REASONS FOR DECISION

Complaint No. 92 of 2001

In the matter of JEFFREY DUJON, Cricket Coach and Therol Voche, an Attorney-at-Law

AND

In the matter of the Legal Profession Act, 1971 (Act 15 of 1971)

Preliminaries to hearing the Complaint

1. This complaint, was instituted in or about May, 2001 and was heard on the 17th January, 2003. The Complainant was represented by Mr. Jeffrey Mordecai, Attorney-at-Law. The evidence was given by the Complainant alone through whom a number of documents were tendered and admitted as exhibits 1 through 11A. Mr. Therol Voche', (hereafter referred to as "the Respondent Attorney") did not appear and was not represented. An Affidavit of Service indicating that service of the Notice of Hearing on the Respondent Attorney at his last known address, was produced by the Secretariat. It indicated that service was effected by mailing the Notice of Hearing to the Respondent Attorney at 22 Trafalgar Road, Kingston 5 on the 3rd December, 2003. We were satisfied that there had been compliance with Regulation 5 of the Fourth Schedule to the Legal Profession Act and therefore proceeded to hear the complaint.

The Evidence

2. The Complainant gave his full name as Peter Jeffrey Dujon and stated that in early 1998 he met the Respondent Attorney socially. They were introduced by a friend. The Respondent Attorney informed him that he had just started an investment bank and encouraged him to invest in the Bank, known as Voche Capital Investments Limited (VCIL). The Respondent Attorney informed Mr. Dujon that the investment company was offering attractive rates, good services and secure investments and that he, the Respondent Attorney, was in practice with his wife as Attorneys-at-Law. Mr. Dujon

stated that the Respondent Attorney, being an Attorney-at-Law, influenced his decision to make an investment in VCIL. He was also encouraged to invest in it by a friend of his, Mr. Peter Gregory.

3. Later, but also in early 1998, Mr. Dujon drew a cheque for US$60,000.00 on an account which he had with the National Commercial Bank Jamaica Limited and delivered it to the Respondent Attorney at the offices where VCIL operated. The Respondent Attorney delivered the cheque to an assistant of his and requested that she "deal with it". The sum of US$60,000.00 was to be placed on a one month roll over investment with interest to be paid at the end of each month or dealt with as Mr. Dujon directed. The cheque was made out to VCIL and Mr. Dujon understood that the proceeds thereof were to be invested in that company and that the United States funds would be converted to Jamaican Dollars for the purpose of the investment.

4. Exhibit 1 was tendered and admitted. It is the copy of a letter dated April 6, 1998 written by Mr. Dujon to VCIL for the attention of a Mr. David Turner. Mr. Turner was described by Mr. Dujon as being the person who handled his account at VCIL. The letter called upon that Company to close Mr. Dujon's account with immediate effect and requested that all funds held in his name be remitted to him, as a matter of urgency.

5. Exhibit 2 is a letter dated April 20, 1998 from the Respondent Attorney, as President of VCIL to Mr. Dujon, by which the latter was reassured about his investment and informed that, as at March, 1998, same stood in the sum of $2,683,700.14 principal plus accrued interest of $36,321.86. As Mr. Dujon put it, this letter states that "I could not receive my money at that time". We will return to this letter in greater detail in our analysis of the evidence.

6. As a result of the contents of Exhibit 2, Mr. Dujon telephoned the Respondent Attorney either on the day that he received the said letter or on the following day. Mr. Dujon then visited the Respondent Attorney at his offices. In the telephone conversation Mr.

Dujon enquired as to the position with his deposit and was told essentially what was contained in Exhibit 2. Mr. Dujon then informed the Respondent Attorney that he (Mr. Dujon) was coming to the office of the Respondent Attorney to meet with the Respondent Attorney and with Mr. Turner. Mr. Dujon did attend at the said offices and eventually met with both persons. In this meeting, he was told by the Respondent Attorney that there was no money and that they were making every effort to be in a position to pay him. There was no specific indication as to how they would do this and they basically repeated what was set out in Exhibit 2.

