



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

October 1994, Vol 3, No 1

Misappropriation

Flak, George

Age 51, Called to the Bar 1972
Toronto, Ontario

Particulars of Complaint

- Professional misconduct
 - Misappropriation of mortgage funds
 - Misappropriation of trust funds (2)
 - Misappropriation of clients' funds

Cases

- Carol A. Allison, Orangeville
- Wayne D. Berthin, Midland
- John C. Bracewell, Sarnia
- Reginald E. Bradburn, Etobicoke
- Roger P. Cooney, Toronto
- Ernest A. Dyck, Toronto
- George Flak, Toronto
- Gerald N. Kuzak, Windsor
- Michael G. Lear, Mississauga
- James D. McKeon, Hamilton
- Henry D. Morgan, London
- Richard P. Ranieri, Toronto
- James D.L. Ross, Toronto
- Norman E. J. Roy, Oakville
- Paul D. Squires, Mississauga
- Leon S. Wickham, North York

Recommended Penalty

- Disbarment (Chair)
- Permission to resign (Committee member)

Convocation's Disposition (10/26/94)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Walter Fox

The Solicitor misappropriated more than \$120,000 of client trust funds. The Committee heard evidence that he did so to support his parents and sister, to make loans to clients in the entertainment business and to repay money he owed to another client after threats of violence were made.

The Chair of the Committee recommended that the Solicitor be disbarred, while one Committee member recommended he be granted permission to resign (the other Committee member had withdrawn from acting as a bencher). At Convocation, the Solicitor was disbarred.

Misappropriation

Cooney, Roger Patrick Peter

Age 58, Called to the Bar 1964
Toronto, Ontario

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Failed to reply to the Law Society
 - Breached an undertaking to the Law Society

- Misappropriated funds from an estate

Recommended Penalty

- Disbarment

Convocation's Disposition (10/26/94)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Charles Mark

The Solicitor failed to file Forms 2 and 3 for the fiscal year ending January 31, 1992. He failed to reply to the Law Society regarding a complaint filed by a client, and breached an undertaking made to do so. The Solicitor also misappropriated approximately \$250,000 from a client's estate by issuing a cheque to a contractor making renovations to the Solicitor's home.

The Solicitor has a prior discipline history - in 1992 he was found guilty of professional misconduct for failing to reply to the Society's audit department. The Committee noted that although the Solicitor had made restitution to the estate, his efforts to do so were not made in a timely way. The Committee recommended that he be disbarred. Convocation adopted this recommendation and disbarred the Solicitor.

Ungovernable solicitor

Ross, James Douglas Leith

Toronto, Ontario
Age 61, Called to the Bar 1957

Particulars of Complaint

• Professional Misconduct

- Failed to produce books and records to Law Society
- Practised law while under suspension
- Misled the Law Society regarding trust account
- Failed to file Forms 2/3
- Demonstrated ungovernability by Law Society

Recommended Penalty

- Permission to resign
- Disbarment if no resignation five days prior to this matter coming before Convocation

Convocation's Disposition (9/22/94)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor continued to practise law while under discipline suspension and to operate a trust fund in the face of his assurances to the Society that he would not. He failed to cooperate with the Society by not producing his books and records when requested. The Solicitor also failed to file his Forms 2/3 for the fiscal year ending December 1992.

The Committee found that the Solicitor showed contempt for the discipline process through his failure to attend the hearing. It recommended that the Solicitor be granted permission to resign if his resignation is tendered within five days before the matter goes before Convocation. Otherwise, it recommended disbarment. At Convocation, the Solicitor was disbarred.

