



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

September 1995, Vol 4, No 1

Misappropriation

Jaffey, John Mowat

Toronto, Ontario

Age 48, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Misappropriated client trust funds (5)
 - Misapplied client trust funds

Recommended Penalty

- Disbarment

Convocation's Disposition (09/28/95)

- Disbarment

Cases

- Bernard Baum, Toronto
- Anthony M. Butler, Ottawa
- Roger L. Clark, Peterborough
- Stephen R. Dymont, Markham
- George Flak, Toronto
- Larry G. Frolick, Toronto
- Percy G. Graves, Gravenhurst
- Pasquale Iannetta, Windsor
- John M. Jaffey, Toronto
- Stephen A. Landau, Toronto
- Gordon A. MacKay Jr., Guelph
- Jairus H. Maus, Cambridge
- Anthony R. Morra, Mississauga
- John V.P. O'Donnell, Mississauga
- Douglas G. Paolini, Toronto
- Grant E. Rayner, Hamilton
- John Rothel, Timmins
- Audrius A. Stonkus, Hamilton
- William G. Winsor, Mississauga

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina Budweth

In May and June of 1994, the Solicitor misappropriated client trust funds in the approximate amount of \$787,560.46. The Solicitor also misapplied \$45,000 of a client's trust funds by investing the monies in his own investment company. In early July, the Solicitor travelled to Australia under an assumed name. Subsequently, he was extradited to Toronto and on December 19 the Solicitor pleaded guilty to charges relating to the misappropriation for which he is currently serving a five-year sentence.

In 1993, the Solicitor was reprimanded in Convocation for misconduct in regard to his actions while an executor and solicitor of an estate.

The Committee recommended disbarment. The Committee noted that one of the Solicitor's victims was his own elderly mother and that no restitution had been made to any of his clients. The Solicitor was disbarred at Convocation.

Misappropriation

Landau, Stephen Anthony

Toronto, Ontario

Age 45, Called to the Bar 1977.

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Misappropriated monies from a client

Recommended Penalty

- Disbarment

Convocation's Disposition (09/28/95)

- Disbarment

Counsel for the Solicitor

Ernest Du Vernet

Counsel for the Law Society

Stephen Foster

The Solicitor failed to file Forms 2/3 for his fiscal years ending April 30, 1991 and 1992. The Solicitor acted for a client in the purchase of a residential property which became the subject of litigation after the vendors refused to close. Almost simultaneously, another property was sold by the client on behalf of her mother, the net proceeds of which (\$52,456.65) were deposited with the Solicitor on his suggestion. After judgment issued in regard to the residential property, the client demanded an accounting. The Solicitor provided the client with two different accountings — one indicating \$17,000 remaining in trust and the other indicating \$12,000 remaining in trust. The client claimed a discrepancy in monies received of \$7,000. The Solicitor later drew up an account setting out his fees for professional services in the amount of \$19,562.50.

Counsel for the Solicitor provided a letter from the Solicitor indicating that he was unable to raise the money for airfare to come to the hearing from overseas. The hearing proceeded in the absence of the Solicitor. The Discipline Committee noted that even giving the Solicitor the benefit of the doubt with respect to the \$7,000 discrepancy, it is clear that monies were taken from the client when they ought not to have been

taken. The Committee recommended disbarment. At Convocation the Solicitor was disbarred.

Conduct unbecoming

Morra, Anthony Rocco

Mississauga, Ontario

Age 51, Called to the Bar 1973

Particulars of Complaint

• Conduct Unbecoming

- Convicted of a criminal offence (2)

Recommended Penalty

- Disbarment

Convocation's Disposition (09/28/95)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil Perrier

The Solicitor was convicted on July 8, 1993, of the criminal offence of conspiracy to commit the indictable offence of trafficking in a narcotic to wit: cocaine, contrary to Section 4(1) of the *Narcotic Control Act*, thereby committing an offence contrary to Section 465 (1)(c) of the *Criminal Code* for which he was sentenced on October 22, 1993, to a six-year term of imprisonment. On February 16, 1994, the Solicitor was convicted of the criminal offence of possession of property obtained by crime under Section 354(1)(a) of the *Criminal Code*, for which he was sentenced to one-year imprisonment concurrent to any sentence he is currently serving.

