2009 LSBC 23
Report issued: July 24, 2009
Oral decision on Facts and Verdict: July 15, 2009
Citation issued: May 14, 2009

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

Harold Garrett Power

Respondent

Decision of the Hearing Panel
on Facts, Verdict and Penalty

Hearing date: July 15, 2009

Panel: G. Glen Ridgway, QC, Chair, Leon Getz, QC, Herman Van Ommen

Counsel for the Law Society: Maureen Boyd
No-one appearing on behalf of the Respondent

Background

[1] On April 2, 2009 the Discipline Committee, through its Chair, directed that a citation be issued against the Respondent pursuant to Rule 4-13 of the Law Society Rules. The citation was served on the Respondent June 2, 2009. The Schedule attached to the citation was amended on July 7, 2009, and the Amended Schedule to the citation states:

1. Your conduct in or about September 1998, in completing and submitting to the Law Society an Application for Enrolment in the Law Society Admission Program in which:

   (a) in response to the instructions to Question 8 to " state any changes of name, formal or informal, or other surnames or given names you have used, and when" , you answered " NA" and failed to disclose that you had previously used the name " Gary Joseph McGory" ; and

   (b) in response to the instructions to Question 21 to " provide full particulars" of any crime, offence or delinquency with which you had been charged, you failed to disclose that you previously had been charged in Ontario with five counts under section 212(4) of the *Criminal Code.*

   (c) further, you solemnly declared on or about September 25, 1998 that the information you added in completing this Application for Enrolment was " true, accurate and complete" , when you knew that it was not.

2. You made statements that were not true to Law Society staff in the course of an investigation related to criminal charges laid against you, and in particular:

(a) by email sent October 3, 2008 you wrote that " I deny that I failed to correctly answer question 8 and the subsequent follow up #21" ;

(b) by email sent October 21, 2008, you wrote that " I have not used any other name than Harold "Garrett' Power" ;

(c) by email sent November 14, 2008, you wrote that " I have never been charged or convicted of any offences under the Criminal Code of Canada" ;

which statements you knew were not true when you made them.

[2] On May 19, 2009 the Respondent wrote to the Law Society stating:

> Effective immediately I am withdrawing as a member of the Law Society and ceasing the practice of law.

[3] On June 5, 2009 the Respondent sent an email to the Law Society stating:

> I do not intend to contest this citation so prepare an agreed statement of facts based on my trial testimony. I have already resigned from the Law Society so I don't see the point of any hearings.

[4] The Respondent was provided with a form of Agreed Statement of Facts, but did not respond. The Respondent did not appear at the scheduled hearing on July 15, 2009. The Panel decided to proceed in his absence pursuant to Section 42(2) of the *Legal Profession Act*, SBC 1998, c.9, on proof that the notice of hearing had been served on him.

[5] The Law Society called two witnesses, Lesley Small, Manager of Credentials and Licensing, and Andrea Brownstone, Manager, Professional Conduct. In addition, the Law Society tendered various exhibits including the transcripts of the Respondent's evidence given in criminal proceedings against him during hearings held February 9, 2009 and March 27, 2009.

[6] At the conclusion of the Law Society's case, the Panel gave brief oral reasons. The Panel found that the Law Society had proven all of the allegations set out in the Amended Schedule to the citation on a balance of probabilities, and further found that such conduct constituted conduct unbecoming a lawyer. The Panel reserved the right to give more detailed reasons in writing. These are those reasons.

Evidence

[7] The Respondent was born on January 14, 1957 in St. John's, Newfoundland. His birth mother was Florence Power. The Respondent believes his biological father was Harold McGory. They were not married at the time of his birth. His mother put him up for adoption and placed him in an orphanage in the Mary Queen of Peace Parish, which was associated with the Mount Cashel Orphanage. His legal name at birth was Harold Garrett Power.

[8] After the Respondent was in the orphanage for a period of time, his aunt and uncle, Gordon and Dorothy McGory took him from the orphanage in an informal manner. He was not formally adopted. They gave him the name Gary Joseph McGory, but did not change his name legally.

[9] The Respondent was not aware of these facts until he was in his early 30s. He learned of them from Dorothy McGory when he made inquiries about his birth certificate in order to travel to the United States. He had at that time the normal identification such as driver's licence and social insurance card in the name of

Gary Joseph McGory. Upon learning about his true name, he acquired a birth certificate in the name of Harold Garrett Power. Subsequently he used the name Power for some purposes and McGory for other purposes.