Ungovernable solicitor

Roy, Norman Edward Joseph

Age 40, Called to the Bar 1982
Oakville, Ontario

Particulars of Complaint

• Professional misconduct

- Failed to reply to the Law Society (6)

- Failed to provide final documentation to a client (2)
- Failed to reply to letters from another lawyer with reasonable promptness (2)
- Failed to serve a client conscientiously and diligently (2)
- Breached an undertaking to the Law Society to reply promptly
- Failed to file Forms 2/3
- Demonstrated himself to be ungovernable

Recommended Penalty

- Disbarment

Convocation's Disposition (10/26/94)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor proved himself to be ungovernable by the Law Society. On six occasions, he failed to reply to the Society regarding complaints made by clients and fellow lawyers, breaching an undertaking to do so. He did not provide final documentation to two clients regarding mortgages in one case and a purchase of property in another. The Solicitor failed to serve two clients in a conscientious, diligent and efficient manner. He also failed to file Forms 2 and 3 for the fiscal year ending April 30, 1993.

The Solicitor has been found guilty of professional misconduct on four prior occasions. The Discipline Committee noted that "he has been afforded every opportunity to rehabilitate himself and he has failed to do so" and recommended he be disbarred.

Convocation adopted this recommendation and the Solicitor was disbarred.

Failure to reply

Wickham, Leon Stanley

North York, Ontario
Age 39, Called to the Bar 1987

Particulars of Complaint

• Professional Misconduct

- Failed to reply to the Law Society (7)
- Failed to serve clients in a conscientious and diligent manner (3)
- Failed to file Forms 2/3
- Failed to produce books and records to Law Society examiner
- Failed to account for trust monies
- Failed to pursue an appeal
- Failed to keep a client reasonably informed
- Failed to deliver a file in a timely manner
- Failed to reply to a fellow solicitor

Recommended Penalty

- Majority: Suspension for three months with conditions and payment of Law Society's costs of \$6000
- Minority: Disbarment

Convocation's Disposition (9/22/94)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The matters in question were composed of four complaints consisting of 17 particulars that occurred over a period of two years. In three instances, the Solicitor failed to serve his clients. He also failed to respond to the Law Society regarding complaints stemming from these matters. The Solicitor also failed to file his Forms 2 and 3 for 1991, failed to produce his books and records to a Law Society examiner, failed to account for monies entrusted to him, failed to file an appeal as instructed by his client, failed to keep a client reasonably informed, failed to deliver a client's file to another lawyer and failed to reply to correspondence from another lawyer. The Solicitor admitted to the particulars set out in the Complaints.

The Solicitor had no discipline record. The majority of the Discipline Committee recommended a three-month suspension to continue until he produces all his books and records, ensures his filings are made on time, provides written replies to outstanding complaints, and supplies the Society with evidence from a doctor he is able to practice. As well, the majority recommended that he not practise as a sole practitioner and that he

provide monthly reports of trust funds he holds. The minority of the Discipline Committee recommended disbarment. Convocation accepted the minority position; the Solicitor was disbarred.

Failure to reply

Squires, Paul Douglas

Mississauga, Ontario
Age 43, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society (4)

Recommended Penalty

- Suspension for six months and costs of \$3000 if he provides an explanation to Convocation, otherwise disbarment

Convocation's Disposition (9/22/94)

- Disbarment

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

Not represented

The Solicitor failed to reply to written and telephone communications from the Law Society regarding four complaints made against him. He was neither present nor represented at the Discipline Committee hearing.

The Committee determined that the Solicitor has "deliberately adopted and maintained over a lengthy period of time a policy of flouting the administrative requirements of the Society." It recommended that he be disbarred unless he appears in person before Convocation and provides reasons for his actions. Should Convocation be satisfied with his explanation, the Committee recommended the Solicitor be suspended for six months and pay costs of \$3000. The Solicitor did not appear before Convocation. Convocation disbarred the Solicitor.