The Solicitor did not attend the hearing although Society counsel advised that he had received a day pass to attend. The Discipline Committee recommended disbarment. The Committee noted that the evidence showed the Solicitor used his offices and his practice to assist organized crime in the trafficking of 10 kilograms of cocaine and of being in possession of property obtained from the trafficking of cocaine. The Committee noted that although his mental state at the time was depressed and he was using cocaine, the trial judge found that the Solicitor knew what he was doing and was fit to stand trial and instruct counsel. At Convocation the Solicitor was disbarred.

Acting without client consent

Clark, Roger Lewis

Peterborough, Ontario

Age 54, Called to the Bar 1974

Particulars of Complaint

• Professional Misconduct

- Acted for individuals without their consent (4)
- Failed to file Forms 2/3 for 1991, 1993, 1994
- Practised while under suspension
- Failed to reply to the Law Society

Recommended Penalty

- Disbarment

Convocation's Disposition (09/28/95)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil J. Perrier

The Solicitor registered mortgages on the title to properties without obtaining instructions from the owners to act on their behalf and without advising them of the existence of any of the mortgages or of the consequences of registration of the mortgages. The Solicitor acted similarly in registering a transfer on the title to one of the properties. The Solicitor also purported to represent an individual in the defence of an action commenced against her without informing her of the existence of the action or obtaining her instructions to act on her behalf. The Solicitor failed to file Forms 2/3 for his fiscal years ending February 28, 1991, 1993 and 1994. He failed to reply to the Law Society regarding inadequacies discovered in his filing for the fiscal period ended February 28, 1992. Finally, the Solicitor continued to carry on his practice of law after having been suspended as of March 26, 1993, for failure to pay a late filing penalty.

In 1990, the Solicitor was reprimanded in Discipline Committee. The Solicitor failed to appear at his hearing and was not represented. The Committee recommended disbarment noting the Solicitor's "...complete and shameless disregard for the rights and property..."

of the concerned individuals and his "complete and total disregard for the authority of Convocation." The Solicitor was disbarred at Convocation.

Misappropriation

Flak, George

Toronto, Ontario

Age 51, Called to the Bar 1972

Particulars of Complaint

• Professional Misconduct

- Misappropriated his clients' funds
- Misappropriated funds from his firm's mixed trust account
- Made an unauthorized loan with his client's funds

Recommended Penalty

- No recommendation
- the Chair recommended disbarment
- one member recommended permission to resign
- one member withdrew

Convocation's Disposition (09/28/95)

- Permission to resign

Counsel for the Solicitor

Walter Fox

Counsel for the Law Society

Christina Budweth

Note: A case summary in the October 1994 edition of *Discipline Digest* indicated that the Solicitor had been disbarred. The disbarment was subsequently quashed by Convocation. The Solicitor's membership has been terminated by resignation, rather than disbarment.

During the period February 1991 to July 1991, the Solicitor misappropriated approximately \$69,360 from his firm's mixed trust account in order to pay interest on a personal loan. The Solicitor misappropriated a further \$66,000.00 from his firm's mixed trust account by making unauthorized loans to two of his clients. The Solicitor also misappropriated \$61,198.95 of a client's funds in order to cover the above misappropriations. The funds had been advanced to him by a trust company to be used to discharge a first mortgage on another client's property. The Solicitor made a similar misappropriation of

\$57,978.12 from other clients for the same purpose.

