2008 LSBC 31
Report issued: September 29, 2008
Citation issued: February 1, 2008

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Gregory John Lanning

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: June 11, 12 and 23, 2008

Panel: William Jackson, Chair, Leon Getz, QC, David Mossop, QC

Counsel for the Law Society: Jean Whittow, QC and Mathew Good (student)
Appearing on his own behalf:

Background

[1] On February 1, 2008 a citation was issued against the Respondent pursuant to the *Legal Profession Act*. The relevant provision of the citation as amended reads as follows:

> 1. In the course of your representation of your client LG in a family matter, you conducted yourself in an unprofessional manner towards the unrepresented opposing party, NG, and in particular in your correspondence to her during the period between August 2006 to December 2006.

[2] The citation was duly served upon the Respondent.

[3] The requisite standard of proof in discipline proceedings is succinctly stated in the discipline decision of *Law Society of BC* v. *Martin*, 2005 LSBC 16 at paragraph 137:

> a. The onus of proof throughout these proceedings rests on the Law Society to prove the facts necessary to support a finding of professional misconduct;
>
> b. The standard of proof is higher than the balance of probabilities but less than reasonable doubt. The standard is a civil standard but rises in direct proportion to the gravity of the allegation and the seriousness of the consequences.

Facts

[4] LG and NG were married in 1998 and had a daughter in 1999. They separated in 2004, but apparently maintained a relationship. They negotiated a separation agreement dated May 2006. In June 2006 issues

arose, and NG filed various applications in BC Provincial Court. NG obtained an *ex parte* restraining order on July 10, 2006, a term of which was that it was to expire July 26, 2006. NG was self represented.

[5] The Respondent is a sole practitioner. His practice consists mainly of family law and criminal law matters. He takes on significant numbers of legal aid matters. He described himself as a lawyer of last resort. The Respondent has no legal secretary or assistant.

[6] The Respondent was retained by LG through a legal aid referral. The evidence before the Panel was that LG had some mental disorder.

[7] NG and the Respondent first met when he approached her where she worked, just prior to the July 26, 2006 application concerning the continuation of the restraining order. On July 26, Crabtree, PCJ ordered the July 10, 2006 Order be continued until August 2, 2006, when the matter was next set..

[8] Although there were oral communications between NG and the Respondent, the Respondent decided early on that the best way to communicate with NG was through letters.

[9] Prior to August 2, 2006, NG contacted LG and advised that she would not seek to continue the restraining order and would not attend Court. On August 2, 2006, the Respondent appeared in Court, with LG. The Court did not renew the restraining order.

[10] Following the application, on August 3, 2006, the Respondent wrote to NG. She replied August 4, 2006, raising five points, including a request for a permission form to enable her to take her daughter to Washington. She concluded:

> Finally, I would appreciate it if in the future you did not refer to [daughter's name] as " the girl" . Her name is [name].
>
> Thank you for your prompt attention to this matter.

[11] The Respondent wrote to NG on August 14, 2006 and took issue with NG's correspondence. He repeated words and phrases from her letter:

> ...Since you promote a high standard for address by me, you must then abide by its strictness yourself. Thank you for your prompt attention in correcting yourself as pedantically as you presume to correct me.
>
> Thank you for your prompt attention... (repeated)

[12] The Respondent's evidence is that his purpose in this and later correspondence was part of a " brilliant but unorthodox strategy" to " squelch" , " defeat" , or " crush" NG, in order to advance his client's interest in securing access and, later, a divorce.

[13] The Respondent did not address NG's request (in her August 4 letter) for written permission to take her daughter to Washington. She then telephoned the Respondent on August 15, 2006. The Respondent and NG agree that he told her that the permission would be provided " in due time" . However, NG felt, based upon the rest of that conversation, that she might not receive such consent in time for the upcoming holiday.

[14] The Respondent then wrote to NG by letter dated August 16, 2006. The letter repeats criticism of NG's failure to appear in Provincial Court.

[15] On August 16, 2006, NG filed an application requesting the matters she had written about - a financial statement, maintenance for extraordinary expenses and permission to travel, returnable August 23, 2006.

