



The Law Society of
Upper Canada | Barreau
du Haut-Canada

discipline Digest

June 1995, Vol 3, No 5

Misappropriation

Levy, Jeffrey Mark

Toronto, Ontario

Age 44, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
(two separate complaints)
 - Failed to produce his books and records
 - Borrowed money from a client
 - Misappropriated funds from a client

Recommended Penalty

- Four-month suspension to continue

Cases

- Roger N. Carr, Port Hope
- David H. Conrad, Markham
- Gerald B. Fox, Newmarket
- John M. Glassco, Sydenham
- Leslie Goldstein, Toronto
- Martin H. Jacobs, Toronto
- Marshall S. Kazman, North York
- Thomas A. Kelly, North York
- William A. King, Toronto
- Jeffrey M. Levy, Toronto
- Charles H. Litman, Toronto
- Byron D. Loney, Barry's Bay
- Donald J. McKee, Newmarket
- David J. McMurray, Kingston
- Allan V. Mills, Hamilton
- Robert K. Murray, Scarborough
- Francis L. Reilly, St. Catherines
- Rosemary F. Smith, North York
- Jerome S. Ublansky, North York
- John M. Woogh, Kingston

until his books and records are in order/Disbarment

Convocation's Disposition (06/22/95)

- Disbarment

Counsel for the Solicitor

Walter Fox (at hearing)

Not represented at Convocation

Counsel for the Law Society

Christina Budweth

In regard to the first complaint, the Solicitor failed to produce his complete books and records necessary for a Law Society examiner to complete her audit. The Discipline Committee heard the evidence in this matter on June 30, 1993, and reconvened October 14, 1993, recommending a four-month suspension to continue indefinitely until such time as the books and records are in satisfactory order. The Solicitor had no discipline history.

The above matter was pending Convocation when a different Committee heard the following separate complaint. Contrary to his client's instructions, the Solicitor deposited a settlement amount in a general bank account in his name rather than in a trust account on his client's behalf to which the client would have access while abroad. The Solicitor borrowed \$5,000 from the account with his client's permission after reassuring her that he would avoid any impropriety. He also misappropriated funds in the amount of \$2,200 to \$3,800 by making withdrawals and deposits without his client's permission. The Committee recommended disbarment. It noted that although the

amounts involved were relatively small, this case could be distinguished from others in which disbarment was not recommended in that the Solicitor did not clearly accept responsibility for his culpable conduct by insisting that the misappropriations were merely "unauthorized loans" and that no evidence of mitigating personal problems was led. The Committee further noted that the Solicitor was evasive and misleading in his evidence and showed no remorse. At Convocation, the Solicitor was disbarred.

Failure to reply

Fox, Gerald Bruce

Newmarket, Ontario

Age 49, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society (7)
 - Failed to file Forms 2/3
 - Failed to account to a client
 - Failed to attend Provincial Court

Recommended Penalty

- Suspension with conditions/Disbarment or permission to resign up to five days prior to Convocation

Convocation's Disposition (06/22/95)

- Permission to resign

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Christina Budweth

The Solicitor failed to reply to the Law Society regarding complaints

from six different clients and regarding inadequacies discovered during a spot audit in 1992. The Solicitor failed to file Forms 2/3 for his fiscal year ending January 31, 1992. In addition, he failed to provide his client with a proper Statement of Receipt and Disbursement of Trust Funds. Finally, the Solicitor failed to attend at a motion in Provincial Court on January 7, 1993, without advising either the court or the opposing lawyer on a timely basis that he would be absent, as a result of which costs of \$250 were assessed against him personally.

