

MINUTES OF SPECIAL CONVOCATION

Friday, 11th August, 1989
9:30 a.m.

PRESENT:

The Treasurer (Mr. Lee K. Ferrier) and Ms. Bellamy, Messrs. Carey, Cullity, Farquharson, Ferguson, Ground, Guthrie, Kemp-Welch, Ms. Kiteley, Mr. Lamek, Mesdames Legge and MacLeod, Messrs. McKinnon, Manes, Murphy, Ms. Peters, Messrs. Shaffer, Somerville, Spence, Thom, Topp and Mrs. Weaver.

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MOTION - COMMITTEE APPOINTMENTS

It was moved by Mr. Spence, seconded by Ms. Weaver, that the following appointments be made:

1. The members of the French Language Services Committee be as follows:

Mr. C. McKinnon (Chair)
Ms. D. Bellamy (Vice-Chair)
Mr. D. O'Connor
Ms. P. Peters
Mr. A. Rock
Mr. R. Topp
Mr. John Richard to June 30, 1990

2. Ms. P. Peters be appointed to the Legal Education Committee and Mr. M. Cullity be appointed Vice-Chair of the Committee to replace Mr. P. Lamek.

3. Mrs. H. MacLeod be appointed Vice-Chair of the Compensation Fund Committee to replace Ms. P. Peters.

4. Mrs. R. Tait to continue as a member of the Muniments & Memorabilia Committee until June 30, 1990.

5. The Law Society's representatives on the Canadian Bar Association Ontario Council be as follows:

Treasurer
Mr. R. G. Ferguson
Mr. J. D. Ground
Mr. D. J. Murphy

6. Mr. James Wardlaw be appointed the Society's representative to the Commission on Election Finances.

Carried

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BUILDING COMMITTEE

Mr. D. Crosbie, Under-Treasurer, provided Convocation with an information report on the present status of planning for the construction of an addition to the southeasterly wing of Osgoode Hall.

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LEGAL EDUCATION COMMITTEE

In Camera

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FINANCE COMMITTEE

In Camera

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DISCIPLINE COMMITTEE

Mr. P. Lamek, Chair, presented six Orders of Convocation to be recorded in the Minutes of Convocation:

11th August, 1989

Re: ROBERT EMERSON PRITCHARD, Sault Ste. Marie

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Robert Emerson Pritchard, of the City of Sault Ste. Marie, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 9th day of June, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Robert Emerson Pritchard be suspended for a period of one month, such suspension to commence on the 1st day of July, 1989.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

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Re: AMITA MOHINI SUD, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Amita Mohini Sud, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 27th day of March, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Amita Mohini Sud be suspended for a period of one year from the date of this Order, that she pay the costs incurred by the Society in the course of its investigation in the amount of \$1,000, payable over a period of six months, and that for a period of one year after the expiration of such suspension, her practice of law be supervised by a duly qualified member of the Society.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

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11th August, 1989

Re: BRUCE PERREAULT, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Bruce Perreault, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 19th day of April, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Bruce Perreault be granted permission to resign his membership in The Law Society of Upper Canada.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

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Re: DOUGLAS HUGH FORSYTHE, Ottawa

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Douglas Hugh Forsyth, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 5th day of June, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Douglas Hugh Forsythe be suspended for a period of one year from the date of this Order, and that for a period of three years after the expiration of such suspension:

1. that he not practise as a sole practitioner, but engage in the practice of law solely as an employed solicitor;
2. that he not have sole signing authority over any trust fund;
3. that he provide the Law Society with trust comparisons every four months.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

11th August, 1989

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Re: JAMES WILLIAM ORME, Hamilton

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF James William Orme, of the Town of Dundas, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 31st day of January, 1989, in the presence of the Solicitor and Counsel for the Society, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said James William Orme be suspended for a period of one month, such suspension to commence on the 1st day of July, 1989.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

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RE: DAVID ARTHUR ALLPORT, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF David Arthur Allport, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report of the Discipline Committee dated the 12th day of June, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said David Arthur Allport be suspended for a period of two months, such suspension to commence on the 5th day of August, 1989.

DATED this 22nd day of June, 1989

"Lee K. Ferrier"
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

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11th August, 1989

Re: STANLEY FRANCIS DUDZIC, Hamilton

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. M. Cullity withdrew.

The solicitor was present with his counsel Mr. Brian Greenspan. Mr. Reg Watson appeared for the Society.

Convocation had before it the original Report of the Discipline Committee, dated 7th February, 1989, together with an Affidavit of Service sworn 21st February, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 7th February, 1989 (marked Exhibit 1), amended Report of the Discipline Committee, dated 7th February, 1989, together with an Affidavit of Service sworn 31st July, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 25th July, 1989 (marked Exhibit 2), Acknowledgement, Declaration and Consent executed by the solicitor on 22nd June, 1989 (marked Exhibit 3) and Notice of Objection (marked Exhibit 4). Copies of the Reports having been forwarded to the Benchers prior to Convocation, the reading of them was waived.

