

2006 : No. 03

David John Martin

Vancouver, BC

Called to the bar: September 26, 1986 (BC) and April 6, 1979 (Ontario)

Discipline hearing : April 18 to 22, 2005

Panel : Ross D. Tunnicliffe, Chair, Patricia L. Schmit, Q.C. and Bruce A. LeRose

Application for stay : May 23, 2006

Bencher : Gavin H.G. Hume, Q.C.

Reports issued : September 7, 2005 (indexed as 2005 LSBC 16), April 25, 2006 (indexed as 2006 LSBC 15) and May 26, 2006 (indexed as 2006 LSBC 22)

Counsel : William Berardino, QC and Pamela Cyr for the Law Society and Josiah Wood, QC for Mr. Martin

Facts

Mr. Martin was representing ISR (Mr. R), who was charged with various criminal offences in relation to the Air India bombing case. The BC Government agreed to provide funding for Mr. R's defence.

Mr. Martin and another senior criminal law lawyer formed a company called DISR Management Corporation, an acronym for "the Defence of ISR." It became a party to a funding agreement with the government. It was Mr. Martin's responsibility to manage administrative issues, including overseeing the preparation of detailed accounts to be submitted to the government and meeting with the government-appointed reviewer, who would review the accounts before submitting them to the government for payment.

Mr. Martin chose to hire members of Mr. R's family as office assistants, translators and interpreters because of concerns that persons adverse in interest to Mr. R might infiltrate the defence team. On September 7, 2001, he hired Mr. R's then 26-year-old son, DR, and on November 7, 2001 Mr. Martin hired Mr. R's then 18-year-old daughter, PR. The panel heard evidence that the reviewer did not take issue with employing family members.

DR's account for September 2001 recorded his hourly rate at \$20. The following month DR submitted his record at an hourly rate of \$35. Mr. Martin raised this with Mr. R and DR and told them in no uncertain terms that the account was not appropriate. That same month, Mr. Martin and another lawyer negotiated with the government to have DR's rate increased to \$25 per hour.

PR's accounts for hours worked from November 2001 through January 2002 were billed at \$20 per hour. Her account for February 2002 charged an hourly rate of \$25. Mr. Martin testified his recollection was the higher rate was agreed at the outset, and therefore he had no explanation for the increase.

Mr. Martin testified that on December 13, 2001 Mr. R told him he wanted DISR to hire his wife because his family needed \$15,000 a month in income. Mr. Martin told Mr. R it would be excessive and unreasonable to employ Mrs. R, who was subject to a compensation order for welfare fraud, when DR and PR were already working there.

On January 8, 2002 the defence team met. PW and TD, who were also lawyers on the team, were among those who attending the meeting. PW recalls Mr. Martin mentioning at the meeting that Mr. R wanted DISR

to employ AG, who was a friend of DR, and L, who was a former cellmate of Mr. R. PW said it was beginning to look as though Mr. R saw the government funding of his case as a way to spread largesse around to those he favoured. TD expressed concern about Mr. R's desire to have the DISR billings meet his family's financial needs. He described it as "a shakedown" and said, "you don't pay your client for the privilege of representing him." PW testified there was no talk from the group of firing the children.

In February 2002, DR and PR billed \$10,887.25, and DR's hours were the highest of the entire defence team. PR had the third highest hours. When questioned, DR readily admitted that his and PR's hours for February and March 2002 were inflated. The panel noted the hours were increased by more than 50%.

Mr. Martin wrote the Attorney General and assumed responsibility for his failure to detect and prevent the submission of the children's improper accounts. The panel noted the evidence that, ultimately, the government never paid for any portion of the children's fraudulent accounts.

Verdict

The hearing panel found there was no evidence Mr. Martin consciously knew the accounts of Mr. R's children were not "valid and proper" prior to submitting them to the reviewer. The panel concluded that Mr. Martin failed to meet the standard required of lawyers in BC when he failed to properly monitor DR and PR's accounts. Despite an abundance of warning signs that should have alerted him to pay particular attention to the children's accounts, Mr. Martin failed to heed them and that amounted to professional misconduct.

Penalty

The hearing panel accepted Mr. Martin's previous professional character and practice has been exemplary and that he is an experienced and eminent criminal lawyer. Nevertheless, the panel found it is no excuse to say "I am ethical in all other situations."

The panel found, firstly, the public must feel the integrity of the profession is being protected and, secondly, it is in the public's interest to be served by a profession whose members recognize all of their ethical responsibilities, including those to public funders. The hearing panel accordingly ordered that Mr. Martin:

1. be reprimanded;
2. be suspended from the practice of law for a period of six months, to commence on a date to be agreed upon by counsel. However, the suspension should commence no later than June 1, 2006;
3. pay the costs of these proceedings, in the sum of \$35,000.

Stay of suspension

On May 23, 2006, a Bencher granted Mr. Martin a stay with respect to his six-month suspension, pending a review of penalty by the Benchers. In making the decision, Gavin H.G. Hume, QC noted the public was not at risk because of the delay.