

Province of New Brunswick

**In the Matter of the Securities
Act, R.S.N.B. 1973, c. S-6, and
amendments thereto;**

and

**In the Matter of the
Registration of John Gerard
Doucet.**

Decision and Reasons

Hearing: Thursday, June 13, 9:00 a.m.

Appearances: Edouard O. LeBlanc, Deputy Administrator of
Securities, New Brunswick;
John Gerard Doucet, Registrant;

Decision and Reasons of Donne W. Smith, Jr., Administrator of Securities, New Brunswick:

Pursuant to a Notice dated June 6, 1991, a hearing was held at the Office of the Administrator of Securities on June 13, 1991 commencing at 9:00 a.m. to consider whether, in the opinion of the Administrator, it is in the public interest to suspend, cancel, restrict or impose terms and conditions upon the registration of John Gerard Doucet ("Doucet"), a registrant under the Securities Act (Security Frauds Prevention Act) R.S.N.B. 1973, C. S-6, (the "Act") by reason of his allegedly committing a fraudulent act, contrary to the Act.

The Notice of Hearing disclosed the following allegations:

1. On March 8th, 1991 a Form "C" application for registration as salesman for John Gerard Doucet was received at the Office of the Administrator.
2. Doucet was granted registration on March 20, 1991 based on the information he supplied on the application.
3. On the said application Doucet indicated in reply to Question 15(B) that he had never been convicted of an offence.
4. Doucet has been convicted on charges of driving while his ability was impaired under the Criminal Code of Canada and for possession of a narcotic.
5. The above actions of Doucet constitute a fraudulent act as defined under this Act contrary to section 41(1) of the Act in that he knowingly made a materially false statement in an application submitted to the Administrator.

Pursuant to section 21 of the Act, the Administrator has jurisdiction to examine any person to determine whether, inter alia, any fraudulent act or offence against the Act or Regulations has been committed. The Administrator or his representative has substantial authority and discretion to conduct investigations and examinations pursuant to this section.

Procedure at the hearing, while informal, was guided by principles of natural justice applicable to all administrative tribunals. Both the Deputy Administrator of Securities, Edouard LeBlanc ("LeBlanc"), and Doucet gave sworn testimony. Each was given the opportunity to examine the other and to make representations to the Administrator. Additionally, evidence was given by a witness in support of the registrant. At the conclusion the Administrator advised Doucet that a written decision would be promptly forwarded to him and his employer.

The following facts are not in dispute. The registrant, John Gerard Doucet, resides at [REDACTED], Fredericton, New Brunswick and is employed as a sales representative with Investors Syndicate Limited at their Fredericton office, 1133 Regent Street. Mr. Doucet is 29 years of age.

By an application form dated February 18, 1991, Doucet requested registration as a salesperson under the Act. This application was approved by the Administrator on March 20, 1991 and a certificate of registration subsequently issued effective March 20, 1991 to expire on October 31, 1991. Like Investors Syndicate Limited his activities as a salesperson were then and remain restricted to the distribution of mutual funds sponsored by Investors Syndicate Limited.

Pursuant to the registration requirements of the Office of the Administrator, Doucet executed a Security Frauds Information Centre ("SFIC") Records Request form on January 8, 1991. Subsequently the form was returned by SFIC indicating that a conviction might be on record as relating to the registrant. Only with fingerprints could a conclusive determination be made. No conviction was disclosed on Doucet's application form as required by Question 15(B).

Upon receipt of the returned SFIC form, the Deputy Administrator commenced an investigation pursuant to normal practice. In a telephone conversation on April 8, 1991 with LeBlanc, Doucet admitted the convictions. A letter to LeBlanc from Doucet on the same date further explained these circumstances.

In 1985 Doucet was convicted of impaired driving for which he received a \$500 fine and 6 months suspension of driving privileges. In 1986 he was found guilty under the Narcotics Act for possession of marijuana which resulted in a \$50 fine. In 1987 he was convicted again for impaired driving, contrary to section 237(b) of the Criminal Code of Canada. For this he was ordered to pay a fine of \$500 and to serve 14 days in provincial jail. A certificate of conviction for this latter offence was submitted at the hearing.

In his evidence Doucet admitted these facts. Furthermore, he testified that not only did he understand the meaning of Question 15(B) but he deliberately answered falsely. Doucet explained that he was afraid he would not get the job if his employer was aware of his past criminal convictions. While he anticipated that these convictions would be discovered, either by the employer or the securities regulator, he was uncertain what would be the result. He was hopeful that his work would be "good enough to make up for it", that is, by doing his job well, both his employer and the Administrator would somehow overlook his deliberate failure to tell the truth.

