



# Discipline Digest

June 1994 Vol. 2 No. 6

## Cases

- Bryan T. Davies  
Whitby
- Giovanni Faraci  
Toronto
- Botond G. Fejes  
Toronto
- Carl E. Logan  
Hamilton
- Yaroslav Mikitchook  
Toronto
- John L. Rossi  
Windsor
- Kishore P. Tanna  
Etobicoke

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## Misappropriation

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### Logan, Carl Eric

Hamilton, Ontario

Age 59, Called to the Bar 1962

#### *Particulars of Complaint*

- Professional misconduct
  - Failed to reply to the Law Society (2)
  - Failed to file Forms 2/3 (2)
  - Practised law while under suspension (3)
  - Failed to maintain and provide records, including trust account reconciliations
  - Misappropriated client monies (6)
  - Falsely reported position of new mortgages in six transactions
  - Failed to maintain trust ledgers
  - Paid into and withdrew money from a mixed trust account

#### *Recommended Penalty*

- Disbarment

#### *Convocation's Disposition (June 23, 1994)*

- Disbarment

#### *Counsel for the Law Society*

Neil Perrier

#### *Counsel for the Solicitor*

Not represented

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On six occasions, the Solicitor misappropriated client funds, totalling more than \$250,000. In those transactions, he falsely reported the position of the new mortgages. He also failed to maintain and provide records, did not file Forms 2 and 3 for the 1991 and 1992 fiscal years and did not re-

ply to the Law Society.

The Solicitor was not in attendance at the hearing but had purported to resign through an earlier letter. The Committee heard evidence that he was charged and convicted of criminal fraud arising from these transactions. Convocation accepted the Committee's recommendation that he be disbarred.

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## Misappropriation

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### Davies, Bryan Thomas

Whitby, Ontario

Age 35, Called to the Bar 1984

#### *Particulars of Complaint*

- Professional misconduct
  - Misappropriated client's funds
  - Borrowed from his client
  - Failed to serve his client

#### *Recommended Penalty*

- *Majority:*
  - Permission to resign, disbarment if no resignation within 10 days
- *Minority:*
  - Suspension of one year, credited with time during which he voluntarily withdrew from practice;
  - Upon termination of suspension, only to practise as a Crown Attorney unless granted permission otherwise from Convocation;
  - Costs of \$2,000; and
  - Provide a Direction to his physicians to disclose to the Society his continuing treatment and its impact on his

professional responsibilities

*Convocation's Disposition (June 23, 1994)*

- Suspension of one year with conditions, credited for five months in which he had voluntarily withdrawn from practice
- Upon termination of suspension, only to practise as a Crown Attorney unless granted permission otherwise from Convocation;
- Provide a Direction to his physicians to disclose to the Society his continuing treatment and its impact on his professional responsibilities
- Costs of \$2000 to be paid within 60 days

*Counsel for the Law Society*

Neil Perrier

*Counsel for the Solicitor*

B. Seiler

The Solicitor misappropriated monies from one client to advance funds to another. He also borrowed money from a client without advising him to seek independent legal representation or providing security for the loan.

The Solicitor has no prior discipline record and cooperated throughout the Society's investigation. The Committee heard evidence of psychiatric problems which "impaired his judgement". Prior to the misappropriations, the Solicitor had sought medical assistance for these problems which, unfortunately, were not properly treated. The Solicitor made no personal gain from the misappropriations and full restitution was made. There were also 75 letters from members of the judiciary, Crown attorneys, fellow solicitors, clients and the community attesting to his character. A majority of the Committee recommended that he be requested to resign and granted permission to do so. If, within 10 days, he has not resigned, the majority deemed he should be disbarred.

The minority recommended adoption of the joint recommendations on penalty, that the Solicitor be suspended for one year (credited for time he voluntarily withdrew) and then practise only as a Crown Attorney unless given permission by Convocation. As well, he should pay costs of \$2,000 and provide a Direction to his physicians to disclose evidence of his treatment and its impact on his professional responsibilities. At Convocation, he Solicitor was suspended for six months and 20 days with conditions and ordered to pay costs of \$2000 within 60 days.