In 1984, the Solicitor was reprimanded in Discipline Committee for borrowing from clients, failing to maintain sufficient trust balances and failure to file Forms 2/3. The Committee was divided in its recommendation as to penalty with only two members making recommendations while one member had withdrawn from the panel. The Chair noted the Solicitor's family situation which involved caring for his incapacitated father for nine years and noted the threats of physical violence from the Solicitor's personal creditor, but recommended disbarment. The remaining member of the Committee emphasized the need for compassion in light of the Solicitor's situation and recommended he be given permission to resign. At Convocation, the Solicitor was given permission to resign.

Practising while suspended

Maus, Jairus Hamilton

Cambridge, Ontario

Age 41, Called to the Bar 1986

Particulars of Complaint

- Professional Misconduct
 - Practised law while under suspension (2)
 - Operated general account transactions through his mixed trust account

Recommended Penalty

- Six-month suspension to continue until the Solicitor enters a counselling programme

Convocation's Disposition (09/28/95)

- Permission to resign

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina Budweth

The Solicitor continued to practise law during the period of February 1, 1993, to June 30, 1993, during which he was suspended for failure to pay his Errors and Omissions Insurance levy. In late

May and early June of 1993, the Solicitor spoke with the Director of Finance of the Law Society to seek a deferral of his obligation to pay the fee and stated that he was not engaged in active practice. The deferral was granted. The Solicitor also practised law while under suspension from November 1, 1993, until December 14, 1993. During the period March 1, 1993, to August 5, 1993, the Solicitor operated his general account transactions through his mixed trust account. He co-mingled general office funds in his trust account for the purpose of avoiding creditors, thus subjecting his clients' trust monies to risk of seizure.

The Discipline Committee recommended a six-month suspension to continue until the Solicitor enter into an appropriate counselling programme to deal with the suicide of his associate and partner in 1993 and the subsequent separation from his wife. The Committee was not prepared to go along with the Solicitor's request for a recommendation of permission to resign out of concern that it would introduce a distortion into the Law Society's precedents for such a disposition. At Convocation, the Solicitor was granted permission to resign.

Failure to honour financial obligation

Winsor, William Gordon

Mississauga, Ontario

Age 48, Called to the Bar 1974

Particulars of Complaint

- Professional Misconduct
 - Failed to honour a financial obligation
 - Failed to reply to a fellow lawyer
 - Failed to release a client's file to a successor lawyer
 - Failed to file Forms 2/3
 - Failed to maintain books and records
 - Failed to maintain sufficient trust balances
 - Practised while under suspension

Recommended Penalty

- Permission to resign

Convocation's Disposition (09/28/95)

- Permission to resign if resignation submitted one month following notification of Convocation's decision
- Otherwise, disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina M. Budweth

The Solicitor acted for a client on a land purchase. Upon closing, the client received only 12 acres of land although she believed she had purchased about 23 acres. The Solicitor agreed to settle the client's claim of professional negligence for \$4,100, but after failing to pay, judgment was entered against the Solicitor on December 14, 1992. The Solicitor did not pay the judgment nor did he reply to communications from his former client's lawyer including requests for the release of the client's file. The Solicitor failed to file Forms 2/3 for his fiscal year ended March 31, 1993. In February of 1994, a Law Society Examiner attended at the Solicitor's office and discovered that the Solicitor's books and records were in arrears from late 1993, and that there was a trust shortage of \$1,658.43. Finally, the Solicitor continued to practise while under suspension for non-payment of his annual fees as of November 1, 1993.

In 1992, the Solicitor was suspended for six months for attempting to mislead his client, misapplication of trust funds and failing to maintain his books and records. In 1984, the Solicitor was reprimanded in Discipline Committee for failing to maintain his books and records, for failing to cooperate with the Law Society and for failing to comply with Undertakings.

The Committee recommended the Solicitor be given permission to resign. The Committee noted that the Solicitor did not attend his hearing despite a continuance for that purpose and recommended disbarment if the Solicitor does not submit his resignation before Convocation. At Convocation, the Solicitor was granted permission to resign within one month of notification of Convocation's decision. Otherwise, the Solicitor will be disbarred.