The Reports of the Discipline Committee are as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 5, 1987, Complaint D87/87 was issued against Stanley Francis Dudzic, Q.C., alleging that he was guilty of professional misconduct.

The matter was heard in public on September 13 and 14, 1988 and January 5, 1989 by this Committee composed of Donald H.L. Lamont, Q.C. as Chair, Mrs. Nettie Graham and Maurice C. Cullity, Q.C.

Mr. Dudzic attended the hearing and was represented by his counsel, Frank Marrocco. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

The following are the particulars provided of the alleged professional misconduct:

Paragraph 2: (Complaint D87/87)

- (a) On or about October 8th, 1985, he misappropriated the sum of \$20,000, more or less, from funds held in trust from the sale of the matrimonial home of his client, Loreen Osinga, and her spouse, John Donovan.
- (b) During the period of October 1st, 1985, to October 8th, 1985, he borrowed the sum of \$22,000, more or less, from his client Loreen Osinga under questionable circumstances including his knowledge of his client's frailties.
- (c) He assisted his former client, Alva Wheatle, an owner of Eureka Lodging Home, to take unfair advantage of his senile clients, Hester Badgley, Charles Hall, Anne Hall and Margaret Wilson, residents of that home by preparing and participating in the execution of wills and powers of attorney in favour of Alva Wheatle when he knew or ought to have known that Hester Badgley, Charles Hall, Anne Hall and Margaret Wilson did not have the requisite capacity.
- (d) He attempted to mislead Louis Van Paassen, a lawyer employed by the Provincial government and attempted to obtain an unconscionable profit for himself by proposing that:

11th August, 1989

- (i) he would arrange for the repayment of the debt of a client, Lucy Palmer, if the government gave him a 15% finder's fee, and then stating that
- (ii) if such a fee was not paid then the government would get nothing as his client was judgement-proof, when such was not the case.

Evidence

Paragraph 2(a) of the Complaint

1. The Facts

The Solicitor's client, Ms. Loreen Osinga (Donovan), separated from her husband in June 1985. The closing of a sale of the matrimonial home occurred on September 30, 1985. The home had been purchased by Ms. Osinga prior to the marriage and title was registered in her name. Mr. Donovan had made payments on a mortgage on the property and had assumed responsibility for repairs. On the breakdown of the marriage, Mr. Donovan claimed an interest in the home and in the proceeds of sale.

At closing, the proceeds of sale were received by the Solicitor with instructions from his client to invest the funds at interest. The Solicitor was aware that the correct division of the proceeds of sale was a matter of dispute between his client and Mr. Donovan in their matrimonial proceedings. Mr. Donovan's solicitor wrote to Mr. Dudzic on September 30, 1985 stating, "I would confirm that you will be providing us with the ledger statement and that all but \$10,000 worth of proceeds will be put into an interest bearing account pending the resolution of the outstanding matters between our respective clients."

On October 1, the Solicitor forwarded an accounting to his client that showed that he was holding in his trust account an amount of \$40,000. A copy of this account was provided to the Solicitor for Mr. Donovan.

On October 8, 1985, the Solicitor withdrew the amount of \$40,000 from his trust account and deposited it in his personal account. The Solicitor executed a promissory note dated the same day to the order of Loreen Donovan and John Donovan in the amount of \$40,000. He did not have the approval of the husband's solicitor nor did he advise him at that time of the existence of the promissory note.

The evidence disclosed that, having deposited the amount of \$40,000 in his personal account, the Solicitor withdrew various amounts to repay personal indebtedness, including an amount of between \$19,000 and \$25,000 to his aunt. The Solicitor testified that the repayment of the indebtedness to his aunt was made because she requested it.

The Solicitor did not communicate the existence of the promissory note to the solicitor for Mr. Donovan until the morning of January 27, 1986. An auditor from the Law Society had an appointment to meet with the Solicitor later that day to discuss matters relating to the particulars set out in paragraph 2(c) of the Complaint. On hearing that the amounts had been borrowed by the Solicitor, Mr. Donovan's solicitor expressed his displeasure and, after consulting with his client, wrote to the Solicitor on the same day requesting that the amounts be placed immediately in an interest-bearing guaranteed investment certificate in the names of both solicitors in trust. Mr. Donovan's solicitor testified that it was always his understanding that the proceeds of the sale were to be held by the solicitor in trust pending the resolution of the matrimonial proceedings.

The Solicitor subsequently borrowed money from a private lender and on February 4, 1986 he purchased a term deposit in the amount of \$40,000 which was held in the names of both solicitors in trust. Under the terms of a Separation Agreement dated July 24, 1986, Mr. Donovan received \$20,000 from the proceeds of the sale of the matrimonial home.