She attempted to fax it to the Respondent and delivered it to LG. The Respondent then wrote a letter dated August 17, 2006. Notable passages are:

> It is interesting that you served both LG AND me, albeit in different ways. Surely you know that this duplication was gratuitous.
>
> I enclose LG's release so that your child (my term is literally correct) can go to Washington. It is interesting that you delayed twelve days in disclosing where exactly you wished to go - and why. Previously, you had told LG about visiting relatives in Alberta.
>
> I will later give you legal advice on what an applicant must disclose in order to seek an order for day care expenses.

[16] While the Respondent provided the requested permission form, he persisted in referring to " the child" although he had been specifically asked to call [daughter] by name.

[17] On August 17, 2006, NG wrote to the Respondent regarding her last three letters from him. She expressly declined the Respondent's offer of legal advice.

[18] On August 23, 2006, the application was adjourned to October 13, 2006. The Respondent and NG had little communication during that time. By letter dated October, 11, 2006, the Respondent indicated that he would seek to adjourn generally NG's application for access.

[19] The Respondent and NG attended Provincial Court on October 13, 2006, before Raven, PCJ. The Court ordered that neither party could remove the child from British Columbia, and adjourned the applications for maintenance and access to November 29, 2006. NG testified that Raven PCJ encouraged the parties to resolve matters.

[20] On October 17, 2006, NG sent a letter with a settlement proposal.

[21] During this time period, NG was exchanging unpleasant emails with LG and his new girlfriend, DO. Some of these emails were sent to the Respondent along with a letter of October 30, 2006. In these emails, NG had written " I will win this" and said that she had " proven myself better at court appearances than he is." As indicated, these emails were forwarded to the Respondent. NG had never intended that these emails be sent directly to the Respondent.

[22] The Respondent undoubtedly found these emails very insulting. He sent this correspondence to NG, along with his letter dated October 31, 2006. The Respondent's letter responds in part to these emails. He addressed his letter to:

> N (" will win this") G

[23] The Respondent used variations on the phrase " I will win this" in this and subsequent letters, incorporating the quotation into the address line, until February 2007. His evidence was that it was his intent to " hold the mirror up to nature." There was no purpose in advancing the matter by use of the quotes in the middle of NG's name. It was name-calling, born out of the Respondent's personal frustrations.

> Perhaps you can prove yourself *better at negotiating*.
>
> Your eighth paragraph of your October 17 letter could have been *written better*. It is demonstratively false that you are " to receive in lieu of the child support" some part " of his ICBC settlement" . Child support and ICBC settlement are not linked at all by paragraph 11 of the Separation Agreement. Paragraph 11 is so badly written that it says vaguely, " The amount of this payment is to be determined

later." How much later? Determined by whom? Determined how?

Your self-confident letter goes on to " propose" $2500 or 10% of the award - but all you can do is merely " propose" . *The badly written paragraph 11 gives you no power to dictate*. In the end, LG will propose, too. Besides, this matter is unconnected to divorce.

I trust you can also *prove yourself better* at simple arithmetic.

Be advised that I will not consider discussing being your mother's debt collector until such time as LG is divorced. She is rudely presumptuous.

As a result of your *better court appearances*, you have restrained yourself from taking [daughter] (aka your child) into Washington State. LG need no longer repeat his past kindness of granting his permission for you to take [daughter] (aka your child) abroad.

[emphasis added]

[24] On November 2, 2006, the Respondent sent funds for child support, along with a further letter in which he continued the form and content of that of October 31.

Mrs. N (" I will win") G

With regard to " special or extraordinary expenses" that you claim, you can make your court appearances even better than they have been (when you show up) by reflecting on sections 7(1) and 7(2) of the Federal Child Support Guidelines.

In order for the judge to calculate that proportion, it was necessary for you to make financial disclosure, as you finally after [sic] I kindly instructed you on this aspect of the law.

In turn, you should respond with equal kindness, for this will be a true sign or [sic] your smartness and strength.

There should be no reason for you to contact DO and goad her sexually. No one will think highly of you for it - and even for yourself the fun will wear off.

[25] This letter is most similar to the October 31 letter, although it incorporates a few more phrases from NG's email and earlier correspondence. Neither letter contains any direct or firm request that NG communicate only with the Respondent regarding the legal matters. It appears that LG, his girlfriend and NG continued to communicate among themselves directly and unkindly.

[26] The Respondent advanced another explanation for his criticisms of NG - that he needed to stop her from undermining his client's confidence in him. However, he also testified that LG was very happy with the way things were going.

[27] Having received two letters that only partially addressed her proposal, NG wrote again on November 7, 2006.

