2014 LSBC 40
Decision issued: September 5, 2014
Citation issued: April 2, 2012

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:	April 28, 2014
Panel:	Tony Wilson, Chair Clayton Shultz, Public representative Gary Weatherill, QC, Lawyer
Counsel for the Law Society:	Carolyn Gulabsingh
Appearing on his own behalf:	Gary R. Vlug

INTRODUCTION

[1] On April 2, 2012, the Respondent was cited for 11 allegations of professional misconduct arising from three separate complaints, all by lawyers.

[2] The Facts and Determination hearing was conducted from June 3 to 5, 2013. On February 26, 2014, we released our decision that the Respondent had committed professional misconduct in respect of all 11 allegations (2014 LSBC 09).

[3] Those findings of professional misconduct were that the Respondent knowingly misrepresented facts while appearing before judges of the Supreme Court and of the Court of Appeal, misled the Law Society, attached documents to an affidavit after it had been sworn, and acted with incivility in dealing with fellow lawyers.

BACKGROUND

[4] The Respondent is 47 years of age. He was called to the bar in August 1992 and has practised in Vancouver as a sole practitioner ever since. His main areas of practice are family law and motor vehicle litigation.

POSITION OF THE LAW SOCIETY

[5] The Law Society argues that the appropriate disciplinary action for the Respondent is a suspension of three to six months. It seeks costs in the amount of $23,743.03. It argues that the finding of the Panel that the Respondent intentionally made a false representation to the court alone should warrant a suspension. The additional findings by the Panel that the Respondent improperly commissioned affidavits, intentionally included misrepresentations and misleading statements in affidavits and was uncivil with his legal colleagues reinforce the disciplinary sanction sought.

RESPONDENT'S POSITION

[6] The Respondent submits that he should be given a "heavy fine" in the amount of $11,000, representing $1,000 for each of the 11 proven allegations or alternatively, a suspension of one month.

[7] The Respondent testified at the discipline hearing. He filed a book of documents containing recent bank records (Exhibit 10), Notices of Assessments for the 2011 and 2012 taxation years, his T1 General for 2013 (all Exhibit 11), skin biopsy results from the Vancouver Dermatology Clinic (Exhibit 12), and Google search results of his name (Exhibit 13). The purpose of this evidence was to establish that he is not a wealthy man, earns a modest annual income in the $50,000 to $70,000 range, has recently been diagnosed with skin cancer, and has had his name muddied by information on the internet about the Law Society citations and the Panel's finding in this matter. He submits that all of these factors will negatively impact his ability to earn income in the future. He estimates that his income has been reduced by one-third since the publication of the citation and this Panel's finding of professional misconduct.

[8] In effect, his position is that he will be put out of business if he is suspended from practice for more than a month. He doubts that his practice could ever bounce back from a longer suspension.

FACTORS DETERMINING DISCIPLINARY ACTION

[9] Under section 3 of the *Legal Profession Act*, the Law Society mandate is to protect the public interest in the administration of justice (*Law Society of BC v. Harding*, 2013 LSBC 25).

[10] Factors that should be considered respecting the penalty process include:

(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 on 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 on 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 public confidence in the integrity of the profession;

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

Law Society of BC v. Ogilvie, [1999] LSBC 17

[11] These factors are intended as guidelines only. They do not all come into play in every case. The weight to be attached to each of these factors may vary from case to case (*Law Society of BC v. Lessing*, 2013 LSBC 29).

[12] In *Lessing*, the review panel emphasized the need for public protection and public confidence in the legal profession:

[56] All the *Ogilvie* factors do not come into play in all cases. In addition, the weight given to the factors may vary from case to case. Some factors may play a more important role in one case, and the same factor may play little or no role in another case.

[57] However, two factors will, in most cases, play an important role. The first is protection of the public, including public confidence in the disciplinary process and public confidence in the profession generally. The second factor is the rehabilitation of the member. Why is this so?

[58] These two factors are mentioned up front in *Ogilvie*. That decision indicates there is a balance between protecting the public, including confidence in the disciplinary process, and allowing the member to practise. This is set out in *Ogilvie* at paragraph 9:

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

[59] Further, at paragraph 10(l) the following is stated:

> (l) the need to ensure public's confidence in the integrity of the profession.

