



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

# discipline Digest

May 1996, Vol 4, No 8

## Ungovernable solicitor

**Evans, Gregory Philip**

Toronto, Ontario

Age 32, Called to the Bar 1991

### *Particulars of Complaint*

- Professional Misconduct
  - Failed to reply to the Law Society (8)
  - Failed to reply to a fellow solicitor (1)
  - Failed to serve client conscientiously and diligently
  - Failed to ensure sufficiency of funds on deposit for cheque written on behalf of client
  - Failed to forward a release executed by client
  - Failed to file Forms 2/3

### *Recommended Penalty*

- Disbarment

### *Convocation's Disposition (05/23/96)*

- Disbarment

## Cases

- James W. Andrew, Toronto
- George L. Argiris, Toronto
- Joseph G. M. Barnes, Kemptville
- Johanne L. Bezaire, Kingston
- Kenneth R. Bruce, Kingston
- Gordon W. Ecclestone, North York
- Gregory P. Evans, Toronto
- Gabriele M. Hauser, Toronto,
- Roderick G. MacGregor, Clarington
- Arif Raza, Toronto
- Shamdayal B. M. Sahoy, Markham
- Thomas D. S. Shortill, Toronto
- James Steffoff, Toronto
- Richard A. Sutton, Toronto
- Mary G. B. Trapp, Kitchener

### *Counsel for the Solicitor*

Not represented

### *Counsel for the Law Society*

Allan Maclure

The Solicitor failed to respond to the reasonable inquiries of a number of clients and failed equally to reply to the Law Society when it investigated on behalf of those clients. The Solicitor also failed to serve a client in a conscientious, diligent and efficient manner by failing to account for \$774.60 entrusted to him by the client and misleading the client as to whether a payment had been made on the client's behalf. He failed to forward a release executed by a client until six months after receipt of funds even though the terms of settlement required that the release be forwarded within two weeks of the Solicitor receiving funds. Finally, the Solicitor failed to file Forms 2/3 for fiscal year ending 1994. Given the great number of client complaints and the absence of any mitigating evidence, the Committee concluded that the Solicitor was not in any way responding to the needs of his clients and is in fact ungovernable. The Committee recommended that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

## Ungovernable solicitor

**MacGregor, Roderick Grant**

Clarington, Ontario

Age 43, Called to the Bar 1979

### *Particulars of Complaint*

- Professional Misconduct
  - Failed to file Forms 2/3 (2)
  - Failed to pay financial obligation to client resulting from Assessment Hearing

- Failed to reply to the Law Society (2)

### *Recommended Penalty*

- Disbarment

### *Convocation's Disposition (05/23/96)*

- Disbarment

### *Counsel for the Solicitor*

Not represented

### *Counsel for the Law Society*

Glenn Stuart

The Solicitor failed to file Forms 2/3 for fiscal years ending 1993 and 1994. He also failed to pay his client a financial obligation owing from an assessment hearing and twice failed to reply to the Law Society regarding complaints from clients.

The Solicitor did not appear at the hearing, though the Discipline Committee concluded that all reasonable efforts to locate the Solicitor had been made and that he had been adequately served. The Committee noted that the Solicitor had been reprimanded in Convocation in 1992 for failure to reply and failure to meet financial obligations, and had been suspended for five months in 1993 for practising while under suspension. From 1989 to 1994, he had been suspended administratively ten times. The Committee concluded that this history, together with the complaints before it, demonstrated a persistent failure to accept professional responsibilities. The Solicitor's disappearance constituted the ultimate act of professional misconduct and led the Committee to conclude that he was ungovernable. The Committee recommended that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

## Conflict of interest

**Barnes, Joseph Glenn Michael**

Kemptville, Ontario

Age 51, Called to the Bar 1981



*Particulars of Complaint*

## • Professional Misconduct

- Failed to reply to the Law Society (9)
- Misled client (2)
- Failed to render account to client
- Failed to reply to client
- Failed to maintain sufficient balances on deposit in trust accounts
- Failed to comply with Undertaking to Law Society (4)
- Failed to serve client conscientiously and diligently (2)
- Acted in a conflict of interest (3)
- Failed to reply to fellow solicitor