[28] The Respondent sent two replies dated November 7, 2006. The letters contained these parts:

(a) The first (unsigned) letter of November 7 is addressed to " Ms. N ("all kinds of fun') G" , repeating a passage from the earlier e-mail. It criticizes NG personally - " stew in your self-imposed bitterness," " you are not the centre of the universe," " [you] take pleasure in self indulgent complaining," " you read

as badly as you write." It then purports to interpret her letter requesting clarification as a request for legal advice - something she expressly declined - and devotes a page to criticism of her analysis. " Don't you know all this from your wide reading?" It concludes by repeating that she is restrained from taking [daughter] out of the jurisdiction.

(b) The second letter dated November 7 is somewhat repetitive. It is addressed to " Ms. N ("proven myself better') G" . It includes personal remarks " with a coy bit of cat-and-mouse cleverness that you indulge in for the sake of your amusement." The letter is critical to the point of insult, " Do you even know the meaning of " contested divorce?..." , and has a patronizing tone " I have filed dozens of divorce applications. And you?"

[29] In response to the panel's questions, the Respondent testified that his criticisms were true - that NG was incorrect in her understanding of various points of law.

[30] NG sent the material upon which she intended to rely by letter of November 20, 2006.

[31] The Respondent responded in a letter dated November 27, 2006, which he again addressed to " Mrs. N ("proven myself better') G" .

[32] The Respondent and NG again attended in court on November 29, 2006. The matter of maintenance was addressed, apparently by consent. However, in his letter dated November 29, 2006 to NG, the Respondent wrote:

Mrs. N (" I officially give up") G

You succeeded in putting more money in my pocket. I thank you for enriching me. I will draft both the recent Orders ? and charge accordingly for every minute spent.

Exactly as predicted, LG scored a clear victory in court today by getting the Order he already agreed to. See fourth paragraph of my insightful letter of November 27. The order is for $214 in basic child support - exactly as you know that LG agreed to. There is also the $56 for special or extraordinary expenses - precisely as I know that LG already agreed to.

...exactly as I predicted in the fourth paragraph of my superb letter of November 27,

After you rambled out, she and I graciously remedied your failure, which clearly arose from your demonstrated lack of knowledge of court appearances.

[33] This continued in a further letter from the Respondent to NG dated December 4, 2006. The Respondent sent two draft orders and wrote in part:

Since you boast have [sic] no need of help from me, you can decide on your own whether or not to approve the Order as to form.

As a courtesy to you, I twice acted as a go-between so as to get money to you promptly. Because you extend me no comparable courtesy, I will pass to you only one more cheque. What goes around, comes around.

On July 31, you smuggled into the court file a brief affidavit from MM. Despite bragging of your knowledge of rules and regulations, you did not serve me a copy. Judge Crabtree thus reviewed the affidavit in court without my being able to speak to it. However, the judge quickly dismissed this badly written affidavit as being completely hearsay.

[34] NG wrote on December 7, 2006 requesting two corrections.

[35] The Respondent's " strategy" was entirely ineffective. Her evidence was that the Respondent's communications " got her back up."

[36] NG complained to the Law Society in January, 2007.

[37] The Panel has considered the correspondence as a whole and has also considered the oral evidence of NG and the Respondent to give context to the correspondence.

Verdict

Definition of Professional Misconduct

[38] In *Law Society of BC* v. *Martin*, (*supra*) the Panel extensively reviewed the authorities concerning the test for a finding of professional misconduct. The Panel noted that it is well established that it is for the Benchers, as the guardians of proper standards of ethical conduct, to determine what behaviour constitutes professional misconduct. In conclusion, the Panel stated:

> [171] The test that this Panel finds is appropriate 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.

[39] This formulation of the test has since been used in all Law Society discipline proceedings; see for example *Law Society of BC v. Goldberg,* 2007 LSBC 03.

Authorities

[40] The Canons of Legal Ethics, *Professional Conduct Handbook,* Chapter 1, describe a lawyer's essential professional duties, and address a lawyer's obligations in communications with opposing parties:

> 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 interests 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.
>
> *2.* To courts and tribunals
>
> (1) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.
>
> *3.* To the client
>
> (4) *A lawyer should treat adverse witnesses, litigants, and counsel with fairness and courtesy, refraining from all offensive personalities.* The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. *At the same time the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.*

(5) *A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence which is authorized by law.* The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

4. To other lawyers

(1) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers which cause delay and promote unseemly wrangling.