[10] In 1990 the Respondent used the name Power to obtain a Declaration of Bankruptcy. Between 1992 and 1994 the Respondent attended the University of Western Ontario under the name Power.

[11] In May 1994 the Respondent was arrested in Toronto in respect of a warrant issued in the name of Gary Joseph McGory and was charged with five counts under Section 212(4) of the *Criminal Code* with obtaining, for consideration, the sexual services of a person under 18 years. These charges concerned conduct during the period from 1988 to 1993. He was subsequently committed to trial on three of those counts. He did not advise the police or Crown Counsel that his legal name was Harold Garrett Power.

[12] In the fall of 1994, the Respondent began attending law school at the University of Toronto under the name of Power. He obtained his LLB in April, 1997. In April 1998 he attended the trial of the criminal charges under the name of McGory in London, Ontario and was acquitted.

[13] In September 1998, the Respondent applied to the Law Society of British Columbia under the name Harold Garrett Power for enrolment in the Law Society Admission Program. In the application form:

> (a) Question 8 states: State any changes of name, formal or informal, or other surnames or given names you have used, and when?
>
> The Respondent answered: " N/A" .
>
> (b) Question 21 states: Have you ever been charged, in Canada or elsewhere, with any crime, offence or delinquency under a statute or ordinance? If yes, please provide full particulars on a separate sheet including applicable dates, places, nature of acts or offences, penalties and pardons.
>
> The Respondent answered " Yes" by ticking the appropriate box and added an addendum to his application which stated:
>
> Good Character - Question 21

Offence	Place	Date	Disposition
Parking meter violation	Vancouver	July 1997	Fine
Speeding violation	Vancouver	1990	Fine
Illegal left turn	Vancouver	1983 or 1984	Fine

[14] In a prominent box at the beginning of the application form, it states:

> This application form must be completed fully and precisely, and the declaration must be sworn before a Notary Public or a commissioner ..."

[15] The Respondent signed a Declaration of Applicant as follows:

I, Harold Garrett Power, DO SOLEMNLY DECLARE THAT:

1. I am the applicant described in this application for enrolment;

2. I have personal knowledge of the information I have added in completing this Application for Enrolment, and that the information is true, accurate and complete;

and I make this solemn declaration conscientiously believing it to be true and knowing that it has the same legal force and effect as if made under oath.

[16] In 2007, criminal charges were brought against the Respondent in British Columbia. He was charged with one count of sexual exploitation of a minor under s. 153(1)(a) of the *Criminal Code*.

[17] The Respondent gave the following evidence with respect to his application to the Law Society at his trial of the B.C. criminal charges on March 27, 2009:

Q All right. And you read this document [the Law Society Application Form] before completing it and signing it -

A Yes.

Q And is that all your handwriting?

A Yes, it is.

Q All right. And then number 8 it says [as read in]:

State any changes of name, formal or informal, or other surnames or given names you have used and when.

And the initials " N/A" appear on those lines; is that correct?

A That's correct.

Q All right. And that's your writing, the N/A?

A It is.

Q All right. So you did not disclose that you had, for years, and up until five months previously in Ontario, used the name Gary Joseph McGory?

A No, I didn't disclose it.

Q Okay. Why is that?

A Basically because I was using the name Gary Joseph McGory, I think, illegally. I never had any legal use to being able to be using it. And I was concerned that my application for the Law Society would be complicated by that admission.

Q But you had used the name for years in Ontario in legal proceedings?

A I didn't ? as I indicated previously, I didn't choose to use that name. They ? that was the name that I was charged under and ? but yes, the answer is yes, ma'am.

Q All right. And I'm going to suggest to you that another reasonable, predictable result of putting down Gary McGory would be that the Law Society would find out that you had been before the courts in Ontario for years on the charges that were before Mr. Justice Hawken months earlier?

A True. And they would also have found out that I was acquitted on them. But they were embarrassing charges, nonetheless.

Q All right. If you turn to what is page 9 of the fax, up in the right-hand corner, number 21 under the heading, " Good Character."

Q The question is, [as read in]:

> Now, you clearly knew what the word charged meant? Right. And that's your tick?

A Yes, it is.

Q And you understood the difference, having gone to law school, having gone through a preliminary inquiry and having gone through a trial, the difference between being charged, convicted and acquitted, right?

A Yes.

Q Right. And the question 21 then says [as read in]:

> If yes, please provide full particulars on a separate sheet including applicable dates, places, nature of acts or offences, penalties and pardons.

A Yes.

