



Discipline Digest

November 1992 Vol. 1 No. 2

Sexual Harassment

Ramsay, Peter Robert

New Liskeard, Ontario

Age 55, Called to the Bar 1968

Particulars of Complaint:

- professional misconduct
 - the Solicitor made inappropriate comments of a sexual nature to a client

Recommended Penalty:

reprimand in Convocation

Convocation's Disposition:

reprimand in Convocation

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

Brian Greenspan

Cases

- Francis J. Altimas
Orleans
- James R. Axler
Kitchener
- Bruce J. Daley
Toronto
- David J. Fraser
Parry Sound
- William W. Kay
Toronto
- Richard I. Kesten
Toronto
- Peter S. Mann
Niagara-on-the-Lake
- Peter R. Ramsay
New Liskeard
- Bruno M. Toneguzzi
Nepean

The complainant had been a client of the Solicitor's firm for a number of years. She had retained the Solicitor to draft a will after her second marriage. In July 1991, she visited the Solicitor's office and spoke with him concerning proposed alterations to her will. During the course of this conversation the complainant asked the Solicitor how much it would cost to prepare a codicil. When she was informed that the Solicitor's fee would be \$75, she said that the Solicitor had previously told her that his fee for preparing a codicil would be approximately \$50. The Solicitor responded by saying that there would be no charge if the complainant would come to his office without a brassiere and provide him a viewing of her breasts. The complainant reported the

Solicitor's comments to the police and, later, to the Law Society.

The Society wrote the Solicitor in January 1992. The Solicitor admitted that he had probably used the words referred to or "something similar." He conceded that the comments were most inappropriate and he extended his sincere apologies to the complainant. He indicated that he deeply regretted that his comments and conduct had caused her such concern.

The discipline hearing panel found that the Solicitor did not intend his comments to be taken seriously, but that the complainant honestly thought that was the Solicitor's intention. The complainant suffered considerable emotional upset as a result of the incident, manifested by frustration, crying and sleeplessness that persisted at the time of the hearing before the panel.

The discipline hearing panel was mindful of the fact that Convocation had recently made sexual harassment in a professional context professional misconduct. The profession must be made aware, the panel said, that inappropriate sexual comments in a professional context would be treated seriously by the Society.

For reasons of general deterrence and education of the profession, the panel recommended that the Solicitor should be reprimanded in Convocation. Convocation accepted the panel's recommendation and reprimanded the Solicitor in public.

Charging excessive fee

Daley, Bruce John

Toronto, Ontario

Age 37, Called to the Bar 1981

Particulars of Complaint:

- professional misconduct
 - charged a fee that was grossly excessive

Recommended Penalty:

six month suspension and payment of costs in the amount of \$10,000

Convocation's Disposition:

four month suspension and payment of costs in the amount of \$10,000

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

Martin Teplitsky

On August 12, 1987, the Solicitor was retained by two men who had been indicted in California as a result of an investigation into the laundering of proceeds from drug trafficking. On August 17, 1987, the Solicitor billed \$20,000 as a retainer fee and paid the account on the same date out of funds the client had transferred into his trust account.

The Solicitor rendered a second account for \$80,000 in fees, plus disbursements, on September 25, 1987. The Solicitor rendered a third account in the amount of \$250,000 on January 28, 1988. Finally, he rendered an account on April 20, 1988, in the amount of \$19,961.44 plus disbursements. The total fees charged were accordingly in the amount of \$369,961.44 plus disbursements.

The Solicitor told the committee that the clients had asked for a set fee. The Solicitor told them that such a fee would have to be approved by an assessment officer. The clients did not want the fee reviewed because they wished to avoid publicity. The Solicitor proposed a fee of \$750,000 and \$100,000 for disbursements. This would be for work related to the California indictment and possible extradition proceedings. It also included the Solicitor's time in attending a pending trial in California of an alleged co-conspirator, which was estimated to last three to five months, which the clients had asked him to attend personally. This fee arrangement was never reduced to writing.

The Solicitor was in his sixth year of practice at the time of these events. He had little knowl-

edge of California or U.S. federal law and had never acted as counsel at an extradition hearing. The trial against the alleged co-conspirator did not proceed and the U.S. government did not pursue extradition of the clients.