2. Decision

Despite the fact that no one suffered any loss as a result of the Solicitor's actions and the arguments made by Counsel for the Solicitor to the effect that the Solicitor genuinely believed that the husband's interest in the proceeds of sale was tenuous, the fact remains that on October 8, 1985 the Solicitor withdrew funds held in trust without the knowledge or consent of Mr. Donovan's solicitor and those funds were applied to the personal use of the Solicitor until February 4, 1986. The Committee is satisfied that the above facts establish that the Solicitor misappropriated trust funds in which Mr. Donovan was interested pending the resolution of the matrimonial proceedings. In view of the conflict of evidence referred to in connection with paragraph 2(b) of the Complaint below, the Committee would have given the Solicitor the benefit of the doubt on the complaint of misappropriation if no one other than his client had claimed an interest in the proceeds of sale.

Paragraph 2(b) of the Complaint

1. The Facts

Although the Solicitor testified that he showed the promissory note dated October 8 to his client, Ms. Osinga gave evidence that she had not appreciated that it was anything more than a receipt. The Solicitor testified that he had advised Ms. Osinga on October 8 to visit the offices of a lawyer in the same building for the purpose of obtaining independent legal advice and that Ms. Osinga had declined to do so.

On January 29, 1986, after the Solicitor had been contacted by the Law Society, he invited Ms. Osinga to attend at his office for the purpose of signing a document which states that on September 26th, the client had directed the Solicitor to invest all of the proceeds of the sale, except for \$10,000, and that the Solicitor had advised her that he had invested the funds in his personal demand promissory note in her favour at twelve per cent. The document concludes with the statement that the client was completely satisfied with the loan and was content to permit the loan to remain outstanding until her marriage problems with her husband were settled which she expected to occur within the next two months.

The Committee heard further evidence directed at the question as to whether Ms. Osinga was aware that the Solicitor had borrowed the funds for his personal use. Despite the statement in the document signed on January 29, 1986 and the notes of a discussion that Ms. Osinga subsequently had with Mr. Gibson of the Law Society, Ms. Osinga testified emphatically before the Committee that she had never appreciated that the funds were borrowed by the Solicitor for his personal use. She explained that she thought that the funds were to be held in trust at all times and she elaborated further that, to her mind, when funds were held in trust they could not be withdrawn by anyone for their personal use.

2. Decision

It was the view of the Committee that, even accepting the Solicitor's version of the facts and that he believed that Ms. Osinga had authorized him to borrow the funds, there had been a clear breach of Rule 7 of the Rules of Professional Conduct and that none of the exceptions set out in Rule 7 was applicable.

Paragraph 2(c) of the Complaint

1. Legal Submissions

The Committee received submissions from counsel on the importance of the words in which paragraph 2(c) of the Complaint was framed. Counsel for the Law Society submitted that the single question was whether the Solicitor had been guilty of professional misconduct and that the words of paragraph 2(c) should not be read as though they defined a criminal offence containing a number of elements, each of which had to be proved.

Counsel for the Solicitor submitted that his client could not be found guilty of professional misconduct on the basis of the particulars set out in paragraph 2(c) unless the Society had proved that, in fact, unfair advantage had been taken by Alva Wheatle. In the view of the Committee, the Solicitor was guilty of professional misconduct on the basis of the particulars in paragraph 2(c), whether the correct approach was that advocated by Counsel for the Law Society, or that advocated by Counsel for the Solicitor.

2. The Facts

On the basis of the evidence the Committee was satisfied that:

- (a) the Solicitor had acted for Ms. Alva Wheatle in the past;
- (b) the Solicitor had prepared and supervised the execution of a number of wills and powers of attorney under which Ms. Wheatle was either the sole beneficiary or an ultimate beneficiary or, in the case of the powers of attorney, under which she was the donee of the power;
- (c) in the case of Margaret Wilson, the Solicitor had received instructions from either Ms. Wheatle or her associate, Mr. Lewis, to prepare a power of attorney; he had permitted Ms. Wilson to execute the document without explaining it to her or confirming that it represented her intentions; he had given no consideration to her mental capacity to execute the document and had provided her with no opportunity to read it; Margaret Wilson was elderly, bedridden and her mental conditions had seriously deteriorated; she was unable to carry on a conversation;

- (d) in the case of Charles Hall and Anne Hall, the Solicitor had prepared and permitted wills and powers of attorney in favour of Ms. Wheatle to be executed at the instigation or request of Mr. Lewis or Ms. Wheatle although, on the basis of medical evidence presented at the hearing, it is unlikely that either Mr. Hall or Mrs. Hall would have been capable of understanding the effect of the documents;
- (e) although Hester Badgley may have had the requisite mental capacity, the Solicitor had prepared and supervised the execution of a power of attorney and a Will for her under which Ms. Wheatle was to be the beneficiary; and
- (f) in none of the above cases did the Solicitor take notes with respect to the instructions he had received or with respect to the mental condition of his clients or the existence of any of their relatives and he made no serious attempt to discuss and obtain instructions from his clients with respect to the documents he prepared or to ascertain whether they had the requisite mental capacity to execute such documents.