7. Mr. Dujon then consulted Mr. Jeffrey Mordecai Attorney-at-Law, explained what had occurred to the date of the meeting with him, delivered to Mr. Mordecai the documents which Mr. Dujon could locate relating to the transaction and instructed Mr. Mordecai to pursue recovery of the monies invested. On May 6, 1998, Mr. Mordecai wrote to VCIL for the attention of the Respondent Attorney on Mr. Dujon's behalf. A copy of this letter was received in evidence as Exhibit 3. It referred to and was accompanied by a letter, also dated May 6, 1998, from Mr. Dujon to VCIL. Mr. Dujon's copy of his said letter dated May 6, 1998 to VCIL was admitted in evidence as Exhibit 3A. Essentially, both letters called upon VCIL to redeem Mr. Dujon's investment by May 12, 1998, the date of redemption specified on its certificate of deposit No. RI0964140.

8. On June 29, 1998, Mr. Dujon received a telephone call from the Respondent Attorney in which the Respondent Attorney advised him with respect to the monies owed, that "It looks like October/November". Mr. Dujon explained that because of the nature of his work, he travels frequently. The telephone call was received immediately before his having left the Island on or about June 29, 1998 and that, upon his return, he wrote a letter to Mr. Mordecai advising him of the telephone conversation. Mr. Dujon's letter to Mr. Mordecai advising with respect to the said telephone conversation with the Respondent Attorney, is dated July 6, 1998 and was admitted as Exhibit 4. Mr. Dujon explained that he understood the words "It looks like October/November" to mean that he, the Respondent Attorney, was giving himself time. Mr. Dujon did not believe that the payment would be made in the months indicated.

9. Mr. Mordecai commenced proceedings for the recovery of Mr. Dujon's investment by Writ of Summons dated and filed on June 30, 1998 in Suit No. C.L. D 083 of 1998. In that action, Mr. Dujon is the Plaintiff and VCIL is the Defendant. Judgment in default of Appearance was filed on August 21, 1998 and was entered in Judgment Binder 717 Folio 323. The Judgement was for $2,923,313.10 with interest on the sum of $2,801,578.84 at 26% per annum from July 12, 1998 to the date of Judgement or sooner payment, and costs to be agreed or taxed. On September 4, 1998 an Appearance dated August 29, 1998 was entered by the firm of Voche' & Voche' on behalf of VCIL. Nothing was done by Messrs. Voche & Voche after the entry of their Appearance. The Judgment was not satisfied. Writ of Seizure and Sale was issued and delivered to the Bailiff for execution. The Writ was returned by the Bailiff, nulla bona. By his reports dated July 18, 1998 the Bailiff advised Mr. Mordecai that by the time he received the Writ of Seizure & Sale VCIL was already in receivership and the managers had relocated to 22 Trafalgar Road, Kingston 5. The Bailiff reported also that attempts made to collect the debt from the Respondent Attorney and his wife were to no avail and that all of the Company's assets were taken over by the Receiver. The Respondent Attorney and his wife were not in a position to settle the Company's indebtedness. The Bailiff was also unsuccessful in his efforts to locate goods and chattels belonging to the Company. Copies of the Writ of Summons, Final Judgment, Appearance and the Bailiff's pro forma and detailed reports dated July 18, 1998, were admitted as Exhibits 5, 10, 9, 11 and 11A, respectively.

10. Also on June 30, 1998, Mr. Mordecai wrote to the Securities Commission (the Commission) referring to the abovementioned Suit, delivering to the Commission copies of the correspondence and requesting the Commissions urgent attention. The Commission responded to Mr. Mordecai by an undated letter. A copy of Mr. Mordecai's letter dated June 30, 1998 to the Commission was admitted as Exhibit 6 and the Commission's undated response was also admitted as Exhibit 6A. By its said undated letter, the Commission advised Mr. Mordecai that on the 4th March, 1998 it

suspended the licence of VCIL under section 2(2) of the Securities (Licensing and Registration) Regulations 1996 for failing to meet its liquidity requirements.