*Recommended Penalty*

- Permission to resign

*Convocation's Disposition (05/23/96)*

- Permission to Resign

*Counsel for the Solicitor*

Not represented

*Counsel for the Law Society*

Jane Ratchford

In 1989, a spot audit found that the Solicitor's monthly trust comparisons were in arrears. By 1992, all overdrawn trust accounts had been corrected. From 1991 to 1993, the Solicitor repeatedly failed to answer the queries of his clients, a fellow solicitor and the Law Society when it intervened on clients' behalf. The Solicitor failed also to comply with an undertaking to the Law Society to reply promptly to the concerns of the Law Society or the Solicitor's clients. The Solicitor was part owner of a construction contracting company. The Solicitor acted on behalf of a land developer who employed the Solicitor's contracting company. He disclosed his interest but failed to explain how it created a conflict of interest. The Solicitor also arranged the mortgages for the financing for the development project but then acted in a conflict of interest by commencing an action against the same financial services companies for which he had acted.

The Solicitor was reprimanded in Committee in 1989, for conflict of interest and failure to serve clients in a conscientious, diligent and efficient manner. He was reprimanded in Committee in 1991, for failure to file and failure to reply to the Law Society. Because of a number of mitigating circumstances pertaining to personal and medical matters during the period of misconduct, the Committee recommended at the Solicitor be granted permission to resign. The Solicitor has not practised since late 1993. At Convocation, the Solicitor was granted permission to resign.

## Failure to cooperate with Law Society

**Sahoy, Shamdayal Bridj Mohan**

Markham, Ontario

Age 68, Called to the Bar 1982

*Particulars of Complaint*

## • Professional Misconduct

- Failed to cooperate with the Law Society's Investigation Auditor

*Recommended Penalty*

- Permission to resign

*Convocation's Disposition (05/23/96)*

- Permission to Resign

*Counsel for the Solicitor*

Vusumzi M. N. Msi

*Counsel for the Law Society*

Janet Brooks and Elizabeth Cowie

A client of the Solicitor complained that she had entrusted to him, her life savings of approximately \$84,000 for investment purposes. She alleged, among other things, that the Solicitor failed to follow her investment instructions, guaranteed the investments and failed to provide a satisfactory accounting for the funds. The Solicitor denied any guarantee of the investments and denied any personal involvement with the investments. The Solicitor failed to cooperate with the Society by failing to produce files, books and records which would illuminate either the validity of the client's complaint or the veracity of the Solicitor's explanation. The Committee stressed that the issue was not the Solicitor's guilt or innocence of the allegations outlined in the client's complaint, but his failure to produce the requested materials.

The Solicitor had no discipline history. At the time the matter was heard, he was a retired member and was ill. The Committee recommended that the Solicitor be granted permission to resign. At Convocation, the Solicitor was granted permission to resign.

## Misled client

**Trapp, Mary Gale Bullas**

Kitchener, Ontario

Age 46, Called to the Bar 1977

*Particulars of Complaint*

## • Professional Misconduct

- Failed to reply to Law Society (4)
- Failed to comply with Undertaking to Law Society (6)
- Failed to file Forms 2/3

- Misapplied funds
- Misappropriated funds
- Misled client (2)
- Failed to produce books and records

*Recommended Penalty*

- Permission to resign

*Convocation's Disposition (05/23/96)*

- Permission to Resign

*Counsel for the Solicitor*

Peter Madorin, Q.C.

*Counsel for the Law Society*

Elizabeth Cowie (at Committee)

Jane Ratchford (at Convocation)

The Solicitor failed to reply to the Law Society regarding discrepancies in her books and the complaints of several clients, failed to comply with several undertakings to the Law Society to respond promptly to Law Society queries regarding client complaints and audit deficiencies, and failed to file Forms 2/3 for fiscal year ending 1992. In addition, the Solicitor misapplied a sum received in trust from one client to another client's trust account and mislead two clients. Lastly, she misappropriated \$12,000 in trust funds, which funds were later paid back to the client in question.