Failure to reply

Stonkus, Audrius Antanas

Hamilton, Ontario

Age 42, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society
 - Failed to comply with an Undertaking

Recommended Penalty

- Indefinite suspension until fit to practise
- \$500 in costs

Convocation's Disposition (09/28/95)

- Permission to resign

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil J. Perrier

The Solicitor failed to reply to the Law Society regarding a client complaint despite two letters and four telephone requests. He also failed to comply with his February 26, 1991, undertaking to the Law Society by failing to reply to the letters within one week of receipt and by failing to reply to the telephone communications within two business days.

In 1991, the Solicitor was reprimanded in Discipline Committee for his failure to honour a financial obligation and his failure to serve his client conscientiously and diligently. In 1994, the Solicitor was reprimanded in Committee with \$350 in costs for his failure to reply to the Society and his failure to comply with Undertakings to the Society and a fellow lawyer. The Committee noted that the discipline proceedings were not well suited to this particular case. The Committee accepted a joint submission in recommending that the Solicitor be suspended until he can satisfy a Section 35 committee or senior discipline counsel that he is fit to practise and that he should pay \$500 in costs within one year. The hearing had been adjourned five times, however, there was no medical evidence as to the Solicitor's condition or its remedy. At Convocation the Solicitor sought permission to resign for personal reasons. Convocation granted the Solicitor permission to resign.

Failure to reply

Rayner, Grant Edward

Hamilton, Ontario

Age 43, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct
 - Failed to honour a financial obligation
 - Failed to honour a trust obligation
 - Failed to reply to the Law Society (3)
 - Failed to comply with an undertaking (3)
 - Failed to reply to a fellow lawyer (3)
 - Failed to provide a Notice of Discontinuance
 - Failed to release a client's file
 - Failed to serve his client conscientiously and diligently
 - Failed to comply with a co-signing requirement

Recommended Penalty

- Permission to resign
- Otherwise, a three-month suspension to continue until conditions are met

Convocation's Disposition (09/28/95)

- Permission to resign
- Otherwise, a three-month suspension to continue until conditions are met

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kate Wootton

The Solicitor failed to pay for his client's medical-legal report and failed to reply to the Law Society in that regard. The Solicitor failed to reply to another lawyer regarding his failure to comply with an undertaking to pay his client's rent arrears out of the proceeds from the settlement of a motor vehicle claim. The Solicitor failed to reply to the Law Society and failed to comply with his undertaking of November 30, 1993, to advise his clients of his suspended status and to make immediate arrangements for the transfer of their files. The Solicitor failed to provide a claims examiner with his client's executed release and a notice of discontinuance regarding a motor vehicle

action. He failed to honour a trust obligation to the claims examiner by releasing settlement funds on a motor vehicle claim to his client without first obtaining her executed release. The Solicitor failed to respond to another lawyer and failed to release his former client's file. He also failed to reply to the Law Society and failed to comply with his undertaking to transfer his clients' files. The Solicitor breached co-signing controls placed on his trust account for failure to produce his books and records by drawing and cashing two cheques payable to himself in respect of fees and disbursements. The Solicitor also failed to serve his client conscientiously and diligently by failing to deliver the fee billing to his client and the \$20,000 in settlement monies he had received with respect to his client's lawsuit.

The Solicitor was suspended on March 24, 1994, for one month and indefinitely thereafter with \$1,000 in costs for failure to maintain his books and records and for failure to make his annual filings. The Discipline Committee recommended that the Solicitor be granted permission to resign. If he fails to resign, the Committee recommended that he be suspended for three months and thereafter until he participates in and cooperates with the Practice Review Program and he provides a psychiatric opinion that he is able to be governed by the Society. Convocation adopted the Committee's recommendations.