Q All right. So when we go to page 12, your prepared page, under the heading, " Good Character," question 21, you have three offences listed, one relating to a parking meter violation, one relating to a speeding violation, one relating to an illegal left turn. Right?

A Yes.

Q And you have no disclosure of any of the charges from Ontario in this document?

A No, I don't.

Q All right. So this document is false by its lack?

A Yes.

Q No, I'm actually asking you why you didn't disclose the name McGory and why you didn't disclose the charges.

A I was embarrassed about the nature of the charges and I was also a little concerned about my use of a different name prior to applying for law school and applying to - applying for enrolment in the Law Society.

Q So as a result of the potential embarrassment, you lied?

A Yes. I also felt that because I was acquitted, that that had some bearing on it.

Q Well, you knew it had no bearing on the issue of whether or not you'd been charged with a criminal offence, right?

A Correct.

Q Right. The fact is, you had been charged with criminal offences?

A Correct.

Q And you lied to -

A I think we've established that, yes.

Q Yes, all right. And you, in fact, practised law in BC for a decade before the charges were discovered?

A Yes.

Q Yes. And you swore a declaration and this is found at page 10 of the fax numbering. And this is a declaration that you made to your then principal, Peter Kendall; is that correct?

A Yes, I believe so.

Q And ?

A On page 10. Go ahead, yes.

Q Reading the box headed, " Declaration of Applicant," it says [as read in]:

> I, Harold Garrett Power do solemnly declare that:
>
> (1) I am the applicant described in this application for enrolment and;
>
> (2) have personal knowledge of the information I have added in completing this application for enrolment and that the information is true, accurate and complete.
>
> Right?

A Yes.

Q And [as read in]:

> I make this solemn declaration conscientiously believing it to be true and knowing that it has the same legal force and effect as if made under oath.

A Correct.

Q All right. And when you swore that declaration, made that declaration, you knew that, in

fact, the information wasn't true, accurate and complete, right?

A True.

Q All right. And you didn't tell your principal that?

A No.

Q No. And you ? you've practised criminal law mostly since your call to the bar in British Columbia; is that correct?

A Mostly, yes.

Q All right. And you are aware that perjury includes lying under oath when swearing an affidavit?

A Yes.

Q Did you ever -

A I believe so.

Q Sorry?

A I believe so.

Q All right. Did you ever go back to the Law Society and correct them, tell them the truth?

A No, I did not.

[18] In 2007 as a result of the criminal charges being brought against the Respondent, the Law Society became aware that the Respondent had previously used the name McGory and had previously been charged with criminal offences.

[19] By letter dated September 25, 2007, the Law Society wrote to the Respondent asking him to explain his failure to disclose the Ontario criminal charges and his prior use of the name McGory. After several exchanges of emails in which the Respondent requested an abeyance of the investigation pending his criminal trial, in an email sent October 3, 2008, the Respondent stated:

> I deny that I failed to correctly answer Question 8 and subsequent follow-up, #21.

[20] By letter dated October 8, 2008, the Law Society wrote to the Respondent as follows:

> I would like to clarify your response. Please advise if you have *ever* used the name Gary Joseph McGory, or any name other than Harold Garrett Power. Please provide me with a copy of your birth certificate. Also, are you stating that you were never *charged* in Ontario under the Criminal Code?
>
> [emphasis in original]

[21] The Respondent replied by email sent October 21, 2008 as follows:

> I have never been convicted of any crime in Canada or any other country in any name. I have not used any other name than Harold " Garrett" Power ...

[22] On November 5, 2008, the Law Society further wrote to the Respondent stating:

You also stated that you have not been convicted of any crime. The question which I have repeatedly asked you is whether you have been *charged*. Please respond immediately.

[emphasis in original]

[23] The Respondent replied by an email sent November 14, 2008 in which he stated:

I have never been charged or convicted of any offences under the *Criminal Code of Canada*.

Findings

[24] We find that all of the allegations in the Amended Schedule to the citation have been proven on a balance of probabilities.

[25] It is now recognized that the standard of proof is the civil standard set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, and adopted by Law Society hearing panels in *Law Society of BC v. Schauble*, 2009 LSBC 1 and *Law Society of BC v. Lawyer 9*, 2009 LSBC 19.

[26] We find that the Respondent knowingly and intentionally failed to disclose his prior use of the name McGory.

[27] The Respondent, knowing that question #21 of the application required him to disclose charges, as distinct from convictions, failed to disclose the Ontario charges.