11. By letter dated July 15, 1998 from VCIL to Mr. Dujon, the latter was advised, in relation to certificate of deposit No. R10964140, that the sum of $2,863,443.84 had been rolled over for 61 days at 26% per annum with a maturity date of August 12, 1998. The result, according to the said letter, was that the investment would gain interest of $125,773.77 thereby increasing Mr. Dujon's portfolio to $2,989,217.61. This letter was signed by the Respondent Attorney as President of VCIL and had stapled to it three (3) separate endorsements to the certificate of deposit, reflecting the number of the certificate indicated above, showing dates of re-investment as being April 12, 1998, May 12, 1998, and June 12, 1998 and dates of maturity as being May 12, 1998, June 12, 1998 and August 12, 1998, respectively. This letter dated July 15, 1998 and its attached Endorsements, were admitted as Exhibit 7.

12. Again, by letter dated September 15, 1998 from VCIL to Mr. Dujon, the latter was advised in relation to certificate of deposit No. R10964140, that the sum of $2,989,217.61 had been rolled over for 122 days at 26% per annum with a maturity date of December 12, 1998. The result, according to the said letter, was that the investment would gain interest of $264,054.08 thereby increasing Mr. Dujon's portfolio to $3,253,271.69. This letter was also signed by the Respondent Attorney as President of VCIL and had stapled to it one (1) Endorsement to the certificate of deposit reflecting the same number indicated above, showing the date of re-investment as being August 12, 1998 and the date of maturity as being December 12, 1998. This letter dated September 15, 1998 and its attached Endorsement were admitted as Exhibit 8.

13. Mr. Dujon testified that he has since failed to receive any part of his investment.

Analysis of the Evidence

14. We accept Mr. Dujon's evidence as summarised above, with one exception only. We do not accept that the enclosures to Exhibit 7 were three (3) Endorsements. We believe that there was unlikely to be more than one enclosure to that letter, being the Endorsement relating to the date of re-investment of June 12, 1998. It appears to us that the Endorsement in which the date of re-investment is stated as being April 12, 1998, was received by Mr. Dujon prior to his receipt of the letter, Exhibit 7. We so conclude, not because anything in Mr. Dujon's demeanour negatively impacted on our overall assessment of his credibility. Nothing did and we accepted him as a witness of truth. Our assessment with respect to the attachments to Exhibit 7 has, as its basis, the fact that Mr. Dujon's Attorney wrote to VCIL for the attention of the Respondent Attorney on May 6, 1998 quoting the Certificate of Deposit number R10964141. On the evidence, there was no information regarding the Certificate of Deposit except by reference to the Endorsement with date of re-investment April 12, 1998. In other words, had Mr. Dujon not delivered the Certificate of Deposit dated April 12, 1998 to Mr. Mordecai prior to May 6, 1998, Mr. Mordecai and, in fact, Mr. Dujon could not have quoted the certificate's number in their letters to the Commission dated May 6, 1996, Exhibits 3 and 3A. We are satisfied that there has been no attempt either on the part of Mr. Dujon or Mr. Mordecai to mislead the panel and that our assessment, in so far as it is at variance with the presentation of the evidence, is the result only of the manner of presentation of the evidence.

15. The negotiated cheque for US$60,000.00 was not adduced, the explanation from Counsel for Mr Dujon being that it cannot be located. We were therefore unable to determine the date or approximate date on which the deposit was made or to confirm the institution and account to which it was lodged. Further, we were unable to assess whether, at the time of the delivery of the cheque VCIL was still licensed to trade in investments and, if not, whether this was likely to be known by the Respondent Attorney. Nonetheless, we are satisfied by the documentary evidence and Mr. Dujon's

testimony that the investment was made and that he has not been able to retrieve the proceeds of his investment.

16. By letter dated April 20, 1998 addressed to Mr. Dujon and signed by the Respondent Attorney as President of VCIL, the Respondent Attorney advised Mr. Dujon, inter alia, as follows:

> ***"With the recent news releases and various rumours about our Group of Companies coming to public knowledge, I realise that it must create some concerns for you about your investment with this Company. I therefore assure you that we have every intention to honour our obligation to you....***
>
> ***It is a fact that we would not be able to pay out now if you wished to redeem immediately. The recent departure of some members of Management together with the effect of the news releases, did cause a run on our Company that has created a particularly difficult cash flow position at this time.***
>
> ***However, please be advised, and assured, by me that our financial position and general status is by no means as unstable as the reports and rumours would have you believe....***
>
> ***With regard to the licence for VCIL, David Turner met with the full Board of the Securities Commission and, in association with a letter already sent to them, requested a suspension for approximately 3 months, while we restructured. This was granted.***
>
> ***The Insurance Company should be back in operation during the next 2 months. Therefore, with the economies we have effected, the cash flow should soon be moving more positively..."***

