

2005 LSBC 18

Report issued: May 11, 2005

Citations issued: June 29, 2004, August 26, 2004, and
November 16, 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 Facts and Verdict**

Hearing date: March 14, 2005

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

Counsel for the Law Society: Brian McKinley

No-One Appearing for the Respondent:

Background

[1] David K.K. Tsang was called to the Bar in British Columbia on September 2, 1999, and until May 26, 2002, he practiced as an associate with Jack L. Lee. From May 26, 2002 until October 18, 2004, he practiced law as a sole practitioner in Vancouver. On October 18, 2004 he gave an undertaking to the Law Society that he would not practice until a determination of the citations dealt with in this decision was made. He is presently a non-practicing member of the Law Society.

Facts

[2] A hearing was authorized for three citations issued against the Respondent. All three citations were heard together on March 14, 2005. The Respondent did not attend. Proof of service of the notice of hearing was led. Mr. Ziskrout, formerly counsel to the Respondent, as amicus curiae confirmed that although he did not have instructions to appear on the Respondent's behalf, Mr. Tsang was aware of the hearing date.

Citation #1

[3] On May 6, 2004 the Discipline Committee resolved to issue a citation against the Respondent for failing to respond to the Law Society.

[4] With respect to this matter R.V., a 74 year old retired gentleman, testified that he retained the Respondent for two matters. In 2001 he asked the Respondent to help him with respect to a lien on his home. He stated he provided a \$2,000 retainer to the Respondent to have him remove a lien against his

house, which was done. R.V. next provided an additional \$8,000 retainer to the Respondent to settle the claim which led to the lien. He also retained the Respondent to appeal another judgment rendered against him and provided a separate retainer for that matter.

[5] R.V. subsequently complained to the Law Society that he was having trouble communicating with the Respondent, who was not returning the many telephone messages he left. After the Law Society contacted the Respondent, Mr. Tsang contacted his client and apologized to him and promised to do better. The client was satisfied with the apology and at that time the Law Society closed the file as resolved.

[6] In early January 2004 the same client contacted the Law Society complaining that the Respondent was not returning his telephone calls again. The Law Society sent a letter to the Respondent on February 6, 2004, requesting an explanation for his behaviour and two weeks later called and left a message on his voicemail. The Respondent returned the call the day the voice message was left and advised he had arranged a meeting with the client. The Respondent did contact his client and the client subsequently advised the Law Society that he had agreed to give Mr. Tsang one more week to provide a satisfactory response to him about the status of the litigation matter.

[7] R. V. testified that the Respondent did contact him and asked R.V. to come to his office to sign a Statement of Claim, which R.V. did in March, 2004. Nothing was said about the other Court case. That was the last time R.V. saw the Respondent. In May, 2004, having heard nothing further from the Respondent, R.V. complained to the Law Society again.

[8] R.V. also testified that the Respondent had not accounted to him for the \$8,000 retainer provided to him. The Law Society wrote to the Respondent about this on June 7, 2004 requesting an explanation for his failure to account and a follow-up letter was sent on July 22, 2004. Voicemail messages were left for him to call the Law Society on July 8 and 20th, 2004. The Respondent did not reply to those messages. In September 2004, the client received a cheque for \$8,000 from the Respondent along with the contents of his litigation file.

[9] The Respondent did not provide an explanation regarding his failure to respond to the February 6, 2004 letter sent to him by the Law Society. Subsequently, the Law Society sent letters to the Respondent on March 2, 17, and 30, 2004 requesting a written response. No reply was received. On March 30, 2004 a voicemail message was left for the Respondent advising him that if he did not respond to the previous letters within 5 days, his failure to respond to the Law Society would be referred to the Discipline Committee. No reply was received. The matter was referred to the Discipline Committee, which led to this citation.

Citation #2

[10] On June 9, 2004 the Discipline Committee resolved to issue a citation against the Respondent for his conduct regarding his failure to respond to the Law Society, his failure to respond to a former client and his failure to respond to another lawyer.

[11] The facts giving rise to this citation are that J.W. retained the Respondent in March 2003 to incorporate a company and to register a sole proprietorship. J.W. testified that he knew the Respondent by virtue of the fact that he and Mr. Tsang shared packaged office space. Each office had its own phone line and shared a common reception. J.W. stated that he paid the Respondent \$1,600 as a retainer.

