## IAN DAVID REITH

Whistler, BC

Called to the bar: May 19, 1989

Discipline hearing: October 19, 2015

Panel: David W. Mossop, QC, Chair, Carol Gibson and Peter D. Warner, QC

Decision issued: November 12, 2015 (2015 LSBC 50)

Counsel: Patrick M. McGowan for the Law Society; Ian David Reith on his own behalf

### FACTS

Ian David Reith was employed for the first 21 years of his practice by a company in Whistler that mainly sold time-sharing properties. He left the company in January 2010 to run a private practice focused on real estate conveyancing. He continued to assist his previous company occasionally in the transfer of time-share units.

A Washington state company acquired a 2/51 interest in a time-share from the Whistler company. When the president of the Washington state company died in 1997, his widow wrote to the Whistler company to the attention of Reith advising him of her husband's death. A memorandum from the Whistler company's legal department was issued directing that ownership be transferred to the widow's name. No such transfer occurred, and the fractional interest remained in the Washington state company's name until 2011.

In January 2010, the widow spoke with Reith and advised that she wished to transfer the 2/51 interest in the time-share to her nephews. Reith sent her two land title documents to be executed and a request for $556.85 payable to him in trust for property purchase tax, fees and disbursements. The widow executed the land title documents before a notary public in Washington and returned these documents to Reith along with a cheque in the requested amount.

In May 2010, Reith received an email from an employee of the Whistler company, referring to the Washington state company as a defunct company. Reith responded that they would nevertheless submit the transfer to the land title office to see if it could sneak through the examiners. In July 2010, Reith emailed one of the nephews, the employee and another employee of the Whistler company stating a similar message, that the Washington company was a defunct company and he had told the widow they would see if the transfer sneaks through. He promised to contact the examiner to check on its status, though he did not file any documents with the land title office until six months later.

In January 2011, Reith wrote to the nephew again to say he was waiting for confirmation from the widow and/or the nephews regarding how they wanted the new ownership to show. One of the nephews emailed Reith and instructed that the interest be transferred solely to the widow. Reith took no steps to confirm the instructions with the widow. She did not advise Reith that she authorized her nephew to instruct him on her behalf, nor did she tell Reith that she wanted the interest to be transferred into her own name.

Reith filed the transfer and lease documents in the land title office, without the signature of the widow. Reith did not advise her of the financial obligations the sublease would impose on her. Funds were transferred from Reith's trust account to his non-trust account to pay conveyance costs, but Reith did not prepare or deliver a bill to her.

### ADMISSION AND DISCIPLINARY ACTION

Reith admitted to the following professional misconduct: he engaged in questionable conduct that casts doubt on his professional integrity; he failed to provide a quality of service that would be expected of a competent lawyer; he acted in a conflict of interest by acting for the various parties involved; and he withdrew funds from his trust account without preparing and delivering a bill to his client.

The panel emphasized the important role of lawyers in ensuring the integrity of the land title system in British Columbia and in safeguarding the system against fraud. The panel took into consideration that Reith was genuinely trying to help the widow get the title transferred and he did not gain anything personally by his misconduct. The panel also considered his financial situation, professional conduct record, and other precedent cases to assess the appropriate penalty.

The panel ordered that Reith pay:

1. a fine of $3,000; and
2. $2,000 in costs

## JOHN DAVID BRINER

Vancouver, BC

Called to the bar: May 26, 2003

Ceased membership: October 16, 2013

Disbarred: November 30, 2015

Discipline hearing: December 9, 2014 and June 30, 2015

Panel: Thomas Fellhauer, Chair, Dr. Gail Bellward and Richard B. Lindsay, QC, P.Eng.

Decision issued: March 31, 2015 (2015 LSBC 11) and November 30, 2015 (2015 LSBC 53)

Counsel: Alison Kirby for the Law Society; no one appearing for John David Briner (facts and determination) and John David Briner on his own behalf (disciplinary action)

### FACTS

John David Briner was retained by a client in September 2011 to act in relation to a $50,000 loan. His client advanced the loan to the borrower through Briner's trust account.

On December 16, 2012, Briner's client emailed a payout statement to the borrower requesting payment of $53,164.44 to Briner, who would in turn pay out the financial institution and take care of a discharge

of mortgage. Two days later, the borrower's lawyer couriered a letter and bank draft for $50,439.44 payable to Briner in trust.