17. We note that the contents of the said letter of the 20th April, 1998 (Exhibit 2) were sometimes expressed in the first person singular and at other times expressed in the third person plural. We consider this to be significant for the reason that the effect of so crafting the letter was to enable the Respondent Attorney to give Mr. Dujon

personal assurances while preserving the status of VCIL as the "person" with the responsibility for the repayment of the debt. In our view, an Attorney who is engaged in business as the Respondent Attorney was, cannot be held to any lesser standard of conduct as a businessman outside of his legal practice, as he would be held as an Attorney-at-Law in legal practice, for so long as he also remains an Attorney-at-Law.

18. We are satisfied that much of the information which was communicated to Mr. Dujon in Exhibit 2 was either inaccurate or misleading. We are satisfied that after receiving letter dated April 6, 1998 from Mr. Dujon, VCIL had no authority to roll over his investment and that this was known to the Respondent Attorney. Thereafter, with knowledge of the law and of the fact that Mr. Dujon wished to redeem his investment, the Respondent Attorney signed letters on behalf of VCIL advising that the investment had been rolled over for extended periods which were never contemplated by the agreement relating thereto. We are satisfied that in giving the advice contained in Exhibit 2 and in rolling over the investment, despite Mr. Dujon's request for immediate redemption thereof, the Respondent Attorney was acting in a manner which we consider to be inconsistent with the best traditions of the profession and inconsistent with the standard of conduct which ought to be expected from an Attorney-at-Law whose duty is to conduct himself in a manner which is befitting the profession.

The Submissions

19. Mr. Mordecai submitted that the complaint is not about the business of a company which has failed. He was at pains to point out his and his client's appreciation of the distinction of a company operated by an attorney-at-Law and the attorney-at-Law acting in his personal capacity. According to Mr. Mordecai, the matter is governed by what occurred after the initial investment, in relation to which, the representations which were made by the Respondent Attorney were at best loose and at worst untrue.

20. Mr. Mordecai submitted further that the time frame which should be taken into account by the panel, commenced with Exhibit 2. He maintains that an attorney should not

conduct himself by giving assurances on which the persons to whom he gives such assurances cannot rely, and he expressed the view that, taken as a whole, the Respondent Attorney's conduct amounts to a breach of his duty to uphold the honour and dignity of the profession. According to Mr. Mordecai, where issues arise on a failed business, the duty of the attorney-at-Law who conducts such business is to present the factual position of the failed business, accurately and honestly.

Findings of fact

21. The following are our findings of fact:

(I) The Respondent Attorney, who was then in practice with his wife under the firm name Voche' and Voche', was the President or Chief Executive Officer of an investment company, VCIL.

(ii) In early 1998 Mr. Dujon invested the sum of US$60,000.00 with VCIL to be converted to Jamaican Dollars. Interest was to be paid by the Company monthly or be treated as otherwise directed by Mr. Dujon.

(iii) Mr. Dujon was influenced to make the investment by:

a) the fact that the Respondent Attorney was a practicing Attorney-at-Law with his own firm;

b) the assurances received from the Respondent Attorney that he would receive attractive rates of interest on sums invested; and

c) the encouragement of a friend, Mr. Peter Gregory.

(iv) On March 4, 1998, pursuant to section 2(2) of the Securities (Licensing and Registration) Regulations 1996 the Securities Commission suspended the licence of VCIL for failure to meet its liquidity requirements.

(v) By April 6, 1998, the Respondent Attorney knew or ought reasonably to have known that the licence of VCIL to operate as an investment company, had been suspended.

(vi) On or about April 6, 1998, Mr. Dujon requested of VCIL, the immediate and urgent termination of his account and payment to him of the sums due.

(vii) By the contents of letter dated April 20, 1998 to Mr. Dujon, the Respondent Attorney gave personal assurances regarding the relative strength of VCIL and its cash flow position, which could not have been accurate against the background of the suspension of that Company's Licence by the Securities Commission on March 3, 1998.

