

subcommittee noted that it is fundamental to the practice of law that lawyers appearing in court are truthful and that they not mislead the court with their statements or evidence. The subcommittee explained to the lawyer that it was only the passage of time and the unintentional nature of his conduct under current review that explains why he is undergoing a conduct review for substantially the same conduct that was the subject of the prior citation. (CR 2014-18)

LAND TITLE ACT ELECTRONIC FILINGS

A lawyer failed to strictly comply with the *Land Title Act*, Law Society Rule 3-56(3.2)(b) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia* regarding electronic filings and the use of the lawyer's personal

continued on page 23

Credentials hearing

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

For the full text of hearing panel decisions, visit the [Hearing decisions](#) section of the Law Society website.

APPLICANT 6

Benchers review: June 5, 2014

Benchers: Herman Van Ommen, QC, Chair, Lynal Doerksen, Thomas Fellhauer, Craig Ferris, Benjimen Meisner, Phil Riddell and Elizabeth Rowbotham

Decision issued: August 27, 2014 (2014 LSBC 37)

Counsel: Jean Whittow, QC for the Law Society; Applicant 6 on his own behalf

BACKGROUND

In 1999, Applicant 6 left his law practice and his life in Canada to pursue a new life in France. Unfortunately, he left before all his affairs were in order, and this resulted in financial loss and inconvenience for former clients, the Law Society and his bank.

After experiencing financial difficulties in France, Applicant 6 returned to Canada in 2010 and worked as a realtor and as a taxi driver. In January 2012, he applied to be reinstated as a member of the Law Society.

A three-day credentials hearing was held in July 2013 to determine if Applicant 6 was of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court. The panel granted the application for reinstatement with conditions (2013 LSBC 34).

The Law Society applied for a review of the panel's decision.

DECISION

The hearing panel found that Applicant 6 left Canada in 1999 for the purpose of avoiding his financial difficulties. The hearing panel described this as an isolated incident. However, the misconduct did not end in 1999. The evidence before the hearing panel showed that Applicant 6 did nothing to make his creditors, former clients or the Law Society aware of

his whereabouts. He provided no evidence to the hearing panel that he did anything to address the wrong he committed in 1999. He made no attempts at restitution to any party to whom he owed money when he left.

The Benchers found it troubling that Applicant 6 left France after experiencing financial difficulties there and, curiously, destroying all his financial records before leaving, as he did when he left Canada.

The passage of 15 years would normally be a sufficient lapse of time in a case such as this. However, the mere passage of time itself does not restore one's character or repair the harm one causes. The lapse of time must be accompanied with other positive conduct.

As the hearing panel found, Applicant 6 "preferred his own financial interest to that of his client." There was no evidence on the record to show that Applicant 6 had addressed this character flaw other than his expression of remorse at the time of the hearing.

The reference letters put forward by Applicant 6 were very brief and general in nature; they did not express knowledge of his departure from Canada in 1999. Most, if not all, of these letters were from people to whom Applicant 6 would be in some degree of dependency. Letters of reference from people who were dependent on him, such as his clients, would have been a stronger determiner of character.

A former client who testified about Applicant 6's character had suffered no harm from Applicant 6's conduct. This witness only provided proof that Applicant 6 did a competent job; however, competency does not equate to good character.

If Applicant 6 had provided evidence from those he had harmed and who had perhaps forgiven him, or if he had shown that he had made some effort to repair the relationship, this may have been sufficient to satisfy the test of his rehabilitation.

Applicant 6 had the burden of proving on a balance of probabilities that he was a person of good character. The review panel concluded that the hearing panel erred in finding that Applicant 6 had met the onus to provide evidence that he was a person of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court.

The review panel ordered that the hearing panel's decision be set aside and Applicant 6's application for reinstatement be rejected. ❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Gary Russell Vlug
- John Edward Roberts
- Raffaele Crescenzo
- Thomas Paul Harding
- Martin Drew Johnson
- Vivian Chiang

For the full text of discipline decisions, visit the [Hearings reports](#) section of the Law Society website.

