

2012 LSBC 03

Report issued: January 18, 2012

Citation issued: March 5, 2009

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

Gary Russell Vlug

Respondent

**Decision of the Hearing Panel
on Disciplinary Action**

Hearing date: December 15, 2011

Panel: Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady

Counsel for the Law Society: Maureen Boyd

Appearing on his own behalf: Gary Vlug

introduction and BACKGROUND

[1] In a decision issued August 31, 2011 this Hearing Panel found that Mr. Vlug had committed professional misconduct when he failed to make the necessary inquiry into an amount he had received from ICBC, which amount was \$10,948 more than the agreed settlement between the parties.

[2] The Panel concluded at paragraph [12] of the Decision on Facts and Determination “that the Respondent engaged in questionable conduct casting doubt on his competence which also reflected adversely on the integrity of the legal profession.”

[3] The Panel made this determination bearing in mind paragraph 1(a) of the relevant citation and in doing so did not find that Mr. Vlug had engaged in sharp practice as alleged in paragraph 1(b) of the Citation.

[4] It is this Panel’s conclusion, and counsel for the Law Society acknowledged at the hearing on disciplinary action, that a finding of sharp practice would have been a more serious transgression than the actual finding of professional misconduct in this case.

[5] Counsel for the Law Society in her submissions on disciplinary action tendered as Exhibit 8 in these proceedings the Professional Conduct Record of Mr. Vlug. The Record disclosed that Mr. Vlug had been the subject of three previous Conduct Reviews. The first in 2001, the second in 2005 and the third in 2010, somewhat contemporaneous with the hearing of this Citation.

[6] The Law Society’s position on disciplinary action is that Mr. Vlug’s Professional Conduct Record, along with this Panel’s findings, demonstrates a continuous pattern of bad judgment on the part of Mr. Vlug, as well as poor communications.

[7] Counsel for the Law Society submits that, typically on a lawyer’s first citation, the Law Society would be seeking a fine as opposed to a suspension. However, in this case, because Mr. Vlug continues to engage in the same type of behaviour that reflects poor or bad judgment, and since the remedial process of conduct reviews does not appear to have worked, the Law Society’s position is that the principle of specific

deterrence should be paramount in our consideration of disciplinary action and we should impose a one-month suspension.

[8] It is the Law Society's position that a one-month suspension would send a clear message to Mr. Vlug that he must change his practice or risk losing his professional status.

[9] A number of cases were provided to the Panel to support the Law Society's position on disciplinary action. However, after reviewing these cases, the Panel did not find them particularly helpful as they were distinguishable in each case.

[10] Mr. Vlug's position on disciplinary action was that the Panel should impose a fine in the range of \$1,000 to \$5,000.00. In support of this position he submits the following:

- (a) he was not found to have engaged in sharp practice;
- (b) the extra payment had remained in his trust account at all times until ICBC confirmed (mistakenly) that they had forwarded the correct amount;
- (c) his four clients were aware at all times that the surplus funds were in his trust account;
- (d) that, prior to the hearing on disciplinary action, he paid restitution to ICBC for the full amount of the surplus in the amount of \$10,948, despite the fact he had personally received only \$2,737; and
- (e) this was his first finding of professional misconduct by a hearing panel.

[11] In addition to the aforementioned factors, Mr. Vlug submitted letters from the Canadian Bar Association, BC Branch and the Salvation Army, both setting out the fact that he takes referrals for reduced fees or on a pro bono basis.

[12] Mr. Vlug also provided the Panel with a number of previous decisions from hearing panels across the country, but they too were found not to be of any assistance to the Panel in this case.

Decision

[13] The factors to be considered in assessing penalty are set out in the 1999 decision in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, as follows:

- (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.

[14] The Panel agrees with the submission of counsel for the Law Society that, in this case, bearing in mind the facts as well as Mr. Vlug's Professional Conduct Record, the most important factor in determining the appropriate disciplinary action is the need for specific deterrence.

[15] However, because there was no finding of sharp practice and because the victim (ICBC) was partially responsible for the mistaken over-payment, when taken with the other factors submitted by Mr. Vlug, we have concluded that the appropriate disciplinary action is the imposition of a fine in the amount of \$5,000.

[16] This Panel has concluded that the determining factor of specific deterrence can be adequately met through the imposition of this significant fine when considered along with the recent payment of full restitution to ICBC in the amount of \$10,948, as well as the assessment of costs against the Respondent. Mr. Vlug provided his 2010 Notice of Assessment from the Canada Revenue Agency, which indicated a total income for that year of \$47,746. The Panel has concluded that, in this case, the negative financial impact caused by Mr. Vlug's bad judgment will serve as the appropriate and necessary deterrent.

COSTS

[17] The Law Society seeks costs based on the principle of partial indemnity in the amount of \$10,500. Mr. Vlug does not oppose the Law Society's position on costs and the Panel has concluded that this assessment of costs is reasonable in all of the circumstances. This Panel orders that Mr. Vlug pay to the Law Society costs in the amount of \$10,500.

[18] The Panel notes that Mr. Vlug has not asked for time to pay, but given the imposition of a fine at the top end of the range suggested by him, along with the assessment of a significant amount for costs and Mr. Vlug's apparent modest income, this Panel orders that the fine and the costs be paid in full on or before June 30, 2012.