Briner forwarded his client's email to his assistant and deposited the funds to his pooled trust account. He did not allocate the deposit to his client's trust ledger. He instead directed funds to another client's trust ledger, which was in overdraft of $11,500.47. Briner transferred $10,000 of the funds to his general account and made multiple transfers to third parties from the other client's ledger. Within four days after the deposit, Briner had withdrawn almost the entire amount from the trust account and the remaining balance was only $391.99.

On January 20, 2013, Briner sent a letter to the borrower's lawyer to advise that litigation would ensue if the remaining balance of $2,725 was not paid to his firm in trust by January 25, 2013. Briner filed a notice of claim against the borrower in small claims court. In March 2013, Briner's client sent an email to him and asked whether he was still holding the payout amount in his trust account. Briner responded but did not answer the client's question.

The funds were never paid to Briner's client. No funds remained in the trust account when a custodian was appointed for Briner's practice in October 2013.

Briner did not attend the hearing on facts and determination; he did not seek an adjournment or provide evidence of his unavailability. Briner emailed that he did not object to the hearing proceeding in his absence.

## DETERMINATION

The Law Society sent a Notice to Admit to Briner, to which he provided no response. As a result, he was deemed to have admitted the documents and facts set out in the notice.

Briner is deemed to admit that he misappropriated some or all of the $50,439.44 he received in trust for his client, and this constitutes professional misconduct. The panel agreed that misappropriation of client funds constitutes professional misconduct. The panel also found that Briner committed professional misconduct in failing to cooperate in an investigation and in breaching the Law Society trust accounting rules.

## DISCIPLINARY ACTION

At the hearing on disciplinary action, Briner wished to submit additional evidence. Although the appropriate forum for this would have been at the initial hearing, the panel agreed to swear in Briner and allow him to provide evidence on his own behalf.

Briner stated that the misappropriation was not deliberate and it was a one-time accounting error. He testified he was going through a number of personal challenges and had gotten behind in maintaining his accounting records. He said he accidentally credited the funds incorrectly when catching up on his accounting.

He stated his prior disciplinary record consisted solely of a conduct review. He also submitted that his client was reimbursed by the Lawyers Insurance Fund and he has since reimbursed the insurance fund in full, so there was no long-term impact on the client. He submitted he gained no advantage because the funds were disbursed to a third party and he had to reimburse the Lawyers Insurance Fund with his personal funds. He claimed he has been helpful throughout the disciplinary process.

Under cross-examination, Briner repeatedly said he did not recall events during this period. The panel found the circumstances show that Briner would have been aware of the payment of $50,439.44 into his trust account and that there was a dispute about the balance owing. When his client specifically asked if he had the funds in trust, he did not reply and did not take the opportunity to reimburse his client. The panel found it difficult to believe that Briner would not have known of his accounting errors.

In the period following the errors, Briner had numerous opportunities to correct his errors. He took no further action to correct his errors or advise his client. When a custodian was appointed, Briner signed an undertaking to the Law Society to resign from membership and to cooperate with investigations. The panel found Briner took a passive role in the Law Society's investigations, failing to respond to numerous inquiries and failing to attend the hearing on facts and determination.

The panel found that Briner gained a clear advantage by using his client's trust funds to cover an overdraft in another client's trust account. This enabled him to bill his other client and pay his own general account out of trust and use those funds to pay third parties.

The panel found that Briner's testimony did not affect its determination on each of the three allegations at the hearing on facts and determination. He presented no compelling evidence that any mitigating factors were significant enough to overcome a decision to disbar. The panel referred to other hearing decisions that have disbarred lawyers who misappropriated funds and emphasized anything short of disbarment would compromise the public's confidence in the profession.

The panel ordered that Briner be disbarred.

## TRUST PROTECTION COVERAGE PAYMENT

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 to reimburse the claimant, on the lawyer's behalf, for the amount of the loss.

Based on the circumstances described in relation to the allegation of misappropriation in *Law Society of BC* v. *Briner*, 2015 LSBC 11, a TPC claim was made against John David Briner and the amount of $51,097.44 paid. Briner was sued for the payment made, and the full

amount was recovered. For more information on TPC, including what losses are eligible for payment, please go to Trust Protection Coverage on the Law Society's website.

