

Vancouver, B.C.

Called to the Bar: May 17, 1952

Retired member: January 1, 1997

Discipline hearing panel: February 14, 1995 and September 19, 1996
Benjamin Trevino, Q.C., Chair, Ann Howard and Russell Tretiak

Jean Whittow, for the Law Society

Richard Sugden, Q.C., for Mr. Volrich

Summary

While under a two-year suspension from the practice of law, Mr. Volrich met with Mrs. S, a person facing criminal offences, without advising her that he was a suspended lawyer and unable to act for her. Mr. Volrich misled Mrs. S's doctor as to his status as a lawyer when contacting the doctor for assistance. He gathered particulars of the criminal charges, arranged for counsel (Mr. C) to represent Mrs. S, advised Mrs. S on the prospects of a successful defence and controlled Mrs. S's retainer fees for payment to counsel and to himself in the matter. Along with Mr. C., Mr. Volrich also negotiated with Crown Counsel on her behalf. His actions over a 10-month period amounted to practising law while suspended and uninsured and constituted professional misconduct. The hearing panel determined that the previous suspension had not been an adequate deterrent, and ordered that Mr. Volrich be suspended for three years and that he pay costs of the discipline proceeding.

Facts

While suspended from the practice of law for a two- year period between July, 1987 and July, 1989, Mr. Volrich met with Mrs. S who had been charged with *Criminal Code* offences, including fraud and theft. Her husband, Mr. S, had also been charged with one count in common.

Mrs. S informed Mr. Volrich of the charges against her and she authorized Crown Counsel to release particulars to him.

Mr. Volrich had previously provided Mrs. S with a business card indicating he was a barrister and solicitor. He did not disclose his status as a suspended lawyer to Mrs. S. As a result, she was not alerted to his status and made assumptions about his capacity to act for her. Mr. S provided Mr. Volrich with between \$2,000 and \$3,000 as a retainer.

Mr. Volrich called Mrs. S's doctor for assistance but did not advise of his suspension or his inability to act for Mrs. S.

On September 19, 1988 Mrs. S and Mr. S appeared in court, with Mr. Volrich's sister appearing on their behalf to put the matter over to October 3. The court was not advised that Mr. and Mrs. S were to be separately represented. Mr. Volrich was seated in the public gallery at this time.

Prior to the October 3 hearing date, Mr. Volrich asked a criminal law lawyer (Mr. C) to represent Mrs. S. Mr. Volrich offered the case to Mr. C on two conditions: first, Mr. Volrich was to assist Mr. C and, second, Mr. Volrich was to be in charge of the financial arrangements.

Mr. C met with Mrs. S and discussed the alternatives available to her and advised that he did not think she would be found innocent of the charges.

On October 3 Mr. Volrich's sister appeared in court as agent for Mr. C and fixed a trial date on which Mr. C could be available. Mr. Volrich, who was at the back of the courtroom for this appearance, subsequently accompanied Mrs. S for fingerprinting.

Mr. Volrich met with Crown Counsel to discuss Mrs. S's case, once by himself and once with Mr. C. Mr. Volrich advised Mrs. S about the prospects of a successful defence of the charges, both before and after meeting with Crown Counsel and before and after Mr. C's involvement in the case.

Mr. C appeared in court on four occasions on behalf of Mrs. S. She made a guilty plea in January, 1989 and was given a 30-day intermittent sentence in April, 1991. The charge against Mr. S was stayed or dismissed.

Mr. Volrich did not provide Mrs. S's retainer of \$2,000 to \$3,000 to Mr. C. In August, he paid Mr. C \$750 on his account of \$1,000. Mr. Volrich told the hearing panel that he also paid Mr. C the balance of \$250 and his sister \$300, although there was no evidence of when this money was paid. Mr. Volrich testified that he felt himself entitled to a reasonable recompense for the time he had spent.

Decision

Mr. Volrich's conduct constituted professional misconduct.

Penalty

The hearing panel found that Mr. Volrich had engaged in an ongoing scheme to practise law while under suspension.

Mr. Volrich never advised Mrs. S that he was a suspended lawyer and she naturally assumed he was able to act for her. He also misled Mrs. S's doctor as to his status as a lawyer. Mr. Volrich had his sister appear as agent for Mrs. S; appeared in court though in

the public gallery; attended Mrs. S's fingerprinting; arranged for counsel to represent Mrs. S with his "assistance;" gathered particulars of the charges to provide to counsel; controlled the funds representing fees to counsel and his own fees; and negotiated, possibly alongside Mr. C., with Crown Counsel.

The result of this continued course of action was that Mrs. S was deceived as to Mr. Volrich's status as a lawyer. He practised law while unauthorized to do so and while uninsured. He also deprived Mrs. S of the security of a trust deposit in taking her retainer and he completely failed to properly account for the funds.

Mr. Volrich's actions extended over at least 10 months, which was not an error in his judgement but a flagrant abuse of Mrs. S and his obligations to the profession. Mrs. S and the public in general had a right to expect candour in their dealings with their lawyers and Mr. Volrich failed Mrs. S in this regard. Mr. Volrich also apparently thought he could disguise this behaviour and avoid sanction if detected.

The hearing panel determined that Mr. Volrich's actions, coming as they did under his period of suspension, were deserving of significant censure, although not the ultimate penalty of disbarment. The panel observed that Mr. Volrich's previous two-year suspension had not been an adequate deterrent and the penalty for this misconduct should be more significant.

The panel ordered that Mr. Volrich:

1. be suspended for three years;*
2. pay \$4,489.08 costs of the discipline proceedings.

The panel further ordered that, if Mr. Volrich were reinstated after the suspension, he be prohibited from being a signatory to a trust account for five years.

Mr. Volrich has filed an appeal of penalty to the Benchers, set for hearing on April 29, 1999.

** Mr. Volrich became a retired member of the Society in 1997.*