as claimed in the Bill of Costs.

[44] Rule 5-11 requires this Panel to award the tariff costs unless we are satisfied that we should depart from the tariff under Rule 5-11(4). The Respondent took no position on costs.

[45] Finding no facts to justify departing from the tariff, we order the Respondent to pay \$12,087.24 in costs to the Law Society within five months of our decision being issued.

ORDERS

[46] In summary, this Panel orders as follows:

- (a) The Respondent must serve a three-month suspension to start by May 16, 2022, or on a later date determined by agreement of the Law Society and the Respondent;
- (b) The Respondent must pay \$12,087.24 in costs to the Law Society within five months of our decision being issued, or on a later date determined by agreement of the Law Society and the Respondent.