Misapplication of trust funds

Graves, Percy Glen

Gravenhurst, Ontario

Age 48, Called to the Bar 1974

Particulars of Complaint

- Professional Misconduct
 - Made personal disbursements from his mixed trust account
 - Failed to maintain sufficient balances in his trust account
 - Failed to maintain his books and records
 - Failed to account to his clients
 - Withdrew monies from trust with-

out rendering fee billings

- Acted in a conflict of interest and in so doing preferred the interest of one client over another
- Misled a client
- Misled the Law Society (2)
- Misapplied a client's funds
- Failed to serve his client diligently and conscientiously (2)
- Personally guaranteed a client's mortgage (2)
- Borrowed money from clients (2)
- Issued false documents to clients
- Breached the escrow conditions of a letter
- Made misrepresentations to clients

Recommended Penalty

- Three-year suspension with conditions
- Costs to be agreed upon by counsel

Convocation's Disposition (09/28/95)

- Three-year suspension with conditions
- \$5,000 in costs

Counsel for the Solicitor

Frank Marrocco (at hearing)
Glenn Hainey (at Convocation)
Lynn Mahoney

Counsel for the Law Society

Christina M. Budweth

The Solicitor maintained a general practice between 1977 and 1991 including estates, real estate, family and civil litigation.

The Committee accepted a joint submission on penalty which included a three-year suspension with the following conditions: after the termination of his suspension the Solicitor will continue on the terms of his February 16, 1993, undertaking to practise only in the area of civil litigation; for five years after the termination of his suspension the Solicitor will not handle trust monies or accept retainers from clients; prior to resuming practice, the Solicitor will attend and successfully complete the Bar Admission course with the exception of the articling period; after resuming practice the Solicitor will practise for one and a half years under the supervision of a solicitor satisfactory to Senior Counsel, Discipline; the Solicitor will repay the amounts set out on an Addendum to be prepared by counsel for the Society and

filed at Convocation and any failure to meet the repayment schedule will result in a resumption of the suspension. The joint submission included a condition that the Solicitor repay LPIC for payments made on his behalf. The Committee and Convocation rejected this condition. The Solicitor has also undertaken not to declare bankruptcy and if he is petitioned into bankruptcy the payment obligations will survive the bankruptcy if legally permissible. Finally, the Solicitor will continue to participate as required in his alcohol rehabilitation in the Simcoe Outreach Services Program. Costs were to be agreed upon by counsel.

The Committee acknowledged that the Solicitor's dishonesty coupled with the magnitude of the losses suffered by his clients could support a penalty of disbarment. However, the Committee noted that there were mitigating circumstances, including the absence of personal gain and alcoholism that "...led him to engage in serious acts of dishonesty which, on all the evidence, are out of character with his previous exemplary conduct in his legal practice and in his community." At Convocation, the Solicitor was suspended for three years with the above conditions and \$5,000 in costs.

Misappropriation

MacKay, Gordon Alexander (Jr.)

Guelph, Ontario

Age 41, Called to the Bar 1980

Particulars of Complaint

- Professional Misconduct
 - Misappropriated \$35,000 from his firm's mixed trust account
 - Attempted to deceive a client by providing false documents

Recommended Penalty

- Two-year suspension with conditions
- Costs to be agreed

Convocation's Disposition (09/28/95)

- Two-year suspension with conditions
- \$5,000 in costs

Counsel for the Solicitor

Frank Marrocco (at hearing)
Glenn Hainey (at Convocation)
Lynn Mahoney

Counsel for the Law Society

Christina Budweth

In July, 1989 the Solicitor acted on behalf of both the client and the lender client in relation to a loan secured by a first mortgage on real property. After the mortgage went into default in March 1990, the mortgage company commenced an action against the Solicitor's firm in the amount of \$500,000 for negligence and breach of contract, alleging that the Solicitor failed to disclose material facts regarding problems with the property. The Solicitor attempted to settle the matter personally and agreed to pay \$110,000. As part of the payment, the Solicitor misappropriated \$35,000 from the firm's mixed trust account. The Solicitor was also found guilty of attempting to deceive a client by presenting false articles of dissolution to the client.

