



**The Law Society of Saskatchewan**

**KRISHAN KUMAR**

**April 11, 2013**

***Law Society of Saskatchewan v. Kumar 2013 SKLSS 4***

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990  
AND IN THE MATTER OF KRISHAN KUMAR,  
A LAWYER OF NEPEAN, ONTARIO**

**DECISION OF THE HEARING COMMITTEE FOR THE  
LAW SOCIETY OF SASKATCHEWAN**

1. The Hearing Committee of the Law Society of Saskatchewan (hereinafter called the “Hearing Committee”) comprised of Ron Kruzeniski, Q.C. as Chair, Darcia Schirr, Q.C. and Laura Lacoursiere, convened by conference call on Friday, November 23rd, 2012, with Mr. Tim Huber representing the Investigations Committee of the Law Society and Jason Mohrbutter representing Krishan Kumar. Mr. Kumar was also present. All parties took part by conference call.
2. Neither Mr. Huber nor Mr. Mohrbutter had any objections to the formation of the Hearing Committee, the convening of the hearing by conference call or any other matter relating to the complaint or proceedings leading up to the hearing.
3. Mr. Huber and Mr. Mohrbutter filed an agreed Statement of Admissions, which can be viewed at [www.lawsociety.sk.ca/publichearings](http://www.lawsociety.sk.ca/publichearings).
4. The parties agreed to the filing of an amended complaint which can be found at [www.lawsociety.sk.ca/publichearings](http://www.lawsociety.sk.ca/publichearings).
5. After hearing Mr. Huber and Mr. Mohrbutter and receiving the agreed Statement of Admissions, the Hearing Committee determined that Krishan Kumar is guilty of conduct unbecoming a lawyer as outlined in allegations one and two of the above amended complaint. Allegation three in the above complaint was withdrawn by Mr. Huber.
6. This complaint began prior to amendments to The Legal Profession Act made in 2010 and as such is guided by the earlier rules. Section 53 provides that unless the panel the investigation committee and the member agree, sentencing is to be done by the Benchers as a whole. Mr. Huber indicated he believed that sentencing should be done by the Benchers. Mr.

Mohrbutter accepted that this would occur. As a result, sentencing is left to the Benchers and the work of the Hearing Committee is complete.

“Ronald J. Kruzeniski”  
Ronald J. Kruzeniski, Q.C., Chair  
Hearing Committee

## **DISCIPLINE SENTENCING DECISION**

### **INTRODUCTION**

7. On April 11, 2013 before a sentencing committee composed of the Benchers of the Law Society of Saskatchewan, the Member appeared for the purpose of being sentenced with respect to findings of conduct unbecoming which had been previously made by a Hearing Committee. The Hearing Committee rendered its decision on November 23, 2012 and determined that the Member was guilty of conduct unbecoming as follows:

- i) [The Member] “did provide false or misleading information to the Law Society of Saskatchewan in his February 15, 2002 Application for Admission as follows:
  - a. he failed to use his proper or legal name on the application;
  - b. he failed to disclose his change of name to “Paul White”; and
  - c. he failed to disclose prior disciplinary actions against him as Paul White in Washington, State.
- ii) did provide false or misleading information to the Law Society of Saskatchewan in his August 18, 2003 Commencement Report by failing to disclose his membership in the Washington State Bar.

8. The Decision of the Hearing Committee is annexed to this decision at Tab 1.

9. At the sentencing hearing, the Investigation Committee of the Law Society of Saskatchewan was represented by Mr. Timothy F. Huber. The Member was represented by Mr. Jason W. Mohrbutter. The Member was present for the sentencing.

10. The sentencing hearing was chaired by Mr. Robert R. Heinrichs. Following the chairperson’s inquiry, both parties indicated that there were no objections to the composition of the Sentencing Committee and there were no preliminary motions or objections to the sentencing proceeding.

### **FACTS**

11. Part of the record before the Hearing Committee contained a Statement of Admissions executed by counsel for Mr. Kumar. That Statement provides background of the complaint as follows:

-The Member has been a Canadian resident since March 1996 and has resided in Nepean, Ontario since August 2003. While he is a member of the Law Society of Saskatchewan and is insured in Saskatchewan he has never practiced here.