[60] Undoubtedly, if there is a conflict between these two factors, then protection of the public will prevail. However, in many cases, conditions or limitations can be imposed on the lawyer and the public is still protected. In addition, disciplinary action less than full disbarment can be imposed. In such situations, the lawyer can continue to practise while attempting to rehabilitate him or herself under conditions imposed by the hearing panel. It is important to realize that the protection of the public is not limited to protecting the public from lawyers who might, for instance, steal money from clients. It has a much broader meaning. It also includes public confidence in lawyers generally.

[61] People retain lawyers for a number of reasons. Lawyers become a depository of large sums of money, family secrets and wishful commercial aspirations in connection with the matters on which they have been retained. In providing legal services to the public,

> lawyers dispense large sums of money, give undertakings and make representations to the Court. They must be persons in whom the public have confidence. This public confidence relates to the legal profession generally.

[13] The primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate set out in section 3 of the *Legal Profession Act* to uphold and protect the public interest in the administration of justice. This purpose is recognized in the following often-cited passage from MacKenzie, *Lawyers & Ethics: Professional Regulation and Discipline*, at p. 26-1:

> The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.
>
> In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes.
>
> (quoted in *Law Society of BC v. Hordal*, 2004 LSBC 36, at para. 51)

[14] In *Law Society of BC v. Hill*, 2011 LSBC 16, the hearing panel commented at para. 3 that:

> It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[15] Here, there are 11 findings of professional misconduct on the part of the Respondent. Sanctions for multiple findings of misconduct should be considered on a global basis (*Lessing*; *Law Society of BC v. Gellert* 2014 LSBC 05).

[16] While the global approach to penalties as enunciated in *Lessing* and *Gellert* are not binding on this Panel, this approach is appropriate in the circumstances of this case.

[17] In *Law Society of BC v. Martin*, 2007 LSBC 20, the following considerations were found to be appropriate where the Law Society was advocating suspension as the appropriate penalty:

(a) whether or not the misconduct included elements of dishonesty;

(b) whether or not the misconduct involved repetitive acts of deceit or negligence;

(c) significant personal or professional conduct issues.

[18] Here, our finding is that the Respondent is guilty of acts of dishonesty and negligence. The Law Society's obligation to protect the public and the reputation of the legal profession is paramount. Neither the Law Society nor the public will tolerate lawyers who are dishonest, lie to the judges or habitually behave in a manner that is below the standard expected of lawyers.

[19] The Law Society argues that the principle of progressive discipline suggests that a lawyer who has been disciplined in the past warrants a more significant penalty than someone who has had no prior history of discipline.

[20] We agree.

[21] This principle has been followed in recent decisions (*Law Society of BC v. Niemela*, 2012 LSBC 09; *Law Society of BC v. Batchelor*, 2013 LSBC 09).

[22] The approach to sanctions in cases of multiple findings of professional misconduct requires the Panel to consider similar past conduct and prior disciplinary action. While the notion of progressive discipline may be appropriate in some cases, it should not be applied in all cases. It depends on the circumstances of the individual case (*Lessing*).

RESPONDENT'S CONDUCT RECORD

[23] This is not the first time the Respondent has been involved with the Law Society. He has had one prior citation and four conduct reviews. In addition, in May 2005, a Practice Review was ordered by the Practice Standards Committee, and in September 2005, the Practice Standards Committee made a number of recommendations, including a practice supervisor, a follow-up practice review, improvements to his office procedures and improvements to his practice methods.

[24] In November 2005 a conduct review was ordered regarding his breach of an undertaking to pay sale proceeds to a notary public in relation to the sale of commercial premises. It is clear from the record that the Respondent made an error relating to an assignment of rents but, instead of taking responsibility for the error, decided to stop payment on a trust cheque.

[25] The Discipline Committee ordered a conduct review. The subcommittee reported:

> It is clear that the task of preparing and obtaining a fully executed Assignment of Lease was Mr. Vlug's sole responsibility. His correspondence to Notary T, however, reflects the fact that he totally misunderstood this. Because of this lack of understanding on his part, he authored correspondence that was unfair, misguided and uncomplimentary to Notary T. Mr. Vlug's problems were exacerbated by his response to Notary T's complaint to the Law Society about Mr. Vlug's breach of undertaking. His response was to accuse her of acting unprofessionally and of harassing his office. In short, Mr. Vlug still accepted no responsibility for what went wrong.