The Solicitor was reprimanded once before in Convocation and twice before in Discipline Committee. The Solicitor was also suspended by Convocation commencing February 5, 1993 to continue indefinitely until his filings were made. On June, 22, 1993 the Solicitor was found guilty of professional misconduct regarding three of the above Complaints and on November 9, 1993 the Committee recommended a three-month suspension to continue until all filings are up to date and all replies are made to the Society with conditional reinstatement and \$1,500 in costs. On August 16, 1994, a different Committee heard the Complaint regarding the failure to appear in Provincial Court and failure to reply regarding two clients' complaints. The Committee recommended disbarment or permission to resign five days prior to Convocation. The Committee noted that the serious nature of the Solicitor's current and past misconduct and the lack of any medical evidence warranted termination of membership, even though ungovernability was not explicitly charged. The Committee also noted that disbarment was not necessary. At Convocation, the Solicitor was granted permission to resign.

Failure to reply

Goldstein, Leslie

Toronto, Ontario

Age 41, Called to the Bar 1979

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society (7)
 - Failed to serve a client conscientiously and diligently in a personal injury action
 - Failed to reply to communications from a fellow solicitor (3)
 - Misled his client and the District Court of Ontario in regard to the above matter
 - Failed to fulfill a financial obligation

Recommended Penalty

- Permission to resign

Convocation's Disposition (06/22/95)

- Permission to resign

Counsel for the Solicitor

David M. Goodman

Counsel for the Law Society

Christina Budweth

In a personal injury claim for his client, the Solicitor did not reply to the defendant's requests to schedule Examinations for Discovery and the action was later dismissed due to the Solicitor's failure to have it placed on the trial list. The Solicitor did not inform his client about this and did not respond to her inquiries regarding the personal injury claim and an automobile accident claim which he was also carrying. Furthermore, he did not respond to a fellow lawyer's correspondence seeking release of the client's file, and in regard to three other clients. Finally, the Solicitor failed to fulfil a financial obligation in the amount of \$1,359.97 for reporting services. The Solicitor failed to reply to the Law Society's correspondence regarding all of these matters.

The Solicitor did not have a discipline history. The Discipline Committee recommended that the Solicitor be given permission to resign. Although the Committee noted that

the findings of professional misconduct were serious, it would not have recommended disbarment except that the Solicitor indicated a desire to no longer practise law. A Staff Trustee had assumed the winding up of the Solicitor's practice. At Convocation, the Solicitor was granted permission to resign.

Ungovernable solicitor

Jacobs, Martin Harold

Toronto, Ontario

Age 44, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society
 - Failed to honour an undertaking to reply promptly to the Law Society (6)
 - Failed to reply to a fellow lawyer (2)
 - Failed to honour an undertaking to submit psychiatric reports to the Law Society
 - Failed to comply with an undertaking to participate in the Practice Review Program
 - Failed to serve his client conscientiously and diligently
 - Failed to report to his clients on the closing of a purchase of a property in a timely manner
 - Failed to take steps to address a judgment against his client for unpaid rent
 - Failed to take steps to defend an action against his clients which resulted in Default Judgment being issued against them
 - Failed to honour in a timely manner an undertaking to a fellow lawyer to discharge a mortgage (2)
 - Failed to report promptly to his client on the purchase of a business
 - Failed to file Forms 2/3
 - Failed to account for monies withheld on a real estate transaction

Recommended Penalty

- Disbarment

Convocation's Disposition (06/22/95)

- Permission to resign

Counsel for the Solicitor

Ernest A. DuVernet

Counsel for the Law Society

Neil Perrier
Kate Wootton

There were four Complaints of professional misconduct against the Solicitor. The Discipline Committee found him guilty of 22 particulars of professional misconduct all relating to: failing to serve his clients; failing to respond to communications from other lawyers and the Law Society; practising while under suspension; and failing to file his Forms.

The Discipline Committee noted that while there was no evidence of dishonesty, the Solicitor "...demonstrated total contempt of and ungovernability by the Law Society," for which he expressed no remorse or regrets. Moreover the Committee noted that the Solicitor's discipline history showed a continuing pattern of unacceptable professional misconduct. The Committee recommended disbarment. At Convocation, the Solicitor tendered a medical report and apologized for his conduct. Convocation granted the Solicitor permission to resign.