5. To oneself

(6) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

[emphasis added]

[41] A lawyer's communications must be courteous, fair, and respectful. A lawyer is to refrain from personal remarks or references, and to maintain objectivity and dignity. The purpose of a lawyer's communication is to properly advance the client's matter to a conclusion.

[42] Several past discipline decisions were referred to the Panel by the parties. None of these decisions is exactly the same as the fact pattern here.

British Columbia Cases

[43] In the case of the *Law Society of BC v. Barker*, [1993] LSDD No. 189 (QL), the lawyer lost his temper in the course of a telephone conversation with an adjuster and used abusive language. He sent a written apology. He admitted that this conduct amounted to professional misconduct.

[44] In the case of the *Law Society of BC v. MacAdam*, [1997] LSDD No. 55 (QL) dealt with several complaints, two of which pertained to offensive remarks made by the lawyer to his client and to a probation officer. The lawyer admitted to professional misconduct.

[45] The above two decisions deal with language that, on its face, was either coarse or insulting.

Ontario Cases

[46] In *Law Society of Upper Canada v. Kay*, 2006 ONLSHP 31, a Panel found the lawyer to have misconducted himself through improper communications in three different matters:

a. In the first matter, the lawyer hand wrote notes on copies of correspondence from another lawyer and sent them back to her - such as " I don't have time to read two-page rambling letters. Say what you want to say in a single sentence unless you are paid by the word."

b. In a second matter, the lawyer engaged in settlement negotiations and then wrote to the lawyer with whom he had those discussions and said " I advised you today it would be fraudulent for you to certify that a settlement discussion had taken place. ..."

c. In a third matter, he accused a client in writing of " cheating" him and threatened criminal proceedings to secure a personal advantage.

[47] In *Law Society of Upper Canada v. Carter*, 2005 ONLSHP 24 (CanLII), the lawyer was found to have engaged in professional misconduct for sending improper correspondence to other lawyers and to the Society. The lawyer had taken over conduct of a legal aid matter and formed the view that prior counsel had not adequately represented the client. He then wrote offensive letters to the former lawyer, three different Legal Aid staff and then to the Law Society regarding the resulting complaint.

[48] At paragraph 34, an excerpt of the letter is reproduced in the decision. It reads as follows:

When rational arguments do not persuade it is because the excuses given in opposition to rationality are lies covering arbitrary and discriminatory behavior.

I care nothing for whatever arrangements Ms. Moretti made with previous counsel Cosgrove or on whatever ridiculous basis. I warned Ms. Moretti not to try the same shit with me Cosgrove handed Mr. B. In my respectful view they both ought to be doing something else to earn a living.

Attached find a letter of mine to Mr. Leroy dated June 21, 2004 and his to me dated June 28, 2004 for your ready reference.

[emphasis added]

Alberta Case

[49] A case from Alberta is the *Law Society of Alberta v. Poznia,* [2002] LSDD No. 55. That case dealt with a lawyer calling another lawyer " clueless" . This case was found to be professional misconduct. The case was not referred to by any of the parties.

[50] The Panel in *Carter* relied on the *Rules of Professional Conduct* of the Law Society of Upper Canada, the Canadian Bar Association *Code of Professional Conduct*, Chapter XVI, and the *Principles of Civility for Advocates*, published by the Toronto Advocates' Society. These publications are of assistance in articulating the importance of civility in the profession.

[51] Allen McEachern and Michael Goldie, QC wrote *Ethical and Professional Responsibility Issues,* published by the Continuing Legal Education Society. It is a useful overview as to the meaning of professionalism and the way it is achieved through ethical conduct, attitude and competence. They wrote, " "Professionalism' is an ideal that describes the way lawyers are expected to conduct themselves in litigation, how we practise, and everything else we do in connection with our privileged status as lawyers."

Application to the Citation

[52] In the present case, the Respondent's conduct toward NG departed from the standards required, nearly from the outset of their communications.

[53] The Respondent's position is that he had a " brilliant but unorthodox strategy" to " squelch" , " defeat" , or " crush" NG, in order to advance his client's interests. Even if the purpose of these letters was to advance the interests of his client, this purpose does not justify the incivility and discourtesy contained in these letters. These letters that were insulting or condescending towards NG started before the Respondent became aware of NG's insulting remarks to third parties. After that, these condescending and insulting remarks in the correspondence intensified.