(viii) Regarding the explanation contained in Exhibit 2 with respect to VCIL's Mr. David Turner having made a request for a three (3) month suspension which was granted by the Securities Commission, there is no indication from the Commission's letter, Exhibit 6A that the suspension was limited to the alleged or any period. We find that there was no limitation on the period of the suspension of VCIL's licence whether to three (3) months or otherwise.

(ix) The projections advanced in Exhibit 2 by the Respondent Attorney, as President of VCIL, as to when that Company would be able to meet its obligations to Mr. Dujon were unrealistic and were calculated to mislead Mr. Dujon into believing that he would ultimately receive the proceeds of his investment.

(x) Upon receipt of Exhibit 2 Mr. Dujon telephoned and subsequently met with the Respondent Attorney and his assistant Mr. David Turner. At this meeting Mr. Dujon was told that there was no money and also that 'they' were making efforts to be in a position to pay. He was also given assurances similar to or the same as were contained in the said letter.

(ix) Thereafter, Mr. Dujon attended upon and instructed Mr. Mordecai to pursue recovery of the investment. Mr. Mordecai commenced the process on May 6, 1998 by writing to VCIL for the attention of the Respondent Attorney (Exhibits 3 and 3A).

(x) On Monday June 29, 1998, the Respondent Attorney telephoned Mr. Dujon and, with respect to the amount due on the investment, the Respondent Attorney informed Mr. Dujon that "it looks like October/November" which Mr. Dujon understood to mean that the funds would be paid to him in October or November, 1998. We find Mr. Dujon's stated understanding to be a reasonable inference to be drawn from the words used, given the circumstances. We also find that the record of the conversation between Mr. Dujon and the Respondent Attorney is as recorded in letter dated July 6, 1998 from Mr. Dujon to Mr. Mordecai (Exhibit 4). We find that the call to Mr. Dujon and the comment made therein that it looks like October/November, was meant by the Respondent Attorney to be an assurance to Mr. Dujon that he would receive his funds within those months.

(xii) Mr. Mordecai wrote to the Securities Commission on the 30th June, 1998 (Exhibit 6). On the said June 30, 1998, Mr. Mordecai commenced proceedings for recovery of Mr. Dujon's investment and pursued same through Judgment and a failed execution (Exhibits 5, 9, 10, 11 and 11A).

(xiii) The information that the Securities Commission had suspended VCIL's Licence was communicated to Mr. Mordecai by an undated letter (Exhibit 6A) which was written on or after July 9, 1998, in response to Mr. Mordecai's letter dated June 30, 1998 to the Commission (Exhibit 6).

(xiv) At the time of giving the assurance to Mr. Dujon in the telephone conversation of the 29th June, 1998, the Respondent Attorney knew that VCIL's Licence had been suspended and that the suspension could not have been for the three (3)

month period referred to in Exhibit 2, as that period would have expired since the date of suspension, March 4, 1998.

(xv) The Respondent Attorney did nothing to correct this error, misconception, or falsehood and thereby failed to disclose to Mr. Dujon the fact that VCIL no longer had the ability whether in fact or in law to continue to trade in securities.

(xvi) Judgment in default of Appearance was entered against VCIL on August 21, 1998 in Suit No. C.L.D. 083 of 1998 between Mr. Dujon and VCIL. The Bailiff, in his efforts to execute the Writ of Seizure & Sale, was unable to locate or proceed against any asset of VCIL and was therefore unable to recover the proceeds of the Judgment from that Company - Exhibits 10, 11 and 11A.

(xvii) By letters dated July 15, 1998 and September 15, 1998 (Exhibits 7 and 8 respectively) which were signed by the Respondent Attorney as President of VCIL, Mr. Dujon was advised that the Company had rolled over his investment for further periods of 61 days and 122 days, respectively. At the time when these letters were written, VCIL's authority to do anything more than to pay to Mr. Dujon the proceeds of his investment had ceased.