[26] Of significant concern to this Panel is that his professional conduct record ("PCR") also discloses dishonesty on his part. In 2011, a hearing panel concluded that he was guilty of professional misconduct relating to the settlement of a personal injury matter in 2008. They found that, following a negotiated settlement with ICBC, he mistakenly received more money from ICBC than he should have and failed to return the excess. When confronted, he concocted a story suggesting that the excess money was in payment for a bad faith claim against ICBC. The Law Society advocated for a one-month suspension on the basis that the Respondent's PCR showed a history of poor judgment, poor communication and that past conduct reviews did not appear to be helping the Respondent understand his shortcomings. Instead, the Panel ordered a fine of $5,000 in the hope that it would have a deterrent effect.

[27] It is noteworthy that the misconduct that was the subject of the ICBC-related citation pre-dates the misconduct found in this case and that the Panel's decision in the ICBC matter occurred in 2011, after the misconduct in this case occurred.

[28] The Respondent's PCR also discloses that, in 2010, a conduct review was conducted relating to what was determined to be *"arrogant, belittling, demeaning, overly aggressive, threatening and unnecessary"* communications with a self-represented party in a contested custody matter. The subcommittee conducting the review concluded that Mr. Vlug has learned little or nothing from his previous conduct reviews relating to similar complaints concerning his communication skills and failure to take responsibility for his actions.

[29] There are two themes that emerge from the Law Society's history with the Respondent, and this Panel's finding:

(a) the Respondent has poor communication skills;

(b) the Respondent refuses to accept responsibility for his improper behaviour and actions, wanting instead to blame others.

[30] The Respondent has been given many chances and has had the benefit of help from the Law Society with seemingly little positive results. It is on this background that this Panel must assess the appropriate sanction for our 11 findings of professional misconduct.

[31] We agree with the Law Society's submissions that the following factors are most relevant in determining the appropriate sanction:

(a) the serious nature of the Respondent's conduct including whether or not it involved dishonesty or deceit, the number of instances of the misconduct, the impact on the "victims", and the need for general deterrence;

(b) the Respondent's PCR and other factors relevant to the Respondent personally;

(c) consistency with sanctions in prior similar cases.

THE SERIOUS NATURE OF THE RESPONDENT'S CONDUCT

[32] This Panel found that the Respondent knowingly made misrepresentations in affidavits and lied to a judge of the Court of Appeal, to the Law Society and to the Panel. We also found that he improperly suggested a lawyer was deceiving the Law Society during its investigation of the complaints against him. We found his conduct was egregious and beneath the standards expected of members of the profession.

[33] It is apparent to the Panel that the Respondent has no difficulty saying whatever he thinks he has to, to whomever he is dealing with, in order to avoid taking responsibility for his actions.

[34] These findings are serious. His misrepresentations were intentional, and he was dishonest. In our view, his lack of honesty and his apparent lack of understanding of the gravity of his behaviour during both hearings elevate the sanction that must be assessed.

[35] One of the *Ogilvie* factors is whether or not the respondent has gained or benefited from his misconduct. In this case, there appears to be very little that the

Respondent gained by his actions. Rather, his efforts to "save face" have had a negative effect on both himself and his practice.

The possibility of rehabilitation

[36] Public protection must prevail over rehabilitation or remediation of the Respondent.

[37] The Law Society points out that the 11 findings of professional misconduct involved in this case involved three separate client matters and occurred between May 2009 and October 2011, a period of two and a half years. It concedes, however, that the timing of this misconduct pre-dated the Panel's decision respecting the prior citation, so the Respondent would not have gained any deterrent or remedial benefit from the events that form his PCR until after the misconduct arose in this case. The Law Society therefore says that the Respondent's prior citation is not relevant because he did not have the Panel's decision at the time he committed the misconduct related to the current citations.

[38] While we understand the point made by the Law Society, to us the larger concern is that the Respondent has displayed a pattern of behaviour that falls far below the standard of conduct expected of any lawyer. It cannot be minimized. Simply put, the Respondent is not entitled, in these circumstances, to say that he did not appreciate the gravity of the improper conduct of which this Panel found him guilty because he was awaiting the outcome of an earlier panel's decision.

The need for specific and general deterrence

[39] We agree with the Law Society's submission that the Respondent's conduct in this case is significant and serious. To ensure public confidence in the integrity of the legal profession and its ability to regulate itself, a strong message of general deterrence must be sent to the profession. The message must also be strong enough that the public is reassured that this type of conduct will not be tolerated. Further, a strong message of deterrence must be sent to the Respondent specifically.

