

Vancouver, B.C.

Called to the B.C. Bar May 12, 1981

Called to the Ontario Bar April 13, 1978

**Discipline hearing panel:** January 23, 1995

W.T. Wilson, Q.C., Chair, T.L. Brown, Q.C. and E.M. Reid, Q.C.

E.D. Crossin, for the Law Society

W.K. Derby, Q.C., for Mr. Sharp

### **Summary**

Mr. Sharp represented a VSE-listed company in a transaction in which the principals transferred control of the company in exchange for control of another company. The transaction contemplated an exchange of each company's escrow shares, corporate seal and files and an exchange of certified cheques representing each company's treasury. In the course of this transaction, Mr. Sharp knowingly took instructions from a person who was neither an officer nor director of the company and who was, in fact, disqualified from acting as an officer or director of a public company because of a criminal record for fraud. Mr. Sharp also breached his undertaking when completing the transaction by releasing a certified cheque to a bank officer, even though he knew there were insufficient funds in his client company's bank account to issue its own certified cheque in exchange. Mr. Sharp relied on assurances from the principals that the company held sufficient funds in a term deposit, but this was untrue, and Mr. Sharp did not independently verify the statements. He admitted that his conduct constituted professional misconduct.

### **Facts**

In June, 1987 Mr. Sharp became the corporate solicitor for H Ltd., a B.C. company listed on the Vancouver Stock Exchange. Control of H Ltd. had recently been acquired by R, who became a director and president of the company, and M, who became its promoter. M was neither an officer nor director of the company and was in fact disqualified from serving as an officer or director of a public company because of a criminal record for fraud.

A dispute arose among H Ltd.'s shareholders at an extraordinary shareholders' meeting in August 1987 over the transfer of control to R and M. A group of dissident shareholders opposed the transfer. In resolution of the dispute, R and M agreed to return control of H Ltd. to the original principal (P) in return for control of A Ltd., another company owned by P with a similar share structure and treasury.

When R and M acquired control of H Ltd., the company had about \$500,000 in its treasury. The dissident shareholders expressed concern that M had dissipated the treasury since acquiring control. As a condition of exchanging the companies, P required that H Ltd. provide a written accounting to determine if the company's treasury was intact.

R and M agreed to exchange control of H Ltd. for control of A Ltd. through an exchange of each company's escrow shares, corporate seal, files and treasury. In particular, each company was to produce a certified cheque representing its treasury. A Ltd. would produce a certified cheque drawn on its account, payable to A Ltd. Likewise, H Ltd. would produce a certified cheque drawn on its account, payable to H Ltd. Solicitors for the companies would exchange the cheques, and the new principals would deposit the cheques in new bank accounts.

Mr. Sharp acted for H Ltd. in this transaction.

On September 11, 1987 the solicitor for A Ltd. sent Mr. Sharp closing documents and a cheque drawn on the A Ltd. bank account, payable to A Ltd. He wrote that he was sending Mr. Sharp these materials "on the express trust condition, and your undertaking" not to release nor otherwise deal with them until:

- H Ltd. had provided a written accounting satisfactory to P;

- H Ltd. had forwarded the executed resignations of the directors of H Ltd., the corporate files, seal and minute book and a certified cheque for not less than \$483,000 drawn on the H Ltd. account.

The letter also specified that, if Mr. Sharp were unable to accept the trust conditions and undertaking, he would immediately notify the solicitor for A Ltd. and deliver back the materials on demand. Mr. Sharp gave the solicitor for A Ltd. a written accounting provided by M. The accounting indicated that H Ltd. had \$483,813.27 in its treasury, but did it not indicate whether that money was held in a bank account or in a term deposit.

On instruction from M, Mr. Sharp took the A Ltd. cheque to H Ltd.'s bank on September 14 where he met R. Mr. Sharp gave the cheque to a bank officer for deposit to A Ltd.'s new account on the condition that the bank officer would return with a certified cheque for \$483,813.27, drawn on the bank account of H Ltd. and payable to H Ltd.

When he delivered the A Ltd. cheque to the bank officer, Mr. Sharp knew that there were not enough funds in H Ltd.'s bank account to cover a cheque for \$483,813.27. There was, in fact, only about \$4,500 in the account. R and M had assured Mr. Sharp that the balance of H Ltd.'s treasury was held in a term deposit, and Mr. Sharp relied on that assurance. He breached his undertaking by giving the A Ltd. cheque to the bank officer for deposit without first having delivered a certified cheque from H Ltd. to the solicitor of A Ltd.

After Mr. Sharp gave the A Ltd. cheque to the bank officer, the bank officer and R met alone. When R returned, he provided Mr. Sharp with a certified cheque for \$483,813.27 drawn on H Ltd.'s account. During R's meeting with the bank officer, he had done the following:

- deposited the A Ltd. cheque into an account that R had opened in the name of A Ltd.;
- written a cheque for \$486,000 drawn on the A Ltd. account and deposited the cheque to the account of L Inc., another company controlled by R;
- written a cheque for \$479,137.25 on the account of L Inc. and deposited the cheque to the account of H Ltd.;
- written a cheque for \$483,813.27 on the account of H Ltd. and instructed the bank to certify that cheque.

After R gave him the \$483,813.27 certified cheque, Mr. Sharp delivered the cheque and closing documents to the solicitor for A Ltd.

Contrary to what R and M had told Mr. Sharp, H Ltd. did not hold any funds in a term deposit.

The net effect of the exchange of the A Ltd. and H Ltd. cheques was to deprive A Ltd. of its treasury. During the course of representing H Ltd., Mr. Sharp did not take any independent steps to verify the status of the H Ltd. treasury. He relied on the written accounting from M and on assurances from R and M that the treasury was held in a term deposit.

### **Decision**

Mr. Sharp admitted, and the hearing panel found, that he had professionally misconducted himself by:

- knowingly taking instructions from M, who was neither an officer nor director of H Ltd. and was, in fact, disqualified from acting as an officer or director of a public company because of a criminal record for fraud; and
- breaching his undertaking by releasing the cheque from A Ltd. knowing that H Ltd. had no funds in its bank account available to complete the transaction in accordance with the undertaking.

### **Penalty**

The Discipline Committee and the discipline hearing panel accepted Mr. Sharp's admission of professional misconduct and his proposed disciplinary action. The panel accordingly ordered that he:

1. be suspended for one year beginning January 23, 1995; and

2. pay \$12,000 as costs of the discipline proceedings, payable in monthly instalments over the term of his suspension.

*Discipline Case Digest — 1995: No. 2 February (Sharp)*