## GARY RUSSELL VLUG

Vancouver, BC

Called to the bar: August 28, 1992

Bencher review: May 1 and June 10, 2015

Benchers: Kenneth Walker, QC, Chair, Haydn Acheson, Satwinder Bains, Pinder Cheema, QC, Jamie Maclaren and Elizabeth Rowbotham; A. Cameron Ward (did not participate in the decision)

Decision issued: December 31, 2015 (2015 LSBC 58)

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

### BACKGROUND

A hearing panel found that Gary Russell Vlug committed professional misconduct in respect of 11 allegations arising from three separate complaints, all by lawyers. The panel found that Vlug knowingly misrepresented facts in court, 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 that Vlug failed to acknowledge his misconduct.

The panel determined that Vlug's conduct amounted to professional misconduct and ordered that he be suspended for six months and pay $20,000 in costs (facts and determination: 2014 LSBC 09; disciplinary action: 2014 LSBC 40; discipline digest: Winter 2014).

Vlug applied for a review of the decision. A stay of suspension was granted and extended pending appeal or further order of the court (2014 LSBC 48 and 2015 LSBC 08).

### DECISION OF THE BENCHERS ON REVIEW

Vlug applied to introduce fresh evidence at the review. The Law Society opposed, arguing that it did not meet the fresh evidence test. The Benchers considered previous cases and the nature of the new evidence and dismissed the application (2015 LSBC 59).

The Benchers confirmed the hearing panel's findings of professional misconduct for seven of the 11 allegations in the citation.

Three of the allegations arose from one family law matter. The hearing panel had found that Vlug committed professional misconduct by preparing and filing court documents that he knew or ought to have known were improper and misleading.

The Benchers, however, found that there was an absence of specific and compelling evidence that Vlug knew his filings and statements were improper and misleading and reversed the hearing panel's findings of professional misconduct for these three allegations.

The Benchers were unable to reach a majority decision on one allegation of misleading the court and the Law Society where the hearing panel had rejected Vlug's evidence concerning a phone conversation. Three Benchers (Acheson, Cheema and Maclaren) would have upheld the hearing panel's finding that, on a balance of probabilities, Vlug's evidence was not credible. Three other Benchers (Walker, Bains and Rowbotham) would have reversed that decision, as they were not satisfied that the hearing panel properly considered all the evidence.

With respect to disciplinary action on the findings of professional misconduct, the Benchers ordered that Vlug:

1. be suspended for seven weeks;
2. take a remedial program in family law to the satisfaction of the Practice Standards Committee;
3. pay costs of $5,000 plus disbursements for the review; and
4. pay costs of $12,500 for the hearing.

*Vlug has filed a Notice of Appeal to the BC Court of Appeal.*

## CATHERINE ANN SAS, QC

Vancouver, BC

Called to the bar: May 19, 1989

Discipline hearing: June 23 to 27, 2014 and September 24, 2015

Panel: Dean Lawton, Chair, Dan Goodleaf and Donald Silversides, QC

Decisions issued: April 20, 2015 (2015 LSBC 19) and January 25, 2016 (2016 LSBC 03)

Adjournment application: July 29, 2015 (2015 LSBC 38)

Counsel: J. Kenneth McEwan, QC and Rebecca Robb for the Law Society; Peter Wilson, QC and Meagan Richards for Catherine Ann Sas

### FACTS

In March 2010, Catherine Ann Sas ceased practising as a sole practitioner and joined a larger law firm. In early 2011, she still held funds in trust that had been received from clients when she was practising as a sole practitioner. There were several outstanding files and unbilled time and disbursements that needed to be dealt with. She embarked on a file review project to deal with those files, including the unbilled time and disbursements and the monies held in trust.

In March and August 2011, Sas improperly billed 22 of her clients for disbursements that were not incurred and withdrew a total of $1,947.39 held in trust for those clients to pay to her law corporation. Sas knew the funds were the property of her clients, and she had not been authorized to withdraw their funds. During the same period of time, Sas also withdrew an additional $9,068.53 held in trust for 21 clients to pay bills for amounts she charged them, without immediately sending bills to any of those clients, contrary to Rule 3-57(2).