-The Member was admitted to the practice of law in India in 1992.

-The Member was admitted to practice in the State of Washington in 1996.

-The Member was admitted to the Law Society of Saskatchewan in 2003.

-He has never been a Member of the Law Society of Upper Canada nor has he ever held a permit to practice in that jurisdiction. While residing in Ontario, the Member has been engaged only in the practice of Federal Immigration law and primarily on a pro bono basis.

-On July 7, 2009 the Law Society began an investigation into the Member after being advised by officials with the Law Society of Upper Canada that the Member had been disbarred in Washington State on November 30, 2004 "in absentia". Mr. Kumar was not aware of the investigation by the Washington State Bar Association and did not have an opportunity to retain/request professional legal representation nor did he represent himself. Mr. Kumar specifically does not agree to the charge of failure to cooperate in the disciplinary investigations because he was not aware of the investigations. He also specifically does not agree with the charge of requiring a lawyer to promptly respond to any inquiry or discovery request made in connection with a disciplinary investigation, because he did not know of any such investigation. Mr. Kumar does not have full knowledge of the particulars of the other charges but agrees with the facts in paragraphs two through six of the Notice of Disbarment (attached to this Decision at Tab 2) and the first sentence of paragraph seven and, moreover, that he was disbarred in absentia from the Washington State Bar effective November 30, 2004.

-In April 2001 the Member legally changed his name in the King County District Court from Krishan Kumar to Paul White. The Member then officially changed his membership record with the Washington State Bar Association to reflect his new name.

-Shortly thereafter, in June 2001, the Member was disciplined and suspended for 30 days by Washington State Bar Association, as Paul White, for violations of the Rules of Professional Conduct.

-Approximately 6 months later, the Member submitted an application for enrolment in the Law Society of British Columbia using his former name Krishan Kumar. On this application he did not disclose his use of the name Paul White (his then legal name in the United States) or his membership and discipline history with the Washington State Bar Association. The application required that the Member declare under oath that the information provided by him was true, accurate and complete. The Member ultimately withdrew his application to the Law Society of British Columbia.

-In July 2002 the Member submitted an application to the Hawaii State Bar Association, again using the name Krishan Kumar. The application required that the Member answer all questions candidly, fully, frankly and truthfully, and completely. The Member did not disclose the fact that his legal name was Paul White, his membership in Washington State or his discipline history there under the name Paul White. Ultimately the Member withdrew his application in January 2003.

-In March 2003, the Member changed his name in the United States back to Krishan Kumar.

12. The Statement of Admissions then recites the fact that the Member submitted an application for admission as a Student-At-Law to the Law Society of Saskatchewan dated February 15, 2002. That application was made under the name "Krishan Kumar". On August 18, 2003 the Member was admitted as a member of the Law Society Saskatchewan as Krishan Kumar.

13. To summarize the chronology of events with respect to the name change, the Member changed his name from Krishan Kumar to Paul White in April, 2001. The Member's Application for Admission as a Student-At-Law to the Law Society of Saskatchewan was dated February 15, 2002 and was under the name "Krishan Kumar". In March, 2003 the Member changed his name back from Paul White to Krishan Kumar. On August 18, 2003 the Member was admitted as a Member of the Law Society of Saskatchewan as Krishan Kumar.

14. It is important to note that on the Member's Application for Admission as a Student-At-Law to the Law Society of Saskatchewan, the salient questions and responses with respect to the conduct unbecoming outlined in the first count are as follows:

- 1(a) Full Name: Krishan Kumar
  - 1(c) What other names, if any, have you used: Krishan Swaroop Vashisht
  - 1(d) Has your name ever been changed? If so, from what to what: Why and when? Shortened my name from Krishan Swaroop Vashisht to Krishan Kumar from 1995.
- 4.) Have you:
- (a) been suspended, disqualified, censured, or had disciplinary action instituted against yourself as a Member of any profession? No

At no point in the Law Society of Saskatchewan Application for Admission as a Student-At-Law does the Member indicate his change of name to Paul White or his June 2001 thirty day suspension by the Washington State Bar Association, as Paul White for violations of the Rules of Professional Conduct.