Whether the Respondent has acknowledged the misconduct

[40] It is of significant concern to this Panel that the Respondent has failed to acknowledge his misconduct. He continues to believe that his actions were not that serious and that he should be allowed to continue to practise, business as usual.

[41] The Respondent has not admitted or acknowledged any of his misconduct. Even as late as the disciplinary action phase of the hearing, the Respondent stated that he was entitled to "go down swinging", meaning that he was entitled to maintain to the

last possible moment that he was innocent of his wrongdoings despite the overwhelming evidence against him.

[42] The Respondent has not taken any steps to redress any of his misconduct. He continues to be oblivious or wilfully blind to the impropriety of his actions. Given his continued denial, it is not surprising that he has taken no steps to rehabilitate himself. Until he is able to understand his shortcomings and recognize that his conduct is far below the standard expected of a lawyer, it will not be possible to remediate or rehabilitate him.

[43] His PCR suggests that, following his previous encounters with the Discipline Committee and practice reviews, he recognized that his methods of practice were wanting and suggested that "the light went on" and he would improve. Apparently, that is not the case.

[44] We agree with the Law Society's submissions that these factors weigh in favour of a sanction designed to address specific deterrence of the Respondent.

Range of sanctions in previous cases

[45] The Law Society and the Respondent provided the Panel with a summary of cases each says deal with the penalties assessed in similar situations.

[46] In sum, we find the cases provided by the Respondent are distinguishable on their facts. The findings of misconduct in each of those cases are far less severe than the misconduct in this case. The range of penalties imposed in those cases would be wholly inappropriate to the Respondent considering our findings against him.

[47] The cases provided by the Law Society more appropriately set out the range of sanctions that should be made in respect of our findings in this case.

[48] We agree with and adopt the Law Society's submissions on the point. They are as follows:

Misleading, or misrepresentation to, the Court

In the cases summarized below, the sanctions ordered varied from a $2,000 fine to a suspension of 90 days. Suspensions were ordered in cases where the respondent misled the court in more than one way, or other aggravating factors were present, such as other misconduct (e.g., misleading the Law Society), or the respondent had a professional conduct record. Typically, suspensions have been ordered when the misrepresentation to the court was found to have been intentional.

1. *Law Society of BC v. Hart*, 2007 LSBC 50, was a case in which the lawyer permitted his client to swear an affidavit that the client advised contained inaccurate statements, and then relied upon it in a court application without advising the court of the inaccuracies, despite having told his client that he would do so. The errors were inconsequential and gave no benefit to the respondent or his client. The lawyer was fined $2,000.

2. In *Law Society of BC v. Batchelor*, 2014 LSBC 11, the respondent lawyer relied on two improperly commissioned affidavits that were filed electronically without compliance with the Rules of Court and made misrepresentations to the court when he was questioned about the commissioning of the affidavits. (The respondent told the court that the exhibits to the affidavit of his client were commissioned by the lawyer before whom the client swore the affidavit, which was untrue because the respondent had signed the exhibits in the client's absence.)

   The behaviour of the respondent in wilfully filing improperly sworn affidavits and representing to the court otherwise is one of the most serious transgressions that can be committed by a lawyer. It goes to the heart of the legal process before our courts. The hearing proceeded under Rule 4-22 (Consent to disciplinary action). The respondent had a PCR consisting of various recommendations of the Practice Standards Committee, a conduct review and a citation, all of which were recent, and the respondent had been in practice for only eight years in British Columbia. The respondent was suspended for one month.

3. In *Law Society of BC v. Galambos*, 2007 LSBC 31, colleagues in the office where the respondent was employed were preparing an application for short leave in a family law action. The respondent was aware of a discussion on whether it was necessary to serve the defendant in the action with only the writ and statement of claim, or whether the notice of motion and supporting affidavit also had to be served. The writ and statement of claim were served on the defendant, but the notice of motion and supporting affidavit were not. The respondent attended before a Master in Supreme Court Chambers to speak to the short leave application. Prior to leaving the office for court, the respondent asked a legal secretary if the defendant had been served. She told him that the defendant had been served, but the process server had not yet provided an affidavit of service. The respondent did not ask which documents had been served on the defendant. During his submissions, the respondent represented to the court that the notice of motion and supporting affidavit had been served on the defendant. The Master granted the short

leave application. Immediately after the application, the respondent's associate advised him that the notice of motion and affidavit had not been served on the defendant. The respondent did not return to court to advise his prior representation was inaccurate. The panel accepted the respondent's admission of misconduct and ordered a suspension of one month, and stated at paras. 6 and 7:

