

2005: No. 02 July-August

Gregory Allan Smith

Surrey, BC

Called to the bar: February 12, 1985

Discipline hearing: May 30, 2005

Panel: Dirk J. Sigalet, QC, Chair, Warren T. Wilson, QC and Joost Blom, QC

Report issued: July 15, 2005 (indexed as 2005 LSBC 27)

Counsel: Brian McKinley for the Law Society and Jerome D. Ziskrout for Mr. Smith

Facts

In 1999 Mr. Smith represented U in a third-party action for damages arising from injuries the client had suffered in motor vehicle accident. In January 2001 Mr. Smith settled the third party action on behalf of U and received the settlement funds in trust.

U had earlier executed a subrogation agreement in favour of an insurance company that had paid her certain disability benefits.

Between April 2001 and November 2002 staff of the insurance company wrote to and called Mr. Smith on numerous occasions to enquire about the outcome of the settlement negotiations, to follow up on the company's subrogation interest. Mr. Smith did not respond to these communications.

In August 2004 Mr. Smith provided a trust cheque for \$1,103.47 to the insurance company, which it accepted in full satisfaction of its subrogated claim.

Verdict

The hearing panel found that Mr. Smith's conduct in failing to respond to communications that required his response constituted professional misconduct. The panel emphasized that a lawyer has a duty to respond, not only to other lawyers, but to lay persons he or she deals with when acting for a client.

Penalty

The panel noted that Mr. Smith was experiencing file management difficulties at the time of this incident arising from a busy practice, a partner who was ill and other demands. This was at the same time he had failed to comply with trust accounting rules, for which he had been disciplined with a fine and costs: *see below*.

The panel treated these situations as one incident, not separate incidents, and noted that Mr. Smith was a hardworking lawyer unlikely to repeat the behaviour. It ordered that he:

1. be reprimanded; and
2. pay costs, to be agreed on or determined by the panel as necessary.