[28] The Respondent, knowing his application was not true and complete, falsely declared that it was.

[29] When questioned by the Law Society about these matters in 2008, the Respondent lied on three separate occasions in response to clear and direct questions from Law Society staff.

Verdict

[30] Once we find the allegations are proven, we must decide, pursuant to s. 38(4)(b) whether, by reason of those facts, the Respondent has committed any of the following:

(a) professional misconduct;

(b) conduct unbecoming a lawyer;

(c) a breach of the *Act* or the rules; or

(d) incompetent performance of duties undertaken in the capacity of a lawyer.

[31] We find that the Respondent committed conduct unbecoming a lawyer.

[32] " Conduct unbecoming a lawyer" is defined in section 1 of the *Legal Profession Act*, as including:

... a matter, conduct or thing that is considered, in the judgment of the benchers or a panel,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession.

[33] In *Law Society of BC v. Berge*, 2005 LSBC 28 (upheld on Review 2007 LSBC 07), the hearing panel

cited with approval the " useful working distinction" between professional misconduct and conduct unbecoming that was set out in *Law Society of BC v. Watt*, [2001] LSBC 16 at p. 3, in which the panel stated, at para. [77]:

> In this case the Benchers are dealing with conduct unbecoming a member of the Law Society of British Columbia. We adopt as a useful working distinction that professional misconduct refers to conduct occurring in the course of a lawyer's practice while conduct unbecoming refers to conduct in the lawyer's private life.

[34] Two prior panels have determined that providing false answers in an application for admission constitutes conduct unbecoming.

> *Law Society of BC v. Karlsson*, 2009 LSBC 03 and
> *Law Society of BC v. Carr-Harris*, [2002] LSBC 22

[35] Although the false answers given in respect to the investigation in 2008 occurred while the Respondent was a member of Law Society, they were given in connection with his earlier application. Because the Respondent was a member at the time, this conduct could also be characterized as professional misconduct, but it is unnecessary for this Panel to decide that point.

[36] Dishonesty in connection with an application for admission as a member of the Law Society is a serious matter. Admission to the profession is a privilege and requires the applicant to show that he or she is of good character. Integrity is a fundamental quality of a member of the profession. This requires a person to act in the utmost good faith with respect to the governing body of the legal profession.

[37] In *Law Society of BC v. Karlsson*, the panel commented at paragraph [7] as follows:

> 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. This Panel regards dishonesty as one of the most serious forms of conduct unbecoming or professional misconduct. The agreed upon suspension is, therefore, warranted.

[38] There is no question that lying to the Law Society in the application by which one becomes a member is contrary to the best interests of the public and the legal profession. So too is lying about those falsehoods in connection with an investigation into that conduct.

Hearing on Penalty

[39] By oral reasons given July 15, 2009, this Panel found the Law Society had proven, on a balance of probabilities, that the Respondent committed all the conduct alleged in the Amended Schedule to the citation.

[40] This Panel also found on July 15, 2009 that the Respondent had committed conduct unbecoming a lawyer.

[41] The penalty phase of the hearing proceeded on July 15, 2009, pursuant to Rule 4.35(1.1) of the Law Society Rules after the Panel's reasons on Facts and Verdict were given orally. The Respondent was advised in writing by letter dated July 7, 2009 that this might occur. He was also advised that the Law Society would be seeking a penalty of disbarment. Notwithstanding this notice, he did not appear at the hearing on July 15, 2009, which proceeded in his absence.

[42] As noted in our reasons on Fact and Verdict, the Respondent is no longer a member of the Law Society, having resigned on May 19, 2009.

[43] The definition of " lawyer" in the *Legal Profession Act*, among other things, makes former members of the Law Society subject to the provisions of Part 4 of the *Act*, which deals with Discipline.

[44] Once a Panel has made an adverse determination under s. 38(3) of the *Legal Profession Act* and a finding of conduct unbecoming under s. 38(4), the Panel must then, under s. 38(5), do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $20,000;

(c) impose conditions on the respondent's practice;

(d) suspend the respondent from the practice of law; ...

(e) disbar the respondent;

(f) require the respondent to do one or more of the following:

(i) complete a remedial program;

(ii) appear before a Board of Examiners to satisfy them that he or she is competent;

(iii) appear before a Board of Examiners to satisfy them that he or she is not adversely affected by disability or dependency on drugs or alcohol;

(iv) practise law only as a partner employee or associate of one or more other lawyers;

(g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under s. 16(2)(a) or 17(1)(a) from practising law in British Columbia indefinitely or for a specified period of time.

