

2012 : No. 1

Gary Russell Vlug

Vancouver, BC

Called to the bar: August 28, 1992

**Discipline hearing** : April 13 and 14, 2010, June 14 and 15 and December 15, 2011

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

**Report issued** : July 22, 2010 (2010 LSBC 16), August 31, 2011 (2011 LSBC 26) and January 18, 2012 (2012 LSBC 03)

**Counsel** : Eric Wredenhagen (facts and determination) and Maureen Boyd (application to adduce rebuttal evidence and disciplinary action) for the Law Society and Gary Russell Vlug appearing on his own behalf

## Facts

In May 2006, Gary Russell Vlug, represented four clients in a personal injury claim. Vlug settled the claims with ICBC without a trial.

On January 12, 2008, his clients signed a release provided by ICBC for payment of \$32,000. Vlug forwarded the executed release to the ICBC adjuster with a letter requesting reimbursement for disbursements.

On January 24, Vlug received a letter from ICBC that indicated that the settlement of \$32,000 and reimbursement of \$2,316 were enclosed. The cheque, however, was in the amount of \$45,264. There were no details showing a breakdown of how the amount was calculated.

Vlug deposited the cheque into his trust account and credited a quarter of the total (\$11,316) to each of his clients in trust. He met with the clients on January 30 and issued invoices to each client to show the amount of \$8,000 deposited into trust for each of them and not \$11,316.

In July 2008, the Law Society conducted a compliance audit of Vlug's law practice. The auditor discovered that the amount received from ICBC differed from the amount reported and disbursed to the clients.

These excess funds were recorded in Vlug's accounting records as being held in trust for his clients. Vlug's handwritten notes of his discussion with his clients on January 30 indicated that the funds were to be kept until an apparent limitation date expired.

In November 2008, Vlug finally contacted the ICBC adjuster to request a breakdown of the payout and to inquire if there was an error. The adjuster mistakenly confirmed that the cheque for \$45,264 was the correct amount without referring to the original file.

In December 2008, Vlug paid out the balance of the funds to the clients, less his fees.

## Determination

At the conclusion of the April 2010 hearing, the Law Society applied for leave to call rebuttal evidence from the ICBC adjuster. The hearing reconvened in June 2011.

Vlug submitted that the excess funds were a payment for bad faith on the part of ICBC. The panel did not accept that evidence as no reference was made to bad faith in any of his correspondence with ICBC or with

the Law Society.

The panel considered a number of other factors in this case.

Vlug's clients knew of the excess funds held in his trust account, though, contrary to Law Society rules, it did not appear that that information had been accounted for in writing to the clients. The panel noted that the only logical reason for not dispersing all the funds was that Vlug thought an error had been made by ICBC.

Vlug had no communication with the ICBC adjuster regarding the excess funds until after the Law Society commenced its investigation. The extra payment remained in his trust account until ICBC mistakenly confirmed that they had forwarded the correct amount.

In the panel's view, Vlug should have immediately communicated with ICBC about what was obviously a mistake with the payment. His failure to do so cast doubt on his competence and also reflects adversely on the integrity of the legal profession.

The panel concluded that Vlug committed professional misconduct as this was a marked departure from the conduct expected of a lawyer in such circumstances.

## Disciplinary Action

Vlug's professional conduct record disclosed three conduct reviews in 2005, 2010 and 2011, which the Law Society submitted demonstrates a continuous pattern of bad judgment as well as poor communication. The panel agreed that the most important factor in determining the appropriate disciplinary action was the need for specific deterrence. It was decided that the negative financial impact caused by Vlug's bad judgment would serve as the appropriate and necessary deterrent.

The panel ordered that Vlug pay:

1. a \$5,000 fine; and
2. \$10,500 in costs.