Misappropriation

Reilly, Francis Lewis

St. Catharines, Ontario
Age 49, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Practised while suspended
 - Failed to produce books and records
 - Failed to maintain books and records
 - Misappropriated trust funds
 - Misapplied trust funds
 - Misled another lawyer
 - Misled the Law Society
 - Failed to comply with a court order for costs
 - Failed to reply to the Law Society

Recommended Penalty

- Two-year suspension from February 7, 1995, and thereafter for so long as there are outstand-

ing obligations to the Law Society

- Return to practice conditional upon producing medical evidence of fitness to resume practice, practising in a firm or in association with another member or members approved by the Law Society, and not operating a trust account within three years of returning to practice

Convocation's Disposition (06/22/95)

- Two-year suspension and thereafter until he has fulfilled his outstanding obligations to the Law Society

Counsel for the Solicitor

Richard Nabi

Counsel for the Law Society

Neil Perrier

The Solicitor misappropriated trust funds in the amount of \$6,391.78; misapplied trust funds in the amount of \$400; misled another lawyer about settlement funds in the amount of \$6,791.78; and misled the Law Society about the settlement funds being on deposit in his general account. After being suspended for failing to pay his Errors and Omissions Insurance levy, the Solicitor continued to practice under the mistaken belief that the suspension would be lifted on receipt of certain funds. The Solicitor failed to produce books and records which were seized by his landlord for non-payment of rent. He also failed to pay \$500 in fixed costs for not filing any materials in a contempt motion for his client and he failed to reply to the Law Society

The Solicitor was suspended on five previous occasions for failure to pay fees and insurance premiums. The Solicitor was also reprimanded in Discipline Committee and suspended on two other occasions for professional misconduct. The Committee noted that the Solicitor was suffering from a severe depression and that he had not intended to keep his client's money, both of which mitigated against the full penalty of disbarment. Full restitution had been made by the Solicitor. The Commit-

tee recommended a two-year suspension beginning February 7, 1995, to continue so long as there are outstanding obligations to the society. The Solicitor's return to practice is to be conditional upon proving his medical fitness to resume practice in a firm or in association with another member or members approved by the Law Society and without operating a trust account within three years of returning to practice. Convocation suspended the Solicitor for two years and thereafter until he fulfills his outstanding obligations to the Society.

Conflict of interest

Ublansky, Jerome Samuel

North York, Ontario
Age 56, Called to the Bar 1966

Particulars of Complaint

- Professional Misconduct
 - Acted in a conflict of interest
 - Failed to provide his clients with complete reports on their investments
 - Failed to adequately serve his clients
 - Misled his clients (2)

Recommended Penalty

- Nine-month suspension
- \$5,000 in costs

Convocation's Disposition (06/22/95)

- Nine-month suspension
- \$5,000 in costs

Counsel for the Solicitor

Thomas J. Dunne

Counsel for the Law Society

Neil Perrier

The Solicitor participated in many syndicated mortgages in which clients had investments without fully advising his clients as to his interest. The investment reports he provided to clients failed to set out the terms of higher-ranking mortgages, failed to set out the terms of the syndicated mortgage in which the client was a participant, and failed to set out the client's percentage interests in that mortgage. The Solicitor failed to obtain appraisals on properties in

which investments were made, and failed to search title to particular properties. He misled a client by falsely certifying that he had investigated title to a property. He misled another client by not disclosing the fact that an investment was not properly secured by registration of a mortgage on title to a property. The Solicitor acted for investor clients on nine investment loan transactions in which his partner either acted for the borrower or was the borrower and he participated as an investor with his clients in five of the loans. He preferred his own interests or those of his partner to those of his clients. He failed to certify title of mortgages on two investment loans and he failed to take legal action on behalf of his investor clients on mortgages which were in default. Finally, he misrepresented to a number of investor clients that the mortgagor had a good performance record when he knew that his own company was making the payments on behalf of the mortgagors.

