



March 1994 Vol. 2 No. 4

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Toronto
- Paul M. Feldman
Toronto
- William E. Horman
Waterloo
- Ted R. Laan
Toronto
- Grant E. Rayner
Hamilton
- Norman E. J. Roy
Oakville
- Paul H. Watson
Ottawa
- Mario Zammit
Mississauga

Breach of undertaking

Bridgewater, Ronald Douglas

Toronto, Ontario

Age 46, Called to the Bar 1980

Particulars of Complaint

- professional misconduct
 - Failure to deliver papers and property to client (2)
 - Failure to reply to Law Society communications (5)
 - Failure to comply with an undertaking (3)
 - Failure to co-operate with the Law Society's insurer
 - Failure to file Forms 2/3
 - Failure to release client files

Recommended Penalty

disbarment

Convocation's Disposition (Mar. 24, 1994)

disbarment

Counsel for the Law Society

N. Perrier

Counsel for the Solicitor

Not represented

The Solicitor had failed to deliver documents to clients, failed to honour an undertaking to a fellow solicitor, failed to deliver documents to clients, failed to co-operate with the Law Society insurer with respect to a claim made against him, failed to respond to enquiries made by the Society with respect to claims made against him, and failed to file forms required by the Society. The Discipline Committee found that the Solicitor had abandoned his practice and

that his pattern of misconduct demonstrated "a blatant disregard for the duties owed to both his clients, fellow lawyers and the Society."

The Solicitor had been found guilty of professional misconduct on two prior occasions. In 1989, he was reprimanded in Committee for failure to file Forms 2/3 for the fiscal years 1986, 1987, 1988, and 1989. In 1993, the Committee found that he had failed to co-operate in a Law Society investigation, failed to comply with an undertaking to the Society, failed to satisfy and undertaking to a solicitor, and failed to file for the fiscal year 1993. Convocation adjourned the matter until the hearing of the present complaint.

Convocation disbarred the Solicitor.

Abandoned practice

Zammit, Mario

Mississauga, Ontario

Age 41, Called to the Bar 1981

Particulars of Complaint

- professional misconduct
 - Abandoned practice
 - Failed to co-operate with Law Society
 - Practised while suspended
 - Failed to file Forms 2/3

Recommended Penalty

Permission to resign

Convocation's Disposition (Mar. 24, 1994)

Permission to resign

Counsel for the Law Society

S. Foster

Counsel for the Solicitor

Not represented

In August 1992, the Solicitor abandoned his practice and the Law Society began receiving calls from clients regarding outstanding matters. The Law Society's Staff Trustee met with the Solicitor, who agreed to attend to the outstanding matters. However, the Society continued to receive complaints and in January 1993 the Staff Trustee took possession of the Solicitor's client files.

The Law Society attended to some 92 matters that had been left outstanding. As of April 20, 1993, the Law Society had paid out nearly \$17,500 in trusteeship costs, which included such things as registration fees for mortgages and discharges, and travel expenses.

The Solicitor had not filed his Forms 2 and 3 for his 1992 fiscal year. He had continued to practise law while his rights and privileges were suspended for non-payment of E&O insurance from June 1992 until he abandoned his practice in August 1992.

At his hearing before the Discipline Committee, the Solicitor testified with respect to the personal problems which had led him to abandon his practice. In May 1993, the Solicitor had declared bankruptcy.

The Committee recommended that the Solicitor be granted permission to resign and Convocation accepted this recommendation.

Breach of undertaking

Watson, Paul Hubert

Ottawa, Ontario

Age 59, Called to the Bar 1964

Particulars of Complaint

- professional misconduct
 - Failure to co-operate with the Law Society
 - Failure to fulfil undertaking to Law Society

Recommended Penalty

Permission to resign

Convocation's Disposition (Mar. 24, 1994)

Permission to resign

Counsel for the Law Society

C. Budweth

Counsel for the Solicitor

Not represented

The Society had received a letter from the Solicitor requesting permission to resign. The letter referred to mental illness and physical exhaustion as the reasons for his inability to attend to such routine matters as answering correspondence and telephone calls. Counsel for the Society indicated that but for the Solicitor's request she would have recommended a lengthy suspension and that the Solicitor not be permitted to resume practice until such time as he satisfied a Section 35 (fitness to practise). In the circumstances, the Committee decided to accept the Solicitor's request. Convocation accepted the Committee's recommendation.

Misappropriation

Horman, William Edward

Waterloo, Ontario

Age 41, Called to the Bar 1981

Particulars of Complaint

- professional misconduct
 - Failure to file Forms 2/3 (2)
 - Misappropriated client funds (2)
 - Failure to deposit monies into trust account
 - Failure to record receipt of monies
 - Received monies from clients while bankrupt
 - Withdrew monies from a trust account prior to bankruptcy

Recommended Penalty

- six-month suspension, with suspension to continue until Forms filed
- three-year prohibition from operating a trust account; and, following three-year period, any trust account to be subject to co-signing controls for two further years

Convocation's Disposition (Mar. 24, 1994)

six-month suspension and thereafter until filings brought up-to-date and conditions

Counsel for the Law Society

N. Perrier

Counsel for the Solicitor

J. Brownlie

A Law Society examination of the Solicitor's books and records revealed that they were not in compliance with the Regulations of the *Law Society Act* or

the Rules of Professional Conduct. Among other things, the examination revealed that there were inactive client balances in the trust account and differences in the trust comparisons.

The Solicitor was also found to have misappropriated funds belonging to his clients. However, the amounts involved were relatively small; the money was misappropriated for a short period of time; and the money was repaid prior to any investigation by the Society being initiated with no loss to the client.

