

James Douglas Hall

Victoria, BC

Called to the Bar: September 2, 1994

Discipline hearing: January 9, 2003

Panel: Howard R. Berge, QC, Chair, David A. Zacks, QC and Gordon Turriff, QC

Reports issued: March 4, 2003 and June 24, 2003; indexed as [2003] LSBC 11

Counsel: Todd R. Follett, for the Law Society; Mr. Hall, on his own behalf

Summary

Mr. Hall failed to respond promptly to communications from the Law Society respecting a complaint against him. The hearing panel found that the allegation arising from the complaint was not proved, but that Mr. Hall's conduct in failing to respond to the Society constituted professional misconduct. The panel ordered that Mr. Hall be suspended for one week, commencing September 8, 2003, and pay \$500 as costs.

Facts

In 2000 Mr. Hall, who was associated in practice with the W Law Group, represented a client on a trademark issue.

Mr. Hall sought a legal opinion from B law firm on this file. B law firm provided the opinion and later billed for its services. The bill remained unpaid despite several follow-up letters in late 2000 and early 2001 from a lawyer in B law firm to Mr. Hall requesting payment from W Law Group and despite a number of further telephone calls from that lawyer to the accounting department of W Law Group.

The lawyer from B law firm followed up with Mr. Hall by telephone on October 9, 2001 and Mr. Hall told him that payment could be expected within two or three weeks. On October 25, the lawyer from B law firm called Mr. Hall again. Mr. Hall told him that the payment would be made by October 31, but it was not.

The lawyer from B firm wrote to the Law Society on November 8, 2001 to complain of the difficulty his firm was having collecting payment of its account from W Law Group and that W Law Group appeared unable to meet its financial obligations.

The Law Society wrote to Mr. Hall on November 19, 2001 requesting his response to the complaint. The Society wrote follow-up letters on December 27, 2001 and on January 11 and 22, 2002. Mr. Hall faxed a handwritten response on January 24 to say that he would respond in full by January 28. He did not do so. Nor did he respond to a further letter of February 6, 2002 from the Law Society.

From the documentation before it, the panel concluded that B law firm understood the debt was owed by W Law Group and did not consider Mr. Hall personally responsible for its payment.

B law firm did not receive payment of its account until after bringing a collection action.

Verdict

Payment of practice debt

The panel found that it had not been proved that Mr. Hall had failed to fulfil a financial obligation in the course of his practice, and the count of the citation respecting this allegation was dismissed. Since the debt was owed by the W Law Group and not Mr. Hall, the panel noted it was unclear why Law Society staff had written to Mr. Hall and not to the partners or one of the partners of the W Law Group.

The panel noted that, nevertheless, as the lawyer who had committed W Law Group to paying the account of another law firm, Mr. Hall had a responsibility to inform a partner in W Law Group much earlier than he did that the debt was unpaid. It was not right for him to let the matter languish. Mr. Hall also should not have told the lawyer at B law firm that the outstanding bill would be paid when he could only hope that it would be.

In the panel's view, problems of this kind are easily avoided. Law firms should have their employed and contract lawyers tell people whose services are required in the interests of clients that they must do one of the following:

- make their financial arrangements directly with clients, bill the clients directly and look only to the clients for payment;
- bill the firm and look only to the firm for payment; or
- directly bill the lawyer who makes the request for the services and look only to that lawyer for payment.

Responding to the Law Society

The panel found that Mr. Hall's conduct in failing to respond promptly to Law Society communications constituted professional misconduct.

The panel pointed out that discipline proceedings might have been avoided entirely had Mr. Hall responded to the Law Society promptly to clarify that W Law Group was responsible for the debt.

Penalty

The hearing panel ordered that Mr. Hall:

1. be suspended for one week, beginning September 8, 2003; and

2. pay \$500 towards the costs of the hearing.

The panel noted that a reprimand is not a sufficient penalty for failing to respond to the Law Society in most cases, given the importance of this requirement and the need to ensure that Law Society resources are not wasted calling on lawyers to fulfil their obligations in this respect.

In this case, the panel found a suspension an appropriate penalty, not only for general deterrence, but for specific deterrence. Mr. Hall had assured the Law Society that he would respond at a specific time, but then failed to do so. Moreover, at the time the Law Society began seeking his response, Mr. Hall had just undergone discipline proceedings on a separate matter in which he was found guilty of conduct unbecoming a lawyer. As a result, Mr. Hall, even more than other lawyers, should have known that he could not ignore a Law Society request for an explanation of his conduct.

In determining penalty, the panel also noted that Mr. Hall did not admit his misconduct in failing to respond until the hearing had almost completed.

Discipline Case Digest — 2003: No. 12 June (Hall)