[54] Some of NG's communications to the Respondent were intemperate, and he may have believed that she required a firm response. However, the Respondent's letters go well beyond firmness. They breached a lawyer's obligations of professionalism repeatedly. They were rude. They contained personal criticisms of NG, even deteriorating into name-calling. They were deliberately provocative.

[55] As well, the Respondent's letters belittle an opposing party who had no legal training. They contain references to the Respondent's extensive experience in a condescending manner. This worsened after October 30, 2006, when the Respondent learned that NG had been critical of his performance in her communications with LG and his girlfriend. A trained and experienced professional is expected to be more adept in legal matters than a non-lawyer. It is unfair to exploit that inequality in skill and experience in communications with the self-represented litigant in such a condescending manner.

[56] The client's interest is advanced by counsel through litigation or settlement, not through personal attacks. Attempting to crush the opposition in such a fashion is not the " fair and honourable means" referred to in the Canons.

[57] The Respondent's correspondence to NG fell markedly below the standard expected by the Law Society of a member, and amounts to professional misconduct.

[58] This case concerns a possible conflict in the ethical obligation of a lawyer. The lawyer on the one hand must, to the best of his or her ability, defend the interests of the client. The Respondent, throughout these proceedings, maintains he was doing this. On the other hand, a lawyer must be courteous and civil.

[59] The Respondent categorized NG as:

> (a) a very difficult unrepresented litigant to deal with. Perhaps, the most difficult unrepresented litigant he has had to deal with;
>
> (b) a bitter person; and
>
> (c) a person who was unwilling to make a reasonable settlement.

[60] According to the Respondent, all he was doing was trying to have NG see the light and agree to a reasonable settlement. The Respondent maintains the letters were not rude or unprofessional.

[61] This Panel finds it unnecessary to decide whether the categorization of NG by the Respondent is correct. Whether it is true or not does not justify his behaviour towards NG.

[62] However, the Respondent was under an additional ethical obligation. This ethical obligation is set out at paragraph [40] and reads as follows:

> A lawyer should treat adverse witnesses, *litigants*, and counsel with fairness *and courtesy*, refraining from all offensive personalities.

[63] This is just another way of saying that a lawyer should act civilly toward the opposing litigant or counsel.

[64] There is no doubt that a lawyer has the obligation to defend the interests of the client. This may require

the lawyer to take strong positions in letters to the unrepresented litigant or opposing counsel.

[65] The question here is " Did the Respondent cross the line?" How does this Panel determine whether the line has been crossed in this case?

[66] The question of violation of the above rule can be a difficult matter to determine. The Law Society should not engage in nitpicking of letters. However, at the end of the day it is an *objective standard*. This does not mean that the subjective views of the Respondent lawyer should not be considered. Equally, the views of the complainant should be considered. However, their respective views are not determinative of the matter.

[67] A lawyer who acts uncivilly can easily justify his purpose. He or she was defending the interests of his or her client. A complainant may be oversensitive or inclined to read into a letter words or intent that were not there.

[68] In this case, the subjective intent of the Respondent has been stated above. The Panel has considered that.

[69] However, the Panel finds the Respondent has violated the relevant rule. The context must be considered. There were many letters. The letters were written over a number of months. The Panel is particularly concerned about the name-calling and condescending attitude in those letters.

Name-Calling

[70] The Respondent engaged in what can be called " name-calling" . A person has the right in correspondence to be called by their proper name.

[71] The first incident starts in a letter sent by NG to the Respondent. This letter is dated August 4, 2006. In the letter NG states:

> Finally, I would appreciate it if in the future you did not refer to [daughter] as " the girl" . Her name is [name].

[72] On August 17, 2006 the Respondent responded in a letter to NG stating the following:

> I enclose LG's release so that your child (my term is literally correct) can go to Washington.

[73] The Respondent was deliberately not calling the child by the name the unrepresented litigant wanted. It was not an oversight. It was a deliberate goading of the unrepresented litigant. This is unprofessional and a violation of the Canons.

[74] The next issue in name-calling took place in the context of emails sent by NG to DO.

[75] The first of these emails is dated October 26, 2006. In that email NG states the following:

> I am tougher and smarter than you've ever dreamed of being and I will win this.

[76] The second email is dated October 27, 2006 from NG to DO and reads in part as follows:

> As for you supposedly contacting Greg Lanning; I could care less. I have already proven myself better at court appearances than he.