The Solicitor had no discipline history. The Discipline Committee accepted a joint submission and recommended a nine-month suspension and \$5,000 in costs. The Committee noted that the penalty would have been disbarment except for the lack of dishonest intent, although the Solicitor had allowed himself to become "the dupe" of his partner. The Committee further noted the time and effort taken by the Solicitor in cooperating with the Law Society. At Convocation, the Solicitor was suspended for nine months and ordered to pay \$5,000 in costs.

Failure to file forms

Conrad, David Henry

Markham, Ontario
Age 52, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation
- \$550 in costs

Convocation's Disposition (06/22/95)

- Indefinite suspension until the Solicitor attends Convocation for his reprimand
- \$550 in costs payable within 30 days of the date of Convocation

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley M. Cameron

The Solicitor failed to file Forms 2/3 for his fiscal year ending January 31, 1994. He failed to appear at his hearing. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation, that he be required to attend in person at Special Convocation, and that if he failed to appear he be suspended indefinitely until he does attend. The Committee also recommended that the Solicitor pay \$550 in costs. At Convocation, the Solicitor was suspended indefinitely until he attends to receive a reprimand and ordered to pay \$550 in costs within 30 days of the date of Convocation.

Failure to file forms

Loney, Byron Douglas

Barry's Bay, Ontario
Age 34, Called to the Bar 1987

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if his filings are made before Convocation or indefinite suspension until filings are made

Convocation's Disposition (06/22/95)

- Indefinite suspension until filings are made

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Georgette Gagnon

The Solicitor failed to file Forms 2/3 for his fiscal year ending September

30, 1992. The Solicitor did not have a discipline history. The Discipline Committee recommended a reprimand in Convocation if the Solicitor filed before Convocation or a suspension until the filings are completed. At Convocation, the Solicitor was suspended indefinitely until his filings are made.

Practising while suspended

Kazman, Marshall Stephen

North York, Ontario
Age 39, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Practised while under suspension

Recommended Penalty

- Three-month suspension

Convocation's Disposition (06/22/95)

- Three-month suspension commencing September 1, 1995

Counsel for the Solicitor

Martin Irving Applebaum

Counsel for the Law Society

Kate Wootton

After being suspended on November 1, 1993 for failing to pay his Errors and Omissions Insurance levy, the Solicitor continued to practise in November and December of 1993. The Solicitor had no discipline history. The Discipline Committee noted that there were no mitigating circumstances and accepted a joint submission for a suspension of three months, being the equivalent of the period the Solicitor practised while under suspension plus one month. At Convocation, the Solicitor was suspended for three months commencing September 1, 1995.

Improper trust account transaction

Litman, Charles Howard

Toronto, Ontario
Age 46, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Failed to notify clients before transferring money from trust to general
 - Practised law while suspended
 - Signed another lawyer's name to a Statutory Declaration without authority and attempted to register the said document
 - Failed to reply to the Law Society

Recommended Penalty

- Three-month suspension
- \$1,000 in costs
- Participation in Professional Standards Practice Review

Convocation's Disposition (06/22/95)

- Three-month suspension
- \$1,000 in costs

Counsel for the Solicitor

Janet Leiper

Counsel for the Law Society

Neil Perrier

The Solicitor transferred \$30,359.54 from trust to general without fee billings or other written notifications first being delivered to the clients. The Solicitor practised law while under suspension from December 1, 1992 to April 8, 1993. The Solicitor signed another lawyer's name to a statutory declaration and then attempting to mislead that lawyer respecting the signature. Finally, the Solicitor failed to respond promptly to the Law Society regarding a complaint for failure to provide an itemized statement of account for a property transaction.

In 1987 the Solicitor was reprimanded in Discipline Committee for failing to reply to Law Society communications and for failing to file Forms 2/3. The Committee accepted a joint submission after taking into account a medical report and recommended that the Solicitor be suspended for three months; that costs of \$1,000 be paid within three months; and that he participate fully in the Practice Review Programme of the Law Society and implement all reasonable recommendations made by them. The Committee noted that the money transfer was more of

a technical infraction and that the Solicitor did not know he was suspended because he failed to advise the Law Society of his change of address, although he did notify the Society once he was informed of his suspension by a colleague. Convocation suspended the Solicitor for three months and ordered him to pay \$1,000 in costs.

