

2019 LSBC 17
Decision issued: May 21, 2019
Citation issued: September 12, 2017

**CORRECTED DECISION: PARAGRAPHS [2], [3] AND [47]
WERE AMENDED ON MAY 28, 2019**

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: December 19, 2018

Panel: Michelle D. Stanford, QC, Chair
Thelma Siglos, Public Representative
Sandra Weafer, Lawyer

Discipline Counsel: Kathleen M. Bradley
Nobody appearing on behalf of the Respondent

INTRODUCTION

[1] On September 12, 2017, the Law Society of British Columbia (“the Law Society”) issued a Citation against Michael Murph Ranspot (the “Respondent”). The Citation contained two allegations of misconduct:

1. assaulting CC and pleading guilty to assault causing bodily harm, which constitutes conduct unbecoming a lawyer, pursuant to section 38(4) of the *Legal Profession Act* (the “Act”), and

2. acting in a conflict of interest when he represented CC in family law proceedings, 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* (the “BC Code”), because he:

- (a) was in a personal, romantic relationship with CC; and
- (b) loaned funds to CC without ensuring she had independent legal advice regarding the loans,

which constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

[2] On December 19, 2018, the Panel heard from counsel for the Law Society, but neither the Respondent nor his counsel attended the hearing that day. The Panel stood down for counsel for the Law Society to attempt to reach Mr. Ranspot’s counsel. When she was unable to contact him, she advanced an application pursuant to section 42(2) of the *Legal Profession Act* for the hearing to proceed in the absence of the Respondent.

[3] On the evidence, the Panel was satisfied that the Respondent had been served with notice of the hearing. Efforts had been made to contact counsel for the Respondent to no avail. Pursuant to *Law Society of BC v. Pyper*, 2018 LSBC 28, which related to further factors a panel may consider, it was noted that a significant period of time had elapsed (six years) since the start of events giving rise to this proceeding.

[4] Following this evidence and submissions from counsel for the Law Society, the Panel determined that it was fair and expedient to give priority to the public interest in seeing this matter concluded; thus the decision was to proceed with the hearing in the absence of the Respondent and his counsel.

ISSUES

[5] The Respondent has admitted the underlying facts to his conduct in both allegations of the Citation, but has not admitted that the conduct amounts to conduct unbecoming and/or professional misconduct.

[6] Accordingly, the only issues for the Panel to consider is whether the Respondent’s conduct constituted conduct unbecoming a lawyer pursuant to section 38(4)(ii) of the *Legal Profession Act* related to allegation 1 and/or professional misconduct under section 38(4)(i) of the *Legal Profession Act* related to allegation 2.

FACTS

Citation and Service

- [7] The Citation in this matter was authorized by the Discipline Committee on August 24, 2017 and issued on September 12, 2017.
- [8] On September 22, 2017, counsel for the Respondent acknowledged receipt and service of the Citation on the Respondent's behalf, in accordance with Rules 4-19 and 10-1 of the Law Society Rules.

Respondent Background

- [9] The Respondent was born in 1956.
- [10] The Respondent was called and admitted as a member of the Law Society on August 1, 1985.
- [11] Since his call to the Bar, the Respondent has practised primarily in the areas of civil litigation, criminal law, family law, creditors' remedies and administrative law.
- [12] From August 1, 1985 to January 8, 1986, the Respondent was a sole practitioner in Vancouver, BC.
- [13] From June 5, 1986 to February 11, 1987, the Respondent practised with a medium-sized firm in Vancouver.
- [14] From July 1989 to February 1997, the Respondent was a sole practitioner in Vancouver.
- [15] As of February 14, 1997, the Respondent was suspended from the practice of law for 18 months.
- [16] The Respondent ceased to be a member of the Law Society on January 1, 1998.
- [17] The Respondent resumed practising law on February 1, 2001.
- [18] Since February 1, 2001, the Respondent has been a sole practitioner in Vancouver and West Vancouver.