In this matter two questions are before the Administrator. Firstly, is there evidence of a fraud or a fraudulent act having been committed by Doucet, contrary to the Act? Secondly, if such an offence has occurred, what penalty, if any, should be imposed against Doucet?

There can be no doubt with regard to the first. Doucet admits, and I so find, that a "fraudulent act" as defined by the Act was committed by Doucet. Pursuant to Section 1 such acts include:

"any intentional misrepresentation by word or conduct or in any other manner of a material fact, either past or present, and an intentional omission to disclose any such fact".

In this case, the registrant committed a fraudulent act by intentionally responding falsely to Question 15(B). Criminal convictions are material facts which may significantly influence the Administrator's decision to grant registration.

The second question is more difficult. What penalty, if any, should be imposed in the circumstances of this case? Pursuant to section 12(1)(c)(v) of the Act:

- 1) The Administrator may order that
 - c) a registration be suspended or cancelled upon
 - v) the Administrator being satisfied that such action is in the public interest;

The Administrator may exercise a broad discretion in determining what is the public interest and how it should be protected.

The Deputy Administrator argues that honesty is the most important requirement of a salesperson registered under the Act. If a registrant lies to the regulator, there must always be grave concern about the registrant's representations to the investing public. LeBlanc acknowledged that Doucet quickly and freely admitted his convictions. He was cooperative in the investigation and, apart from this incident, no other negative factors have been discovered. As precedent, LeBlanc referred the Administrator to two similar hearings before the Administrator within the last six months which resulted in suspensions of four months and one month. Consequently, he recommended a minimum suspension of one month for Doucet.

On behalf of Doucet, [REDACTED] A.A. [REDACTED] of [REDACTED], Fredericton, New Brunswick gave evidence as to his character. She indicated she has known Doucet since 1990. She emphasized that his criminal convictions occurred when he was younger. In her opinion Doucet is very dedicated to his clientele and involved in his community. She hoped that the Administrator would recognize Doucet's forthright acknowledgement of his error.

Speaking on his own behalf Doucet indicated he was fully prepared to accept the consequences of his mistake. Nevertheless, because his income is derived totally from his activity as a securities salesperson, a long suspension would have very harmful economic consequences. He expressed the hope that, should a suspension be ordered, it be for two weeks only.

The Act requires that the Administrator impose standards so that the investing public is protected from fraudulent activity. If these corporate or individual standards are not met or maintained the integrity of the industry is rightfully questioned. This is especially important in the securities industry where substantial client sums are entrusted by individuals to their advisors. Investors expect their investment advisors to be truthful, honest and forthright, and should they not be, the Administrator is directed by the Act to take appropriate action.

There is no question that Doucet has met the standard proficiency requirements in that proof of successful completion of the Investment Funds Institute of Canada mutual funds course has been filed. Furthermore, it is very evident that no or little instruction was given to him by management of Investors Syndicate Limited when completing the application form. In my opinion, the lack of adequate guidance and supervision throughout the registration process has significantly contributed to the situation in which Doucet now finds himself. For these failures in administrative and supervisory procedures, Doucet cannot be faulted. Indeed, such factors in my opinion serve to mitigate any penalty to be imposed upon Doucet.

Mr. Doucet is starting a career in the securities industry. He has been recruited by Investors Syndicate Limited which has confidence in his integrity and abilities. Over time Doucet will seek to earn the respect of the investing public. It will demand that he maintain the high standards of his industry. While Doucet's convictions in 1985, 1986 and 1987 might alone be viewed as youthful indiscretions, which by themselves might not have precluded his initial registration, his failure to make a proper disclosure of them in completing a very important registration document must be viewed seriously. Regrets are insufficient. Doucet must start his career recognizing the vital importance of honesty and integrity, as well as thoroughness in meeting his responsibilities.

Mr. Doucet acknowledges his folly and error in this matter and is prepared to accept the consequences. Pursuant to section 12(1)(c)(v), I order the salesperson's registration of John Gerard Doucet be suspended effective June 17, 1991, and remain suspended until July 1, 1991, at which time, and in the absence of any further detrimental information, his registration shall be reinstated.

Pursuant to the Securities Act, Mr. Doucet has the right to appeal this decision.

Dated at Saint John, New Brunswick this 14th day of June, 1991.


DONNE W. SMITH, JR.
ADMINISTRATOR