Conflict of interest

King, William Alexander

Toronto, Ontario

Age 49, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Acted in a situation of conflict or potential conflict of interest
 - Failed to obtain adequate security for a loan from his client
 - Failed to advise the client/lender that the Solicitor had made a personal loan to the borrower which was in default
 - Failed to provide timely reports to the client

Recommended Penalty

- Two-month suspension
- Undertaking to never act for both sides in any future transaction or matter

Convocation's Disposition (06/22/95)

- Two-month suspension commencing at 5 p.m., June 23, 1995
- Undertaking to never act for both sides in any future transaction or matter

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kathryn Chalmers

The Solicitor arranged a loan for a longstanding client without informing his client that he was also acting for the borrower. The borrower defaulted on the loan but paid it back over the next year and a half. The Solicitor arranged a second loan between the same parties without informing the client/lender that the Solicitor himself, now had a loan and a mortgage outstanding with the bor-

rower. The second loan, and a third, were paid back ahead of schedule. On a fourth loan, the Solicitor assured the client/lender that the security was similar to that of the second loan when it was not and he again failed to advise his client regarding the outstanding personal loan and mortgage which were now in default. The borrower defaulted on the fourth loan and was petitioned into bankruptcy. At no time did the Solicitor seek his client's consent or advise him to obtain independent legal advice regarding any of the loans.

In 1991, the Solicitor was reprimanded in Convocation for failing to advise his client to get independent legal advice and continuing to act in matters where there was or was likely to be a conflict of interest. The Discipline Committee recommended a two month suspension and an undertaking by the Solicitor that he will never act for both sides in any future transaction or matter. A Majority of the Committee indicated that the less severe penalty was out of deference to a joint submission. The Minority did not rely on the joint submission in finding the penalty appropriate. The Committee as a whole noted that a third conflict of interest misconduct would most likely result in disbarment. Convocation adopted the Discipline Committee's recommendations.

Failure to maintain records

Mills, Allan Vincent

Hamilton, Ontario

Age 43, Called to the Bar 1978

Particulars of Complaint

- Professional Misconduct
 - Failed to respond in a satisfactory manner to the Law Society regarding inadequacies in his books and records

Recommended Penalty

- Reprimand in Convocation if a satisfactory response is received by

Convocation

- Otherwise a one-month suspension and continued suspension until a satisfactory response is received

Convocation's Disposition (06/22/95)

- One-month suspension to continue thereafter until a satisfactory reply is provided

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor practised as a sole practitioner until his suspension on November 1, 1994 due to his failure to pay his annual fee. A Law Society examiner attended at the Solicitor's office in May and September of 1993 to review his books and records. The Solicitor executed an Acknowledgement, dated September 27, 1993, in which he agreed to correct the deficiencies contained in his books and records. By letter dated June 6, 1994, the Solicitor advised the Law Society that he had been unable to pay his accountant in order to correct the deficiencies, but that he would do so within a couple of weeks. As of the date of the hearing, the Law Society had received no further response.

The Solicitor did not have a discipline history. The Committee recommended a reprimand in Convocation if a response satisfactory to the Law Society is received beforehand. Otherwise, the Committee recommended a one-month suspension to continue until a satisfactory response has been received. Convocation adopted the Committee's recommendation.

Failure to file forms

Smith, Rosemary Frances

North York, Ontario

Age 32, Called to the Bar 1990

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Indefinite suspension until her filings are made

Convocation's Disposition (06/22/95)

- One-month suspension and indefinitely thereafter until her filings are made

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Janet Brooks

The Solicitor failed to file Forms 2/3 within six months of her fiscal years ending March 31, 1991 and March 31, 1992. The Discipline Committee noted the somewhat unusual nature of the case in that the Solicitor appeared to have disappeared. There was no evidence that the Solicitor ever practised law in Ontario and notice was properly served at her last known address.

