

2015 : No. 1 Spring

Douglas Edward Dent

100 Mile House, BC

Called to the bar: September 14, 1976

Review: October 16, 2014

Review board: Jan Lindsay, QC, Chair, Don Amos, Dennis Day, Dean Lawton, Elizabeth Rowbotham, Donald Silversides, QC and Sandra Weafer

Decision issued : February 5, 2015 (2015 LSBC 04)

Counsel : Carolyn Gulabsingh for the Law Society; Ravi Hira, QC and Peter Waldkirch for Douglas Edward Dent

Background

In 2011, Douglas Edward Dent was retained to act for the husband in a matrimonial dispute. He was given funds to be held in trust and to be released to the wife on certain conditions and at certain times. He was also given some funds to pay his accounts. Dent applied \$2,000 of the funds held for the wife, and not yet released to her, to pay outstanding accounts for his fees and disbursements. Dent said he did so acting on the mistaken but honest belief that he had obtained the express consent of the client.

Dent admitted that he improperly withdrew funds from trust to pay fees and disbursements, contrary to the rules, and that his conduct constituted professional misconduct.

The hearing panel suspended Dent from the practice of law for 45 days and ordered him to pay costs of \$4,720 (2014 LSBC 04; discipline digest: 2014 No. 1 Spring).

Dent sought a review of the decision and obtained a stay of the suspension (2015 LSBC 12).

Decision

There was no dispute that Dent's improper taking of monies from trust was professional misconduct. Professional misconduct can encompass a wide range of circumstances and penalties. The most egregious professional misconduct will attract the most significant disciplinary action.

The proper handling of trust funds is at the heart of the fiduciary duties that lawyers owe to their clients, but it does not follow that every case of improper handling of trust funds should result in a suspension.

The review board concluded that Dent's conduct in improperly taking funds from trust to pay fees and disbursements while acting on an honestly held but mistaken belief that he had secured his client's consent did not warrant a 45-day suspension.

Dent admitted that he did not have his client's clear consent to take the funds from trust. He should have recorded what he believed to be his client's consent and, if he had, the outcome may have been different. He should have been more careful in how he handled the funds held in trust. His conduct was a marked departure from the conduct the Law Society and the public expects of lawyers.

Dent said that he believed he was entitled to transfer funds from trust to pay his fees. There was no suggestion that he did not hold that belief. He was wrong, but he was not dishonest.

The hearing panel had expressed some concern about Dent's "honest belief." If the panel did not accept the fact of his honest belief, then they should have said so in clear terms, and should have given reasons. The only conclusion to be drawn is that the fact was accepted.

The panel made reference to Dent's professional conduct record and specifically to a citation resulting in an adverse finding and a onemonth suspension in 2001. The panel discussed that earlier misconduct, but decided not to apply the concept of progressive discipline, determining a suspension to be the appropriate penalty in this case. There were many distinguishing circumstances between the earlier misconduct and the current matter. The review board agreed with the panel that the concept of progressive discipline should not be applied in this case.

The review board found that the panel's decision was not correct, because the 45-day suspension was significantly outside the appropriate range of disciplinary action for conduct that, although wrong, was made based on a mistaken belief honestly held by the lawyer. His actions constituted professional misconduct but did not warrant a suspension.

The review board ordered that the suspension ordered by the panel be set aside and that Dent pay:

1. a \$5,000 fine; and
2. \$4,720 in costs.