In September 1988, the clients terminated the Solicitor's retainer and retained other counsel who arranged for the Solicitor's accounts to be assessed. In September 1989, the Solicitor settled the assessment and repaid the clients \$301,300 of the \$369,961.44 that the clients had paid as fees. A term of the settlement called for the clients to withdraw a complaint they had submitted to the Law Society.

The discipline hearing panel found that the fees charged by the Solicitor were grossly excessive and recommended that Solicitor be suspended for six months and required to pay the Society's costs in the amount of \$10,000.

Convocation ordered that the Solicitor be suspended for four months and required to pay the Society's costs in the amount of \$10,000.

Misappropriation

Axler, James Robert

Kitchener, Ontario

Age 46, Called to the Bar 1973

Particulars of Complaint:

- professional misconduct
 - misappropriation (3)

Recommended Penalty:

disbarment

Convocation's Disposition:

disbarment

Counsel for the Law Society:

Christina Budweth

Counsel for the Solicitor:

James W. Neeb, Q.C.

A client of the Solicitor held power of attorney over the affairs of a third party. In March 1991, the Public Trustee ordered the client to pay over to him all funds belonging to the third party. In June 1991, the Solicitor informed the Public Trustee that he was in possession of \$64,201 belonging to the third party. The client had paid over this amount to him in January 1990.

At a meeting with the Society's auditors in February 1992, the Solicitor showed a bank draft for \$64,201 payable to the solicitors for the third party. The following month another meeting was held with the auditors during which the Solicitor admitted misappropriating the \$64,201. The Solicitor had paid for the bank draft in part by misappropriating \$49,375 from another of his clients.

A third allegation of misappropriation arose from the Solicitor's actions as executor of an estate. Withdrawals of \$46,950 had been made from the estate trust account and deposited in the Solicitor's general account. The Solicitor told Society representatives in February 1992 that the transfer of funds represented repayment of disbursements made on behalf of the estate. However, there were no fee billings or account statements in the estate file. The Solicitor admitted to the committee that his statements regarding the transfer of the funds were untrue.

At the February meeting the Solicitor was also asked about a \$50,000 GIC which was one of the assets of the estate and which was scheduled to mature in June 1991. The Solicitor claimed that he did not know what had happened to the investment certificate. However, bank records indicated that he had cashed it in April 1991. Bank statements further revealed that during the period between April and February 1992 an additional \$55,995 was disbursed from the estate account. The Solicitor admitted at his discipline hearing that these funds were used for his personal use.

In September 1991, the Solicitor sold a property which was one of the estate assets and deposited the proceeds of \$114,968 into his trust account. The Society obtained a breakdown of the distribution of these funds. This breakdown revealed that he had disbursed \$107,685 of these funds improperly. The Solicitor's position was that the beneficiaries had agreed to lend estate funds to him. He stated that he told the beneficiaries that he was buying a cottage and that he agreed to pay two per cent more interest on a loan than the bank would pay on a term deposit. There was no documentation in the Solicitor's file to corroborate this story.

Counsel for the Solicitor told the discipline hearing panel that the Solicitor's sole motivation

was his need for money. Counsel also stated that the Solicitor had always intended to repay the funds, but that a failed commercial transaction had made it impossible. The Solicitor was facing criminal charges for the misappropriations.

The discipline hearing panel recommended that the Solicitor be disbarred. Convocation accepted this recommendation.

Conduct unbecoming

Kay, William Walter

Toronto, Ontario

Age 32, Called to the Bar 1989

Particulars of Complaint:

- conduct unbecoming
 - the Solicitor was convicted of robbery and sentenced to four years imprisonment

Recommended Penalty:

disbarment

Convocation's Disposition:

disbarment

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

not represented

A transcript of proceedings in the Ontario Court of Justice (Provincial Division) was entered in evidence. It revealed that in March 1991 the Solicitor and two accomplices entered a bank in Metro Toronto wearing balaclavas. The Solicitor was armed with a .22 calibre semi-automatic rifle. They proceeded to rob the bank, then fled in a car driven by the Solicitor. A high-speed police pursuit followed. The fleeing vehicle eventually crashed into a light standard, and the Solicitor and his accomplices attempted to flee on foot. They were soon apprehended. The Solicitor pleaded guilty to charges of armed robbery and using a firearm while committing an indictable offence. He was convicted on the charges and was sentenced to a four-year term in prison.