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## Practising while suspended

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**Fejes, Botond Gabor**

Toronto, Ontario

Age 40, Called to the Bar 1981

*Particulars of Complaint*

- Professional misconduct
  - Practised while under suspension (2)
  - Failed to maintain sufficient trust funds
  - Failed to correct prior inadequacies in trust funds
  - Failed to file Forms 2/3

*Recommended Penalty*

- Suspension of nine months

*Convocation's Disposition (June 23, 1994)*

- Suspension of nine months effective June 30, 1994

*Counsel for the Law Society*

Neil Perrier

*Counsel for the Solicitor*

Roger Smith

On two occasions the Solicitor continued to practise law while under suspension for failure to pay his Errors and Omissions levy. He also failed to maintain sufficient funds in trust accounts and did not correct previous inadequacies in trust accounts. He failed to file his Forms 2 and 3 for the 1992 fiscal year. The Solicitor has a discipline history — he received a reprimand in Committee for failing to file his Forms 2 and 3 for the 1989 fiscal year.

The Committee accepted that the practising while under suspension was not motivated by dishonesty but rather by financial necessity. The general principle in such cases has been to impose a suspension equal to the period during which the impugned practice occurred plus one month.

In this instance, however, the Committee indicated that such a penalty, of about 18 months, would not allow the Solicitor to re-enter the profession. Instead, in considering the totality of the evidence, including the intent of the Solicitor and the effect of the penalty, they recommended a suspension for nine months, which Convocation adopted.

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## Failure to maintain records

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### Tanna, Kishore Premji

Etobicoke, Ontario

Age 53, Called to the Bar 1975

#### *Particulars of Complaint*

- Professional misconduct
  - Failed to produce books and records as requested by Law Society
  - Breached undertaking to Law Society
  - Failed to properly maintain books and records
  - Failed to serve his client

#### *Recommended Penalty*

- Reprimand in Convocation if matters attended to; otherwise
- Suspension of one month to continue indefinitely until matters attended to
- Costs of \$500

#### *Convocation's Disposition (June 23, 1994)*

- Suspension of one month to continue indefinitely until matters attended to
- Costs of \$500

#### *Counsel for the Law Society*

Stephen Foster

#### *Counsel for the Solicitor*

Not represented

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The Law Society conducted six examinations of the Solicitor's books, from 1980 to 1989. On the last instance, the examiner advised that the Solicitor had not produced sufficient books and records. He was granted several extensions to get his books in order and signed an undertaking to do so, but breached the undertaking.

The Solicitor also failed to serve a client in a real estate transaction by failing to report to the client.

The Discipline Committee recommended that the matter not be brought before Convocation until November to allow the Solicitor to attend to these matters. The Committee recommended a reprimand in Convocation if the matters were attended to; otherwise, it recommended a one-month suspension to continue indefinitely thereafter until he attends to the matters. The Committee also recommended that he

pay costs of \$500. At Convocation, the Solicitor had not attended to the matters and was suspended for one month, to continue indefinitely until he attends to the outstanding matters, and was ordered to pay costs of \$500.

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## Failure to reply

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### Faraci, Giovanni

Toronto, Ontario

Age 50, Called to the Bar 1973

#### *Particulars of Complaint*

- Professional misconduct
  - Failed to reply to the Law Society
  - Breached an undertaking to the Law Society

#### *Recommended Penalty*

- Reprimand in Convocation
- Costs of \$1,500
- File trust reconciliations with the Law Society every three months for two years

#### *Convocation's Disposition (June 23, 1994)*

- Reprimand in Convocation
- Costs of \$1,500
- File trust reconciliations with the Law Society every three months for two years

#### *Counsel for the Law Society*

Christina Budweth

#### *Counsel for the Solicitor*

John Rosen

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After the Law Society conducted a spot audit at the Solicitor's office, he failed to reply to the Society's letters and telephone messages. In particular, he did not respond to requests for detailed information regarding trust accounts.