[45] Although it may appear odd that a Panel may suspend or disbar a non-member, the *Act* requires that it be done if that is the appropriate penalty.

[46] When imposing a penalty appropriate to the circumstances, a panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty. Such orders also have a practical effect. If a lawyer who has been disbarred applies for reinstatement a credentials hearing must be held (Rule 2-52(6)). A lawyer who is suspended or who has been disbarred may not perform legal services, even for free, for anyone (*Legal Profession Act*, s. 15(3)).

[47] The Panel has decided to impose the penalty that would be appropriate if the Respondent were still a member.

[48] In *Law Society of BC v. Ogilvie,* [1999] LSBC 17, the hearing panel commented on the primary focus of disciplinary proceedings, as follows (at para. 9):

> Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining an appropriate

penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

[49] The panel then set out a non-exhaustive list of factors to be considered in assessing penalty at para. 10:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[50] The panel further observed (para. 19) that:

The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

Nature and Gravity of the Offence

[51] Dishonesty in connection with an application for admission to the profession is a very serious matter. One of the purposes of such an application and a prerequisite to becoming a member, is that the applicant show that he or she is of good character.

[52] The Respondent chose to lie under oath in order to prevent the Law Society from becoming aware of the Ontario criminal charges and the conduct underlying those charges. He also chose to hide his true identity. The Respondent had lived almost his entire life under the name McGory, but he lied to ensure the Law Society did not become aware of that fact. It is significant that the Respondent acknowledged that he knew that swearing a false declaration in the application constituted perjury.

[53] A significant aggravating factor is that, having succeeded in becoming a member through his false application, the Respondent lied on three separate occasions in order to conceal his previous dishonesty.

[54] Candour and good faith are required of members in their dealings with the Law Society. This is also a fundamental requirement that affects the ability of the Law Society to effectively govern its members.

Age and Experience - Previous Disciplinary Record

[55] The Respondent was 41 years of age when he applied. He practised criminal law in British Columbia for about 10 years without any disciplinary issues.

Advantage Gained - Number of Times the Offending Conduct Occurred

[56] Through his false application the Respondent gained membership into the Law Society. The Respondent lied because he was concerned that the Law Society would find out about the Ontario criminal charges. Although he was acquitted, the Respondent feared that disclosure of those facts would affect his application.

[57] Although he knew he committed perjury in his application, the Respondent failed to bring this to the attention of the Law Society. He compounded this falsehood by lying on three separate occasions in 2008 in responding to specific and direct questions concerning his name and the criminal charges put to him by the Law Society.

Acknowledgement of Wrongdoing and Possibility of Rehabilitation

[58] The only acknowledgement that the Respondent has given concerning the wrongfulness of his conduct is his resignation and the suggestion that he would admit his wrongful conduct by an agreed statement of facts. He did not respond to the agreed statement of facts submitted to him. In these communications he failed to express any remorse and failed to apologize for his wrongful conduct.

[59] This Panel has no evidence on which it could find in favour of the Respondent that there is any likelihood of rehabilitation.

Impact of Proposed Penalty

[60] In *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106 (CA), the Court quoted at para. 6 with approval the following passage from the hearing panel decision:

> The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and " fitness" implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client's interest first and never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

[61] The requirement that a lawyer be trustworthy and a person of integrity is fundamental to the proper performance of legal services. The *Code of Professional Conduct* published by the Canadian Bar Association recognizes this requirement in Chapter 1, which states in the commentary related to the discharge of duties with integrity that:

> Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. *If the client is in any doubt about the lawyer's trustworthiness, the essential element in the lawyer-client relationship will be missing*. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

[emphasis added]

[62] Further, in *Law Society of BC v. Karlsson* (*supra*), the panel observed (at para. [7]) that:

> 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. This Panel regards dishonesty as one of the most serious forms of conduct unbecoming or professional misconduct.