Failure to reply

Allison, Carol Anne

Age 52, Called to the Bar 1970
Orangeville, Ontario

Particulars of Complaint

- Professional misconduct
 - Failed to reply to the Law Society

Recommended penalty

- Reprimand in Convocation if provides complete accounting of estate funds;
- Otherwise, indefinite suspension

Convocation's Disposition (10/26/94)

- Suspension indefinitely
- Costs of \$1500

Counsel for the Law Society

- Christina Budweth

Counsel for the Solicitor

- Not represented

The Solicitor failed to reply to seven letters from the Law Society regarding inadequacies in her books and records during an audit. The audit revealed problems pertaining to one estate for which she acted as both solicitor and sole executor.

The Solicitor was neither present nor represented in Committee. The Committee determined that, should she reply to the Society prior to her appearance in Convocation, a reprimand in Convocation would be appropriate. Otherwise, it recommended an indefinite suspension until an adequate reply is made. As the reply was not made, Convocation suspended the Solicitor until such time as an adequate reply is received and ordered her to pay costs of \$1500.

Conflict of interest

McKeon, James Dennis

Age 61, Called to the Bar 1959
Hamilton, Ontario

Particulars of Complaint

- Professional misconduct
 - Acted in a conflict of interest involving clients' investments in properties

- Borrowed money from clients

Recommended Penalty

- Suspension of eight months
- Costs of \$5000

Convocation's Disposition (10/26/94)

- Suspension of eight months
- Costs of \$5000

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

James Turnbull

The Solicitor was involved in a conflict of interest when he acted for a client who was investing money in properties in which the Solicitor had a financial interest. He did not recommend that his client seek independent legal advice in these investments; The Solicitor personally benefitted from his client's involvement. His personal line of credit was used to improve the properties and was repaid with his client's money.

The Committee received evidence of the Solicitor's good character and reputation in the community. It also noted that he had a previous discipline record for acting in a conflict and not advising clients to obtain independent legal advice. Based on these considerations, the Committee recommended the Solicitor be suspended for eight months and pay costs of \$5000. Convocation adopted the Committee's recommendations.

Practising while suspended

Ranieri, Richard Paul

Age 40, Called to the Bar 1983
Toronto, Ontario

Particulars of Complaint

- Professional misconduct
 - Continued to practice law while suspended
 - Mislead a committee of Convocation

Recommended Penalty

- Suspension for incapacity pursuant to s.35 of the *Law Society Act*
- Not to practice as a sole practi-

tioner should the Solicitor return to the practice of law

Convocation's Disposition (10/26/94)

- Suspension until he is able to satisfy a Committee of Convocation that he is able to practise law

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor continued to practice law after he was suspended by Convocation on February 23, 1990. He also misled a Committee of Convocation as to this fact, advising them he had not practiced law during this time period.

The Committee was influenced by the Solicitor's personal difficulties - he was on welfare, separated from his wife and under treatment for depression. It recommended an order for suspension under section 35 of the *Law Society Act*, and that, should the Solicitor return to practice, he not practice alone. Convocation ordered the Solicitor's rights to practise be suspended until he can satisfy a committee of Convocation that he is fit to resume the practice of law.

Conduct unbecoming

Morgan, Henry Desmond

Age 58, Called to the Bar 1963
London, Ontario

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society (3)
 - Failed to satisfy a financial obligation incurred in the practice of law (2)
 - Failed to file Forms 2/3
- Conduct unbecoming
 - Convicted of five instances of contravening s.238(1) of the *Income Tax Act*

Recommended Penalty

- Suspension for three months on each particular, to be served concurrently, upon which a finding of professional misconduct or conduct unbecoming is found

- No additional penalty if Forms 2/3 have been filed by Convocation, otherwise, a suspension of one month to continue until filings are made

Convocation's Disposition (10/26/94)

- Suspension of three months

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Michael Caroline

The Solicitor failed to reply to the Law Society pertaining to two complaints against him. He also failed to honour two financial obligations which were incurred during the practise of law. On April 26, 1993, the Solicitor was convicted of five instances of contravening s.238(1) of the *Income Tax Act*. In addition, he failed to file Forms 2 and 3 for the fiscal year ending January 31, 1993.