In his submissions at the sentencing hearing, the Solicitor's counsel told the court that the Solicitor, who had called to the Bar in 1989, had been fired by his firm one week before the robbery occurred.

Convocation accepted the discipline hearing panel's recommendation that the Solicitor be disbarred.

Misappropriation

Fraser, David John

Parry Sound, Ontario

Age 43, Called to the Bar 1976

Particulars of Complaint:

- professional misconduct
- misappropriation

Recommended Penalty:

permission to resign

Convocation's Disposition:

permission to resign

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

Frank Marrocco

Lynne Mahoney

The Solicitor admitted that from 1986 through 1991 he had been misappropriating funds from his trust account for his own personal use and for the use of companies in which he had an interest. Although there was no agreement between the Solicitor and the Society as to the total amount of funds misappropriated, the Solicitor provided the Society with a list of cheques totalling \$292,294 drawn against his trust account during 1989 and 1990 payable to himself or the companies.

Reports from two psychiatrists were filed with the committee. They revealed that the Solicitor had suffered a mental breakdown in 1985. He also had a problem with alcohol. He had been in sole practice since 1981 and by his estimate had opened between 600 and 800 files per year. Evidence was introduced that showed he had given greatly in time and effort to community activities.

The discipline hearing panel concluded that the Solicitor's alcohol problem combined with episodes of depression and workload stress had led to a complete break with reality. The Solicitor had no prior discipline record and had cooperated fully with the Society's attempts to reconstruct his trust account records.

The panel recommended that Solicitor be permitted to resign. Convocation accepted this recommendation.

Misappropriation

Mann, Peter Sanderson

Niagara-on-the-Lake, Ontario

Age 48, Called to the Bar 1972

Particulars of Complaint:

- professional misconduct
- misappropriation

Recommended Penalty:

disbarment

Convocation's Disposition:

disbarment

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

not represented

The Solicitor was a senior partner with a firm in Niagara Falls. Between 1989 and 1991 he misappropriated a sum in excess of \$500,000 from his firm's mixed trust account. The misappropriated funds were used to support personal investments in business and real estate. The Solicitor said that he had assumed responsibility from certain of his law partners for a business investment in which he lost a considerable amount of money, and that it was for this reason that he took the funds.

The discipline hearing panel recommended that the Solicitor be disbarred. Convocation accepted the panel's recommendation.

Failure to serve clients

Kesten, Richard Ian

Toronto, Ontario

Age 45, Called to the Bar 1974

Particulars of Complaints (6):

- professional misconduct
 - failure to serve his clients in a diligent manner
 - failure to reply to Law Society communications
 - failure to honour the financial obligations of his practice
 - breach of an undertaking
 - failure to file Forms 2/3

Recommended Penalty:

suspension for an indefinite period, pending receipt of answers to complaints from clients and a favourable psychiatric report

Convocation's Disposition:

suspension for an indefinite period, pending receipt of answers to complaints from clients and a favourable psychiatric report

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

not represented

Six formal complaints were sworn against the Solicitor. The Society had received numerous letters concerning the Solicitor's conduct from clients, other lawyers and persons who had provided services to him. By August 1991, a total of 10 complaints had been received. Clients complained that the Solicitor had delayed action on their files without adequate explanation, among other things.

The Solicitor was unable to explain to the Society's satisfaction the reasons behind the delays. By August 1991, the Solicitor undertook to provide full and complete responses to all open complaint matters within 14 days. He also undertook to reply promptly to all communications with the Society, to immediately engage in counselling, and to ensure that his books, records and accounts were properly maintained.

The Solicitor breached the undertaking he had given the Society in numerous ways, and also failed to file with the Society his Forms 2/3 for the year ended 1991.