Background Facts

Allegation 1:

- [19] The Respondent and CC were in a romantic relationship from approximately April 2012 to December 31, 2015.
- [20] On December 31, 2015, a physical altercation occurred between the Respondent and CC, resulting in a charge under the *Criminal Code* of assault causing bodily harm and assault with a weapon against the Respondent. He pleaded guilty to the former and received a 16-month conditional discharge on March 8, 2017.

Allegation 2:

- [21] In March 2013, CC commenced a family law proceeding against her common law husband seeking a division of property, spousal maintenance and a protection order.
- [22] The Respondent admits and the Panel accepts that, throughout the course of the family law proceedings, from its initiation to its trial and subsequent appeals by CC's ex-husband and hearings on costs, the Respondent represented CC between the periods March 2013 to mid-August 2013, April 2014, June 2014 and September 2015 to November 2015. The Respondent "assisted" CC and incurred disbursements on her behalf when CC retained different counsel on the same matter for specific court proceedings on dates in August 2013, October 2013, November 2013 to June 2014 and October 2014.
- [23] There is a dispute on the facts between the Respondent and counsel for the Law Society as to when the solicitor-client relationship with CC ended. In correspondence to the Law Society, the Respondent stated that the relationship ended when he last appeared as CC's counsel at the hearing of the appeals on October 7, 2015. Counsel for the Law Society argued that the solicitor-client relationship ended when the Respondent filed a Notice of Withdrawal of Lawyer on February 15, 2016.
- [24] In the Panel's view, a lawyer who must take steps to be removed from the record by filing a Notice of Withdrawal remains the solicitor of record in the proceedings until the related matter is concluded or counsel has withdrawn. The hearing on the appeals ended on October 7, 2015; however, the Reasons for Judgment were not provided until February 23, 2016. Effectively, the matter was concluded when there was a determination by the court on February 23, 2016. The Panel has determined that the Respondent ended his solicitor-client relationship with CC when he filed his Notice of Withdrawal on February 15, 2016.
- [25] During the periods of time when the Respondent represented CC or assisted her counsel, he did not charge her legal fees for his services, but invoiced her for disbursements only.

- [26] From approximately May 2013 until October 2014, during the course of his romantic relationship with CC and while periodically engaged in a solicitor-client relationship with her, the Respondent began to lend CC money on an “as-needed” basis to help with expenses.
- [27] On November 10, 2014, the Respondent provided CC with an invoice for disbursements incurred in the family law proceedings and for payment of a utility bill, as well as for cash that he had lent her from May 2013 to October 2014.
- [28] The Respondent admits and the Panel has found that he never advised CC to seek independent legal advice related to the monies she borrowed from him. As far as the Respondent is aware, CC never received independent legal advice on this issue.

ANALYSIS AND LEGAL REASONING

Onus and Standard of Proof

- [29] The onus and burden of proof in Law Society hearings is well known and consistently applied.
- [30] The standard articulated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, 297 DLR (4th) 193, has been adopted by Law Society panels in numerous cases, including *Law Society of BC v. Schauble*, 2009 LSBC 11.
- [31] In *Schauble*, the panel directly cited the court in *McDougall* at paragraph 43:

The onus of proof is on the Law Society, and the standard of proof is a balance of probabilities: “... evidence must be scrutinized with care” and “must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. ...”

- [32] Accordingly, the onus is on the Law Society to prove on a balance of probabilities that the Respondent conducted himself in a way that amounted to conduct unbecoming a lawyer and professional misconduct.

Test for Conduct Unbecoming

- [33] “Conduct unbecoming a lawyer” was defined in section 1 of the *Legal Professional Act*, S.B.C. 1998, c. 9 (the “Act”) as follows:

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;¹

[34] Section 3, under Part 1 of the *Act*, sets out the object and duty of the Law Society, which includes:

- 3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
 - (a) preserving and protecting the rights and freedoms of all persons,
 - (b) ensuring the independence, integrity, honour and competence of lawyers,
 - ...