> ... in the case under consideration, the governing factor, in our view, is that this is a serious matter. The court must be able to accept statements of counsel without having to make inquiry. And indeed, when counsel, having discovered that he or she has made a misrepresentation (and there is no alternative) must inform the court of the incorrect statement that had been made. That seems to us to be an aggravating factor here.
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> This is, in our view, a case that calls for something more than a fine. We agree with the submission made by counsel for the Law Society that this kind of case calls for something that will be regarded by members of the public as more than a cost of doing business.

4. *Law Society of BC v. Botting*, [2001] LSDD No. 21, the respondent misrepresented to the court in a family law matter that opposing counsel had consented to access and subsequently misrepresented to the Law Society that he did not make the representation to the court. The hearing panel determined that the respondent's conduct constituted professional misconduct and ordered a suspension of 90 days. He had a PCR consisting of two conduct reviews.

Misleading the Law Society

In the following cases, respondents were found to have committed professional misconduct in respect of misrepresentations to or misleading the Law Society in the course of investigations of complaints or fulfilling their regulatory obligations. The lowest sanction ordered in this group of cases is a one-month suspension.

5. In *Law Society of BC v. Liggett*, 2012 LSBC 07, the respondent told the Law Society that he was unable to attend a citation hearing because he had a trial. The respondent sought an adjournment. The Chambers Bencher considering the adjournment requested a copy of the Notice of Trial from the court action and the respondent's alternative dates. The trial had been adjourned, which the respondent did not disclose to the Chambers Bencher.

The Law Society learned of the adjournment from the Provincial Court Registry. The panel found the respondent had committed professional misconduct when he sent a Notice of Trial to the Law Society and, either knowingly or recklessly, misrepresented that he continued to be unavailable for a discipline hearing. The respondent was suspended for one month.

6. The respondent in *Law Society of BC v. Strandberg*, 2001 LSBC 26, was cited for several allegations, including attempting to mislead the Law Society by making misrepresentations to the Law Society in the course of the Law Society's investigation of a complaint. The misrepresentations included forging documents. This conduct was admitted and was determined by the panel to constitute professional misconduct. The respondent was suspended for one month and fined $15,000.

7. In *Law Society of BC v. Geronazzo*, 2006 LSBC 50, the respondent was cited with several instances of attempting to mislead other lawyers and one allegation of attempting to mislead the Law Society in the course of its investigation of a complaint. The panel rejected the evidence of the respondent and determined that her conduct constituted professional misconduct and ordered a suspension of six months. The hearing report did not reference if the respondent had a PCR.

8. In *Law Society of BC v. Luk*, 2007 LSBC 13, the respondent provided a false document to the Law Society during the course of its investigation. The matter proceeded by way of Rule 4-22, and the panel accepted the respondent's admission of professional misconduct and imposed an 18-month suspension and ordered practice conditions. This disciplinary action was in respect of the respondent's misleading conduct toward the Law Society and her failure to provide quality of service to a client. The hearing report did not mention if the respondent had a PCR.

9. *Law Society of BC v. Strandberg*, 2007 LSBC 19, dealt with two citations with 13 allegations of misleading the Law Society, as well as allegations of misleading another lawyer, inadequate quality of service to three clients, and breach of undertaking. At the disciplinary action phase of the hearing, the panel accepted a joint submission from the Law Society and the respondent for the respondent's resignation from the profession coupled with an undertaking that he not apply for reinstatement for at least seven years, rather than disbarring him.

Improper commissioning of affidavits

Suspensions have been ordered in cases for improper commissioning of oaths, but typically suspensions are reserved for cases in which the improper commissioning resulted in misleading the court or where there was other misconduct present. Two cases with similarities to the misconduct in this case are summarized below.

10. In *Hart*, the misconduct of improperly commissioning a client's affidavit resulted in misleading the court, for which the Respondent was fined $2,000.