3. Decision

The Committee found that the evidence establishes that the Solicitor was guilty of professional misconduct in preparing and supervising documents for execution by Margaret Wilson and by Mr. and Mrs. Hall in circumstances in which he must have been aware that they had not given their informed consent.

The Committee was also of the view that, although the evidence did not permit any unequivocal finding with respect to the motives of Ms. Wheatle, the Solicitor's conduct in preparing and procuring the execution of a power of attorney for Margaret Wilson, and Wills and powers of attorney for Mr. and Mrs. Hall in favour of Ms. Wheatle and without the informed consent of his clients, assisted Ms. Wheatle in taking unfair advantage of them.

The Committee noted that there was evidence that funds deposited to the credit of Hester Badgley were diverted to the Dresden Lodge, another nursing home in which Ms. Wheatle was interested and that the power of attorney given by Margaret Wilson was subsequently exercised to withdraw funds from her bank account. Whether or not these payments could have been justified if the clients had provided their informed consent to the execution of the powers, the Committee was of the opinion that Ms. Wheatle took unfair advantage of Margaret Wilson and Mr. and Mrs. Hall by obtaining control over their funds and that there is no doubt that the Solicitor's conduct assisted her to obtain such control.

Paragraph 2(d) of the Complaint

1. The Facts

The evidence under paragraph 2(d) of the Complaint indicated that the Solicitor had requested a fifteen per cent finder's fee in return for a payment on behalf of his client of an amount owed by her to the Ministry of Community and Social Services.

A clerk and a lawyer employed by the Ministry gave evidence to that effect and the Solicitor did not contest their evidence. The explanation given by the Solicitor was that, in his experience, any debtor will be prepared to accept a lump sum less than the principal amount of the debt and that the only difficulty was to determine the basis on which the discount would be given. He had asked for a finder's fee of fifteen per cent because, in his experience with other government agencies and lending institutions, such a fee was commonly paid or allowed by the creditor. When the lawyer for the Ministry indicated that the Ministry would not pay a finder's fee but might be prepared to accept a lump sum in full payment, the Solicitor suggested a lump sum that was eighty-five percent of the amount outstanding. The Solicitor testified further that at no time did he intend to retain any amount representing a finder's fee or a discount and that he had not done so.

2. Decision

The Committee accepted the Solicitor's evidence that he did not intend, and did not attempt, to obtain a personal benefit for himself. While the Committee did not approve of the tactics adopted by the Solicitor in negotiating a settlement on behalf of his client, the Committee was of the opinion that professional misconduct had not been proved under paragraph 2(d) of the Complaint.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Stanley Francis Dudzic be disbarred.

REASONS FOR RECOMMENDATION

The Committee gave the matter of penalty lengthy consideration.

We heard good character testimony from a number of judges and three solicitors from Hamilton where the Solicitor practises. There were letters filed in his support. The Solicitor was said to have an excellent reputation for honesty and integrity and is well liked by the Hamilton Bar, also that he has participated actively in organizations of the legal profession and in community organizations, and that he was at one time an alderman for the City of Hamilton. He has four sons, of whom two are lawyers.

There was no conclusive evidence that any one will suffer any loss by reason of the Solicitor's actions. We took into account all of this testimony and are mindful of the embarrassment for the Solicitor in his profession, and among his friends and family.

Notwithstanding that, we found the Solicitor guilty of a misappropriation of trust funds, the improper borrowing from a somewhat unstable client, and that he prepared and participated in the signing of powers of attorney and wills of senile persons in favour of a former client who was the owner of the nursing home where they were residents.

Counsel for the Solicitor proposed a recommendation or penalty that the Solicitor would undertake to pay approximately \$20,000 to make up for any losses caused by the powers of attorney, be reprimanded in Convocation and that his books of account for his law practice be audited quarter-yearly.

Counsel for the Law Society recommended disbarment.

We considered the many cases filed with us where there had been misappropriation, including the cases in which permission to resign, suspension or reprimand in Convocation were the penalties imposed. However, it has been stated a number of times that when there has been misappropriation the solicitor should be disbarred unless there are exceptional circumstances. As is often said, each stands on its own facts.

It should be said that two members of the panel seriously considered recommending that the Solicitor be permitted to resign bearing in mind his years in practice, his participation in legal and community organizations and the profound embarrassment for him, his family and the two sons who are in the legal profession.

However, considering the totality of our findings of unprofessional conduct and the evidence in support which is referred to in our Decision, we are regretful but unanimous in our recommendation that the Solicitor be disbarred.

Stanley Francis Dudzic was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of June, 1960.

ALL OF WHICH is respectfully submitted

DATED this 7th day of February, 1989

"D. H. Lamont"

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 5, 1987, Complaint D87/87 was issued against Stanley Francis Dudzic, Q.C., alleging that he was guilty of professional misconduct.

