

2007 : No. 5 December

## **David Donald Hart**

Langley, BC

Called to the bar: May 15, 1961

**Discipline hearing** : November 1, 2007

**Panel** : Anna Fung, QC, Chair, James Vilvang, QC and Thelma O'Grady

**Report issued** : November 21, 2007 (2007 LSBC 50)

**Counsel** : Maureen Boyd for the Law Society; Dennis Quinlan for Mr. Hart

## **Facts**

EN, the defendant in a matrimonial action, retained David Donald Hart in August 2005 to assist her in registering a mortgage on the former home of EN and her husband in priority to a certificate of pending litigation filed by her husband. The proceeds from the mortgage would be used to pay out an existing mortgage and to pay a retainer for legal fees to be held in trust by Hart's firm.

EN attended Hart's office on September 28, 2005 to swear to an affidavit Hart had prepared in advance of the meeting. During the meeting, EN advised Hart that the affidavit incorrectly noted the date of separation from her husband and incorrectly noted that the property had been transferred to EN from joint tenancy with her husband, when in fact it was transferred to EN from Ernst & Young on October 2, 1997.

On October 12, 2005 Hart filed the affidavit without the corrections. On October 19, EN reviewed the affidavit with Hart and reminded him of the errors. At the application on October 20, 2005, Hart relied on the affidavit and did not advise the court of these errors. Counsel for the husband advised the court that the property was never registered in joint tenancy. The motion was dismissed on the basis that the case law did not permit the court to grant the right to mortgage the property on an interim basis for the purpose of paying legal fees in a matrimonial action.

Hart admitted that his conduct constituted professional misconduct.

## **Verdict**

The panel found Hart guilty of professional misconduct for failing to ensure the accuracy of the affidavit material provided to the court.

The panel said all lawyers must take great care in preparing affidavit material and making representation to the court to ensure accuracy. They further noted that failure to correct an error, even if the error was unintentional and inconsequential to the outcome of the case, is a serious matter. However, this is not as serious as deliberately attempting to deceive the court.

## **Penalty**

The panel ordered a \$2,000 fine and \$1,500 in costs, both to be paid within three months. They did not reprimand Hart noting that this would be implicit in imposing the fine.