The Solicitor had no discipline history. The Discipline Committee recommended a two-year suspension with the Solicitor's return to practice being conditional upon making arrangements satisfactory to Senior Counsel, Discipline or confirmation of his employment with Gowling, Strathy, Henderson upon the following terms and conditions, which are to continue for a period of five years: no cheque signing authority; a second signature of a partner required on any cheque requisition; another lawyer to be assigned as the Solicitor's file monitor; attendance at a number of continuing legal education seminars; continued involvement in Alcoholics Anonymous; costs to be agreed. The Committee noted that the appropriate penalty for misappropriation is disbarment, but made an exception in this case due to the Solicitor's serious alcoholism. Convocation adopted the Committee's recommendations with \$5,000 in costs.

Misappropriation

Baum, Bernard

Toronto, Ontario

Age 49, Called to the Bar 1978.

Particulars of Complaint

- Professional Misconduct

- Failed to maintain sufficient trust account balances
- Misappropriation (\$29,853.25)
- Failed to maintain books and records
- Failed to file Forms 2/3

Recommended Penalty

- 18-month suspension with conditions
- \$6,000 in costs

Convocation's Disposition (09/28/95)

- 18-month suspension with conditions
- \$6,000 in costs

Counsel for the Solicitor

William Trudell

Michael Ingram

Counsel for the Law Society

Christina Budweth

The Solicitor failed to maintain sufficient trust account balances, and as of October 14, 1992, the shortage was \$31,961.11 which included \$29,853.25 more or less which was misappropriated. In addition, he failed to maintain his books and records and failed to file his Forms 2/3 for his fiscal year ending February 28, 1994.

In 1991, the Solicitor was reprimanded in Discipline Committee for failure to reply to the Law Society.

Accepting the joint submission of counsel, the Committee recommended that the Solicitor be suspended for 18 months with a number of conditions. Before resuming practice the Solicitor must: provide a psychiatrist's or psychologist's report evidencing his fitness to return to practice; must file his Forms; and he must enrol in and cooperate with the Practice Review Program. The Committee also recommended that he have no trust account authority for a period of three years after returning to practice. The Committee noted that although disbarment could be warranted, the length of suspension and the Solicitor's voluntary undertaking not to practise since December 1993 were close to the three-year limit on applying for reinstatement after disbarment. Convocation adopted the Committee's recommendations, with written reason to follow.

Failure to serve clients

Iannetta, Pasquale

Windsor, Ontario

Age 36, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Failed to serve his clients conscientiously and diligently (2)
 - Failed to discharge with integrity his duties owed to his clients by misleading them (3)

Recommended Penalty

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

Convocation's Disposition (09/28/95)

- Three-month suspension
- \$1,500 in costs

Counsel for the Solicitor

Douglas Crane

Counsel for the Law Society

Stephen Foster

The Solicitor failed to carry out his clients' instructions to pursue a foreclosure action on their behalf and he falsified a document in order to corroborate his assertion that foreclosure proceedings had been completed. In a construction contract dispute regarding the same client, the Solicitor failed to issue a statement of claim and misled his clients by advising them that he had issued a statement of claim and had obtained a judgment in the matter. In a collection matter for another client, the Solicitor failed to issue a statement of claim and misled his client by advising him that court proceedings were being pursued when in fact such proceedings had not been initiated.

The Solicitor had no discipline history. The Discipline Committee recognized the stressed condition of the Solicitor and the favourable evidence of his character and reputation. The Committee did note that the Solicitor had taken out a mortgage on his own house to pay his clients in the foreclosure matter. One of these clients was a distant cousin of the Solicitor. The Committee noted that, as often happens in many situations, that having fallen behind in some activity it was difficult for the Solicitor to rectify his default. The Committee recom-

mended a one-month suspension and \$3,000 in costs. At Convocation, the Solicitor was suspended for three months commencing December 1, 1995, with \$3,000 in costs.