11. In *Law Society of BC v. Foo*, [1997] LSDD No. 197, the respondent allowed a client in a divorce proceeding to swear an affidavit stating the client's wife had been served with the divorce petition, which was untrue. He redrafted the affidavit for the client to swear that made reference to exhibits not attached to the affidavit. In addition, he postdated the jurat on the affidavit. The panel fined the respondent $2,600 and imposed conditions upon the respondent's return to practice (he was a non-practising member at the time of the hearing). The practice conditions included that, for the first two years after the respondent returned to practice, he must practise at a law firm under the supervision of a lawyer called to the bar for at least five years and that, in that time, he must complete four Continuing Legal Education courses.

Incivility

Generally speaking, fines are ordered in respect of findings of professional misconduct for incivility. The cases presented below are similar to this case, in that the discourteous remarks were directed at another lawyer.

12. In the case of *Law Society of BC v. Laarakker*, 2011 LSBC 29 (facts and determination); 2012 LSBC 2 (disciplinary action), the respondent posted comments on a public blog that contained discourteous and personal remarks about an Ontario lawyer:

> This guy is the kind of lawyer that gives lawyers a bad name. … I hate these sleazy operators.

In addition, the respondent sent a fax to the Ontario lawyer that contained discourteous and personal remarks. The panel noted the respondent's PCR was not an aggravating or a mitigating factor as this was the first instance of such misconduct from the respondent. The panel found the respondent's

misconduct to be at the lower end of the spectrum of the case range presented by the Law Society, and ordered a fine of $1,500 and costs in the amount of $3,000, with the panel noting the respondent's financial circumstances as one of the reasons to order an amount for costs less than sought by the Law Society.

13. Law Society of BC v. Harding, 2013 LSBC 25 (facts and determination), 2014 LSBC 06 (disciplinary action), involved two citations for making rude and discourteous remarks to two different opposing counsel, on different matters. One of the citations was dismissed. In the citation that was proved, the panel found the respondent wrote two letters on the same date to opposing counsel that contained rude and discourteous remarks. In the first letter, the respondent implied that opposing counsel was a "stupid, dishonest lawyer". In the first letter, the respondent also made specific reference to opposing counsel by his surname only. In the second letter, the respondent said he omitted the use of "Mr." in reference to opposing counsel because it was an "honorific" signifying respect, and "since none applies, [he] did not use it." In the second letter, the respondent specifically stated he retracted nothing from the first letter, and suggested opposing counsel brush up on his grammar and went on to say (in reference to opposing counsel), "All that separates us from the great apes is the precise use of language. In your case, apparently not." The panel found the comments in the second letter to be "completely gratuitous and intended to offend" and that the remarks the respondent made went "beyond mere rudeness or discourtesy." The panel reluctantly accepted the $2,500 fine proposed by the Law Society and the respondent, as the respondent had provided an undertaking to continue with counselling and psychological treatment as reflected in the evidence.

RESPONDENT'S AUTHORITIES

[49] For the sake of completeness, we summarize the cases the Respondent referred to us in support his submission that his penalty should be a fine or a short period of suspension:

1. *Paletta, Re*, CanLII 915 (ON LSDC), involved a racist slur levelled by a lawyer. The discipline committee commented that discriminatory and racist outbursts from lawyers cannot be tolerated and ordered a reprimand.

2. *Bayly (Re)*, 2002 CanLII 53208 (NWT LS), involved a lawyer recording a telephone conversation without informing the party being recorded. Such

conduct was found to be conduct unbecoming a lawyer. The penalty was a reprimand and fine.

3. *Law Society BC v. Boles*, 2007 LSBC 43, involved a lawyer failing to communicate with the Law Society regarding a complaint. Despite the Law Society finding that the respondent's conduct was serious, and despite counsel for the Law Society seeking a suspension of three to six months, the panel applied the principles set out in *Ogilvie*, and determined that a suspension would result in undesirable economic consequences to others, including the respondent's clients, and that a fine of $17,500 was the appropriate penalty. Costs of $17,000 were also ordered.

4. In *Hart*, the respondent prepared an affidavit containing inaccurate statements that he knew to be false. He did not advise the court of the inaccuracies because he did not believe they were important errors. He was ordered to pay a fine of $2,000 plus costs of the proceedings.

5. *Law Society BC v. Wittman*, 2008 LSBC 24, involved a lawyer who failed to remit GST and PST collected from clients and falsely reported them as "nil" on the returns. This came to the panel by way of Rule 4-22 where the respondent sought a fine of $3,000 plus costs of $1,500. That panel accepted the proposed penalty.