GARY RUSSELL VLUG

Vancouver, BC

Called to the bar: August 28, 1992

Discipline hearings: June 3 – 5, 2013 and April 28, 2014

Panel: Tony Wilson, Chair, Clayton Shultz and Gary Weatherill, QC

Decisions issued: February 26 ([2014 LSBC 09](#)) and September 5, 2014 ([2014 LSBC 40](#))

Counsel: Carolyn Gulabsingh for the Law Society; Gary Russell Vlug on his own behalf

FACTS

The Law Society issued a citation against Gary Russell Vlug that contained 11 allegations that relate to three family law matters.

Six of the allegations are related to Vlug's conduct in 2009 while representing a client in a child custody matter. A Supreme Court judge ordered that a Views of the Child Report be prepared by a doctor. The judge's ruling provided that the doctor should see all of the materials that were before the court to enable him to write his report. The judge did not order who was to provide those materials to the doctor.

Opposing counsel subsequently wrote the doctor, and copied Vlug, advising that he would deliver copies of his client's materials and suggesting Vlug do the same on behalf of his client.

It was later revealed in court that the doctor had only been provided information from opposing counsel and had not been provided with any documentation by Vlug. Vlug represented to the court that he was led to believe, in a telephone conversation, that opposing counsel had provided Vlug's client documents to the doctor. There was no such telephone conversation between the Vlug and opposing counsel.

Vlug prepared and commissioned two affidavits sworn by his client that represented to the BC Supreme Court and to the Court of Appeal that there was an active attempt by opposing counsel to deprive the doctor of Vlug's materials. Vlug knew or ought to have known that the representation was untrue or that the affidavit was not competently drafted.

Vlug represented to the Court of Appeal that he had not received a letter sent by opposing counsel advising that he was to provide his client's documents to the doctor when he knew or ought to have known that the statement was untrue.

He made discourteous and unfounded statements about opposing counsel to the Court of Appeal when he said that opposing counsel had "duped" him.

Vlug made a misrepresentation to the Law Society by claiming that the Court of Appeal had an "off record" discussion with opposing counsel respecting opposing counsel's apparent failure to deliver his client's affidavits and other materials to the doctor.

Three of the allegations in the citation related to Vlug's conduct concerning the representation of a client in a divorce proceeding.

On October 30, 2008, Vlug filed a Writ and Claim in the New Westminster Registry of the BC Supreme Court. The plaintiff in both was identified by his Canadian name and a copy of his marriage certificate was included in this filing. The only relief sought was "divorce."

On February 5, 2010, Vlug filed another Writ and Claim, but this time with the Vancouver Registry. The plaintiff was identified by his Chinese name. The relief sought in this filing was expanded to "divorce," "division of the family assets" and "other relief." The marriage certificate was not included in this filing. Vlug asserted to the court, on behalf of his clients, that it was impossible to obtain a certificate of the marriage.

There is no plausible excuse for Vlug filing in Vancouver without the marriage certificate and under a wrong name. He misrepresented the existence of the then-active New Westminster proceeding and also made an untrue statement to the court about the marriage certificate.

The remaining two allegations in the citation related to Vlug's conduct while representing another client in a family law matter in 2009. Vlug added documents to a previously prepared and sworn financial statement and prepared and commissioned an affidavit on behalf of his client that contained a statement that he knew was false.

DETERMINATION

The panel found that Vlug had committed professional misconduct in respect of all 11 allegations arising from three separate complaints, all by lawyers. He knowingly misrepresented facts while appearing before judges of the BC Supreme Court and the Court of Appeal, misled the Law Society, attached documents to an affidavit after it had been sworn, and acted with incivility in dealing with fellow lawyers.

The panel found Vlug's conduct was egregious and beneath the standards expected of members of the profession. It was of significant concern to the panel that Vlug failed to acknowledge his misconduct.

Vlug's professional conduct record includes one prior citation, four conduct reviews and a practice review.

DISCIPLINARY ACTION

The panel determined it was critically important that Vlug, the legal profession in general and the public understand that Vlug's behaviour – particularly his lying to the court, the Law Society and the panel – was not acceptable and should result in significant sanctions.

The panel found Vlug's conduct amounted to professional misconduct and ordered that he:

1. be suspended from the practice of law for six months; and
2. pay \$20,000 in costs.

During final submissions, Vlug argued that the Law Society had delayed its investigation and prosecution of six of the allegations against him, a matter on which the panel decided the parties could provide written submissions after the conclusion of the oral hearing.