15. The salient questions and responses with respect to the Member's Commencement Report of August 18, 2003 are as follows:

Membership in other Law Societies or Bars:

Name of Society Bar Council of Ratasthan, India

Admission Date May 2, 1992

No mention of his Membership in the Washington State Bar appears in the August 18, 2003 Commencement Report.

## **SUBMISSIONS OF COUNSEL**

16. The Investigation Committee emphasized that the Member's conduct impacts the integrity of the profession and the ability of the Law Society of Saskatchewan to regulate its Members. Counsel for that Committee submitted that the application process, as with many other elements of becoming and being a lawyer, rely upon the "honour system" and that it is expected that the Members will be honest, frank and candid with the Law Society in all matters related to their practice. The Investigation Committee stated that given the gravity of the conduct in question, disbarment is the appropriate penalty.

17. The Member acknowledged that he should have disclosed his name changes, membership in the Washington State Bar and prior 30 day suspension from that Bar and that it was not appropriate for the Member to allow his judgment to be clouded by disappointment he experienced arising from what the Member thought was an unfair decision from the Washington State Bar. Counsel for the Member suggested that a suspension would be in order.

## **ANALYSIS**

18. The duty mandated to the Law Society is clearly set out in Section 3.1 of *The Legal Profession Act 1990* as follows:

Duty of society

3.1 In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:

- (a) to act in the public interest;
- (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
- (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.

It goes without saying that in situations where the Member has provided false or misleading information to the Law Society, the Society's ability to regulate the profession and to govern its membership in accordance with its statutory mandate is obstructed. Furthermore, regulatory bodies cannot protect the public in any meaningful way if they are not privy to accurate information concerning their Members. From the viewpoint of the Membership in a professional society, the issue is one of integrity. Members must be candid and honest in dealing with their professional society in order to enable the society to function. The importance of integrity in the practice of law cannot be understated and as stated in the Law Society of Saskatchewan's Code

of Professional Conduct commentary to Chapter 1, “Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession.” and “The principle of integrity is a key element of each rule of the Code.” It should be noted that it is not necessarily every false or misleading admission or omission that will automatically lead to severe penalties but serious breaches of integrity should result in serious penalties in order to maintain the integrity of the legal profession and the public’s confidence in it.

19. In their submissions, counsel for the Investigation Committee and the Member noted that there are only a few cases similar in fact to the case at bar which should be considered. It appears that many cases of a Member providing misleading information to his/her governing body are discovered prior to admission to that body and are dealt with in the admissions stream.

20. In support of its recommendation of disbarment, the Investigation Committee referred to the *Law Society of British Columbia v. Karlsson*, [2009] L.S.D.D. No. 6, which involved failure to disclose on a Membership Application that the Member had a previous criminal record stemming from when he was 18 years old. The result in that case was a suspension and an order to pay costs, however the panel in that case emphasized the integrity issue stating:

The practice of law is based on honesty. The profession could not function at all if judges, other lawyers, and members of the public could not rely on the honesty of lawyers. Anything that undermines the trust that society places on lawyers is a serious blow to the entire profession.

It is noted that the suspension imposed in that case was agreed upon.

21. The Sentencing Committee was also referred by the Investigation Committee to the *Law Society of British Columbia v. Power* [2009] L.S.D.D. No. 82. In that case the Member was disbarred and required to pay costs after having been found to have provided false information on his Application for Membership, the nature of which was omitting to advise whether or not the Member had undergone any formal or informal change of name or had used any other names. Under an alias, the Member had been previously charged with criminal offences although he was ultimately acquitted in relation to those offences. Mr. Power was disbarred and required to pay costs.

22. Finally, the Investigation Committee referred this committee to *Tarangle v. “The College of Physicians of Alberta”* [1976] A.J. No. 307, as authority for the proposition that revocation of membership is an appropriate outcome where the Member has lied during the admissions process.

