

James Douglas Hall

Victoria, B.C.

Called to the Bar: September 2, 1994

Discipline hearing: October 30 and December 11, 2001

Panel: Russell S. Tretiak, QC, as a one-Bencher panel by consent

Reports issued: November 2, 2001 (*findings of fact and verdict*) and March 26, 2002 (*penalty*); indexed as [2001] LSBC 34

Counsel: Todd R. Follett, for the Law Society; Peter C. Freeman, QC, for Mr. Hall

Summary

In 1992, prior to his call to the bar, Mr. Hall incorporated a software company under the *Small Business Venture Capital Act*. While a director and officer of the company, Mr. Hall paid himself a total of \$6,250 as a stipend and for expenses, receiving \$4,000 of this amount after his call to the bar. These payments were made without the knowledge or consent of the other officers and directors of the company and without the authority of a special resolution, which was required under the company's articles and under the *Small Business Venture Capital Act* Regulations. In another instance, Mr. Hall told a chartered accountant, who was working for another director of the company, that income tax returns for the company had been filed when he knew this was untrue. Mr. Hall acted as a director and officer of the company throughout these matters. He admitted, and the hearing panel found, that his conduct constituted conduct unbecoming a lawyer. The panel found that Mr. Hall had been negligent, but not dishonest, in receiving funds as a director without the authorization of a special resolution. He was reprimanded for that conduct. With respect to Mr. Hall's false statement to the accountant, the panel imposed a fine of \$6,500, which it viewed as a significant sanction for a sole practitioner. The panel further ordered that Mr. Hall pay \$4,471 as costs.

Facts

In 1992, prior to his call to the bar, Mr. Hall incorporated a software company under the *Small Business Venture Capital Act*.

Between 1993 and 1997, while a director and officer of the company, Mr. Hall made himself stipend and expenses payments totalling \$6,250. He received \$2,250 of these payments prior to his call to the bar in 1994 and \$4,000 thereafter. The payments were made without the knowledge or consent of the other officers and directors of the company and without the authority of a special resolution, which was required under the company's articles and under the *Small Business Venture Capital Act* Regulations.

Mr. Hall did reflect the payments on financial statements distributed to company shareholders at the company's annual general meetings, but did not indicate that he was the recipient of the money.

Mr. Hall said he was not aware of the legislative requirement for a special resolution.

In September, 1997 a new director in the company hired a chartered accountant to assist her in understanding the company's business. The chartered accountant asked Mr. Hall whether the income tax returns for the company had been filed. Mr. Hall said that the returns had been filed, although he knew this was untrue. Mr. Hall said that he intended to file the tax returns shortly after talking to the chartered accountant, but he then forgot to do so.

Mr. Hall resigned as a director and officer of the company, and the company later began a Small Claims court action against him. Mr. Hall settled the action in January, 1999.

* * *

A discipline citation was authorized again Mr. Hall on July 13, 2000.

Decision

Mr. Hall acted in his capacity as an officer and director of the company in all these matters. He admitted, and the hearing panel found, that his conduct in receiving remuneration as an officer and director of a company without the necessary authority and in falsely stating that income tax returns for the company had been filed amounted to conduct unbecoming a lawyer.

Penalty

As this was a matter of conduct unbecoming a lawyer and not professional misconduct, the hearing panel noted it wished to limit consideration of previous decisions to those involving conduct unbecoming. In the circumstances, the authorities proved of limited assistance.

The panel found that Mr. Hall was negligent in receiving money as an officer and director of a company without first obtaining the requisite authority to do so by special resolution of the company. The panel was persuaded that there was no dishonesty on his part and that there was no need for remediation in this regard. A reprimand was an appropriate penalty for this conduct.

As for Mr. Hall's conduct in falsely stating that the income tax returns of the company had been filed when he knew this was untrue, the panel noted that a fine of \$6,500 would be a significant sanction for a sole practitioner in Mr. Hall's circumstances and would in fact exceed the economic impact of a suspension.

The hearing panel accordingly ordered that Mr. Hall:

1. be reprimanded;
2. pay a fine of \$6,500 by December 11, 2002; and
3. pay \$4,471 as costs of the proceedings by December 11, 2002.

Discipline Case Digest — 2002: No. 05 April (Hall)