The panel found that the delay was not inordinate or unacceptable, did not prejudice Vlug and was, in large part, caused by Vlug himself. The application to dismiss the citation as a result of an abuse of process involving delay in proceeding on six of the allegations was dismissed.

Vlug has applied for a review of the decision, and a stay of suspension has been granted until April 30, 2015.

JOHN EDWARD ROBERTS

Langley, BC

Called to the bar: November 10, 1995

Discipline hearing: July 16, 2014

Panel: Martin Finch, QC, Chair, William Everett, QC and Clayton Shultz

Oral reasons: July 16, 2014

Decision issued: September 8, 2014 ([2014 LSBC 42](#))

Counsel: Kieron Grady for the Law Society; John Edward Roberts on his own behalf

FACTS

In October 2013, the Law Society received a complaint from a former client and business partner of John Edward Roberts. The complaint alleged various forms of conflict of interest and failures to advise, misrepresentations regarding the structure of business, unauthorized withdrawal of funds from the business, attempted backdating of loan documents and failure to report a claim promptly to the Lawyers Insurance Fund.

On December 11, the Law Society wrote to Roberts advising him of the complaint and requesting written confirmation as to whether he had notified the Lawyers Insurance Fund of a court action that had been commenced against him by the complainant. Roberts responded by email confirming that he had notified the Lawyers Insurance Fund of the court action.

On December 18, the Law Society emailed Roberts to ask what date he had notified the Lawyers Insurance Fund of the court action. He did not reply to this email; however, he replied to a subsequent email advising that his letter to the Lawyers Insurance Fund was sent on December 12.

On February 19, 2014, the Law Society emailed Roberts to request

information related to:

- the establishment of the business with his partner;
- the operation, sale and winding down of the business
- allegations of a backdated signature on a general security agreement; and
- transfer of funds in relation to the business.

When Roberts did not respond by the deadline, the Law Society re-sent the letter. Roberts replied on March 21 indicating that he did not receive the original letter of February 19. He also advised that he was taking steps to close his law practice as a sole practitioner, was seeking part-time status for insurance, and may or may not apply for non-practising status in the future. He intended, in the short-term, to take time off from the practice of law due to personal matters and to evaluate his future.

On April 4, Roberts left a voice message to indicate he would not be able to deal with the letter's substantive matters by the deadline. At the date of hearing, July 16, 2014, Roberts had not responded to the requests contained in the Law Society's letter of February 19.

ADMISSION AND DISCIPLINARY ACTION

Following a protracted period of time with continued requests, Roberts failed to properly or completely respond to inquiries from the Law Society, even in the face of a citation hearing.

Roberts' failure to comply with the Law Society's requests appeared to the panel to be, in part, the result of his ongoing process of closing his practice and changing his status to either non-practising or part-time. It was not the product of financial incapacity, but rather lack of time and attention. While his heavy commitments to his family and his work in the construction industry may constitute an explanation, it did not constitute an excuse. A lawyer must respond to the requests of the Law Society in a prompt and complete fashion when an investigation is in progress.

The panel considered Roberts' professional conduct record as an aggravating factor. A citation issued in 2011 related to Roberts' taking default judgment against a represented party and failing to respond to communications from opposing counsel.

The panel accepted Roberts' admission of professional misconduct and ordered that he:

1. pay a \$2,000 fine;
2. pay \$1,417.38 in costs; and
3. provide a complete and substantive response to the inquiries made by the Law Society in its letter dated February 19, 2014.

RAFFAELE CRESCENZO

Vancouver, BC

Called to the bar: September 25, 1987

Ceased membership: January 1, 2011

Counsel: Mark Andrews, QC and Gavin Cameron for the Law Society; Raffaele Crescenzo on his own behalf

FACTS

On August 6, 2009, the Law Society gave notice to Raffaele Crescenzo that a routine compliance audit of the books and records of his practice was scheduled for September 22, 2009.

Crescenzo requested a meeting with the Law Society so that he could self-report trust account issues. He attended this meeting with his counsel and he admitted that during the preceding 18-month period, he took approximately \$150,000 from his pooled trust account when he was not entitled to these funds. He provided information about his circumstances at the relevant time period. Crescenzo, his wife and son have all had serious health issues. He reported that these issues impaired his judgment during that time. He was also on prescription medication and developed an addiction to the drugs. He sought assistance from the Lawyers Assistance Program for his addiction. Two years ago, Crescenzo was indebted to the Canada Revenue Agency for \$88,000. Approximately 18 months ago, he started using funds from his trust account with the intention of repaying the money, but had not replaced the funds.