The matter was heard in camera on September 13 and 14, 1988 while the penalty portion of the hearing, which took place on January 5, 1989, was conducted in public. The Committee consisted of Donald H.L. Lamont, Q.C. as Chair, Mrs. Nettie Graham and Maurice C. Cullity, Q.C.

11th August, 1989

Mr. Dudzic attended the hearing and was represented by his counsel, Frank Marrocco. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

The following are the particulars provided of the alleged professional misconduct:

Paragraph 2: (Complaint D87/87)

- (a) On or about October 8th, 1985, he misappropriated the sum of \$20,000, more or less, from funds held in trust from the sale of the matrimonial home of his client, Loreen Osinga, and her spouse, John Donovan.
- (b) During the period of October 1st, 1985, to October 8th, 1985, he borrowed the sum of \$22,000, more or less, from his client Loreen Osinga under questionable circumstances including his knowledge of his client's frailties.
- (c) He assisted his former client, Alva Wheatle, an owner of Eureka Lodging Home, to take unfair advantage of his senile clients, Hester Badgley, Charles Hall, Anne Hall and Margaret Wilson, residents of that home by preparing and participating in the execution of wills and powers of attorney in favour of Alva Wheatle when he knew or ought to have known that Hester Badgley, Charles Hall, Anne Hall and Margaret Wilson did not have the requisite capacity.
- (d) He attempted to mislead Louis Van Paassen, a lawyer employed by the Provincial government and attempted to obtain an unconscionable profit for himself by proposing that:
 - (i) he would arrange for the repayment of the debt of a client, Lucy Palmer, if the government gave him a 15% finder's fee, and then stating that
 - (ii) if such a fee was not paid then the government would get nothing as his client was judgement-proof, when such was not the case.

Evidence

Paragraph 2(a) of the Complaint

1. The Facts

The Solicitor's client, Ms. Loreen Osinga (Donovan), separated from her husband in June 1985. The closing of a sale of the matrimonial home occurred on September 30, 1985. The home had been purchased by Ms. Osinga prior to the marriage and title was registered in her name. Mr. Donovan had made payments on a mortgage on the property and had assumed responsibility for repairs. On the breakdown of the marriage, Mr. Donovan claimed an interest in the home and in the proceeds of sale.

At closing, the proceeds of sale were received by the Solicitor with instructions from his client to invest the funds at interest. The Solicitor was aware that the correct division of the proceeds of sale was a matter of dispute between his client and Mr. Donovan in their matrimonial proceedings. Mr. Donovan's solicitor wrote to Mr. Dudzic on September 30, 1985 stating, "I would confirm that you will be providing us with the ledger statement and that all but \$10,000 worth of proceeds will be put into an interest bearing account pending the resolution of the outstanding matters between our respective clients."

On October 1, the Solicitor forwarded an accounting to his client that showed that he was holding in his trust account an amount of \$40,000. A copy of this account was provided to the Solicitor for Mr. Donovan.

On October 8, 1985, the Solicitor withdrew the amount of \$40,000 from his trust account and deposited it in his personal account. The Solicitor executed a promissory note dated the same day to the order of Loreen Donovan and John Donovan in the amount of \$40,000. He did not have the approval of the husband's solicitor nor did he advise him at that time of the existence of the promissory note.

The evidence disclosed that, having deposited the amount of \$40,000 in his personal account, the Solicitor withdrew various amounts to repay personal indebtedness, including an amount of between \$19,000 and \$25,000 to his aunt. The Solicitor testified that the repayment of the indebtedness to his aunt was made because she requested it.

11th August, 1989

The Solicitor did not communicate the existence of the promissory note to the solicitor for Mr. Donovan until the morning of January 27, 1986. An auditor from the Law Society had an appointment to meet with the Solicitor later that day to discuss matters relating to the particulars set out in paragraph 2(c) of the Complaint. On hearing that the amounts had been borrowed by the Solicitor, Mr. Donovan's solicitor expressed his displeasure and, after consulting with his client, wrote to the Solicitor on the same day requesting that the amounts be placed immediately in an interest-bearing guaranteed investment certificate in the names of both solicitors in trust. Mr. Donovan's solicitor testified that it was always his understanding that the proceeds of the sale were to be held by the solicitor in trust pending the resolution of the matrimonial proceedings.

The Solicitor subsequently borrowed money from a private lender and on February 4, 1986 he purchased a term deposit in the amount of \$40,000 which was held in the names of both solicitors in trust. Under the terms of a Separation Agreement dated July 24, 1986, Mr. Donovan received \$20,000 from the proceeds of the sale of the matrimonial home.

