

2007 : No. 2 May

David John Martin

Vancouver, BC

Called to the bar: September 26, 1986

Bench Review: October 19, 2006

Benchers: James Vilvang, QC, Chair, Dirk Sigalet, QC, Leon Getz, QC, Robert Punnett, Thelma O'Grady, Richard N. Stewart and Ronald Tindale

Report issued : April 11, 2007 (2007 LSBC 20)

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

Background

In the decision of the hearing panel (facts and verdict: 2005 LSBC 16, penalty: 2006 LSBC 15; *Discipline Digest* 2006: No. 3) David John Martin was found guilty of professional misconduct for failing to adequately review the accounts of a client's children whom he had hired to assist him in the Air India case. A hearing panel ordered that he be reprimanded, that he be suspended for six months and that he pay costs of \$35,000.

On review, Martin argued that the hearing panel's decision on penalty could only be justified if the misconduct was intentional, involved dishonesty or evidenced moral turpitude. He also argued that the hearing panel erred by failing to distinguish between negligent and fraudulent conduct and by imposing a penalty that was too severe.

The Law Society and Martin agreed that the applicant's misconduct did not involve dishonesty or deceit, was not intentional and was not characterized by moral turpitude.

Decision

The Benchers found that Martin's failure to adequately supervise the work of the client's children and to appreciate the warning signs that their accounts were fraudulent, amounted to gross, culpable neglect. After reviewing prior decisions, the Benchers concluded that without a finding of dishonesty, repetitive acts of deceit or negligence, or significant personal or professional conduct issues, a suspension was not warranted.

Accordingly, the Benchers ordered that Martin:

1. be reprimanded;
2. be fined \$20,000 to be paid by May 1, 2007; and
3. pay the costs of these proceedings in the sum of \$35,000.