

2006 : No. 05 November-December

## **David Kok Kwong Tsang**

Eureka, CA

Called to the bar: September 22, 1999

Ceased membership for non-payment of fees: January 1, 2006

**Penalty hearing** : November 16, 2005

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

**Report issued** : May 3, 2006 (indexed as 2006 LSBC 17)

**Counsel** : Brian McKinley for the Law Society; Ali Sodagar for Mr. Tsang

## **Facts**

By citations issued May 6, June 9 and September 2, 2004, Mr. Tsang was cited for failure to respond to the Law Society, failure to respond to a client, failure to respond to another lawyer, failure to provide a client with a quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, and failure to account in writing to a client for funds received in trust. Mr. Tsang did not attend the ensuing discipline hearing, where the hearing panel found Mr. Tsang guilty of professional misconduct with respect to all cited allegations.

Mr. Tsang did attend the hearing on penalty, where he testified that 2004 had been a very stressful year for him, for various family and health reasons. Mr. Tsang said that he had been required to travel a great deal throughout the states of Washington, Oregon and California to establish business contacts for a new family business, impairing his ability to complete the legal work he had taken on, and contributing to his delays in responding to clients and to the Law Society.

Mr. Tsang advised the panel that, while he had become a resident of California and had no current intention to practise law in BC, he would like to "leave the door open." Mr. Tsang gave his undertaking not to practise law without meeting the conditions to be imposed by the hearing panel in its penalty decision.

## **Penalty**

The hearing panel noted, as mitigating factors, that Mr. Tsang was a junior lawyer of previous good character at the time of the material events, that he did not benefit personally from the actions giving rise to this proceeding, and that he made efforts to restore the positions of the clients and counsel affected by his actions. The panel also found that Mr. Tsang's actions caused serious inconvenience, and in the case of one client, caused financial hardship. The panel noted, as further aggravating factors, that Mr. Tsang's actions occurred over a significant period of time and resulted in three separate citations.

The hearing panel said that Mr. Tsang put his business and family interests before the interests of his clients and his professional responsibilities. The panel added that if Law Society members have difficulties in their practices, they have a professional obligation to obtain assistance and to deal with the problems. The panel also stressed that if members do not take communications from the Law Society seriously, BC's legal profession may lose its right to independent self-governance, as has occurred in other jurisdictions.

The hearing panel ordered that Mr. Tsang:

1. be reprimanded;
2. comply with the following conditions before returning to practice in BC:
  - a. 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 his professional misconduct;
  - b. provide a medical assessment that demonstrates that he is fit to practise at that time; and
  - c. 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 continue under practice supervision, at his cost, until relieved of this condition by the Practice Standards Committee;
3. comply with all recommendations made from time to time by the Practice Standards Committee with respect to his practice;
4. respond to all written inquiries from the Law Society within 14 days of receipt; and
5. pay costs in the amount of \$8,114.96, within one year from the date of issuance of the panel's reasons.