2. Decision

Despite the fact that no one suffered any loss as a result of the Solicitor's actions and the arguments made by Counsel for the Solicitor to the effect that the Solicitor genuinely believed that the husband's interest in the proceeds of sale was tenuous, the fact remains that on October 8, 1985 the Solicitor withdrew funds held in trust without the knowledge or consent of Mr. Donovan's solicitor and those funds were applied to the personal use of the Solicitor until February 4, 1986. The Committee is satisfied that the above facts establish that the Solicitor misappropriated trust funds in which Mr. Donovan was interested pending the resolution of the matrimonial proceedings. In view of the conflict of evidence referred to in connection with paragraph 2(b) of the Complaint below, the Committee would have given the Solicitor the benefit of the doubt on the complaint of misappropriation if no one other than his client had claimed an interest in the proceeds of sale.

Paragraph 2(b) of the Complaint

1. The Facts

Although the Solicitor testified that he showed the promissory note dated October 8 to his client, Ms. Osinga gave evidence that she had not appreciated that it was anything more than a receipt. The Solicitor testified that he had advised Ms. Osinga on October 8 to visit the offices of a lawyer in the same building for the purpose of obtaining independent legal advice and that Ms. Osinga had declined to do so.

On January 29, 1986, after the Solicitor had been contacted by the Law Society, he invited Ms. Osinga to attend at his office for the purpose of signing a document which states that on September 26th, the client had directed the Solicitor to invest all of the proceeds of the sale, except for \$10,000, and that the Solicitor had advised her that he had invested the funds in his personal demand promissory note in her favour at twelve per cent. The document concludes with the statement that the client was completely satisfied with the loan and was content to permit the loan to remain outstanding until her marriage problems with her husband were settled which she expected to occur within the next two months.

The Committee heard further evidence directed at the question as to whether Ms. Osinga was aware that the Solicitor had borrowed the funds for his personal use. Despite the statement in the document signed on January 29, 1986 and the notes of a discussion that Ms. Osinga subsequently had with Mr. Gibson of the Law Society, Ms. Osinga testified emphatically before the Committee that she had never appreciated that the funds were borrowed by the Solicitor for his personal use. She explained that she thought that the funds were to be held in trust at all times and she elaborated further that, to her mind, when funds were held in trust they could not be withdrawn by anyone for their personal use.

2. Decision

It was the view of the Committee that, even accepting the Solicitor's version of the facts and that he believed that Ms. Osinga had authorized him to borrow the funds, there had been a clear breach of Rule 7 of the Rules of Professional Conduct and that none of the exceptions set out in Rule 7 was applicable.

Paragraph 2(c) of the Complaint

1. Legal Submissions

The Committee received submissions from counsel on the importance of the words in which paragraph 2(c) of the Complaint was framed. Counsel for the Law Society submitted that the single question was whether the Solicitor had been guilty of professional misconduct and that the words of paragraph 2(c) should not be read as though they defined a criminal offence containing a number of elements, each of which had to be proved.

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Counsel for the Solicitor submitted that his client could not be found guilty of professional misconduct on the basis of the particulars set out in paragraph 2(c) unless the Society had proved that, in fact, unfair advantage had been taken by Alva Wheatle. In the view of the Committee, the Solicitor was guilty of professional misconduct on the basis of the particulars in paragraph 2(c), whether the correct approach was that advocated by Counsel for the Law Society, or that advocated by Counsel for the Solicitor.

2. The Facts

On the basis of the evidence the Committee was satisfied that:

- (a) the Solicitor had acted for Ms. Alva Wheatle in the past;
- (b) the Solicitor had prepared and supervised the execution of a number of wills and powers of attorney under which Ms. Wheatle was either the sole beneficiary or an ultimate beneficiary or, in the case of the powers of attorney, under which she was the donee of the power;
- (c) in the case of Margaret Wilson, the Solicitor had received instructions from either Ms. Wheatle or her associate, Mr. Lewis, to prepare a power of attorney; he had permitted Ms. Wilson to execute the document without explaining it to her or confirming that it represented her intentions; he had given no consideration to her mental capacity to execute the document and had provided her with no opportunity to read it; Margaret Wilson was elderly, bedridden and her mental conditions had seriously deteriorated; she was unable to carry on a conversation;
- (d) in the case of Charles Hall and Anne Hall, the Solicitor had prepared and permitted wills and powers of attorney in favour of Ms. Wheatle to be executed at the instigation or request of Mr. Lewis or Ms. Wheatle although, on the basis of medical evidence presented at the hearing, it is unlikely that either Mr. Hall or Mrs. Hall would have been capable of understanding the effect of the documents;
- (e) although Hester Badgley may have had the requisite mental capacity, the Solicitor had prepared and supervised the execution of a power of attorney and a Will for her under which Ms. Wheatle was to be the beneficiary; and
- (f) in none of the above cases did the Solicitor take notes with respect to the instructions he had received or with respect to the mental condition of his clients or the existence of any of their relatives and he made no serious attempt to discuss and obtain instructions from his clients with respect to the documents he prepared or to ascertain whether they had the requisite mental capacity to execute such documents.

3. Decision

The Committee found that the evidence establishes that the Solicitor was guilty of professional misconduct in preparing and supervising documents for execution by Margaret Wilson and by Mr. and Mrs. Hall in circumstances in which he must have been aware that they had not given their informed consent.