The Solicitor was found guilty of professional misconduct in 1991, for failing to reply to the Society and breaching an undertaking. He was also found guilty of professional misconduct in 1988 for a misapplication of client's funds, and in 1981 for failing to reply to the Society regarding insurance matters.

The Committee recommended that the Solicitor be suspended for three months currently for each particular on which a finding of professional misconduct or conduct unbecoming was made. If he had not filed his Forms 2 and 3 by Convocation, the Committee further recommended he receive a one-month suspension, to continue until the filings are made. At Convocation, the Solicitor had made the filing and was suspended for a period of three months.

Failure to serve client

Dyck, Ernest Arthur

Toronto, Ontario
Age 44, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct
 - Failed to serve clients in a conscientious and diligent manner (2)

- Failed to reply to the Law Society (3)
- Breached undertaking to the Law Society (3)
- Failed to cooperate with Law Society investigator

Recommended Penalty

- Suspension for two months to continue indefinitely until the Solicitor satisfies the Society, by medical opinion, that he is fit to return to practice
- Solicitor must submit to a Practice Review

Convocation's Disposition (9/22/94)

- Suspension of two months and thereafter indefinitely, plus conditions

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

John Struthers (at hearing)

The Solicitor had failed to serve his clients conscientiously and diligently in two matters. He also failed to reply to the Law Society regarding three complaints made against him and, in doing so, breached his undertaking to the Society to reply promptly. As well, he did not cooperate with an investigation by the Society's insurer.

The Solicitor had an extensive discipline history. In 1992, he was reprimanded in Convocation and in Committee for failing to reply to the Society. In 1993, he was found guilty of professional misconduct for failing to reply to the Society, failing to serve clients, failing to honour financial obligations, breaching an undertaking and failing to satisfy an award of costs.

The Committee noted that the Solicitor was seeking psychiatric help at the time of the hearing, but had still not responded to all of the complaints. The Committee recommended a suspension for two months, to extend indefinitely until the Solicitor provides to the Society a medical opinion that he is fit to return to the practice of law. It also recommended that the Solicitor be required to participate in the Practice Review Program. Convocation accepted the Committee's recommendations.

Conflict of interest

Berthin, Wayne Douglas

Midland, Ontario

Age 37, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct
 - Prepared mortgage with interest rate in excess of that provided for in *Criminal Code* (3)
 - Failed to disclose to client his spouse's interest in mortgage loans
 - Acted in a conflict of interest
 - Spouse borrowed from a client
 - Guaranteed a mortgage loan from a client to his wife

Recommended Penalty

- Suspension for two months
- Costs of \$11,000

Convocation's Disposition (9/22/94)

- Suspension for two months
- Costs of \$11,000

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

The Solicitor was found to have committed multiple, serious breaches of professional conduct, including drafting mortgage agreements with interest rates in excess of the interest rate specified in section 347 of the *Criminal Code*, borrowing from clients, acting in a conflict of interest and guaranteeing a mortgage.

The Committee considered the fact that the Solicitor had no discipline history and had cooperated with the Society in its investigation. Based on this, the Committee recommended that the Solicitor be suspended for two months and pay \$11,000 costs of the investigation. Convocation accepted this recommendation.

Particulars of Complaint

- Professional Misconduct
 - Prepared a false mortgage and secured a loan

Recommended Penalty

- Reprimand in Convocation with conditions
- Costs of \$1500

Convocation's Disposition (9/22/94)

- Suspension for one month with conditions

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor prepared and registered a mortgage which purported to secure a loan of \$300,000 when he knew no such loan had been made. The Solicitor had a discipline history. He was found guilty of professional misconduct in 1987 and in 1991 and reprimanded in Committee on both occasions.