The discipline hearing panel reviewed two psychiatric reports submitted on behalf of the Solicitor. The psychiatrist stated her belief that the Solicitor had been suffering from a major depression for the previous 10 months, if not longer. She recommended that he begin a course of anti-depressant treatment with appropriate medication.

The panel was satisfied that the interest of the public would be protected if the Solicitor was suspended to allow him time away from the practice to make full and complete responses to the outstanding complaints. The panel recommended that the Solicitor be suspended for an indefinite period pending receipt by the Society of responses to the outstanding client complaints and receipt of a report from a psychiatrist approved by the Society certifying that he is fit to resume practice. Convocation accepted the panel's recommendation.

Misleading the Law Society

Altimas, Francis James

Orleans, Ontario

Age 49, Called to the Bar 1969

Particulars of Complaint:

- professional misconduct
 - deceived clients through fictitious disbursements
 - attempted to mislead the Law Society
 - counselled clients to execute blank powers of attorney

Recommended Penalty:

one month suspension

Convocation's Disposition:

one month suspension

Counsel for the Law Society:

Gavin MacKenzie

Counsel for the Solicitor:

Michael J. Neville

In the three real estate transactions that led to the complaint, the Solicitor billed a client for the cost of surveys when surveys were neither ordered nor paid for. The Solicitor supplied the clients with doctored pre-existing surveys to disguise the fact that new ones had never been ordered.

It was explained in mitigation that due to extraordinary pressure of work in the Solicitor's sole practice he had failed to order the surveys. He knew that he should have done so and in order to avoid making it obvious that they had not been ordered, he included disbursements for them in his accounts. Thereafter, to further forestall detection of either his failure to order the surveys or his improper charges, he provided falsified documents to the client and ultimately denied misconduct during the investigation by the Law Society. Having deceitfully started the ball rolling, the Solicitor panicked and failed to own up to his own wrongdoing.

Many letters from colleagues at the Bar and clients were tendered in evidence. It was apparent to the discipline hearing panel that at the time of these events the Solicitor had enjoyed an enviable reputation for service and integrity amongst his colleagues and in the community at large. Over the period of time since his misconduct was discovered the Solicitor's practice had shrunk to about one-third of its previous level of activity.

The panel said that a period of suspension was

required to make it clear to the Solicitor that such conduct would not be countenanced. The panel recommended that the Solicitor be suspended from practice for a period of one month. Convocation accepted this recommendation.

Failure to file forms

Toneguzzi, Bruno Mario

Nepean, Ontario

Age 43, Called to the Bar 1977

Particulars of Complaint:

- professional misconduct
 - breach of an undertaking
 - practising while suspended
 - failure to file his Forms 2/3

Recommended Penalty:

reprimand in Convocation with conditions

Convocation's Disposition:

suspended for one month beginning Dec. 1, 1992, and indefinitely thereafter until his Form 2/3s for the years 1988-91 are filed, and payment of the Society's costs in the amount of \$350.

Counsel for the Law Society:

Stephen Foster

Counsel for the Solicitor:

not represented

The Solicitor's problems stemmed largely from his inability to file his Forms 2/3 at the end of his fiscal years. He was reprimand in committee in April 1990 for failing to reply to the Society and failing to file his Forms 2/3 for his fiscal years ending in April 1988 and 1989. At the 1990 hearing he undertook to file these forms by June 1990.

The Solicitor did not honour his undertaking. The Solicitor also failed to file the forms for his fiscal years ending in April 1990 and 1991, despite

receiving notice in December 1991, that if he failed to file he would be suspended from practising. At the date of the Solicitor's second discipline hearing in October 1992, the forms remained unfilled.

The Solicitor's delinquency in filing his forms and the attendant build-up of late-filing fees had led to his suspension from practice from September 1990 to April 1991. The committee had before it records of 19 separate accounts rendered by the Solicitor for legal services provided during this period. The Solicitor admitted that he knew of the suspension but continued practising law throughout the suspension period.

Convocation ordered that the Solicitor be suspended for one month beginning December 1, 1992, and that his suspension continue indefinitely thereafter until his Forms 2/3 for the years 1988 through 1991 inclusive are filed. The Solicitor was also ordered to pay the Society's costs in the amount of \$350.

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