(xviii) When signing the letters dated July 15, 1998 and September 15, 1998, the Respondent Attorney knew or ought reasonably to have known that there was no real prospect of Mr. Dujon recovering his investment. The Respondent Attorney knew that VCIL's authority to reinvest Mr. Dujon's funds had been terminated. The Respondent Attorney knew that VCIL had no authority, as of April 6, 1998 or at any time thereafter to roll over Mr. Dujon's investment for any period. As is evidenced by the Bailiff's reports dated July 18, 1998, the Respondent Attorney knew that VCIL was in receivership and did not have the resources to pay to Mr. Dujon the proceeds of his investment and neither were there assets from which same could be realised.

(xix) The Respondent Attorney's conduct, commencing with his signing Exhibit 2 and ending with his signing of letter dated September 15, 1998, as President of VCIL, reflects a blatant neglect or refusal to communicate accurate facts regarding the status of his said Company and a propensity to distort facts which were either known or ought reasonably to have been known to him, to be inaccurate.

(xx) The Respondent Attorney's communications with Mr. Dujon regarding the latter's investment with VCIL from April 20, 1998 to the date of the last communication by letter dated September 15, 1998 were, beyond reasonable doubt, deceitful and dishonest.

(xxi) The purpose of this dishonest conduct was to stem the flow of cash leaving VCIL and to delay the date for repayment of the investment for as long as possible, with the hope of facilitating resumption of the operations of VCIL. This, if achieved, would have enured to the benefit of VCIL and would, ultimately, enure to the personal benefit the Respondent Attorney. In other words, it was in the interest of the Respondent Attorney to seek to preserve VCIL as a going concern and, in relation to Mr. Dujon, the method which was chosen by the Respondent Attorney in his efforts to achieve this objective, was deceit.

(xxii) Mr. Dujon never recovered his investment.

The Law

20. The Canons of Ethics do not prohibit an Attorney-at-Law from engaging in business in a capacity other than the practice of law. In this Complaint, the Respondent Attorney did precisely that and, accordingly, the issue is whether what he did in his business relationship with Mr. Dujon amounts to professional misconduct which may

properly be the subject of a complaint under the provisions of the Legal Professional Act and The Legal Profession(Cannons of Professional Ethics) Rules.

21. Section 12(1) of the Legal Profession Act, in so far is it is relevant to the present circumstances, provides that:

> "Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an Affidavit made by such person... concerning any of the following acts committed by an attorney, that is to say-
>
> a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect);"

22. Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules provides that-

* "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member"

Canon I (c) provides that-

> "An Attorney shall observe these Canons and shall maintain his integrity and encourage other attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the Legal Profession."

Canon IV(j) provides that-

* "Except with the specific approval of his client given after full disclosure, an Attorney shall not act in any manner in which his professional duties and his personal interests conflict or are likely to conflict."

Canon VIII (a) provides that-

> "Nothing herein contained shall be construed as derogating from any existing rules of professional conduct and duties of an Attorney which are in keeping with the traditions of the legal profession, although not specifically mentioned herein"

Finally, Canon VIII provides that, among others, breaches of Canons I(b) and IV(J) set out above, "*shall constitute misconduct in a professional respect and an Attorney who commits such a breach shall be subject to any of the orders contained in section 12(4) of the Principal Act.*" The "Principal Act" is defined as meaning the Legal Profession Act and the orders contained in section 12(4) thereof are as follows:

> (a) striking off the Roll the name of the attorney to whom the application relates, or suspending him from practice on such conditions as they may determine, or imposing on him such fine as they may think proper, or subjecting him to a reprimand;
>
> (b) the payment by any party of costs or such sum as they may consider a reasonable contribution towards costs;
>
> (c) the payment by the attorney of any sum by way of restitution as they may consider reasonable.

23. In the circumstances of this complaint, we are satisfied that the Respondent Attorney failed to act consistently with his duty under Canons I(b) and (c) and Canon IV(j) of the Legal Profession (Canons of Professional Ethics) Rules. We accept Mr. Mordecai's submissions that the Respondent Attorney and, indeed, no Attorney should conduct himself or herself by giving assurances on which the person or persons to whom they are given cannot rely. We also agree with Mr. Mordecai that the Respondent Attorney's conduct amounts to a breach of his duty to uphold the honour and dignity of the profession and that, in the circumstances of the complaint and on the facts as found, the duty of the attorney-at-Law who conducts a business which fails, is to present the factual position of the failed business, accurately and honestly to customers who are affected thereby.