[77] These two emails subsequently came into the possession of the Respondent.

[78] The Respondent proceeded with a name-calling campaign against NG.

[79] One can understand the Respondent being upset by these letters, and he could have easily written a strong but courteous letter to NG about her emails. Here are the specific references he made to NG:

(a) a letter dated October 31, 2006 addressed as follows:

N (" will win this") G
[business address]

(b) a letter dated November 2, 2006 addressed as follows:

Mrs. N (" I will win") G
[business address]

(c) a letter dated November 7, 2006 addressed as follows:

Mrs. N (" all kinds of fun") G
[business address]

(d) in another letter dated November 7, 2006 addressed as follows:

Mrs. N (" proven myself better") G
[business address]

(e) a letter dated November 27, 2006 addressed as follows:

Mrs. N (" proven myself better") G
[business address]

(f) a letter dated November 29, 2007 addressed as follows:

Mrs. N (" I officially give up") G
[business address]

[80] The Respondent attempted to justify this name-calling on the basis he was just using the expressions NG had used in emails.

[81] The Panel has no doubt that the purpose of this campaign was to put NG down and to degrade her. Every person has the right to be called by their proper name.

Condescending Attitude

[82] There were a number of occasions in the correspondence that the Respondent displayed a condescending attitude toward NG. These comments by the Respondent were an attempt to put her down and to degrade her. Here are some of the examples.

[83] In a letter dated October 31, 2006 addressed to N (" will win this") G, the Respondent said as follows:

> Your eighth paragraph of your October 17 letter could have been *written better*. It is demonstratively false that you are " to receive in lieu of the child support" some part " of his ICBC settlement." Child support and ICBC settlement are not linked at all by paragraph 11 of the Separation Agreement. Paragraph 11 is so badly written that it says vaguely, " The amount of this payment is to be determined later." How much later? Determined by whom? Determined how?
>
> Your self-confident letter goes on to " propose" $2500 or 10% of the award - but all you can do is merely " propose" . *The badly written paragraph 11 gives you no power to dictate.* In the end, LG will propose, too. Besides, this matter is unconnected to divorce.
>
> As for back-dated maintenance, $2500 would be the equivalent of about twelve month's child support at the $214/month figure that you gave me. Yet the " right" you claim would take you back only four months. *I trust you can also prove yourself better at simple arithmetic.*
>
> ...As a result of your *better court appearances*, you have restrained yourself from taking [daughter] (aka your child) into Washington state. LG need no longer repeat his past kindness of granting his permission for you to take [daughter] (aka your child) abroad.
>
> [emphasis added]

[84] The Respondent repeated four times the reference to " better" , and each time criticizes NG's performance in some way. It is a personal, not a professional, response. The letter was insulting and intended to be so.

[85] NG perceived the last paragraph referred to above as a form of threat. The Panel does not find this paragraph to be threatening. In fact, the Panel finds there was nothing in the correspondence sent by the Respondent to NG or any correspondence that could be considered threatening.

[86] In a letter dated November 7, 2006 addressed to " Mrs. N ("all kinds of fun') G" , the Respondent stated the following:

> ... *On the phone I reminded you that you are not the centre of the universe,* expecting that other people will do exactly as *you* ask. Instead, you must reciprocate. What goes around comes around ...
>
> ...In my third paragraph, I dealt directly with another topic raised by you, namely, receipts, and kindly relieved you of the burden of providing many small receipts. In my fourth paragraph, I dealt civilly with yet another topic from the fifth paragraph of your own October 17 letter, namely, " dancing/stages expenses" - for which you still provide no details. So, if I am " angrily rambling on" , what must you yourself have been doing? *You read as badly as you write.*
>
> Although you end by angrily rambling on about how I must not advise you legally *(you are mistaken about conflict of interest, since there is no conflict at all), your questions #1 - #4 are a disguised call for legal advice*. Be advised then of my answers:
>
> > 1. Whether the amount is to be paid monthly is, ultimately, the decision of a judge. However, anyone truly aware of all " the rules and sections" should already know that child support is almost always paid monthly. Likewise, anyone really as well informed as she imagines will also know that payments are generally made on the first of the month - although this matter, too, is ultimately in the hands of the judge. *Don't you know all this from your wide reading?*

2. You already have the implicit answer in the third, non-angry, non-rambling paragraph of my November 2 letter. As carefully explained above, my paragraph dealt directly with the fifth paragraph of your own letter of October 17, which did not specify any specific amount beyond your " $56 per month" . By the Federal Guidelines, which you want me to think you understand, special or extraordinary expenses - if and when awarded - are not divided in half anyway but are allocated only pro rata. By that test, your superior income would leave you paying more than half of those expenses. *You demonstrate that I have no choice but to advise you legally, since you still have this idea of " one-half" lodged in your head*. Moreover, a child support order acceptable to FMEP must be for a fixed, preset amount. The order cannot fluctuate, depending on changes in receipts. I don't expect you to be grateful for my further assistance...