Following a compliance audit, the Law Society drew these actions to Sas's attention in April 2012. Sas did not take corrective action until November 2012. She either repaid from her own funds all or part of the monies taken from trust and either paid these monies to the clients or paid them to her new firm in trust for the clients. In other cases, she rebilled the clients a file-closing fee to replace bills previously issued for disbursements that were not incurred. For clients whose funds were previously taken to pay bills, she prepared and sent bills backdated to the dates of the original billings in 2011.

### DETERMINATION

The panel found that Sas's primary motive in wrongfully withdrawing funds held in trust for clients was to clean up the accounting records relating to her sole practice and to wind up that practice. Although the total amount misappropriated was less than $2,000 and had little impact on her clients, Sas gained a significant benefit by expediting the process and reduced the inconvenience and cost of dealing with the funds appropriately.

The panel determined that these actions constitute professional misconduct and breaches of the *Legal Profession Act* or the Law Society Rules.

Sas appealed the decision on Facts and Determination to the BC Court of Appeal. The appeal was heard on January 15, 2016, and the decision is under reserve.

### APPLICATION TO ADJOURN

Sas applied to the hearing panel to adjourn the disciplinary action phase of the citation hearing pending her appeal to the BC Court of Appeal. The panel was not satisfied that Sas would be prejudiced or deprived of a fair trial if the adjournment was not granted, while the public interest would be served by the timely determination of the issues in the proceeding. The adjournment was refused, and the hearing on disciplinary action went ahead as scheduled.

### DISCIPLINARY ACTION

The panel considered the seriousness of the conduct and aggravating and mitigating factors, 46 letters of support tendered by Sas, letters from Sas and her accountant, and case authorities that included sanctions imposed in prior similar cases. The panel took into account that Sas did not have any prior conduct record.

At the time of her misconduct, Sas had been practising as a lawyer for almost 22 years and was a Bencher of the Law Society. She knew what her obligations were with respect to the monies held in trust for her clients.

The panel concluded that protection of the public is paramount in this case, as it is in every case where a lawyer has committed professional misconduct by misappropriating monies held in trust for clients. The panel ordered that Sas:

1. be suspended for four months; and
2. pay costs of $32,038.49.

*Sas has filed a notice of review following the disciplinary action decision.*

## DOUGLAS EDWARD DENT

100 Mile House, BC

Called to the bar: September 14, 1976

Discipline hearing: March 23-25 and December 21, 2015

Panel: David Mossop, QC, Chair, Bruce LeRose, QC and Clayton G. Shultz

Decisions issued: July 24, 2015 (2015 LSBC 37) and February 12, 2016 (2016 LSBC 05)

Counsel: Kieron Grady for the Law Society; Ravi Hira, QC and Jason Jaffer for Douglas Edward Dent

### FACTS

On February 1, 2011, the vendor and the purchaser of a large tract of land in interior British Columbia showed up unannounced at Douglas Edward Dent's office without an appointment. The vendor and purchaser wanted the deal to go through as quickly and cheaply as possible and wanted Dent to act for both parties. The agreement included an easement as one of a number of provisions. The deal went through and no one suffered loss or harm.

The purchasing corporation was owned 50/50 by a female partner and a male partner. The female purchaser was not satisfied with the accounting of monies paid for the purchase of the property and sought an accounting from Dent. Dent stated that he represented the vendor only and she was not entitled to his accounting records. The vendor wrote a letter of complaint to the Law Society. Following an investigation, the substance of the original complaint did not result in any citation. However, the investigation revealed three matters that led to a citation: Dent acted for both parties, contrary to the *Professional Conduct Handbook* then in force; Dent did not advise the purchasers he was not protecting their interests; and Dent breached an undertaking.

Dent claimed that he agreed at the meeting in February 2011 to act only for the vendor, a long-standing client of his, and he could not act for both parties as the sale had a commercial component; however, he also agreed to prepare documents normally prepared by the solicitor for the purchaser. Letters sent or drafted by Dent between February and June 2011 indicated he believed he was only acting for the vendor. Between the original meeting and the closing date, the vendor and the purchaser agreed to an option to sell the property at a reduced price. Dent prepared documents for the option for the vendor, which was used to ensure that, if the deal did not go through, the vendor would keep the amount paid for the option. Dent did not give legal advice to either the female purchaser or the male purchaser, though he did have option papers signed by them in his office.