Conflict of interest

Frolick, Larry George

Toronto, Ontario

Age 46, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Acted in a conflict of interest (2)

Recommended Penalty

- Three-month suspension
- \$1,500 in costs

Convocation's Disposition (09/28/95)

- Three-month suspension
- \$1,500 in costs

Counsel for the Solicitor

John P. Evans

Counsel for the Law Society

Neil J. Perrier

On or about October 19, 1990, the Solicitor acted in a serious conflict of interest when he invested \$11,000 belonging to one client and \$95,000 belonging to another client in second and third mortgages in respect of a third client. Both investor clients lost their investment.

The Solicitor had no discipline history. The Discipline Committee accepted a joint submission and recommended a three-month suspension and \$1,500 in costs. The Committee noted that the Solicitor gained no personal benefit from the conflict of interest, that he fully cooperated with the Law Society and that he had been suffering from clinical depression after the sudden breakdown of his marriage. Convocation adopted the Committee's recommendations.

Failure to file forms

Paolini, Douglas Gerard

Toronto, Ontario

Age 41, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct

- Failed to file Forms 2/3 (2)
- Failed to cooperate with the Law Society by failing to produce books and records

Recommended Penalty

- Reprimand in Convocation with \$500 in costs if books and records produced beforehand, otherwise, a 30-day suspension to continue until the books and records are produced with \$500.00 in costs
- One-month suspension with \$1,000 in costs

Convocation's Disposition (09/28/95)

- 60-day suspension to continue until Forms are filed and books and records produced
- \$1,500 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kate Wootton

In hearings on October 18, 1994, and February 24, 1995, the Solicitor was found guilty of professional misconduct for failing to file Forms 2/3 for his fiscal year ended March 31, 1993, and for failing to cooperate with a Law Society audit by failing to produce his books and records.

The Solicitor had no discipline history. The Discipline Committee recommended a reprimand in Convocation with \$500 in costs if the books and records were produced beforehand, and, if not, a 30-day suspension to continue until the books and records are produced with \$500 in costs.

In a hearing on March 14, 1995, the Solicitor was found guilty of professional misconduct for failing to file Forms 2/3 for his fiscal year ended March 31, 1994. The Committee recommended a one-month suspension with \$1,000 in costs and voiced a concern that the profession understand the seriousness of recent increases in failure-to-file offences. The Committee also recommended that both matters proceed to Convocation together. At Convocation, the Solicitor was suspended for 60 days to continue until his Forms are filed, his books and records are produced and ordered to pay costs in the amount of \$1,500.

Practising while suspended

O'Donnell, John Victor Patrick

Mississauga, Ontario

Age 56, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Practised law while under suspension (2)

Recommended Penalty

- Seven-week suspension
- \$1,000 in costs

Convocation's Disposition (09/28/95)

- Seven-week suspension
- \$1,000 in costs

Counsel for the Solicitor

Not represented at Committee
Roger Smith (at Convocation)

Counsel for the Law Society

Janet Brooks

The Solicitor continued to practise law from May 1, 1993, to May 14, 1993, and from February 25, 1994, to March 21, 1994, while suspended for non-payment of his annual fees.

The Solicitor had a previous discipline record of a reprimand in Discipline Committee for failure to file Forms 2/3 for his fiscal year ended December 31, 1992. The Committee recommended a seven-week suspension with \$1,000 in costs. The Committee noted that the Solicitor's concern for his clients was misplaced since he had no insurance while practising under suspension. In accepting the joint submission as to penalty, the Committee considered, among other factors, the Solicitor's concern for the welfare of his staff, which would have been laid off. Convocation adopted the Committee's recommendations as to penalty and advised that it would be issuing reasons. The Solicitor's suspension is to be effective December 7, 1995.