24. We are also satisfied that in conducting his business affairs in relation to Mr. Dujon, the Respondent Attorney was constrained by the Rules to act in a manner which ensured that his professional duties and his personal interests did not conflict or were not likely to conflict. Here, the Respondent Attorney encouraged Mr. Dujon to invest, partially on the basis of his professional status as an Attorney-at-Law in practice with

his wife, both having their own law firm. Although there was no evidence of his having conducted business in the course of his profession as an Attorney-at-Law for or on Mr. Dujon's behalf, he clearly intended that Mr. Dujon rely upon his status as an Attorney-at-Law to give him confidence in making the investment. At the commencement of their business relationship and throughout same, assurances were given by the Respondent Attorney to Mr. Dujon, which we have found to be for the purpose of providing the latter with false reassurances about being paid the proceeds of the investment.

25. As we have found, the Respondent Attorney was here acting in advancement of the interest of VCIL which would ultimately redound to his personal benefit, while failing to observe his professional duty of honesty and integrity in his dealing with Mr. Dujon. Here, the Respondent Attorney's personal interest was in direct conflict with his professional duty to present the facts surrounding the circumstances of VCIL's financial predicament accurately, honestly and with integrity, despite the effects that this would have had on his said Company. Canon IV(j) of the Canons of Ethics makes one exception to the requirement that an attorney must not, in any manner permit his professional duty to conflict with his personal interests. That exception arises where there is an existing attorney-at-law/client relationship and the attorney has his client's specific approval, after full disclosure. Where, as here, there was no attorney-at-law/client relationship, it was the duty of the Respondent Attorney, with knowledge of the requirements of Canon IV(j) of the Cannons of Ethics, to present all of the facts surrounding VCIL's financial situation, honestly and fairly, despite the fact that by so doing, Mr. Dujon may have acted in a manner which would have been detrimental to the Respondent Attorney's personal interests. However, the evidence is that, instead of being advised of VCIL's actual financial resources at the time of the requests for redemption of the investment, Mr. Dujon was given false assurances and promises.

26. As, at all times, the Respondent Attorney's professional duty included that of observing the Canons of Ethics and maintaining his integrity and the integrity of the profession

generally, we conclude that he has breached Canons I(b) and IV(j) of the Legal Profession (Canons of Professional Ethics) Rules.

27. However, Mr. Dujon's Affidavit in support of the Complaint concludes as follows:

"10. That the said Attorney's failure to satisfy the Judgment sum or any part thereof is:

a) conduct unbecoming his profession,

b) an act of blatant impropriety,

c) dishonourable (sic) bringing the profession into disrepute, and

d) a failure to maintain the honour and reputation of the profession.

11. That I hereby complain to the General Legal Council in respect of the said Attorney's conduct in failing to satisfy the said Judgment."

28. The foregoing indicates that the factual basis on which Mr. Dujon initially advanced the complaint of professional misconduct on the part of the Respondent Attorney, is the latter's failure to pay the Judgement sum. Nevertheless, when giving his evidence, Mr. Dujon did not proceed on this basis and neither did his Attorney advance same. The result is that there is no evidence to the effect that the Respondent Attorney was, in any manner, liable to satisfy the Judgment.

30. However, we are satisfied that the conduct which forms the basis of our findings as previously outlined is unbecoming of an Attorney-at-Law and brings the profession into disrepute. We are satisfied that the conduct is dishonourable and that it amounts to misconduct in the professional sense. We have arrived at this conclusion on an analysis of the evidence which convinces us, beyond reasonable doubt.

The Sanction

30. The Respondent Attorney did not attend the hearing and has not put forward any answer to the Complaint. No evidence was led as to his present circumstances. The conduct which is the subject of the complaint does not fall to be considered as constituting misappropriation. There is no evidence to support such a charge or

complaint and, in fact, this was not the basis of the complaint. The conduct complained of and which we have found to be supported, is dishonesty in the representations made to a customer in the course of the business dealings between the customer (Mr. Dujon) and the Respondent Attorney, as well as the personal advantage which the Respondent Attorney stood to gain by making the dishonest representations for the purpose of providing an avenue for shoring up his beleaguered Company, at a time when his personal interest in so doing, was in direct conflict with his professional duty of honesty and integrity.

