

2006 LSBC 17

Report issued: May 03, 2006

Citations issued: May 6, 2004, June 9, 2004  
and September 2, 2004

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

**David Kok Kwong Tsang**

Respondent

### **Decision of the Hearing Panel on Penalty**

Hearing date: November 16, 2005

Panel: Ralston S. Alexander, Q.C., Chair, Anne K. Wallace, Q.C., Dirk Sigalet, Q.C.

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Ali Sodagar

## **Background**

[1] This was a hearing of three citations which included complaints concerning failing to respond to the Law Society, failing to respond to a client, failing to respond to another lawyer, failure to provide a client with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation and failing to account in writing to a client for funds received in trust. The Respondent did not attend the hearing into the citations and did not instruct counsel to attend on his behalf. The Respondent did attend the hearing on penalty.

[2] The Panel found that the Respondent professionally misconducted himself with respect to all of the allegations, and the Panel found him guilty of professional misconduct on all three citations. The penalty hearing was conducted on November 16, 2005 before a Panel consisting of Ralston Alexander, Q.C., Dirk Sigalet, Q.C. and Anne Wallace, who was, at that time, no longer a Bencher of the Law Society but was continued as a member of this Panel by the President under Rule 5-2(5).

### **Conduct Record**

[3] The Respondent was called to the Bar in British Columbia on September 22, 1999. From his date of call until May 26, 2002, he practised in association with another lawyer. Commencing June, 2002 he practised as a sole practitioner. On October 18, 2004, the Respondent gave his undertaking to the Law Society of BC that he would not practise law until the citations were dealt with. He is now a non-practising member.

[4] His Professional Conduct Record, until these matters arose, was unblemished.

## **Respondent's Circumstances**

[5] The Respondent explained that 2004 was a very stressful year for him. An attempted suicide in his extended family was very emotionally difficult for the Respondent and, also in that year, he and his wife separated. The Respondent testified that this caused him to be anxious and depressed, which led to his chronic procrastination. He stated that he finally went to his physician, who prescribed medication and recommended he take some time off.

[6] The Respondent further testified that in early 2004 he became involved in starting up a family business which demanded a lot of his time. His evidence was that there was significant pressure on him from his family to be involved in this business. It required him to travel a great deal throughout Washington, Oregon and California to establish business contacts. He testified that this contributed to the delay in responding to his clients and the Law Society and impaired his ability to satisfactorily complete the work he had taken on.

[7] The Respondent gave an undertaking to the Law Society to not practice law unless and until he meets the requirements of this decision. He advised the Panel that he now lives in California and at this time does not intend to practice law in British Columbia but would like to "leave the door open" to practice here in the future.

[8] The Panel finds that the Respondent gave conflicting and inconsistent explanations for his behaviour. For instance, he indicated that the stresses he was facing in 2004 were the root cause, yet the complaints in one citation began in 2001, and in another began in 2003.

[9] The Respondent stated his health issues contributed to his problems but no medical evidence was called, either viva voce or by way of a medical report, to support this allegation. In addition, in cross-examination the Respondent acknowledged that he has not been diligent in taking the medication prescribed by his physician and that he has missed appointments with his Doctor.

## **Law Society's Position**

[10] Counsel for the Law Society acknowledged that the Respondent's attendance at the penalty hearing went a long way to showing his acknowledgment of his misconduct, as did the repayment to his clients of their retainers for fees. Counsel submitted a fine in the range of \$4,000 to \$6,000 would be appropriate.

[11] Counsel for the Law Society also submitted that the Panel impose the following conditions upon the Respondent:

(a) Prior to returning to practice, provide a report acceptable to the Practice Standards Committee from a qualified medical practitioner setting out the diagnosis, prognosis, and recommended treatment for the medical condition that contributed to the Respondent's professional misconduct and provide a medical assessment that the Respondent is then fit to practice law;

(b) Until relieved of this condition by the Practice Standards Committee, provide quarterly reports acceptable to the Practice Standards Committee from the Respondent's medical practitioner setting out the ongoing treatment plan and progress;

(c) Prior to returning to practice, enter into a Practice Supervision Agreement with a lawyer acceptable to the Practice Standards Committee and on terms acceptable to the Practice Standards Committee;

(d) Continue under practice supervision at the Respondent's cost until relieved by the Practice Standards Committee;

(e) Within six months of resuming practice, report to the Practice Standards Committee as required and submit to a practice review as directed by the Practice Standards Committee.

[12] In addition, counsel submitted that the Bill of Costs for the two hearings of this matter, which totalled \$8,114.96, be paid by the Respondent.

### **The Respondent's Position**

[13] The Respondent's position is that the penalty proposed is too severe. The Respondent testified that at no time were his actions dishonest or fraudulent. He has returned all monies he held in trust for retainers to his clients and, in the final outcome, delivered the documents that had been requested of him. As well, he had given his undertaking not to practice law quite some time ago and has abided by his undertaking.

[14] The Respondent cited a number of decisions that resulted in reprimands and reduced costs, but no further suspensions or fines.

## **Decision**

[15] The factors the Panel must consider in assessing penalty are set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. Applying the *Ogilvie* test, in mitigation the Panel recognizes that the Respondent is still quite young and was a junior lawyer when these events happened. He was of previous good character and has made efforts to restore the position of the clients in whose matters he misconducted himself. He gained no advantage for himself from these actions. He did cause significant inconvenience to the clients and to another lawyer, and with respect to one client, he caused considerable financial hardship - which has resulted in a claim to the Law Society.

[16] In terms of the nature and gravity of the offence, while it is not at the most serious end of the range of actions which amount to professional misconduct, failing to respond to the Law Society is a grave concern for the profession. If the Law Society and its members are not seen to take communications from the Law Society seriously, the profession may lose the right to independent self-governance, as has occurred in other jurisdictions.

[17] Aggravating factors in this matter are that this behaviour resulted in three separate citations and occurred over a substantial period of time.

[18] The conduct itself goes to the heart of the public's assessment of the integrity of the profession. In this situation, the Respondent chose to put his business and family interests ahead of those of his clients and his professional responsibilities. It is important that members of this profession clearly understand that if they are having difficulty in their practice, for whatever reason, they have an obligation to obtain assistance and deal with the problems, rather than avoid doing so at the cost of the client. This is essential in order for the public to retain confidence in the legal profession.

[19] Therefore it is the decision of this Panel to impose the following penalty:

1. The Respondent is reprimanded.
2. Prior to returning to practice, the Respondent shall provide a report acceptable to the Practice

Standards Committee from a qualified medical practitioner setting out the diagnosis, prognosis, and recommended treatment for the medical condition that contributed to the professional misconduct of the Respondent and, in addition, the Respondent shall provide a medical assessment that demonstrates that he is fit to practice at that time.

3. Prior to returning to practice, the Respondent shall enter into a Practice Supervision Agreement with a lawyer acceptable to the Practice Standards Committee and on terms acceptable to the Practice Standards Committee, and shall continue under practice supervision, at his cost, until relieved of this condition by the Practice Standards Committee.

4. The Respondent shall comply with all recommendations made from time to time by the Practice Standards Committee with respect to his practice.

5. The Respondent shall respond to all written inquiries from the Law Society of BC within 14 days of receipt.

6. The Respondent shall pay the costs of these hearings pursuant to the Bill of Costs, which was entered in this hearing, in the amount of \$8,114.96. The Respondent shall have one year from the date of the issuance of these reasons to pay that amount.