

Douglas Edward Dent*

**A section 47 Benchers review: see DCD 01/25 for a summary of the hearing panel decision.*

West Vancouver, B.C.

Called to the Bar: September 14, 1976

Benchers review: February 26, 2002

Panel: (*Majority*) William M. Everett, QC, Chair, Ralston S. Alexander, QC, Jaynie Clark, Robert W. McDiarmid, QC, Anita Olsen, G. Ronald Toews, QC, James D. Vilvang, QC; (*Separate reasons*) Gordon N. Turriff

Report issued: April 10, 2002; indexed as [2002] LSBC 01

Counsel: James A. Doyle, for the Law Society; Richard R. Sugden, QC, for Mr. Dent

Summary

Under section 47 of the *Legal Profession Act*, the Discipline Committee referred for review by the Benchers the penalty that had been imposed on Mr. Dent by a discipline hearing panel: *see DCD 01/25*. The hearing panel in that case found, and Mr. Dent admitted, that he had been guilty of professional misconduct for representing a client when he had a financial interest in the matter, failing to obtain adequate security for the client, failing to recommend independent legal advice, failing to advise the client of a possible claim against him and failing to report to the insurer. The panel ordered a one-month suspension and \$5,923.22 in costs. The Discipline Committee sought a review solely with respect to the one-month suspension.

On review, the Benchers noted that the hearing panel had taken into account the seriousness of the conduct, the need for general deterrence and the financial reality of Mr. Dent's ability to continue to pay his debt to the complainant. The Benchers could not say, given the same evidence as was before the panel, that they would have come to a different conclusion or that the penalty imposed by the panel was not correct.

In November, 2001 a hearing panel found, and Mr. Dent admitted, that he was guilty of professional misconduct in acting for a client when he had a financial interest in the matter, failing to obtain adequate security for the client, failing to recommend independent legal advice, failing to advise the client of a possible claim against him and failing to report to his professional liability insurer as required.

The panel ordered that Mr. Dent be suspended for one month, beginning February 1, 2002, and pay \$5,923.22 in costs: *see DCD 01/25 for a summary of the hearing panel decision.*

In December, 2001 the Discipline Committee resolved to refer the decision on penalty to the Benchers for a review on the record under section 47 of the *Legal Profession Act*. The sole issue for review was the one-month suspension.

On review, the Law Society argued that the panel had misconstrued evidence with respect to Mr. Dent's acknowledgment of his misconduct and the steps he had taken to disclose or redress the wrong; failed to apply the principle of general deterrence; and failed apply the principle of ensuring the public's confidence in the integrity of the profession. In the Law Society's submission, the one-month suspension was not in keeping with the penalties imposed in similar cases.

A majority of the Benchers noted that the hearing panel had thoroughly reviewed the appropriate penalty guidelines and precedents. While noting that there appeared to be no evidence before the hearing panel that Mr. Dent had cooperated in the investigation, the Benchers pointed out that a broad interpretation might include the submission of an agreed statement of facts to the hearing. Such an interpretation was not so unreasonable as to cause the Benchers to interfere with penalty.

Furthermore, while Mr. Dent had apologized to the complainant long after the misconduct and did not begin to pay the complainant until after she had obtained a judgment against him, the panel was aware of these circumstances. As such, the Benchers would not interfere with the panel's assessment of Mr. Dent's apology and repayment.

The Benchers noted Mr. Dent's debt load, his intention to pay the complainant the entire sum owed her and the fact that the hearing panel had been particularly impressed with the steps he had taken to settle this debt. The Benchers pointed to evidence before the panel that a long suspension would effectively end Mr. Dent's practice and his ability to pay the debt, as well as to pay spousal and child support.

The Benchers stated that the hearing panel had obviously wrestled with the conflicting factors of the seriousness of Mr. Dent's conduct, the need for general deterrence and the financial reality of his continued ability to pay his debt to the complainant. A majority of the Benchers on the review were not prepared to say that, given the same evidence, they would have come to a different conclusion or that the penalty imposed was not correct.

The Law Society was ordered to pay costs of the review.

In separate reasons, Mr. Turriff said that, while he would not interfere with the panel's discretion to impose a one-month suspension, had he exercised the penalty discretion in the first instance, he would have imposed a longer suspension. He would have done so to maintain among members of the public, as noted in *Bolton v. Law Society* [1994] 2 All ER 486 (CA), "a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."