

## **James Galt Martin**

North Vancouver, BC

Called to the Bar: May 14, 1976

**Discipline hearing:** April 3, 2003

**Panel:** Peter J. Keighley, QC, Chair, William Jackson and Ross D. Tunncliffe

**Report issued:** April 14 (facts and verdict) and August 25, 2003 (penalty); indexed as [2003] LSBC 16

**Counsel:** Todd R. Follett, for the Law Society; Albert M. Roos, for Mr. Martin

---

### **Summary**

Mr. Martin lied to a client by telling her that a property in which she was claiming an interest had been sold, when it had not, and by telling her that he would receive the sale proceeds in trust, when he knew this was untrue. On the strength of this representation, the client entered into an agreement to purchase a strata property. On three occasions, Mr. Martin provided the client and her notary with trust cheques unsupported by deposits. Mr. Martin gave assurances to the client and the notary that funds would be available to complete the strata purchase, knowing that these assurances were false. As a result of Mr. Martin's assurances, the client's pending property purchase was jeopardized and was only salvaged with assistance from her family. The hearing panel found that Mr. Martin's conduct constituted professional misconduct. The panel reviewed various factors affecting penalty, including the serious nature of the misconduct, the harm to the client, Mr. Martin's previous discipline for similar conduct and his addiction to drugs (he had since sought treatment and abstained from both alcohol and drugs since September, 2002). The panel concluded that the public should not continue at risk while Mr. Martin dealt with his addictions, but was not convinced that disbarment was necessary for public protection. The panel ordered that Mr. Martin be suspended from practice for 18 months, effective September 5, 2003, and pay costs. Before resuming practice, he will be required to satisfy a board of examiners that his competency to practise is not adversely affected by a dependence on alcohol or drugs and, if he is permitted to resume practice, he may do so only as a partner, employee or associate.

---

### **Facts**

In 2001 Mr. Martin acted for Ms. C in a matrimonial matter. He advised his client that she was entitled to an interest in her ex-husband's farm. In June, 2001 he told Ms. C that the farm would be sold by court order and that she would receive \$245,000 from the sale proceeds, plus interest backdated to the end of 1999. By the third week of June, he said that the funds would be paid out in about 10 to 20 days, although he knew these assertions were untrue. In July he told Ms. C that one of the people bidding on the farm

had made a complaint and had frozen the sale proceeds. Mr. Martin knew his assertion was untrue.

Relying on Mr. Martin's advice that she would be receiving funds from sale of the farm, Ms. C made an offer to purchase a townhouse. Between late July and mid-August Mr. Martin advised his client on several occasions that the money would be available any day, although he knew these assertions were untrue. On Mr. Martin's advice and based on his assurances, she removed the subject clauses on her townhouse offer.

On August 10 Mr. Martin provided a trust cheque for \$245,000 to Ms. C but the cheque was not honoured for lack of sufficient funds, as Mr. Martin knew it would be. Mr. Martin told the client that the cheque was dishonoured because his account had been garnished by another lawyer, although he knew this was untrue. Ms. C advised Mr. Martin that she needed the money to close her real estate transaction. Mr. Martin told her the money would be available, but when Ms. C attempted to present the trust cheque for certification, the bank advised there were insufficient funds.

Ms. C subsequently retained a notary public on the townhouse purchase. On August 24 Mr. Martin told the notary that he would deliver a trust cheque to her on August 28, although he knew he held no money for Ms. C. He later told Ms. C that he would deliver to the notary a cheque for \$204,301.21 the next day, but he did not. He instead provided Ms. C with a cheque for \$40,698.79, which she was unable to cash due to lack of sufficient funds. He later delivered a cheque to the notary, but it was also uncashable due to lack of sufficient funds.

The notary negotiated an extension of the completion date on the townhouse purchase. Mr. Martin again told Ms. C that his trust account had been garnished, which was untrue. On August 30 he promised the notary that he would have the funds available the next day, which assertion he knew to be untrue. Ms. C's townhouse purchase subsequently completed, at a significantly higher cost, with financial assistance from members of her family.

Ms. C and the notary public complained to the Law Society about Mr. Martin. The chair of the Discipline Committee ordered an investigation of his books, records and accounts. A citation was issued against Mr. Martin and, in lieu of a proceeding to consider an interim suspension pending hearing, the Discipline Committee accepted Mr. Martin's undertaking to abide by certain practice conditions, including having another lawyer oversee his files and serve as a co-signatory on his trust accounts. At that time, Mr. Martin planned to sell his law practice, but had since indicated an intention to continue practising law.

## **Verdict**

The hearing panel found that Mr. Martin's conduct constituted professional misconduct.

## **Penalty**

The panel considered a broad range of factors affecting penalty, including the serious nature of Mr. Martin's conduct in repeatedly lying to his client over the conduct of her file and lying to third parties, in particular Ms. C's notary and realtor about the availability of funding to complete Ms. C's purchase of a townhouse. He generated three false documents, the uncashable cheques, and took steps to hide his deceptions from his office staff. His lies were proactive and calculated to encourage Ms. C to take steps he knew would lead to disaster.

Although Ms. C's family provided financial assistance that allowed her to complete the townhouse transaction, Ms. C had to borrow money and lost time from work. She later settled her claim against Mr. Martin for \$35,000. Mr. Martin's lies allowed him to avoid admitting that he had done absolutely nothing to secure his client's position.

The panel looked closely at Mr. Martin's personal circumstances, including the fact that he had assumed a heavy family law workload for which he was not well prepared, and had become addicted to drugs. He was a heavy user of cocaine at the time of these incidents, and had been a life-long user of marijuana, but he had abstained from both drugs and alcohol since September, 2002 when he entered a treatment program.

The panel also looked at Mr. Martin's professional conduct record, noting that he had been fined and suspended for two months in 1997 for wrongful conversion, in circumstances that reflected an indifference to clients' interests and property. At that time, the panel took into account his heavy workload and marriage breakdown and he was placed under practice conditions. He was also disciplined for breach of undertaking in 1999 and underwent conduct reviews in 1991, 1993 and 1998.

The panel considered past discipline cases and pointed to the need for general and specific deterrence and for public confidence in the integrity of the profession.

The panel expressed concern that Mr. Martin had misled a psychiatrist with whom he had met at the time of the 1997 hearing in that he had denied using any illicit drugs when he was in fact a marijuana user. Moreover, although psychiatric evidence in the current hearing attributed Mr. Martin's behaviour to poly-substance abuse, this did not account for his earlier behaviour. It appeared more likely that he had procrastination problems that he sought to conceal with lies.

After considering penalty options, the panel concluded that the public should not continue at risk while Mr. Martin dealt with his drug addiction. The panel was not, however, convinced that disbarment was necessary for public protection. It was unclear whether Mr. Martin's conduct resulted from a character deficiency or a treatable illness, and the panel fixed a penalty that would allow him to establish that it is the latter. The panel ordered that Mr. Martin:

1. be suspended for 18 months, effective September 5, 2003;
2. before being permitted to resume practice, satisfy a board of examiners appointed by the Practice Standards Committee that his competency to practise law is not adversely affected by a dependence on alcohol or drugs;

3. if permitted to resume practice, do so only as a partner, associate or employee of another lawyer or lawyers; and
4. pay costs of the discipline proceedings.

*Discipline Case Digest — 2003: No. 21 October (Martin)*