

Vancouver, B.C.

Called to the Bar: May 10, 1984

**Discipline hearing panel:** August 14 and October 6, 1996 W.T. Wilson, Q.C., Chair, N.A. MacDonald, Q.C. and H.R. Berge

J.W. Williams, for the Law Society

E.D. Crossin, for Mr. Hall

**Benchers:** The Discipline Committee applied under section 50 of the *Legal Profession Act* for a review by the Benchers of penalty. The Committee decided in November, 1997 not to proceed with the review.

### **Summary**

While acting as counsel in a construction dispute, Mr. Hall, together with his client, met with representatives of the opposing party and its lawyer to discuss areas of dispute and possible settlement. During this meeting, Mr. Hall falsely stated that he had spoken with the consulting engineer on the project and, by implication, that the engineer agreed with the position of Mr. Hall's client. This was untrue; Mr. Hall had not spoken to the engineer. A representative of the opposing party discovered that Mr. Hall's statement was false immediately, and he informed Mr. Hall of this. The next day Mr. Hall admitted to opposing counsel that he had been untruthful; he apologized and subsequently wrote a letter of apology.

### **Facts**

In 1994, Mr. Hall represented a corporate real estate developer that was in a dispute with a concrete forming contractor who claimed money was still owing for labour and material the contractor's company had supplied on a condominium project. The position of the developer was that the consulting engineer on the project had already approved for payment the work and material at issue, and that payment had been made. The position of the contractor was that his claim was distinct from, and not covered by, the earlier ruling of the engineer.

In October, 1994, Mr. Hall and his client met with two representatives of the contractor and their lawyer. The purpose of the meeting was to define the areas of dispute and to determine whether the dispute could be settled at an early opportunity. During the initial part of the meeting, Mr. Hall asserted his client's position that the claim then being advanced had already been adjudicated by the engineer. Mr. Hall said that he had spoken to the consulting engineer on the project. This was untrue; he had not spoken to the engineer. In making this false statement, Mr. Hall created the impression that the engineer had agreed with the position of Mr. Hall's client.

Mr. Hall and his client left the room to give the opposing party and his lawyer time to consult. During Mr. Hall's absence, the opposing party telephoned the consulting engineer who denied having spoken with Mr. Hall. When Mr. Hall returned to the room, opposing counsel asked about the nature of Mr. Hall's contact with the engineer. Mr. Hall first said he had contact with the engineer's office but, after being pressed by opposing counsel, he stated that he had spoken with the engineer personally earlier that day. Opposing counsel then told Mr. Hall that the engineer had denied speaking to him.

The next day, Mr. Hall admitted to opposing counsel that he had been untruthful; he apologized and then wrote a letter of apology.

### **Decision**

Mr. Hall admitted, and the hearing panel found, that his conduct constituted professional misconduct.

### **Penalty**

In assessing penalty, the hearing panel considered a number of factors.

On the seriousness of the misconduct, the panel observed that Mr. Hall's false statements would serve only to bolster his position momentarily in the circumstances, since the ultimate determination of the dispute depended on documentary evidence. The panel found this instance less serious than certain cases cited in which lawyers have lied to clients or lied to the Law Society. The potential advantage to Mr. Hall in making the false statement was illusory since it did not influence the opposing party to settle the claim. As no one would be acting on Mr. Hall's statement, there was also no potential harm to others.

Mr. Hall made and repeated his statement within the space of a few minutes. The next day he wrote a letter of apology and made no attempt to deny or conceal the incident.

The hearing panel accepted that Mr. Hall was sincerely remorseful and there was little or no likelihood of him engaging in similar misconduct in the future. The panel accepted evidence of Mr. Hall's good character, reputation and standing in the legal community and that the incident was an aberration, perhaps attributable to the stress he was under at the time.

The panel noted that any lie told by a lawyer diminishes the stature of the legal profession in the eyes of the public and other members of the profession and therefore must be strongly denigrated and discouraged. There must, however, be some gradation in the seriousness with which such statements are viewed by the public and the profession, and a corresponding gradation in penalty.

In considering these factors, the panel decided that Mr. Hall's conduct was not so reprehensible as to require suspension and ordered that he:

1. be reprimanded;
2. pay a \$10,000 fine, no later than September 30, 1997;
3. pay costs of the hearing, no later than September 30, 1997.

The Discipline Committee, which had directed a review of penalty by the full Benchers, decided in November, 1997 not to proceed with the review.

*Discipline Case Digest — 1998: No. 2 February (Hall)*