

David Michael Ashton

Victoria, BC

Called to the Bar: May 10, 1984

Discipline hearing: March 16, 2004

Panel: Ralston S. Alexander, QC, as a one-Bencher panel, by consent

Reports issued: May 4, 2004; indexed as 2004 LSBC 11 (facts and verdict) and 2004 LSBC 12 (penalty)

Counsel: Luisa Hlus, for the Law Society and Michael Ranspot, for Mr. Ashton

Summary

While representing the plaintiff in a litigation matter, Mr. Ashton failed for seven months to respond to communications from counsel for the defendant that required his response. Since a previous hearing panel on a separate matter had ordered that he practise only under a practice supervision agreement with another lawyer and he had not entered into such an agreement, Mr. Ashton was not practising law at the time of the hearing. In the present matter, the panel noted the seriousness of Mr. Ashton's conduct and ordered that he be suspended for three months and pay costs.

Facts

In June, 2002 Mr. Ashton began acting for the plaintiff in a litigation matter. Between July 18 and December 17, 2002, counsel for the defendant communicated with Mr. Ashton on 14 occasions. Mr. Ashton's only response to these communications was a returned telephone call on December 19. During that conversation, Mr. Ashton said that he had no instructions from his client but would seek these the following Monday. He did not in fact provide a further response, and counsel for the defendant communicated with him three more times in the month that followed in an attempt to move the litigation along.

On January 21, 2003 counsel for the defendant complained to the Law Society about Mr. Ashton's failure to respond. On January 23, 2003 the Law Society requested Mr. Ashton's response to this complaint.

The Discipline Committee suspended Mr. Ashton from practice on January 24, 2003 on an interim basis, pending disposition of a separate citation against him. Following that other hearing, the panel ordered that Mr. Ashton not return to practice until he had entered into a practice supervision agreement with another lawyer acceptable to the Law Society. He had not practised law since his interim suspension and was driving a taxi for a living at the time of the hearing.

Verdict

Mr. Ashton admitted and the hearing panel found that his conduct in failing to respond to communications from another lawyer that required his response breached Chapter 11, Rule 6 of the *Professional Conduct Handbook* and constituted professional misconduct.

Penalty

The hearing panel commended counsel who represented the defendant in this matter for his patience, restraint and diligent follow-up throughout the seven months in which Mr. Ashton failed to reply to his communications. This exemplary conduct was in contrast to Mr. Ashton's own unacceptable behaviour, which must be censured in the strongest terms to send a message of condemnation and to ensure the profession is aware of the seriousness with which such conduct is viewed.

The hearing panel ordered that Mr. Ashton:

be suspended for three months; and

pay \$2,633.50 as costs of the discipline proceedings, payable at \$250 per month without interest and commencing a month after Mr. Ashton has satisfied other outstanding obligations to the Law Society respecting previous orders for fines and costs.