The Solicitor was previously reprimanded in Committee on two occasions in 1992 for failing to reply to the Law Society. In this case, the Discipline Committee stated that there was no issue about the serious nature of the misconduct, nor of the Solicitor's capacity to practise law at this time. In the circumstances, the Committee recommended that the Solicitor be given permission to resign on the basis of medical evidence outlining the Solicitor's alcohol abuse and clinical depression during the time material to the misconduct. The Committee noted the Solicitor's ultimately unsuccessful attempts to treat her condition and the fact that clients whose funds were misappropriated have been reimbursed to their satisfaction. At Convocation, the Solicitor was given permission to resign.

## Conflict of interest

**Argiris, George Larry**

Toronto, Ontario

Age 48, Called to the Bar 1975

*Particulars of Complaint*

## • Professional Misconduct

- Acted in conflict of interest (3)
- Advised clients such that the Solicitor knew the result would be a breach of an Order of the Court



*Recommended Penalty*

- One-month suspension
- \$3,000 in costs

*Convocation's Disposition (05/23/96)*

- Six-month suspension
- \$3,000 in costs

*Counsel for the Solicitor*

Martin Jurjans

*Counsel for the Law Society*

Rhonda Cohen

The Solicitor acted for a married couple in the sale and purchase of two properties in 1989-90. Previous to accepting the retainer the Solicitor had loaned the couple \$16,600. One of the properties involved was the subject of litigation because of an outstanding mortgage on which the couple had defaulted. The mortgagee obtained an order from the court requiring the couple to pay into court \$75,000 from the sale of their home. Rather than moving to have the order varied or stayed, the Solicitor advised his clients in such a way as to result in the breaching of the order. Namely, the Solicitor advised his clients not to pay the monies into court, but rather, without the consent of the mortgagee, to place on the title to the subject property a \$75,000 mortgage to be held by the Solicitor in trust for the mortgagee. The Solicitor also acted in conflict by registering the \$75,000 mortgage in favour of himself in trust for the mortgagee while acting for a party opposite in interest to the mortgagee (the couple) when the Solicitor and mortgagee were each personal creditors of the Solicitor's clients; having placed himself in the position of trustee for the mortgagee, the Solicitor registered a discharge of the \$75,000 mortgage and failed to replace it with adequate security or make payment; and finally, the Solicitor permitted another solicitor from his firm to attempt to set aside the very debt which formed the subject of the order and mortgage.

The Discipline Committee noted that the Solicitor was reprimanded in Convocation in 1983, for several instances of falsely swearing/commissioning an affidavit, and reprimanded in Committee in 1991 for breach of an undertaking and communicating directly with a person represented by a solicitor. The Committee noted as well that the Solicitor appeared remorseful and believed that he was acting in accordance with the spirit of the Order. The Discipline Committee recommended the Solicitor be suspended for one month and pay \$3,000 in costs. At Convocation, the Solicitor was suspended for six months commencing July 1, 1996 and ordered to pay costs of \$3,000.

## Failure to reply

---

**Hauser, Gabriele Monika**

Toronto, Ontario

Age 44, Called to the Bar 1986

*Particulars of Complaint*

## • Professional Misconduct

- Failed to reply to the Law Society (5)
- Failed to serve client conscientiously and diligently
- Failed to cooperate with the Law Society

*Recommended Penalty*

- Six-month suspension, and indefinitely thereafter until conditions met
- \$1500 in costs

*Convocation's Disposition (05/23/96)*

- Six-month suspension, and indefinitely thereafter until conditions met
- \$1500 in costs

*Counsel for the Solicitor*

F. Bowman

*Counsel for the Law Society*

Jane Ratchford

The Solicitor several times failed to reply to the Law Society regarding an audit of the Solicitor's books and records, which were found to be inadequate. Similarly, the Solicitor repeatedly failed to answer Law Society queries regarding complaints instituted by clients and by fellow solicitors. These complaints referred generally to the Solicitor's tardiness in winding up or proceeding with files. In addition, the Solicitor failed to serve a client in a conscientious, diligent and efficient manner by neglecting to provide the client with a full report upon completion of the sale and purchase of property and by failing to account for monies entrusted to her by the client. Finally, the Solicitor failed to cooperate with the Law Society's attempts to conduct an audit by failing to produce her books and records.

The Solicitor had an extensive discipline history. In 1991, the Solicitor was reprimanded in Committee for failing to report and failing to reply to the Law Society. In 1993, the Solicitor was reprimanded in Convocation for failing to reply to the Law Society regarding a client's complaint, ordered to enrol in the Practice Review Program and ordered to pay \$1,250 in costs. Failure to reply in regard to other complaints led to a one-month suspension in 1993 and a three-month suspension in 1994.