31. We are guided by the dicta of Sir Thomas Bingham M.R. in the U.K. Court of Appeal case of **Bolton v Law Society [1994] 1 W.L.R. 512** who, when considering the sanction to be imposed on a Solicitor who has been found to have been dishonest and whose conduct amounts to professional misconduct, said:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client's monies have been misappropriated the complaint is invariably made against a solicitor, since solicitors receive and handle clients' moneys and barristers do not.
>
> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. **The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.** Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standard of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision

whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension." [The emphasis has been added]

32. **Bolton v The Law Society** is a case of a Solicitor who received monies in the course of handling the sale of a house and disbursed the funds received rather than retain same on his client's account, pending completion of the transaction. The sale was not completed and when the discrepancy was discovered by the Solicitors Complaint's Bureau, it was promptly made good by the Solicitor. The Solicitors Disciplinary Tribunal found that he was not deliberately dishonest and suspended the Solicitor from practice for two (2) years. The Divisional Court, on the basis of the finding that there was no dishonesty and on fresh evidence of good character, found that the Tribunals sentence was disproportionate to its findings. The Divisional Court quashed the penalty of suspension and imposed a fine. On appeal, the Court of Appeal held that the Tribunal's decision should not have been interfered with by the Divisional Court but declined to reinstate the suspension because of the stay which had been granted in respect of the Tribunal's order and the lapse of time pending appeal.

33. In relation to this complaint, we are also guided by the fact that the Securities (Licensing and Registration) Regulations 1996 includes among the persons who may qualify for a dealers licence, a person who "has a professional qualification in law or accounting" - Regulation 2(1)(a)(ii). There is no evidence that the Respondent Attorney was a licenced dealer and we do not seek to maintain that anything in his conduct contributed to the suspension of VCIL's licence by the Commission. Nonetheless, we are of the view that this requirement could only have been included in recognition of the fact that the standard of conduct which is expected from such professionals is a high one and that, for the protection of the investing public, persons who qualify to be licenced dealers should include members of professions which are known to require of their members, the inflexible qualities of "integrity, probity and complete trustworthiness" to use the words of Sir Thomas Bingham M.R. In our view, the fact that the conduct complained of occurred in the course of the Respondent

Attorney's business as opposed to his law practice, cannot mean that he should be held to any lesser standard.

34. In determining what sanction we should impose in the circumstances of this complaint, we have had regard to the principles described in Sir Thomas Bingham M.R.'s Judgment set out above. Our finding of proven dishonesty on the part of the Respondent Attorney, is a very serious breach of the high standard of conduct which attorneys-at-law are required to uphold. The legal profession cannot condone dishonesty in any form at any time or in any manner, whether emanating from an Attorney-at-Law in the course of his practice or in the course of business. Being so guided and having regard to the principles in **Bolton v The Law Society**, we conclude that the Respondent Attorneys name should be struck from the Roll of practising Attorneys-at-Law and that he should pay Mr. Dujon's costs as well as the costs of the Disciplinary Committee. Accordingly we make the following order:

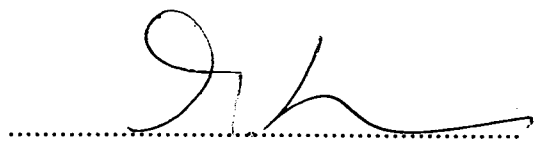
(i) The name of the Respondent Attorney, Mr. Therol Voche', is to be struck off the Roll.

(ii) The Respondent Attorney is to pay Mr. Dujon's costs fixed at $50,000.00.

(iii) The Respondent Attorney is to pay the Disciplinary Committee's costs fixed at $30,000.00.

Dated the 6th day of March, 2004

Pamela Benka-Coker Q.C.



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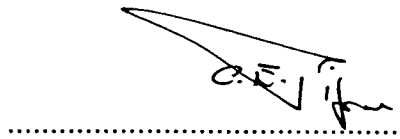

Charles Piper