3. ... Besides, you are stuck with badly written paragraph 11, which seems not to have been amended by the strict terms of paragraph 5. Your math remains wrong for exactly the reasons I gave, reasons you angrily ramble on past. The penultimate paragraph of your October 17 missive clearly specifies " back dated to June 29, 2006."

[emphasis added]

[87] In another letter dated November 7, 2006 addressed to " Mrs. N ("proven myself better') G" , the Respondent states:

... Someone as familiar as you with legal procedure will know that you should approach LG's counsel for the general form of access.

... Whether or not an application turns out to be contested cannot be known at the time of filing. *I have filed dozens of divorce applications. And you?*

... *Do you even know the meaning of " contested divorce" in the Supreme Court Rules?*

3. Where you first got DO's e-mail address interests me not. This trivia that you dwell on is past history. It was never one of the " items" that you fancy I " bring up" . *You read as badly as you write.*

What do you imagine to be the two distinct interests and then what do you fancy is the conflict between them? Anyway, only my client has standing to complain of breach - and you don't, since I have no duty toward you. LG has expressed in writing his satisfaction with me. Besides, judges often urge lawyers to assist a party that has no lawyer. People who give advice (" mind your own business") should take their own advice - especially when they are so confused about the angry advice they propose.

Do you understand the " ramifications" for your claiming almost $58,000 in expenses while claiming only about $41,000 in income from which to pay all those expenses?

[emphasis added]

[88] In a letter dated November 27, 2006 again addressed to " Mrs. N ("proven myself better') G" the Respondent states:

... *You can exchange with LG as many angry, rambling e-mails as you wish and call them "*

negotiations" if you choose, but the bottom line is that, after all this time, there is no money - and maybe ICBC will never pay any. The sum of the emails that you sent me, often on different topics, is that nothing has been agreed upon between you two.

[emphasis added]

[89] In a letter dated November 29, 2006 addressed to " Mrs. N ("I officially give up') G" , the Respondent states:

You succeeded in putting more money in my pocket. I thank you for enriching me. I will draft both the recent Orders - and charge accordingly for every minute spent.

Exactly as predicted, LG scored a clear victory in court today by getting the Order he already agreed to. See fourth paragraph of my insightful letter of November 27. The Order is for $214 in basic child support - exactly as you know that LG agreed to...

...The judge did nothing with your frivolous complaint - exactly as I predicted in the fourth paragraph of my superb letter of November 27. So obvious was your failure in court that the court clerk immediately pointed it out to me. *After you rambled out, she and I graciously remedied your failure, which clearly arose from your demonstrated lack of knowledge of court appearances.*

[emphasis added]

[90] In a letter to Mrs. NG dated December 4, 2006, the Respondent states:

... On July 31, you smuggled into the court file a brief affidavit from MM. Despite bragging of your knowledge of rules and regulations, you did not serve me a copy. Judge Crabtree thus reviewed the affidavit in court without my being able to speak to it. *However, the judge quickly dismissed this badly written affidavit as being completely hearsay*.

[emphasis added]

[91] Lawyers face many challenges in dealing with unrepresented litigants. This is particularly true in family matters. Parties can easily descend into name-calling and highly uncivil language. However, lawyers are expected to be above that. This case does not concern itself with one uncivil comment made by a member of the Law Society of British Columbia. We leave that issue open. This case concerns many uncivil comments made in writing over a period of time.

[92] The Panel recognizes that there is a fine line between bad manners and uncivil behaviour. Further, future panels will have to draw the line. Bad manners per se will not result in professional misconduct. However, the lack of civility will. As stated above, the line has been crossed on the facts of this case.

[93] The Panel finds the Respondent's conduct constitutes professional misconduct in respect of the allegations in the citation.