[35] Chapter 2 of the BC Code is entitled “Standards of the Legal Profession.” The BC Code states that the Canons of Legal Ethics have been included “for their historical value and for their statement of general principles that underlie the remainder of the rules in this Code.” Under rule 2.1, the introductory paragraph of the Canons states the following:

A lawyer is a minister of justice, an officer of the courts, a client’s advocate and a member of an ancient, honourable and learned profession.

In these several capacities, it is a lawyer’s duty to promote the interest of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

[36] Rule 2.2 of the BC Code is entitled “Integrity”. Commentaries 2 and 3 to rule 2.2-1 state:

- [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*

¹ As a result of amendments to the *Legal Profession Act*, the phrase “conduct unbecoming the profession” has replaced “conduct unbecoming a lawyer” throughout the Act. See *Legal Profession Amendment Act, 2012*, SBC 2012, c. 16, which was proclaimed in effect April 2, 2018. We use the terminology of the Act at the time of the events giving rise to the citation.

knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[emphasis added]

[37] The hearing panel in *Law Society of BC v. Berge*, 2005 LSBC 28 (“*Berge 2005*”), cited *Law Society of BC v. Watt*, 2001 LSBC 16, which involved a lawyer cited for possession of cocaine, at paragraphs 19 and 20:

“Conduct unbecoming a lawyer” is an inclusively-defined term in Section 1(1) of the *Legal Profession Act* which refers to the conduct being considered in the judgment of the Benchers to be either contrary to the best interest of the public or of the legal profession or to harm the standing of the legal profession. Justice Clancy, of the Supreme Court of British Columbia, held, in *Re Pierce and the Law Society of British Columbia*, 1993 CanLII 765, 103 D.L.R. (4th) 233 at p. 247:

When considering conduct unbecoming, the Benchers’ consideration must therefore, be limited to the public interest in the conduct or competence of a member of the profession.

The Benchers discipline Members for some “off-the-job” conduct because lawyers hold positions of trust, confidence, and responsibility giving rise to many benefits but imposing obligation not shared with most other citizens. For most other citizens, the criminal proceeding for possession of cocaine is all the formal proceeding they would face. For some, in addition to the criminal proceeding, possession of cocaine might also entail loss of employment or virtually-forced resignation from public office. For some, essentially those in the professions, there may be disciplinary proceedings in addition to the criminal proceedings. Mr. Watt’s act, because of his privileged professional standing, has more than one aspect and gives rise to more than one legal consequence. *Regina v. Wigglesworth*, (1984) 11 CCC (3d) 27 at 32-33, is to that effect. If a lawyer acts in an improper way, in private or public life, there may a loss of public confidence in the lawyer, in the legal profession generally, and in the self-regulation of the legal profession if the conduct is not properly penalized in its professional aspect. It is possible that conduct unbecoming may lead to controversy about the legal profession and lawyers, which may disrupt the proper functioning of lawyers in British Columbia as they relate to clients, interested third parties (such as witnesses, police officers, and service providers), other lawyers (within and without the jurisdiction), the judiciary, the press, and, put generally,

anyone who may be expected to rely on lawyers behaving in a dependable, upright way. The behaviour of lawyers must satisfy the reasonable expectations which the British Columbia public holds of them. By their behaviour, lawyers must maintain the confidence and respect of the public; lawyers must lead by example. In this, Mr. Watt, as he has acknowledged, failed.

[emphasis added].

- [38] In *Law Society of BC v. Berge*, 2007 LSBC 07 (“*Berge 2007*”), the Benchers on review made the following comments at paragraph 38 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.

- [39] The review panel in *Berge 2007* went so far as to conclude that “criminal conduct” was an “obvious example” of conduct unbecoming.