23. The Member referred the Committee to the *Karlsson* case, as well as to the following cases, namely *Law Society of British Columbia v. Carr-Harris* [2002] L.S.D.D. No. 37, *Law Society of Saskatchewan v. Chetty*, *Law Society of Saskatchewan v. Armitage* [1997] L.S.D.D. No. 3 and *Law Society of Saskatchewan v. McLean*.

24. The “*Carr-Harris Case*” is of limited value as it dealt with the issue of the Member whose mental illness was an underlying factor in the commission of criminal sexual offenses and

the non-disclosure of that Member's significant history of mental illness and treatment on his Membership Application. The outcome in that case was a fine with no suspension because the B.C Law Society considered it necessary to have the Member continue practicing in order that he could in part provide compensation to the victims of the sexual offenses.

25. *Chetty* can be distinguished from the case at bar as although it involved an integrity offense, the Member in that instance misled clients by omitting to inform them that he was not authorized to practice in another jurisdiction. He was ultimately suspended for 60 days. While this is a serious integrity issue, this Committee is of the view that lying to regulators and lying to others are distinctly different issues.

26. The *Armitage* and *McLean* cases are likewise of limited value in the instant case as the elements of providing misleading information in those cases are examples of attempts to mislead others rather than attempts to mislead the member's regulatory body itself.

## DECISION

27. Charges of Conduct Unbecoming a lawyer were determined to be well founded in that the Member did provide false or misleading information to the Law Society of Saskatchewan in his Application for Admission and did provide false or misleading information to the Law Society of Saskatchewan in his Commencement Report. The nature of the Member's conduct is an aggravating factor in that such behaviour thwarts the ability of the Law Society to regulate itself effectively and discharge its statutory duty as set out in the *Legal Profession Act, 1990*. Other aggravating factors include the Member's prior history of similar behaviour with respect to false information provided to both the Law Society of British Columbia and the Hawaii State Bar as indicated in the Statement of Admissions. Additionally, the Member in his submissions to the Sentencing Committee did not display any remorse or insight into the gravity of his behaviour.

28. A mitigating factor in favour of the Member is the Statement of Admissions which precluded the need for a full hearing.

29. It is the opinion of this committee that the Member's integrity breaches are serious in that they were designed to conceal his identity to gain admission to a professional body. For reasons already canvassed in this decision, such behaviour cannot be tolerated and must be generally deterred.

30. It is therefore the decision of this Committee that the Member be disbarred and that he be directed to pay the cost of these proceedings in the amount of \$5,000.00. The payment of these costs shall be made on or before September 30, 2013 or such further period that may be directed by the Chairperson of Discipline upon application by the Member. The minimum period of time during which the Member is not eligible to apply for reinstatement shall be five years.

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 ”Robert R. Heinrichs  
 Robert R. Heinrichs  
 Chair, Discipline Committee

### **AGREED STATEMENT OF FACTS AND ADMISSIONS**

**In relation to the Formal Complaint dated December 14, 2009 [Tab 1] alleging that he:**

- 1. did provide false or misleading information to the Law Society of Saskatchewan in his February 15, 2002 Application for Admission as follows:**
  - a. he failed to use his proper or legal name on the application;**
  - b. he failed to disclose his change of name to “Paul White”; and**
  - c. he failed to disclose prior disciplinary actions against him as Paul White in Washington State.**

*Reference Code of Professional Conduct Chapter I.*

- 2. did provide false or misleading information to the Law Society of Saskatchewan in his August 18, 2003 Commencement Report by failing to disclose his membership in the Washington State Bar;**

*Reference Code of Professional Conduct Chapter I.*

- 3. did fail to disclose his 2004 disbarment in Washington State to the Law Society of Saskatchewan.**

*Reference Law Society of Saskatchewan Rule 149A(3).*

### **JURISDICTION**

31. Krishan Kumar (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (herein after the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”). Attached at **Tab 2** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s status.

32. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated December 14, 2009. The Formal Complaint is comprised of the three counts noted above. The Formal Complaint was served upon the Member through his legal counsel on December 15, 2009. Proof of service in the form of an Acknowledgement of Service is included with the Formal Complaint attached at Tab 1.

## **BACKGROUND OF COMPLAINT**

33. The Member has been a Canadian resident since March 1996 and has resided in Nepean Ontario since August 2003. While he is a member of the Law Society of Saskatchewan and is insured in Saskatchewan he has never practiced here.

34. The Member was admitted to the practice of law in India in 1992.

35. The Member was admitted to practice in the State of Washington in 1996.

36. The Member was admitted to the Law Society of Saskatchewan in 2003.

37. He has never been a Member of the Law Society of Upper Canada nor has he ever held a permit to practice in that jurisdiction. While residing in Ontario, the Member has been engaged only in the practice of Federal Immigration law and primarily on a pro bono basis.

38. On July 7, 2009 the Law Society began an investigation into the Member after being advised by officials with the Law Society of Upper Canada that the Member had been disbarred in Washington State on November 30, 2004 “in absentia”. The Notice of Disbarment from Washington State is attached at **Tab 3**. Mr. Kumar was not aware of the investigation by the Washington State Bar Association and did not have an opportunity to retain/request professional legal representation nor did he represent himself. In reviewing Tab 3, Mr. Kumar specifically does not agree to the charge of failure to cooperate in the disciplinary investigations because he was not aware of the investigations. He also specifically does not agree with the charge of violating ELC 5.3 (e), requiring a lawyer to promptly respond to any inquiry or discovery request made in connection with a disciplinary investigation, because he did not know of any such investigation. Mr. Kumar does not have full knowledge of the particulars of the other charges but agrees with the facts in paragraphs two through six of the Notice of Disbarment and the first sentence of paragraph seven and, moreover, that he was disbarred in absentia from the Washington State Bar effective November 30, 2004.

39. In April 2001 the Member legally changed his name in the King County District Court from Krishan Kumar to Paul White. The Member then officially changed his membership record with the Washington State Bar Association to reflect his new name.

40. Shortly thereafter, in June 2001, the Member was disciplined and suspended for 30 days by the Washington State Bar Association, as Paul White, for violations of the Rules of Professional Conduct. The discipline decision relating to the 30 day suspension is attached at **Tab 4**.

41. Approximately 6 months later, the Member submitted an application for enrolment in the Law Society of British Columbia using his former name Krishan Kumar. On this application he did not disclose his use of the name Paul White (his then legal name in the United States) or his membership and discipline history with the Washington State Bar Association. The application required that the Member declare under oath that the information provided by him was true, accurate and complete. The Member ultimately withdrew his application to the Law Society of British Columbia.

42. In July 2002 the Member submitted an application to the Hawaii State Bar Association, again using the name Krishan Kumar. The application required that the Member answer all questions candidly, fully, frankly and truthfully, and completely. The Member did not disclose the fact that his legal name was Paul White, his membership in Washington State or his discipline history there under the name Paul White. Ultimately the Member withdrew his application in January 2003.

43. In March 2003, the Member changed his name in the United States back to Krishan Kumar.

## **SASKATCHEWAN ALLEGATIONS**

44. The Member submitted an Application for Admission as a Student at Law to the Law Society of Saskatchewan dated February 15, 2002. The Application for Admission as a Student at Law is attached at **Tab 5**. As part of the application the Member declared that all of the information therein was complete and true in every respect.

45. On his February 15, 2002 application, the Member:

- a. did not disclose that his true legal name in the United States at the time of the application was Paul White;
- b. did not disclose his change of name in the United States; and
- c. did not disclose prior disciplinary actions against him as Paul White in Washington State which resulted in a 30 day suspension.

46. On August 18, 2003 the Member was admitted as a member of the Law Society of Saskatchewan as Krishan Kumar. On that same date he failed to disclose his Membership in the Washington State Bar Association to the Law Society in his Commencement Report. Attached at **Tab 6** is a copy of the Member's Commencement Report dated August 18, 2003.

## **PRIOR RECORD**

The Member has no other discipline history in this jurisdiction.