When Crescenzo received notice of the upcoming compliance audit, he realized the misappropriation would come to light and he consulted a bankruptcy trustee. He filed for bankruptcy on September 16. The Law Society was listed as an unsecured creditor for \$150,000. He and his wife were in the process of selling their house and he proposed to pay \$100,000 to the Law Society from the proceeds of the sale, after other secured creditors, including the CRA, were paid.

On September 17, Crescenzo signed a voluntary undertaking to cease practice and consented to the appointment of a custodian. By order of the BC Supreme Court, the Law Society was appointed as custodian over Crescenzo's law practice.

The Law Society conducted an audit under Rule 4-43 of Crescenzo's books, records and accounts and an external accountant was retained to reconcile his trust accounts and reconstruct the client trust ledger balances. Based on a reconciliation of all client ledgers sitting in a negative position, it was determined that Crescenzo's client trust liabilities totalled \$693,799.52. The pooled trust account had a balance of only \$549,759.18, resulting in a global trust shortage of \$144,040.34.

The Law Society identified funds withdrawn by Crescenzo over and above the global trust shortage when individual client files were reviewed, including matters where the client trust ledger had a positive balance.

The evidence obtained during the investigation established that, between December 2006 and September 2009, Crescenzo took funds in the amount of \$156,309.85 held in trust on behalf of his clients when he was not entitled to the funds.

ADMISSION

Crescenzo admitted that he misappropriated \$156,309.85 held in trust on behalf of his clients, by withdrawing the funds from his pooled trust account by cheques made payable to himself when he was not entitled to the funds. He admitted that his conduct constituted professional misconduct. His admission was made to the Discipline Committee under Rule 4-21. This rule provides for a process whereby a respondent can admit misconduct without a hearing. At the time of the admission,

Crescenzo's membership in the Law Society had ceased and he had been prohibited from practising law since September 17, 2009.

The Discipline Committee accepted Crescenzo's admission and his undertaking not to apply for reinstatement to the Law Society, amongst other things, for a period of four years commencing on September 25, 2014.

Crescenzo will not be eligible to apply for reinstatement with the Law Society until September 25, 2018. If he chooses to apply at that time, he will have to convince a credentials hearing panel that he is fit to practise and is of good repute. The Discipline Committee believes the misconduct in this case is very serious but the Committee also believes the minimum nine years Crescenzo will not have practised, together with the future oversight of the Credentials Committee, properly protects the public. The Committee considered expert medical reports and acknowledged the severe medical conditions suffered by Crescenzo, his wife and adolescent son. The Committee does not accept that medical conditions, whether suffered by him or his family members, in any way excuses his actions, but the serious medical issues are mitigating circumstances that contributed to the Committee's decision to accept the admission of misconduct under Rule 4-21.

TRUST PROTECTION COVERAGE

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss. Based on the circumstances described in allegations 1.1, 1.2, 1.4 paragraph 33, 1.4 paragraph 44, 1.10, 1.27, 1.30, 1.37 and 1.38 of an admission made under Rule 4-21 of the Law Society Rules, nine TPC claims were made against Crescenzo and the amounts of \$7,206, \$958, \$1,346, \$1,994, \$3,792, \$195, \$9,803, \$510 and \$701 paid respectively. A tenth TPC claim was made in relation to the circumstances described in allegation 1.39 and the allegations relating to funds taken from the pooled trust account, and the amount of \$159,070 was paid. Crescenzo is obliged to reimburse the Law Society in full for the amount paid under TPC. For more information on TPC, including what losses are eligible for payment, please go to [Trust Protection Coverage](#).

THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 3, 1990

Discipline hearing: May 15, 2014

Panel: Elizabeth Rowbotham, Chair, Karen Nordlinger, QC and Thelma Siglos

Decision issued: September 29, 2014 ([2014 LSBC 45](#))

Counsel: Kieron Grady for the Law Society; Gerald A. Cuttler for Thomas Paul Harding