Test for Professional Misconduct

- [40] “Professional misconduct” is not a defined term in the *Act*, the Law Society Rules or the *BC Code*.
- [41] The leading case is *Law Society of BC v. Martin*, 2005 LSBC 16, in which the hearing panel concluded at paragraph 171 that the test is:

...whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

- [42] The panel went on to comment at paragraphs 151 to 154 that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. The panel commented at paragraph 154:

The real question to be determined is essentially whether the Respondent’s behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

[43] The bench review decision in *Re Lawyer 12*, 2011 LSBC 35, is the leading case concerning the test for professional misconduct at the section 47 review level. In confirming the marked departure test set out in *Martin*, the majority and minority of the review panel also adopted at paragraph 7 the following test set out from the single bench panel in *Re Lawyer 12*, 2011 LSBC 11:

[14] 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.

THE LAW

Allegation #1: Criminal Conduct

[44] As noted above in *Berge 2007*, criminal conduct is an “obvious example” of conduct unbecoming. Such conduct is considered to be contrary to the best interests of the public and the legal profession and harms the standing of the legal profession.

[45] In *Berge 2005*, the hearing panel found that a lawyer engaged in conduct unbecoming a lawyer by: consuming a substantial amount of alcohol prior to driving a vehicle, causing an accident by driving without due care and attention, removing an open can of beer from his car in order to dispose of it, and using mouthwash prior to the arrival of the police in order to mask the smell of alcohol on his breath. He was originally charged with impaired driving and driving with a blood alcohol reading in excess of .08. He pleaded guilty to driving without due care and attention under the *Motor Vehicle Act*, was fined \$1,000 and given a 3-month driving prohibition. The lawyer appealed his sentence, but the appeal was dismissed.

[46] At paragraph 88, the hearing panel found that the “combined effect of this conduct is tantamount to dishonest conduct and is conduct unbecoming.”

[47] In *Law Society of BC v. Suntok*, 2005 LSBC 29, a then prosecutor argued with his girlfriend over the phone. He then immediately travelled from Victoria to Vancouver and entered her house unannounced. He proceeded to assault and threaten to kill her until a neighbour intervened. He was charged and pleaded guilty to assault and uttering threats and was sentenced to a conditional discharge. On a Crown appeal, the sentence was increased to a three-year suspended sentence.

[48] At the subsequent Law Society disciplinary hearing, the panel accepted the respondent's admission that his conduct amounted to conduct unbecoming a lawyer.

[49] In making their determination, the panel noted at paragraphs 15-16 of their decision:

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 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.*

[emphasis added]

Allegation #2: Conflict of Interest

[50] The *BC Code* provides as follows:

Independent legal advice

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;
- (b) buying or selling property;
- (c) accepting a gift, including a testamentary gift;

- (d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;
- (e) recommending an investment; and
- (f) entering into a common business venture.

[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.

Lawyers in loan or mortgage transactions

3.3-34 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.

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.

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 of 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. ...

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.

[51] In *Law Society of BC v. Sprague*, 2002 LSBC 26, a lawyer admitted to professional misconduct for acting in a conflict of interest in circumstances where he acted for a non-profit housing society. The lawyer was a director of a company that loaned money to the housing society. Additionally, the lawyer personally loaned money to the housing society. Each loan was secured by a mortgage against the property now owned by the housing society he helped to secure. Although the panel took into consideration that there was no evidence of harm, no complaint made to the Law Society, and there was no motivation for financial reward, the panel made a finding that the admitted conduct amounted to professional misconduct.

[52] In *Law Society of BC v. Jenab*, 2006 LSBC 30, a hearing panel accepted a conditional admission of professional misconduct in circumstances where a lawyer commenced an intimate personal relationship with a man when she was performing legal services for both him, his wife and a number of companies controlled by them. The lawyer acted without appreciating the conflict her intimate relationship posed for the duties owed to her clients.