[63] The Alberta Court of Appeal also considered the role of integrity in the legal profession in *Adams v. Law Society of Alberta*, 2000 ABCA 240, in which the appellant lawyer sought to have the Court of Appeal set aside his disbarment. The Court of Appeal commented (at para. 8 to 11):

> Although arising in a different context, the Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130. At 1178, Cory, J. said:
>
> > The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.
>
> ... Historians may question the origin and the history of the oft-repeated statements about the honour and integrity of the legal profession, *but it cannot be denied that the relationship of solicitor and client is founded on trust* . That fundamental trust is precisely why persons can and do confidently bring their most intimate problems and all manner of matters great or small to their lawyers. That is an overarching trust that the profession and each member of the profession accepts. Indeed, it is the very foundation of the profession and governs the relationships and services that are rendered. While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal professional will be eroded by the disreputable conduct of an individual lawyer.
>
> It is therefore erroneous to suggest that in professional disciplinary matters, the range of sanctions may be compared to penal sentences and to suggest that only the most serious misconduct by the most serious offenders warrants disbarment. Indeed, that proposition has been rejected in criminal cases for the same reasons it should be rejected here. It will always be possible to find someone whose circumstances and conduct are more egregious than the case under consideration. *Disbarment is but one disciplinary option available from a range of sanctions and as such, it is not reserved for only the very worst conduct engaged in by the very worst lawyers.*
>
> [emphasis added]

[64] This recognition of the need for a severe sanction when the integrity of the profession is harmed in a fundamental way is also found in the often-cited case of *Bolton v. Law Society*, [1994] 2 All E.R. 486 (C.A.), in which the Court of Appeal commented that:

> It is required of lawyers practising in this country that they should discharge their professional duties

> with integrity, probity and complete trustworthiness. ...
>
> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.

Range of Penalties

[65] There are two relevant prior British Columbia Law Society cases in which dishonesty in an application for admission were considered.

[66] In *Law Society of BC v. Carr-Harris* (*supra*) the member was found to have engaged in conduct unbecoming in respect of his failure to disclose his prior history of mental illness and a criminal conviction in 2000 in respect of the sexual assault of his minor stepdaughters (which occurred in the 1970's). The Panel considered disbarment, but instead imposed a penalty of a fine of $20,000, placing considerable emphasis on the view that suspension or disbarment would render him unable to meet his financial obligations pursuant to a settlement agreement entered into with his stepdaughters.

[67] The Panel also stated:

> ... we accept Mr. Carr-Harris' explanation that given the timing and the previous circumstances surrounding his ejection from medical school after completing 5 of 6 required years, that his inclination to be less than fully candid is understandable in all of the circumstances. We make these observations knowing that at the time these representations were made to the Law Society Mr. Carr-Harris was not an entirely well man. He was at that time (1966) well within the time frames during which the Bipolar 1 Disorder was having a significant impact upon his life and these difficulties were exacerbated by the problems occasioned by excessive usage of alcohol and drugs.

[68] For these reasons the *Carr-Harris* decision is of limited value in terms of the appropriate discipline in these circumstances.

[69] The most recent case is *Law Society of BC v. Karlsson* (*supra*), which proceeded pursuant to Rule 4-22. In that case, the panel accepted that the appropriate disciplinary action in respect of three applications for admission (two for temporary articles and one for enrolment) made by the Respondent with untrue statements was a " short" suspension of six weeks. As in this case, in *Karlsson* the Respondent failed to disclose criminal charges (as well as his conviction on a weapons charge, on which he received a conditional discharge).

[70] There are three significant factors that, in our view, make the Respondent's conduct more serious than that considered in *Karlsson* and thus require a more severe penalty.

[71] The Respondent lied in order to conceal his true identity. He had used the name McGory for his entire life until his early 30s. From then until he made his application at the age of 41, he used both names. Concealing one's identity prevents the Law Society from conducting background checks with respect to character, especially criminal record checks. Where good character is prerequisite to admission, concealing the bulk of one's life from the Law Society strikes at the very core of the admission process.

[72] Unlike *Karlsson*, who admitted that he had not disclosed prior criminal charges when he was questioned, the Respondent lied to the Law Society about his false application on three separate occasions.

[73] In *Karlsson* the Panel had evidence that the member understood and acknowledged his wrongful conduct and, as a result, that he could rehabilitate himself such that there would likely be no reoccurrence of dishonest conduct. We have no such evidence.

[74] Lastly, the aggravating factor of lying to the Law Society on three separate occasions about his initial falsehood is significant.

[75] As a result of all these factors and the whole of his conduct, the Panel believes that the Respondent's conduct requires a more severe response. We order that the Respondent, Harold Garrett Power, be disbarred.

Costs

[76] The Law Society presented a Bill of Costs showing the total of the actual and estimated counsel costs including disbursements was approximately $9,763.38. It asks for an order of costs in the amount of $5,000 inclusive of all disbursements.

[77] This Panel orders pursuant to Rule 5-9 of the Law Society Rules that the Respondent pay to the Law Society the sum of $5,000 for costs.