[12] J.W. testified he had to "chase Mr. Tsang down" but eventually he received a letter from the Respondent advising he had incorporated the company but had done so with Mr. Tsang as the subscribing shareholder. A photocopy of the certificate of incorporation was provided. The Respondent advised his client by letter that he would transfer the company into J.W.'s name.

[13] Using the document and letter, J.W. opened a corporate bank account. He then ran into difficulty with the federal government because the company was not transferred into his name. J.W. testified that he then began to leave virtually daily voicemail messages for the Respondent for 7 or 8 months but he received no response. He testified he put notes under the Respondent's door, when he could hear people talking in the office. The room would go silent after the note was put under the door and yet the Respondent did not respond.

[14] J.W. then hired a new lawyer, Mr. Eades, a practitioner of more than 30 years experience. Mr. Eades testified that he telephoned the Respondent twice and left messages but he did not receive a reply, nor did the Respondent reply to two subsequent letters written by him. He testified that in mid-May, 2004 he personally attended at the Respondent's office but was told Mr. Tsang was not in. He left a message but that message was not returned. The member complained to the Law Society.

[15] This Panel heard that Law Society staff then telephoned the Respondent and left two messages at the end of March, 2004 advising him of the complaint and requesting that he call back. Staff also wrote to the Respondent on March 30, 2004 to formally advise him of the complaint and request an explanation. Follow-up requests were sent April 14, April 30, and May 11, 2004 requesting a response to the previous letter. The Respondent has never responded to the voicemail messages or the letters.

[16] Mr. Eades testified that in October, 2004 he received a letter from the Respondent which indicated that Mr. Tsang had had personal matters to attend to and he apologized for the delay. However, Mr. Eades then made four phone calls and left messages, none of which were returned. In November he sent a letter and enclosed the documents that the Respondent needed to sign to complete the transfer. Shortly thereafter Mr. Eades received the signed documents, with no cover letter. He filed the documents then sent a statement of account to the Respondent with an explanation of it. In mid-January 2005 he received a cheque in that amount, again with no cover letter.

[17] Mr. Eades testified that he is still acting for J.W. in relation to a law suit arising from the fact that the incorporation was not in his name for such a long time.

Citation #3

[18] On September 2, 2004 the Discipline Committee resolved to issue a citation against the Respondent for failing to respond to the Law Society, failing to provide his client with quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, and for failing to account in writing to his client for funds he received in trust for that client.

[19] M.K. retained the Respondent in October, 2002 to draft a separation agreement. The Respondent drafted the agreement and saw to the execution of it. M.K. subsequently retained the Respondent to obtain a divorce for him. He paid a retainer of \$900.00 to the Respondent, as did his wife. M.K. testified that after that he could not get the Respondent to reply to his phone calls. In September, 2003 the client complained to the Law Society about the Respondent's delay in finalizing his divorce. Law Society staff contacted the Respondent at that time and Mr. Tsang responded to the client and satisfied him that he would attend to the matter.

[20] The client complained again in April, 2004 and testified that he was having trouble again contacting the Respondent. On three occasions he called to discuss the status of the divorce and a refund of fees but received no reply.

[21] In early May, 2004, Law Society staff wrote to the Respondent requesting an explanation with follow-up letters sent on May 19, 2004 and June 8, 2004. The Respondent did not respond to the letters from the Law

Society but M.K. testified that Mr. Tsang contacted him and told him he had the paperwork done and that he should come in and sign. That was accomplished in May, 2004 and that time, the Respondent refunded M.K. part of the retainer.

[22] The Respondent has never provided the Law Society with a response.

Decision

[23] The Respondent appeared to lose interest in the practice of law after a very short time practicing. He has never provided any explanation at all to the Law Society for his behaviour. The ultimate display of his disinterest was his non-attendance at the hearing of these citations against him.

[24] This Panel finds that all the complaints in the three citations have been made out and finds that the Respondent has committed professional misconduct for failing to respond to the Law Society on three matters, for failing to respond to a former client, for failing to respond to another lawyer, for failing to provide his client with a quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, and for failing to account in writing to his client for funds he received in trust for that client.