The Committee was also of the view that, although the evidence did not permit any unequivocal finding with respect to the motives of Ms. Wheatle, the Solicitor's conduct in preparing and procuring the execution of a power of attorney for Margaret Wilson, and Wills and powers of attorney for Mr. and Mrs. Hall in favour of Ms. Wheatle and without the informed consent of his clients, assisted Ms. Wheatle in taking unfair advantage of them.

The Committee noted that there was evidence that funds deposited to the credit of Hester Badgley were diverted to the Dresden Lodge, another nursing home in which Ms. Wheatle was interested and that the power of attorney given by Margaret Wilson was subsequently exercised to withdraw funds from her bank account. Whether or not these payments could have been justified if the clients had provided their informed consent to the execution of the powers, the Committee was of the opinion that Ms. Wheatle took unfair advantage of Margaret Wilson and Mr. and Mrs. Hall by obtaining control over their funds and that there is no doubt that the Solicitor's conduct assisted her to obtain such control.

Paragraph 2(d) of the Complaint

1. The Facts

The evidence under paragraph 2(d) of the Complaint indicated that the Solicitor had requested a fifteen per cent finder's fee in return for a payment on behalf of his client of an amount owed by her to the Ministry of Community and Social Services.

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A clerk and a lawyer employed by the Ministry gave evidence to that effect and the Solicitor did not contest their evidence. The explanation given by the Solicitor was that, in his experience, any debtor will be prepared to accept a lump sum less than the principal amount of the debt and that the only difficulty was to determine the basis on which the discount would be given. He had asked for a finder's fee of fifteen per cent because, in his experience with other government agencies and lending institutions, such a fee was commonly paid or allowed by the creditor. When the lawyer for the Ministry indicated that the Ministry would not pay a finder's fee but might be prepared to accept a lump sum in full payment, the Solicitor suggested a lump sum that was eighty-five percent of the amount outstanding. The Solicitor testified further that at no time did he intend to retain any amount representing a finder's fee or a discount and that he had not done so.

2. Decision

The Committee accepted the Solicitor's evidence that he did not intend, and did not attempt, to obtain a personal benefit for himself. While the Committee did not approve of the tactics adopted by the Solicitor in negotiating a settlement on behalf of his client, the Committee was of the opinion that professional misconduct had not been proved under paragraph 2(d) of the Complaint.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Stanley Francis Dudzic be disbarred.

REASONS FOR RECOMMENDATION

The Committee gave the matter of penalty lengthy consideration.

We heard good character testimony from a number of judges and three solicitors from Hamilton where the Solicitor practises. There were letters filed in his support. The Solicitor was said to have an excellent reputation for honesty and integrity and is well liked by the Hamilton Bar, also that he has participated actively in organizations of the legal profession and in community organizations, and that he was at one time an alderman for the City of Hamilton. He has four sons, of whom two are lawyers.

There was no conclusive evidence that any one will suffer any loss by reason of the Solicitor's actions. We took into account all of this testimony and are mindful of the embarrassment for the Solicitor in his profession, and among his friends and family.

Notwithstanding that, we found the Solicitor guilty of a misappropriation of trust funds, the improper borrowing from a somewhat unstable client, and that he prepared and participated in the signing of powers of attorney and wills of senile persons in favour of a former client who was the owner of the nursing home where they were residents.

Counsel for the Solicitor proposed a recommendation or penalty that the Solicitor would undertake to pay approximately \$20,000 to make up for any losses caused by the powers of attorney, be reprimanded in Convocation and that his books of account for his law practice be audited quarter-yearly.

Counsel for the Law Society recommended disbarment.

We considered the many cases filed with us where there had been misappropriation, including the cases in which permission to resign, suspension or reprimand in Convocation were the penalties imposed. However, it has been stated a number of times that when there has been misappropriation the solicitor should be disbarred unless there are exceptional circumstances. As is often said, each stands on its own facts.

It should be said that two members of the panel seriously considered recommending that the Solicitor be permitted to resign bearing in mind his years in practice, his participation in legal and community organizations and the profound embarrassment for him, his family and the two sons who are in the legal profession.

However, considering the totality of our findings of unprofessional conduct and the evidence in support which is referred to in our Decision, we are regretful but unanimous in our recommendation that the Solicitor be disbarred.

11th August, 1989

Stanley Francis Dudzic was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of June, 1960.

ALL OF WHICH is respectfully submitted

DATED this 7th day of February, 1989

"D. H. Lamont"

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Stanley Dudzic,
of the City of Hamilton, a Barrister
and Solicitor.

NOTICE OF OBJECTION

TAKE NOTICE THAT the Solicitor intends to dispute the findings made by the Discipline Committee in its report dated February 7, 1989:

A. Particular 2(a) of the complaint

1. The Solicitor will dispute the finding that the Solicitor misappropriated funds in the amount of \$20,000.00 from funds held in trust from the sale of the matrimonial home of his client, Loreen Osinga and her spouse, John Donovan.