The Discipline Committee noted that the Solicitor has ceased practising law, closed her office and transferred all her active files to another lawyer. Additionally, the Committee reviewed an extensive medical report that explains some of the actions of the Solicitor and indicates that a return to practice is possible if the medical advice is followed. The Committee recommended that the Solicitor be suspended for six months definite, and thereafter indefinitely until the Solicitor provides psychiatric evidence satisfactory to the Law Society that she is competent to practice law. Upon reinstatement, she is to enrol and cooperate with the Practice Review Program. Costs of \$1,500 were imposed. At Convocation, the Committee's recommendation was adopted.

## Failure to reply

---

**Andrew, James William**

Toronto, Ontario

Age 53, Called to the Bar 1975

*Particulars of Complaint*

## • Professional Misconduct

- Failed to maintain books and records
- Practised while under suspension
- Failed to file Forms 2/3
- Failed to reply to the Law Society (5)
- Misappropriated client funds
- Failed to account for client monies

*Recommended Penalty*

- Six-month suspension
- Thereafter, indefinite suspension until conditions met

*Convocation's Disposition (05/23/96)*

- Six-month suspension and indefinite thereafter until conditions met

*Counsel for the Solicitor*

Linda Lamb

*Counsel for the Law Society*

Jane Ratchford

A Law Society audit in January of 1994, revealed that the Solicitor had failed to perform trust comparisons since the inception of his sole practice in May 1992. After suspension for failing to pay his annual membership fees in 1993, the Solicitor continued to practise law until his reinstatement in April 1994. Further, the Solicitor misappropriated funds in the amount of \$535 from his clients, failed to pay an outstanding account of \$522.23, failed to render an account for client services and failed to respond to another solicitor's investigations regarding the trust funds of a client of the Solicitor. In each case the Solicitor failed to



respond to the Law Society's questions on these matters.

The Solicitor was reprimanded in Committee in 1987, for practising while under suspension and misleading counsel for the Law Society and in 1994 for failure to file Forms 2/3. The Discipline Committee noted that the Solicitor had been in the care of a psychiatrist since 1994 for treatment of depression. A year later he was diagnosed with clinical depression and was, at the time of the hearing, being treated for that condition. The Discipline Committee recommended that the Solicitor be suspended for six months and indefinitely thereafter until he provides psychiatric evidence satisfactory to the Law Society that he is competent to practise law. Several financial conditions were also imposed as a condition of his reinstatement. At Convocation, the Committee's recommendation was accepted.

## Failure to comply

**Bezaire, Johanne Lisette**

Kingston, Ontario

Age 54, Called to the Bar 1977

### *Particulars of Complaint*

- Professional Misconduct
  - Failed to comply with an Undertaking to the Law Society
  - Failed to file Forms 2/3

### *Recommended Penalty*

- One-month suspension
- Thereafter, indefinite suspension until requisite filings made
- \$1,043.23 in costs

### *Convocation's Disposition (05/23/96)*

- Three-month suspension and indefinitely thereafter until requisite filings are made
- \$1,043.23 in costs

### *Counsel for the Solicitor*

Not represented

### *Counsel for the Law Society*

Rhonda Cohen

As a result of prior discipline in 1992, the Solicitor undertook to the Law Society to participate in the Practice Review Program. The Solicitor failed to complete the Program. The Solicitor also failed to file Forms 2/3 for the fiscal year ending November 1994.

The Discipline Committee noted that the Solicitor had been disciplined on three previous occasions: in 1985 for, *inter alia*, failing to reply to fellow solicitors and to the Law Society, failing to report and

account to clients, failing to co-operate with the Law Society's examination of her books and records, failing to file Forms 2/3 for the fiscal year ending 1982, and failing to serve clients in a conscientious and diligent manner; in 1989 for failure to file for the fiscal years ending 1985, 1986 and 1987; and in 1992 for failure to file for fiscal year ending 1990. The Committee took into account the fact that the Solicitor had nearly completed the Practice Review Program before she ceased participation, and noted as well that the Solicitor intends to leave practice once her discipline matters have been dealt with. The Committee recommended that the Solicitor be suspended for one month and indefinitely thereafter until the requisite filings are made, and pay the sum of \$1,043.23 representing the costs of services provided by the Professional Standards Department. At Convocation, the Solicitor's suspension was increased to three months. Convocation adopted the remainder of the Committee's recommendations.