After previous disciplinary matters in 1992, the Solicitor undertook to respond promptly to the Society. Prior to that, in 1984, he was suspended for eight months for obtaining trust monies from clients without ensuring their interests were protected.

The Committee heard evidence of the Solicitor's efforts to resolve his personal and financial problems and recommended a reprimand in Convocation, costs of \$1500 and a requirement that he file trust reconciliations with the Law Society every three months for two years. Convocation accepted the Committee's recommendation.

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## Failure to reply

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### Mikitchook, Yaroslav

Toronto, Ontario

Age 47, Called to the Bar 1975

#### *Particulars of Complaint*

- Professional misconduct
  - Failed to reply to the Law Society
  - Failed to comply with an undertaking to the Law Society

#### *Recommended Penalty*

- Reprimand in Convocation
- Costs of \$500
- 40 hours of community service at the Toronto Food Bank within three months of the Order of Convocation

#### *Convocation's Disposition (June 23, 1994)*

- Reprimand in Convocation
- Costs of \$500
- 40 hours of community service at the Toronto Food Bank within three months of the Order of Convocation

#### *Counsel for the Law Society*

Neil Perrier

#### *Counsel for the Solicitor*

Not represented

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The Solicitor failed to respond to the Law Society regarding a complaint alleging he delayed divorce proceedings. In doing so, he failed to comply with his 1990 undertaking to respond promptly to the Law Society. He was reprimanded in Convocation in 1992 for failing to reply to the Society, failing to comply with his 1990 undertaking, failing to service a client and misleading a client regarding a motion.

At the time of the hearing, the Solicitor had been responding to the Society promptly for a three-to-four month period. The Committee accepted a joint submission that he be reprimanded in Convocation,

pay costs of \$500 and perform 40 hours of community service at the Toronto Food Bank within three months of the Order of Convocation. Convocation accepted the Committee's recommendation.

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## Failure to file forms

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### Rossi, John Louis

Windsor, Ontario

Age 42, Called to the Bar 1978

#### *Particulars of Complaint*

- Professional misconduct
  - Breached undertaking to Law Society (2)
  - Failed to file Forms 2/3

#### *Recommended Penalty*

- Suspension for one month, to continue month-to-month until filings made

#### *Convocation's Disposition (June 23, 1994)*

- Reprimand in Convocation

#### *Counsel for the Law Society*

Stephen Foster

#### *Counsel for the Solicitor*

Not represented

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The two complaints were heard by separate discipline committees.

The Solicitor had been found guilty of professional misconduct in 1992, in part for failing to reply to the Law Society. At that time, he made an undertaking to the Society to respond promptly to its communications and to communications from other lawyers and clients. He subsequently breached this undertaking.

The second complaint arose after the Solicitor did not file his Forms 2 and 3 for the fiscal year ending February 28, 1992.

The Discipline Committee noted that some measures need to be taken to force the Solicitor to deal with these matters. They recommended he be suspended for one month, to continue from month-to-month until his obligations to the Law Society are met. With regard to the second complaint, the Committee recommended if the Solicitor had filed by the time of Convocation, no additional penalty would be required. If he had not filed by that time, the Committee recommended he be suspended for an additional month, to continue indefinitely thereafter until the filings are made. At Convocation, the Solicitor had attended to all the matters and was reprimanded.

The Law Society  
of Upper Canada



Le Barreau  
du Haut-Canada

### Discipline Digest

is published six times annually by  
The Law Society of Upper Canada  
Communications Department  
Osgoode Hall,  
130 Queen Street West  
Toronto, Ontario M5H 2N6  
Tel: (416) 947-3465  
Fax: (416) 947-3991



Printed on  
paper containing  
recycled material