2. It will be argued that a finding of misappropriation must contain a finding of dishonest intention and that the evidence in this case does not support this conclusion.

3. Further, it will be argued that Mr. Donovan did not have any property interest in the funds at the time of the borrowing, and therefore, a misappropriation did not take place.

4. It will be further argued that the Committee erred in finding the Solicitor guilty of misappropriation and borrowing in relation to the same pool of funds.

B. Particular 2(c)

5. The Solicitor will dispute the finding that he assisted his former client, A. J. Wheatle, an owner of the Eureka Lodging Home, to take unfair advantage of his senile clients, Hester Badgley, Charles Hall, Ann Hall and Margaret Wilson, residents of that home by preparing and participating in the execution of Wills and powers of attorney in favour of Alva Wheatle when he knew or ought to have known that Hester Badgley, Charles Hall, Ann Hall and Margaret Wilson did not have the requisite capacity. Where the Solicitor did not act purposefully, with the intention of assisting Mrs. Wheatle, this does not establish professional misconduct.

6. The Solicitor will dispute the conclusion that the evidence heard pursuant to this particular establish professional misconduct; it will be argued that the evidence establishes negligence, but not professional misconduct.

C. PENALTY

7. the solicitor will dispute the recommendation made by the Discipline Committee as to penalty.

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Counsel for the Solicitor,
STANLEY FRANCIS DIDZIC

TO: LAW SOCIETY OF UPPER CANADA
Osgoode Hall
130 Queen Street West
Toronto, Ontario

REGINALD WATSON,
Discipline Counsel

11th August, 1989

The solicitor, counsel and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Somerville that the Report of the Discipline Committee dated 7th February, 1989 be adopted.

The solicitor, counsel and the reporter returned.

Mr. Greenspan filed a Memorandum of Fact and Law and Book of Authorities.

Mr. Watson filed a Memorandum of Fact and Argument and Book of Authorities.

Mr. Watson filed a Document Brief.

Mr. Watson made submissions on jurisdiction.

Mr. Greenspan made submissions on jurisdiction.

Mr. Thom proposed an amendment to Mr. Lamek's motion that the decision of the Discipline Committee be received accepting as a matter of policy that the decision of the Discipline Committee is final.

The motion was ruled out of order by the Treasurer.

The ruling was challenged by Mr. Thom.

Convocation supported the ruling.

Mr. Greenspan continued on with respect to jurisdiction.

The solicitor, counsel and the reporter withdrew.

Messrs. Spence, Kemp-Welch and Manes withdrew during the deliberations, but were present for all submissions.

It was moved by Mr. Somerville that Convocation adopt the submissions of Mr. Watson and determine that it does not have jurisdiction to make a finding of guilt in that that jurisdiction resides in the Committee.

Withdrawn

The Treasurer suggested the following wording:

Convocation adopt the position that it does not have the authority to review the decision of a Discipline Committee.

Not put

Mr. McKinnon suggested that The Law Society Act does not provide the solicitor a rehearing on facts or culpability in Convocation.

Not put

It was moved by Mr. Wardlaw, seconded by Mrs. MacLeod, that Convocation hear submissions of counsel disputing statements of fact or findings of fact contained in the Report of the Committee of Convocation.

Carried

The solicitor, counsel and the reporter returned.

The solicitor and counsel were advised of Convocation's decision with respect to submissions.

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CONVOCATION ADJOURNED AT 1:15 P.M.

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CONVOCATION RESUMED AT 2:15 P.M.

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PRESENT:

The Treasurer (Mr. L. K. Ferrier) and Messrs. Carey, Ferguson, Ground, Guthrie, Lamek, Mrs. MacLeod, Mr. Manes, Ms. Peters, Messrs. Shaffer, Somerville, Thom, Topp, Wardlaw and Mrs. Weaver.

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The reporter was sworn.

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STANLEY DUDZIC CONTINUED

Mr. Greenspan made submissions on Notice of Objection (written report - decision only).

Mr. Watson made submissions on Notice of Objection (written report - decision only).

The solicitor, counsel and the reporter withdrew.

It was moved by Mr. Carey, seconded by Mr. Somerville, that the matter be directed back to the Committee for a definite finding as to the intent of the solicitor in reference to the taking of the funds.

Lost

It was moved by Ms. Peters that the Committee be directed to consider whether the solicitor had an honest belief reasonably held that he had the right to do what he did.

Not put

A motion to adopt the Report was carried.

The solicitor, counsel and the reporter returned.

The solicitor and counsel were advised of the adoption of the Report.

Both counsel consented to the issue of penalty being heard by any quorum of Convocation.

The matter was adjourned to Convocation in September for the penalty hearing.

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CONVOCATION ROSE AT 4:30 P.M.

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Confirmed in Convocation this day of , 1990

Treasurer