## Failure to serve client

**Steffoff, James**

Toronto, Ontario

Age 53, Called to the Bar 1970

### *Particulars of Complaint*

- Professional Misconduct
  - Failed to serve clients conscientiously and diligently
  - Failed to report a potential claim to E & O department
  - Bid at auction on behalf of clients who themselves were prohibited from bidding

### *Recommended Penalty*

- One-month suspension

### *Convocation's Disposition (05/23/96)*

- Three-month suspension

### *Counsel for the Solicitor*

Not represented

### *Counsel for the Law Society*

Elizabeth Cowie (at Committee)

Georgette Gagnon (at Convocation)

The Solicitor's clients were involved in a motor vehicle accident and suffered personal injuries. The Solicitor commenced a law suit and undertook at discovery on behalf of his clients to provide particulars of their claim. Through the Solicitor's negligence the undertakings were not fulfilled. The defendant moved to dismiss the action with costs. The Solicitor did not properly respond to the defendant's motion to fulfill

the undertakings. The action was subsequently dismissed with costs, and the court ordered a judicial sale of the clients' home to meet the court costs. The Solicitor continued to assure his clients that the action was proceeding when it was not and that the house could not be sold without his permission. When the sale occurred, the Solicitor bid on their behalf (as the clients themselves were prohibited from bidding) in contravention of the *Conveyancing and Law of Property Act*. The house was ultimately sold to the second highest bidder, who then resold it to the Solicitor's clients at a profit of over \$30,000. The Solicitor also failed to report a potential claim arising from his negligence to the Law Society's E & O department.

The Solicitor had previously been reprimanded in Committee for failing to comply with requests on behalf of his client to turn the client's file over to new solicitors and for failing to reply to the Law Society regarding a complaint. The Discipline Committee accepted a joint submission that the Solicitor be suspended for one month. The Committee expressed concern that the penalty was low, but considered several mitigating factors: the Solicitor cooperated with the Law Society; he paid over \$95,000 personally to the clients to make restitution for their loss and he informed the Committee that he suffered from alcohol addiction at the time. Convocation suspended the Solicitor for three months to commence June 10, 1996.

## Failure to reply

**Raza, Arif**

Toronto, Ontario

Age 50, Called to the Bar 1980

### *Particulars of Complaint*

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

### *Recommended Penalty*

- **Be given until Dec. 19, 1995 to clear up outstanding matters with the Law Society's Audit Department**
- If the member complies by that date, a one-month suspension
- If the member does not comply, an indefinite suspension until all outstanding matters are satisfied
- Enrolment in the Practice Review Program
- Costs of \$500



*Convocation's Disposition (05/23/96)*

- One-month suspension
- \$500 in costs
- Practice Review Program

*Counsel for the Solicitor*

Alawi K. Mohideen

*Counsel for the Law Society*

Audrey Cado (at Committee)

Rhonda Cohen (at Convocation)

The Solicitor failed to file Forms 2/3 for fiscal year ending 1994 and as of the date of the discipline hearing had still not filed the required forms. The Solicitor had received a reprimand in Committee in 1992 for a similar failure to file. As that latter discipline matter proceeded through the system, the Solicitor's books and records were examined in January and February of 1992, revealing some 20 audit deficiencies. These included, *inter alia*, transferring money from trust accounts to general accounts without first notifying clients, failing to keep a transfer journal, failing to maintain a trust ledger and failing to properly maintain trust account comparisons and reconciliations. The Solicitor undertook to ensure that audit deficiencies would be corrected. However, corrections were spotty and inconsistent and involved frequent reminders from the Law Society of the Solicitor's obligations. Many of these reminders received no reply.

