

NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS OF PRACTICE FOR COUNSELLORS AND PSYCHOTHERAPISTS

Intimate Partner Violence When Private Misconduct is Also Professional Unethical Behaviour

Dr. Glenn Sheppard

Regulators of the various professions sometimes have to address the challenging question of when does a practitioner's private misconduct also constitute a case of professional unethical behaviour. Such a challenge typically occurs when the misconduct involves a matter of criminal behaviour: for example, what should a regulator's response be when a practitioner's behaviour is a criminal offense such as driving while under the influence of alcohol or some other drugs, shoplifting, fraud, assault and so forth?

Even though such misconduct usually happens outside a practitioner's professional practice, it may, nevertheless, be viewed as unethical behaviour to which there must be an appropriate regulatory response. This usually happens when the behaviour brings discredit to both the professional and the profession and when it also potentially undermines societal trust in the profession and its public credibility.

Also, a particular conviction may impair a health practitioner's capacity to provide, without a personalized bias, an appropriate service to any of their clientele who have engaged in similar misconduct.

A rationale for addressing misconduct that occurs outside a professional practice is stated as follows by this disciplinary panel:

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...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. Law Society of BC v. Suntok, 2005 LS BC 29

A similar view can be taken with respect to members of the health professions which includes counselling and psychotherapy. One significant example of such an offense is intimate partner violence to which some recent cases of disciplinary decisions by regulators and court cases have drawn our attention. In intimate partner violence is recognized by the courts and legislation as a serious criminal violation (See S.718.2 (a)(ii) of the *Criminal Code*. So it is not surprising that it is receiving the attention of regulators.

One example of this attention is the tribunal decision by the Law Society of British Columbia (*Kang (Re) 2021*) LSBC 23) when a lawyer was found to have engaged in intimate partner violence. The criminal charges against him were stayed after a protective peace bond was issued. He argued that his misconduct did not constitute "criminal and violent conduct." The Panel saw it otherwise and expressed its view as follows:

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.

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. 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.

Considering a number of mitigating factors in this case, the tribunal decided that a two month suspension was a fair and reasonable sanction. This may seem to be a minimal consequence. There have been some other disciplinary decisions involving intimate partner violence where the sanction was a fine in one case and another was as a reprimand with a requirement for the practitioner to continue in therapy for his criminal and consequential ethical misconduct. (See *Clarke (Re)*, 2021LSBC39) and *Law Society of Ontario. Alzahid 2021 ONLSTH89*.

Despite these seemingly minimal sanctions, there are a number of other discipline decisions by regulators where the sanctions have been more severe. For example, the case of *Ontario (College of Physicians and Surgeons of Ontario v. Mukherjee, 2019)*. a physician was given a six month suspension and the tribunal held the following view about his intimate partner violence.

Dr. Mukherjee exploited the power imbalance in his relationship with Ms. B. an intimate partner and employee, by threatening to withdraw the monetary support he was providing her. He did so in a manner that was aggressive and violent, leading to criminal convictions.

The penalty reflects the Committee's and public's expectation that physicians lead by example, including in matters of intimate partner violence and abuse. The six-month suspension and reprimand will serve as deterrents to Dr. Mukherjee and the profession, and send a strong message that such conduct will not be tolerated. Instruction in anger management will provide for Dr. Mukherjee's further rehabilitation. The six month suspension and instruction in anger management also satisfy the need to protect the public, which remains a paramount principle in determining an appropriate penalty.

Also, a more severe consequence was issued for another physician in this tribunal decision (See *Ontario (College of Physicians and Surgeons of Surgeons of Ontario v. Dhanon, 2020 ONCPSD 28)*). The physician was suspended from his practice for a five-month period and was required to complete a number of courses relevant to his misconduct. The tribunal took the following view in its decision:

Aggravating factors include that violence was a component of the criminal conviction. Dr. Dhanoa was convicted of assault and given a conditional sentence and probation. The assault occurred in a family setting, which was particularly egregious. The fact that this was male violence against a female augments the egregiousness of the misconduct. As a physician, Dr. Dhanoa may be called upon to treat patients who have been subjected to domestic assault. He needs to be approachable and open to doing that. A conviction of this sort does not inspire confidence that he will fulfill his duty in that regard.

When adjudicating the degree of liability and consequential sanctions in and other ethical cases, disciplinary tribunals must consider these four guiding considerations: general deterrence, specific deterrence, rehabilitation, and the maintenance of public confidence. Also, these factors are typically taken into account:

- The nature and gravity of the misconduct
- The impact of the behaviour on the victim
- The practice record of the member
- The acknowledgement of the misconduct by the member and their insight about their misconduct
- How the various deterrence should be prioritized in a particular case
- The range of sanctions imposed in other similar cases.

Of course, health professionals and others can also be liable for unethical conduct that occurs outside their professional practice when it is not criminal behaviour. For example, it could be because of their conduct on social media. In my Notebook for the Winter issue of *Cognica* (Vol. 53, No 1, 2021), I reviewed a number of such cases from a number of professions with a variety of examples of social media activities. All of these activities were judged to be contrary to the best interests of the public or the profession of which they were a member and which could negatively effect the social standing of it. (See *Can the Use of Social Media by Health Professionals Result in Findings of Professional Misconduct*).

Note: Readers are reminded that the Notebooks can be found on a dedicated location on the CCPA website.