



DISCIPLINE CASE *DIGEST*

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Case 95-08 (Amended)

VICTOR BRIAN OLSON
Winnipeg, Manitoba

Called to the Bar
June 24, 1982

Particulars of Charges
Professional Misconduct (7 counts)

- failing to serve clients (3 counts)
- misleading client
- breach of trust condition (3 counts)

Date of Hearing
April 26, 27 & 28, 1995

Panel
Reeh Taylor, Q.C. (Chairperson)
Lorne Campbell, O.C., Q.C.
Ronald Toews

Disposition

- Acquitted on 4 counts
 - failing to serve client
 - misleading client
 - breach of trust condition (2 counts)
- Reprimand on 3 counts
- Costs of \$1,500.00

Counsel
Daniel Dutchin for the Law Society
Sidney Green, Q.C. for the member

Failure to Serve Clients

Facts

Mr. Olson was retained by clients Mr. and Mrs. A in connection with a dispute with their former landlord. Mr. Olson promptly complied with the initial retainer and later Mr. and Mrs. A received a notice from the Residential Tenancies Branch advising that their former landlord was claiming for arrears in rent and damages to the property and also advising of the hearing date that had been set.

Mrs. A then provided the notice to Mr. Olson by leaving it at his office and confirming with him by telephone that he had received the notice.

Mr. Olson advised Mrs. A that he adjourned the hearing as he would be unable to attend the date set.

The hearing was in fact not adjourned and proceeded in the absence of Mr. and Mrs. A and Mr. Oldson. Mr. and Mrs. A were then advised of the outcome of the hearing by letter from the Residential Tenancies Branch. When Mrs. A contacted Mr. Olson he advised her that he was no longer practising and that she should seek other counsel to rectify the problem.

Mr. Olson was retained by Client B to set aside a default judgment obtained by MPIC against the client. Mr. Olson was able to negotiate a settlement to set aside the judgment, but failed to file the consent order prior to his withdrawal from practice. It was also alleged that he failed to advise B that he was withdrawing from practice.

Mr. Olson acted for three different clients on real estate transactions where a bank imposed trust conditions on mortgage proceeds. In one case, it was alleged that he failed to provide the bank with the final report on title showing no prior encumbrances effecting the bank's security within 45 days of the receipt of the monies. There were six prior mortgages on the property and Mr. Olson discharged five of them. The sixth was in favour of a trust company, but no funds had been advanced on the mortgage. Mr. Olson was unable to discharge that mortgage by the time he withdrew from practice.

Mr. Olson also accepted trust conditions from the bank with respect to another client which required that he provide that bank with a preliminary report on title and a final report on title showing no encumbrances effecting the bank's security within 45 days of the receipt of the monies. In this case, Mr. Olson was able to present evidence to the Committee that the terms were complied with and the bank was in error.

In the third case, the bank was to receive a copy of the appropriate documentation showing that the bank held a first charge on the subject property free and clear of any encumbrances. Mr. Olson received the monies and disbursed same, but then filed a caveat in priority to the

mortgage for an undetermined amount of money owing to the vendor by way of a final adjustment without advising the bank. When Mr. Olson reported to the bank, he indicated that there were no prior mortgages, charges or encumbrances to the bank's mortgage and made no mention of the caveat. When the bank became aware of the caveat, Senior Counsel for the bank demanded that Mr. Olson immediately comply with the trust condition. He failed to comply by the time he withdrew from practice.

Comments of the Discipline Committee

The Committee accepted the testimony of Mrs. A and found that Mr. Olson was representing Mr. and Mrs. A on the Residential Tenancies matter. The Committee found that Mr. Olson had failed to appear at the hearing and had misled his clients as to the adjournment.

The Committee found that Mr. Olson did not handle Client B's matter properly, but his carelessness fell short of professional misconduct. The Committee also found that the allegation that Mr. Olson had failed to disclose his pending retirement to the client had not been proved.

The Committee found that two charges of breach of trust condition were not proved. On the third charge of breach of trust condition involving the registration of a caveat by Mr. Olson, the Committee found that Mr. Olson was in breach of the trust condition in that he was aware that the caveat would not be discharged on a timely basis. The Committee noted that there was a two year and eight month delay between the acceptance of the trust condition and the registration of the discharge of the caveat by the bank, after Mr. Olson retired.

Findings and Penalties

The Committee found Mr. Olson guilty of professional misconduct with respect to three counts in the Citation. The Committee noted that Mr. Olson withdrew from practice on September 30, 1992. The Committee imposed a reprimand and also ordered that costs be paid in the amount of \$1,500.00.

Note

Mr. Olson filed an appeal from his conviction to the Manitoba Court of Appeal on June 16, 1995. The appeal was heard by the Court of Appeal on January 23 and 24, 1997. Judgment was delivered March 4, 1997 and by a majority of 2:1 the appeal was dismissed with costs.

Mr. Olson filed an Application for Leave to Appeal in the Supreme Court of Canada. The Law Society of Manitoba filed a Motion to quash the Application for Leave to Appeal. On October 6, 1997, the Supreme Court of Canada dismissed Mr. Olson's Application for Leave to Appeal with costs and also dismissed the Law Society's Motion to quash the Application for Leave to Appeal with costs.

An Application for Reconsideration for Leave to Appeal and a Motion to adduce new

evidence were filed by Mr. Olson in the Supreme Court of Canada on October 28, 1997. On February 26, 1998 the Supreme Court of Canada dismissed the Application for Reconsideration and the Motion to adduce new evidence with costs.

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