The Discipline Committee noted the Solicitor's previous discipline history on similar facts. The Discipline Committee also noted its concern about the Solicitor's governability by his persistent failing to respond to the Law Society and by signing an undertaking of compliance in February of 1992, which had not been met as of November of 1995. The Committee recommended that the Solicitor have until December 19, 1995 to file all outstanding returns and clear up all outstanding matters to the satisfaction of the Law Society's audit department. The Solicitor must also enrol in the Practice Review program and pay costs of \$500. If the Solicitor complied by the above date, a one-month suspension would follow. If he had not complied, the suspension would be indefinite until all outstanding matters had been resolved to the Audit Department's satisfaction. At Convocation, the Solicitor was suspended one month, the suspension to commence on June 7, 1996. In addition, he was ordered to pay \$500 in costs and to enrol in the Practice Review Program.

## Failure to reply

**Bruce, Kenneth Ross**

Kingston, Ontario

Age 52, Called to the Bar 1972

*Particulars of Complaint*

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

*Recommended Penalty*

- One-month suspension
- Thereafter, month to month suspension until conditions met

*Convocation's Disposition (05/23/96)*

- One-month suspension
- Thereafter, indefinitely until conditions met

*Counsel for the Solicitor*

Not represented

*Counsel for the Law Society*

Allan Maclure

In 1994, some \$12,000 related to an estate remained in the solicitor's trust account for over a year, leading to concern that the estate matter was not receiving prompt or appropriate attention. The Law Society sought information. Receiving some information, it requested further particulars in late 1994 and early 1995 to which the solicitor failed to respond. The Solicitor had also failed to file his Forms 2/3 for the fiscal year ending May 31, 1994.

Citing the paramount need to protect the public, the Committee recommended that the solicitor be suspended for one month and thereafter from month to month until he completes all annual filings, produces all books and records for his practice, responds satisfactorily to the Law Society's requests for information and pays the outstanding costs of \$450 from his previous discipline hearing.

In 1994, the solicitor was reprimanded in Committee and ordered to pay costs of \$450 on the same charges of failing to file Forms 2/3 and failing to reply to the Law Society. Since then a staff trustee has been engaged in winding up the solicitor's practice, which appears to have been abandoned.

At Convocation, on May 23, 1996, the Solicitor was suspended for one month and indefinitely thereafter until the conditions outlined above have been met.

## Failure to file

**Shortill, Thomas David Stapleton**

Toronto, Ontario

Age 55, Called to the Bar 1970

*Particulars of Complaint*

- Professional Misconduct
  - Failed to file Forms 2/3 (2)
  - Failed to cooperate with the Law Society

*Recommended Penalty*

- One-month suspension to commence at conclusion of current administrative suspension
- Thereafter, indefinite suspension until all requisite filings made and books and records produced for audit

*Convocation's Disposition (05/23/96)*

- One-month suspension and thereafter indefinite suspension until such time as all requisite filings are made and the Solicitor's books and records have been produced for an audit

*Counsel for the Solicitor*

Not represented

*Counsel for the Law Society*

Rhonda Cohen

The Solicitor failed to file his Forms 2/3 for fiscal years ending 1994 and 1995, respectively. A Law Society Examiner made numerous requests for an appointment to review the Solicitor's books and records. The Solicitor did not co-operate with the Law Society Examiner. The Solicitor had been administratively suspended as of November 1994 for non-payment of his annual fee.

The Solicitor had no discipline history. The Discipline Committee accepted a joint submission as to penalty and recommended that the Solicitor be suspended for one month and thereafter on a month to month basis until the Solicitor has made the requisite filings for fiscal years 1994 and 1995 and produced all books and records for audit by the Law Society. The suspension is to commence at the conclusion of the current administrative suspension. Convocation adopted the recommendation of the Discipline Committee.



## Failure to reply

### Sutton, Richard Alexander

Toronto, Ontario

Age 49, Called to the Bar 1979

#### Particulars of Complaint

##### • Professional Misconduct

##### First Complaint

- Failed to maintain books and records
- Withdrew \$2,350 from trust account for fees without prior notification to client
- Operated general account transactions through the trust account
- Failed to cooperate with the Law Society
- Failed to file Forms 2/3
- Failed to honour Undertaking to fellow solicitor

##### Second Complaint

- Failed to reply to Law Society
- Failed to honour a financial obligation arising from practice (2)

#### Recommended Penalty

- Reprimand in Convocation if produced certain deposit books and fee billings by date of Convocation. Failing which two-month suspension and thereafter indefinitely until documents produced.
- Reprimand in Convocation plus \$250 costs