[53] In a motion to remove the respondent's lawyer in *Kam v. Hermanstyne*, 2011 ONCJ 101, 1 RFL (7th) 494, the judge commented on the "near-impossible" conflict an intimate

relationship with a client poses for a lawyer who is engaged as counsel in family law proceedings. The application was granted and the lawyer was removed from the record. Spence J. stated at paragraph 17:

On the other hand, her professional standards of conduct necessitate that she act in a way that does not adversely affect her judgment in her role as counsel to her client. She must try to maintain her objectivity while, at the same time, being inextricably emotionally intertwined with the respondent and the outcome that the respondent is attempting to achieve in this case. In my view, this is a near-impossible tension to resolve.

ANALYSIS

Allegation 1:

- [54] The Respondent entered a guilty plea to assaulting CC causing bodily harm on November 9, 2016. CC's physical injuries were not insignificant and resulted in attendance at a hospital. The Respondent admitted, and the Panel has accepted, that alcohol was at the core of his life problems during this period. Unfortunately, this factor alone cannot mitigate the Respondent's obligation to conduct himself in accordance with the standards set out in the *BC Code* that govern his private life, as well as his professional life.
- [55] In correspondence to the Law Society on February 15, 2016, the Respondent stated as a further explanation of the altercation with CC on December 31, 2015 that CC had "mental health and emotional issues ..." and "... at times, demonstrated extreme anger and violence towards me." He wrote further that she "... attacked me ... I defended myself. I suffered injuries."
- [56] Although the Respondent pleaded guilty to assault causing bodily harm, it is the Panel's view that, based on the above statements, the Respondent clearly was not remorseful, nor was he taking responsibility for his actions.
- [57] A client's knowledge of criminal conduct to this degree could certainly impair his or her trust in the Respondent. It could also reflect adversely on the integrity of the profession as a whole. Not to adequately address the negative impact of the Respondent's blatant disregard for the standards of "social responsibility" he holds as a lawyer, would most certainly erode the public confidence in the profession. (*Berge 2007*, at paragraph 38)
- [58] Accordingly, the Panel has no difficulty in finding that the evidence supports, on a balance of probabilities, a determination of conduct unbecoming a lawyer.

Allegation 2:

- [59] With respect to conflict of interest, the commentary under Rule 3.4-28 is clear that “lending or borrowing” are included as “any transaction.”
- [60] The Respondent admitted, and the Panel has found, that the Respondent acted as CC’s lawyer in her family law matter during a period of time when he was also in a personal, romantic relationship with her.
- [61] While still in a relationship with CC and acting as her counsel, the Respondent loaned CC money during this period without ensuring that CC had independent legal advice.
- [62] The Respondent remained on the record of CC’s appeals, notwithstanding the physical altercation with CC followed by a charge of assault causing bodily harm. It was not until he was charged a month later with assault with a weapon related to the same altercation that the Respondent filed a Notice of Withdrawal.
- [63] The Respondent decided to act for a client with whom he was in a personal, romantic relationship and to lend her money while still acting for her and without ensuring she had independent legal advice. He continued to represent her following a physical altercation resulting in criminal charges. The Panel finds that these circumstances are the result, on so many levels, of a stunning lack of judgment. This conduct can only amount to “gross culpable neglect of his duties as a lawyer.” (*Martin*, at paragraphs 151 to 154)
- [64] The evidence supports, on a balance of probabilities, that the Respondent’s behaviour is a “marked departure from the conduct the Law Society expects of its members” (*Martin*, at paragraph 171). Accordingly, we find the Respondent’s conduct amounts to professional misconduct.

RESULT

- [65] We find that the Law Society has proven both allegations in the Citation and that the preponderance of evidence supports a determination of conduct unbecoming a lawyer pursuant to section 38(4)(ii) of the *Legal Profession Act* with respect to allegation 1 and professional misconduct pursuant to section 38(4)(i) of the *Legal Profession Act* with respect to allegation 2.