In addition, the Solicitor had failed to make filings for the fiscal years ending January 31, 1991, and January 31, 1992.

The Committee recommended that the Solicitor be suspended for six months from the date of the Convocation hearing, and that the suspension should continue until his filings for the 1991 and 1992 fiscal years are completed. It also recommended that the Solicitor be prohibited from operating a trust account for a three-year period and, if he has a trust account after the three-year period, that he be subject to co-signing controls for a further two-year period.

Convocation adopted the recommendation of the Committee.

Failure to file forms

Laan, Ted Roland

Toronto, Ontario

Age 42, Called to the Bar 1979

Particulars of Complaint

- professional misconduct
 - Failure to file Forms 2/3
 - Practising while under suspension (2)

Recommended Penalty

One-month suspension

Convocation's Disposition (Mar. 24, 1994)

Two-month suspension

Counsel for the Law Society

S. Foster

Counsel for the Solicitor

B. Andrews

The Solicitor was suspended from December 1, 1992, to January 22, 1993, for non-payment of annual fees and from March 26, 1993, to May 4, 1993, for non-payment of a late filing fee respecting his Forms 2 and 3.

At the time in question, the Solicitor had been experiencing a number of personal problems, including severe financial difficulties.

The Discipline Committee recommended a one-month suspension. Convocation ordered a two-month suspension.

Practising while suspended

Roy, Norman Edward Joseph

Oakville, Ontario

Age 39, Called to the Bar 1982

Particulars of Complaint

- professional misconduct
 - Practised law while under suspension
 - Failed to maintain proper books and records

Recommended Penalty

one-month suspension; costs; and filing of trust fund comparisons for eighteen months

Convocation's Disposition (Mar. 24, 1994)

one-month suspension and \$1,200 costs

Counsel for the Law Society

C. Budweth

Counsel for the Solicitor

Not represented

The Discipline Committee stated in its decision that the Solicitor's misconduct was "misconduct of an administrative nature in that there is no evidence that his conduct resulted in any loss or great inconvenience to his clients. Nonetheless, we are of the view that his conduct of continuing to practice while under suspension is of a serious nature, carrying with it a degree of culpability that requires a penalty more serious than a reprimand. In addition, the Solicitor has a prior discipline history in which he was found guilty of professional misconduct on two prior occasions. On each occasion he failed to file his Forms 2/3 ... [I]t is obvious that for a third occasion on which the Solicitor is guilty of professional misconduct, the penalty must include a period of suspension." Convocation accepted the Committee's recommendation and suspended the Solicitor for a period of one month with costs in the amount of \$1,200. In addition, the Solicitor will be required to file monthly trust records for a period of 18 months following the end of his suspension.

Failure to maintain records

Rayner, Grant Edward

Hamilton, Ontario

Age 41, Called to the Bar 1985

Particulars of Complaint

- professional misconduct
 - Failure to maintain proper books and records
 - Failure to file Forms 2/3

Recommended Penalty

Reprimand in Convocation if books and records put in order or one-month suspension to continue indefinitely thereafter until books and records are in order

Convocation's Disposition (Mar. 24, 1994)

One-month suspension to continue indefinitely thereafter until books and records are in order

Counsel for the Law Society

S. Foster

Counsel for the Solicitor

Not represented

The Solicitor admitted that he failed to complete the filing of forms and that he failed to fulfil the legitimate requirements imposed upon him by audit staff. He testified under oath that he suffered from a kind of paralysis with respect to deadlines. He was not practising at the time of the hearing. As of the date of the discipline hearing, he had not paid his fees for the 1993-94 fiscal year.

The Committee felt that the matter required at least a reprimand in Convocation. It also felt that the Solicitor could, with relatively little effort, bring his books and records up to date and fulfil the requirements imposed by the audit staff. The Committee felt that the failure of the Solicitor to accomplish this should result in his suspension.

Convocation suspended the Solicitor for one month and indefinitely thereafter until his books and records have been brought up to date.

Failure to serve clients

Feldman, Paul Magnus

Toronto, Ontario

Age 46, Called to the Bar 1975

Particulars of Complaint

- professional misconduct
 - Failure to serve clients (4)

Recommended Penalty

Reprimand in Convocation & costs of \$1,000

Convocation's Disposition (Mar. 24, 1994)

Reprimand in Convocation & costs of \$1,000

Counsel for the Law Society

S. Foster

Counsel for the Solicitor

S. Waisberg

An Agreed Statement of Facts, entered into evidence at the discipline hearing, detailed a narrative of events in which clients of the Solicitor suffered loss of money, frustration and resentment because of the lost time and the inconvenience to which they were subjected. In one case, the Solicitor was retained by a husband and wife to defend them against a claim. After the initial meeting with his clients, the Solicitor misplaced their file and failed to issue a Statement of Defence. A Judgement was issued against his clients.

The Discipline Committee concluded that the Solicitor failed in his duty to be competent to perform the legal services which he undertook and failed to serve the clients in a contentious, diligent, and efficient manner.

Counsel for the Solicitor pointed out that there were mitigating circumstances, including that the Solicitor had voluntarily undertaken to participate in the peer review process of the Professional Standards Programme and that he had co-operated in the investigation of the Law Society.

The Committee recommended that the Solicitor be reprimanded in Convocation and ordered to pay \$1000 costs. It noted that the Solicitor had been found guilty of professional misconduct in 1984 for breaching an undertaking to the Society and indicated that in the absence of mitigating circumstances, it would have recommended a period of suspension.

Convocation accepted the Committee's recommendation and reprimanded the Solicitor.

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