Failure to serve client

Rothel, John

Timmins, Ontario

Age 44, Called to the Bar 1977

Particulars of Complaint

• Professional Misconduct

- Failed to serve his client conscientiously and diligently
- Misled his client
- Failed to provide a reply to the Law Society (6)
- Failed to comply with his undertaking to a fellow lawyer to pay out amount due under a Charge/Mortgage
- Failed to provide his clients with all their papers, property and information and failed to promptly render an account for outstanding fees and disbursements upon termination of his retainer

Recommended Penalty

- One-month suspension to continue until fit to return to practice
- \$3,750 in costs

Convocation's Disposition (09/28/95)

- One-month suspension to continue until fit to return to practice
- \$3,750 in costs

Counsel for the Solicitor

John I. Laskin (until Dec. 1993)

Brian Greenspan

Counsel for the Law Society

Neil Perrier

The Solicitor failed to proceed with an action pursuant to his client's instructions for a period of approximately 33 months and he misled the client by assuring him that the claim was advancing. The Solicitor failed to comply with his undertaking to the purchaser's lawyer to pay out in full the amount due under the Charge/Mortgage of a land parcel in favour of the Toronto-Dominion Bank and to provide the discharge particulars thereafter. The Solicitor failed to provide his other clients with all their papers, property and information and failed to promptly render an account for outstanding fees and disbursements upon the termination of his retainer. Finally, the Solicitor failed to reply to the Law Society in regard to the above matters and three others.

The Solicitor had no Discipline history. The Committee recommended a one-month suspension to continue until Senior Counsel, Discipline is satisfied he is fit to resume practice. If the Solicitor is not satisfied with Senior Counsel's

determination, he may have it referred to a committee appointed by the Policy Section of the Committee. The Solicitor is also to pay costs in the amount of \$3,750. Convocation adopted the Committee's recommendations.

Failure to reply

Butler, Anthony Morris

Ottawa, Ontario

Age 51, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society regarding inadequacies in his books and records
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if filings are made prior to the Convocation hearing
- Otherwise, a one-month suspension to continue until Forms are filed
- \$500 in costs

Convocation's Disposition (09/28/95)

- One-month suspension to continue until Forms filed
- \$500 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Jane Ratchford

The Solicitor failed to reply to the Law Society concerning inadequacies discovered during an examination of his books and records and failed to file Forms 2/3 for his fiscal year ending September 30, 1993.

The Solicitor was reprimanded in Convocation and ordered to pay costs of \$500 for failing to file for the fiscal year ended September 30, 1992. The Discipline Committee accepted the recommendation as to penalty of the Society's

Counsel that if the filings were made prior to Convocation, the Solicitor receive a reprimand in Convocation and be ordered to pay \$500 in costs. Otherwise, the Committee recommended a one-month suspension to continue indefinitely until filings are made. At Convocation, the Solicitor was suspended for one month commencing October 5, 1995, to continue thereafter until his Forms are filed and \$500 in costs.

Practising while suspended

Dyment, Stephen Robert

Markham, Ontario

Age 50, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Practised while under suspension

Recommended Penalty

- One-month suspension
- \$900 in costs on consent

Convocation's Disposition (09/28/95)

- 15-day suspension

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina Budweth

The Solicitor practised law for 25 days while under suspension from November 1, 1993, to November 30, 1993, for non-payment of annual fees. The Discipline Committee recommended a one-month suspension and \$900 in costs, to which the Solicitor agreed. In mitigation, the Committee noted that the Solicitor had no discipline history in 22 years of practice, that he co-operated with the Law Society, that his books were in order and that he had taken steps to ensure that the non-payment error would not be repeated. The Committee, in considering the *McGregor* decision, noted that while a mathematical analysis may be applied to that portion of the suspension which reflects the amount of time that the Solicitor practised while under suspension (general deterrence), the punitive portion of the suspension (specific deterrence) was not intended to be a permanent fixing of a one-month suspension to add on

in all cases. The Committee also note the disproportionate consequences of a suspension on sole practitioners. At Convocation, the Solicitor was suspended for 15 days commencing October 27, 1995. The costs order was upheld. Convocation will issue written reasons in this matter.

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