

2004 LSBC 11

Report issued: May 4, 2004

Oral Reasons: March 16, 2004

Citation issued: September 23, 2003

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

DAVID MICHAEL ASHTON

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: March 16, 2004

Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

Counsel for the Law Society: Luisa Hlus

Counsel for the Respondent: Michael Ranspot

Background

[1] On September 23, 2003, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Corporate Secretary of the Law Society pursuant to the direction of the Chair of the Discipline Committee. This citation directed that this hearing panel enquire into the Respondent's conduct as follows:

1. Your failure to respond from July, 2002 to January, 2003, to communications requiring a response from a member, Richard A. Cleveland, regarding a litigation matter in which you acted for the Plaintiff and Mr. Cleveland acted for the Defendant.

[2] The Respondent acknowledged proper service of the citation.

[3] Pursuant to Rule 5-2(2), the Respondent agreed in writing to a panel consisting of a single Bencher.

Agreed Facts

[4] An Agreed Statement of Facts was filed in these proceedings. I will summarize the essential ingredients of the Agreed Statement of Facts.

(a) In approximately June of 2002, Mr. Ashton acted for a Plaintiff in an action commenced by him in the Supreme Court of British Columbia.

(b) Mr. Richard Cleveland acted as counsel for the Defendants in this action, and in that capacity, Mr. Cleveland communicated with Mr. Ashton on a number of occasions, fourteen in all, from July 18, 2002 to and including December 17, 2002.

(c) Mr. Ashton's only response to these fourteen communications was a returned telephone call to Mr. Cleveland which took place on December 19, 2002, during which conversation Mr. Ashton advised Mr. Cleveland that he had no instructions but would seek the same and respond by the following Monday. Mr. Ashton did not provide a further response to Mr. Cleveland by the following Monday, or at all, and Mr. Cleveland provided three further communications to Mr. Ashton over the next month in an attempt to move the litigation along.

(d) On January 21, 2003, Mr. Cleveland's client complained to the Law Society about Mr. Ashton's failure to respond.

(e) On January 23, 2003, the Law Society wrote to Mr. Ashton seeking a response to the complaint, and on January 24, 2003, for an unrelated matter, Mr. Ashton was suspended from the practice of law. A custodian of his practice was appointed on January 27, 2003.

(f) Mr. Ashton admits that his failure to respond to Mr. Cleveland's correspondence and voice messages as described herein is a breach of the Professional Conduct Handbook, Chapter 11, Rule 6, and constitutes professional misconduct.

[5] Following a consideration of submissions by Counsel, I found the Respondent guilty of professional misconduct on the facts described herein.