The Committee recommended the Solicitor be reprimanded in Convocation and fulfil the following conditions: attend two Continuing Legal Education programs a year for five years, participate in the Practice Advisory program, not practise as a sole practitioner, be supervised by another lawyer, attend the ethics portion of the Bar Admission course and pay the Law Society's costs of \$1500. At Convocation, the Solicitor was suspended for one month, commencing November 1, 1994. Convocation also ordered that the Solicitor comply with the conditions recommended by the Committee, but declined to impose the costs recommended by the Committee.

Note: The Solicitor has appealed Convocation's decision to the Divisional Court. A stay of the suspension was granted by the court on Oct. 31, 1994.

- Acted for both sides in real estate transaction and preferred interests of purchaser to those of vendor

Recommended Penalty

- Reprimand in Convocation
- Costs of \$1500

Convocation's Disposition (9/22/94)

- Reprimand in Convocation
- Costs of \$1500

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor acted for both parties in a real estate transaction, preferring the interests of the purchaser to those of the vendor. Although he did suggest to the vendor she seek independent legal advice, he did not discuss the nature of the conflict which existed between the parties.

The vendor sold her property, listed at \$229,000, for \$80,000, with an agreement that she continue to occupy the house. Later, the vendor told the Solicitor she wanted to reverse the transaction because she had not understood it. Initially, the Solicitor acted for the purchaser against the vendor in resisting this reversal. Subsequently, with the Solicitor's assistance, the property was reconveyed to the vendor.

In 1992, the Solicitor was reprimanded by the Discipline Committee for failing to reply to the Society.

The Committee acknowledged the Solicitor's role in resolving the vendor's complaint. It recommended that he be reprimanded in Convocation and pay the Society's costs of \$1500. Convocation accepted the Committee's recommendations.

Prepare false mortgage

Lear, Michael Gordon

Mississauga, Ontario

Age 41, Called to the Bar 1981

Conflict of interest

Kuzak, Gerald Nicholas

Windsor, Ontario

Age 49, Called to the Bar 1975

Particulars of Complaint

- Professional misconduct

Failure to file forms

Bradburn, Reginald Edwin

Age 53, Called to the Bar 1970

Etobicoke, Ontario

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3 for 1993

Recommended Penalty

- Reprimand in Convocation if filings made before Convocation; or
- Suspension for one month, to continue indefinitely until filings are made
- Costs of \$500

Convocation's Disposition (10/26/94)

- Reprimand in Convocation
- Costs of \$500

Counsel for the Law Society

Janet Brooks

Counsel for the Solicitor

Not represented

The Solicitor failed to file Forms 2 and 3 for the fiscal year ending January 31, 1993. He did not respond to notices from the Law Society. The Committee recommended that if the filings were made before the date of Convocation, the Solicitor should be reprimanded in Convocation. Otherwise, it recommended a one-month suspension, to continue indefinitely until the filings are made. The Committee also recommended the Solicitor pay costs of \$500. The Solicitor made the required filing prior to the time the matter was heard by Convocation. Accordingly, at Convocation, the Solicitor received a reprimand and was ordered to pay costs of \$500.

- Failed to maintain sufficient trust balances

Recommended Penalty

- Reprimand in Convocation

Convocation's Disposition (9/22/94)

- Reprimand in Convocation

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

Not represented

The Solicitor operated his practice through his trust account because Revenue Canada garnished his general practice account due to income tax arrears. He also failed to maintain sufficient balances in his trust account when he failed to rectify a shortage created when a client's cheque was returned for non-sufficient funds.

The Solicitor admitted to the particulars, and explained that he did not understand how to operate his trust account in the face of a garnishment order from Revenue Canada. There was also evidence of personal problems during this time period. The Committee determined the Solicitor's honesty and integrity were not at issue and recommended a reprimand in Convocation. This recommendation was accepted in Convocation.

Trust account shortage

Bracewell, John Calvin

Sarnia, Ontario

Age 44, Called to the Bar 1989

Particulars of Complaint

- Professional Misconduct
 - Operated practice through trust account

discipline Digest

is published six times annually by
The Law Society of Upper Canada
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Toronto, Ontario M5H 2N6
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