6. *Law Society of BC v. Walters*, 2010 LSBC 15, involved an isolated breach of an undertaking. The lawyer took immediate steps to rectify the breach and took responsibility for it. The lawyer proposed a penalty under Rule 4-22 of a $3,500 fine and costs of $1,500, which was accepted by the panel.

7. In *Law Society of BC v. Marcotte*, 2010 LSBC 18, the respondent failed to respond to law society communications or provide meaningful responses to their inquiries respecting complaints against her. Her PCR revealed a number of conduct reviews for breaches of undertakings and client complaints with respect to delays. Relying on *Ogilvie*, the panel did not believe a reprimand or a suspension was warranted and ordered a fine of $2,750 and costs of $2,400.

8. In *Law Society of BC v. Toews*, 2008 LSBC 29, a fine of $2,500 and costs of $3,300 were ordered in circumstances where the lawyer misconducted himself in a real estate transaction.

9. In *Law Society of BC v. MacKinnon*, 2001 LBC 38, the respondent misled the court by stating that a matter was to be adjourned by consent when

there was no consent. The respondent had a long and unblemished career, acknowledged his misconduct early in the proceedings, was remorseful and apologized. The penalty was a fine of $1,500 and costs of $1,000.

10. *Law Society of BC v. Pierce*, 2001 LSBC 04, involved a lawyer who had an extensive prior discipline history and who was found to have overcharged a client by improperly billing on a percentage basis rather than on an hourly rate basis. The penalty was a $12,000 fine and costs of $5,069.

11. In *Law Society BC v. Cruickshank*, 2012 LSBC 27, the majority of the panel accepted the proposal of a one-month suspension and costs of $8,500 in respect of a respondent's breach of undertakings, sloppy handling of trust funds and failure to comply with Law Society rules regarding accounting and trust matters. The panel stated that "what is noticeably absent is any malice or deception by the Respondent."

12. *Law Society BC v. Lanning*, 2009 LSBC 02, involved professional misconduct by a lawyer in comments made to an unrepresented party. The lawyer was reprimanded, given a fine of $2,500 and ordered to pay costs of $6,600.

13. *Law Society BC v. Lail*, 2012 LSBC 32, involved a lawyer who, in order to zero out trust account balances on his files in preparation for his leaving the firm, prepared 24 bogus bills equal to those balances. He did not send the bills to his clients. He admitted his conduct was wrong and was given a $3,500 fine and ordered to pay $2,000 costs.

14. *Law Society of BC v. Cranston*, 2006 LSBC 36, involved a lawyer who signed a document as a witness when he had not actually witnessed the signature. He was ordered to pay a fine of $5,000 and costs of $3,500.

15. Lastly, in *Law Society of BC v. Milne*, 2004 LSBC 19, a lawyer who improperly altered a document was fined $3,500 and ordered to pay costs.

[50] In our judgment, the cases the Respondent relied on are distinguishable on their facts and are not helpful or persuasive in the determination of the appropriate penalty warranted in this case.

CONCLUSION AND ORDER

[51] The Respondent's conduct in this case is sufficiently wanting that it warrants a significant period of suspension regardless of his conduct in the past.

[52] In weighing the nature of the Respondent's conduct, the evidence of the Respondent during the disciplinary action phase of the hearing and the submissions, it is the Panel's decision that the Respondent is to be suspended for a period of six months.

[53] This takes into account the findings at the hearing, the Respondent's PCR and concern the Panel has about the Respondent as reflected in these reasons.

[54] While it is at the upper end of the sanction the Law Society sought, in our judgment, it is critically important that the Respondent, the profession in general and the public understand that the type of behaviour displayed by the Respondent (particularly his lying to the Court of Appeal, to the Law Society and to the Hearing Panel) is not acceptable and should result in significant sanctions.

[55] The Respondent, Gary Russell Vlug, is suspended from the practice of law pursuant to section 38(5)(d) of the *Legal Profession Act* for a period of six months commencing October 1, 2014.

COSTS

[56] The Law Society seeks costs in the amount of $23,743.03 and relies on a Bill of Costs which we have considered. Having reviewed and considered the Bill of Costs and the submissions from both parties, we order costs payable by the Respondent of $20,000 on or before November 30, 2014.