#### Convocation's Disposition (05/23/96)

- (1) Reprimand in Convocation
- (2) Reprimand in Convocation
- \$250 in costs

#### Counsel for the Solicitor

Harry J. Doan (at Committee)

Robert Van Duffelin (at Convocation)

#### Counsel for the Law Society

Elizabeth Cowie (at Committee)

Rhonda Cohen (at Convocation)

The Solicitor was involved in two separate discipline matters. The first and more serious matter resulted from a Law Society audit undertaken in 1993 because the Solicitor's cheque for his Errors & Omissions fees was returned due to insufficient funds. The audit revealed several deficiencies in the maintenance of the

Solicitor's books. It showed also that the Solicitor had on several occasions transferred money from client trust accounts in the total amount of \$2,350 without rendering an account to the client. To complete the audit, the Examiner required deposit books or their duplicates. Despite numerous requests for these documents, they were never provided. In respect of a file passed to the Solicitor from a fellow lawyer, the Solicitor failed to honour his undertaking to ensure that the first lawyer's fees and disbursements would be the first charge paid out from the proceeds of any settlement. The Solicitor believed the assessed fees were exorbitant but was tardy in contesting it. Finally, the Solicitor failed to file Forms 2/3 for fiscal year ending 1994.

The second discipline matter arose out of the completion of the audit commenced in the first discipline matter. The audit found a number of inadequacies which the Solicitor was to acknowledge. He did so but failed to provide various materials requested on numerous occasions by the Law Society. The Solicitor also failed to honour financial obligations totalling \$368.77 arising out of his practice.

The Solicitor had been reprimanded in Convocation in 1989 for failure to maintain books and records. For the first discipline matter the Committee recommended that the Solicitor be reprimanded in Convocation and that before the matter reaches Convocation he produce the relevant materials requested by the Law Society. Should he fail to produce these documents, the Committee recommended that he be suspended for two months and thereafter until production of the documents. For the second discipline matter the Committee noted that the Solicitor is no longer practising and recommended that he be reprimanded in Convocation and pay costs of \$250. Convocation followed the Committee's recommendation, reprimanding the Solicitor for each of the discipline matters and ordering him to pay \$250 in costs related to the second matter.

## Failure to serve client

### Ecclestone, Gordon Wilfred

North York, Ontario

Age 68, Called to the Bar 1953

#### Particulars of Complaint

##### • Professional Misconduct

- Failed to serve client conscientiously and diligently (2)

- Failed to reply to the Law Society
- Failed to cooperate with the Law Society
- Practised while under suspension (2)
- Misled a Discipline Committee

#### Recommended Penalty

- Disbarment

#### Convocation's Disposition (05/23/96)

- Reprimand in Convocation on an undertaking to resign and not to practise pending resignation, Section 35 hearing recommended in the event of a readmission application.

#### Counsel for the Solicitor

Not represented (at Committee)

William Trudell (at Convocation)

#### Counsel for the Law Society

Lesley Cameron

The Solicitor failed to serve his clients in connection with their defence of criminal charges by failing to attend court appearances in May and June of 1994, failing to keep his clients reasonably informed, failing to follow their instructions as to the venue of trial, refusing to accompany his clients to a bail hearing when their arrest was as a result of his error, and by failing to deliver all papers and property to which a client was entitled. The Solicitor failed to reply to the Law Society concerning a complaint by a client. He failed as well to produce his books and records despite the Law Society's requests that he do so, and practised while under administrative suspension, two times for a total of approximately 12 months. The Solicitor also misled a Discipline Committee by asserting that he had not practised under suspension.

The Solicitor did not appear at the hearing and the Committee recommended disbarment. At Convocation, medical and extensive character evidence was led. The Solicitor was reprimanded in Convocation on an undertaking to resign and not to practise in the interim. Convocation recommended that any application for readmission is to be the subject of a Section 35 hearing.

### Alcohol/Drug/Eating Disorder/Addiction Problem?

In complete confidence call OBAP anytime (toll free) 1-800-667-5722

Women's Issues 1-800-641-4409

Lawyers Helping Lawyers since 1978

#### 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) 947-3335