The Committee noted the need to demonstrate control over its members. It recommended an indefinite suspension until the filings are made. At Convocation the Solicitor was suspended for one month and indefinitely thereafter until her filings are made.

Failure to file forms

McMurray, David John

Kingston, Ontario

Age 52, Called to the Bar 1987

Particulars of Complaint

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

Recommended Penalty

- Reprimand in Convocation if the Solicitor's filings are made beforehand
- Otherwise, an indefinite suspension until the Solicitor makes his filings

Convocation's Disposition (06/22/95)

- One-month suspension to continue indefinitely until his filings are made and he replies to the Law Society

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kate Wootton

The Solicitor failed to file Forms 2/3

for his fiscal years ending April 30, 1993 and 1994. A Law Society examiner attended at the Solicitor's home on February 14, 1994 and by letter dated March 4, 1994 requested documentation regarding the Solicitor's books and records. The Solicitor did not reply to the letter or any subsequent letters.

The Solicitor did not have a discipline history. The Solicitor told the Discipline Committee that due to his lack of clients he had been unable to afford an accountant. The Committee recommended a reprimand in Convocation if the Solicitor completed his filings before his matter came before Convocation. Otherwise, the Committee recommended an indefinite suspension until his filings were made. Convocation suspended the Solicitor for one month and indefinitely thereafter until he files and provides a reply to the Law Society.

Failure to file forms

Murray, Robert Keith

Scarborough, Ontario

Age 51, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3 for 1991, 1992, 1993

Recommended Penalty

- Disbarment (Majority)
- One-month suspension to continue until the Solicitor satisfies his obligations to the Law Society (Minority)

Convocation's Disposition (06/22/95)

- One-month suspension to continue until the Solicitor satisfies his obligations to the Law Society

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Georgette Gagnon

The Solicitor practised as a sole practitioner until his suspension on November 21, 1989 for failure to pay his Errors and Omissions Insurance levy. The Solicitor failed to file

Forms 2/3 for his fiscal years ending January 1, 1991, 1992 and 1993.

The Solicitor was reprimanded in Committee in 1990 for failing to file his Forms in 1988, 1989 and 1990. On November 1, 1994, the Solicitor wrote to the Law Society advising that he had not practised law since 1989 and had no intention of practising in the future. The Majority of the Discipline Committee noted that the Solicitor had shredded his files instead of closing them out in an orderly manner. He made a donation to charity of the unreconciled funds in his trust account and failed to close his trust account appropriately. The Solicitor had defied Convocation to disbar him.

The Majority found the Solicitor to be ungovernable and recommended his disbarment. The Minority found that by inviting disbarment on his own terms the Solicitor was, in effect, resigning in complete disregard of his obligations to the Law Society. The Minority recommended a one-month suspension to continue until the Solicitor satisfies his obligations to the Law Society. Convocation adopted the recommendation of the Minority.

Failure to file forms

Kelly, Thomas Alan

North York, Ontario
Age 47, Called to the Bar 1981

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if filings made beforehand
- Otherwise, a one-month suspension and thereafter until his filings are completed and the Solicitor attends before Convocation

Convocation's Disposition (06/22/95)

- One-month suspension and thereafter until his filings are completed

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kate Wootton

The Solicitor failed to file Forms 2/3 for his fiscal year ending October 31, 1993. The hearing had been adjourned several times for medical reasons but there was no indication from the Solicitor as to his health at the date of the latest hearing and no indication as to whether it was his intention to appear. The Discipline Committee therefore, proceeded in the absence of the Solicitor and recommended a reprimand in Convocation if the Solicitor made his filings and appears before Convocation. If the Solicitor failed to make his filings before Convocation, the Committee recommended a one-month suspension to continue indefinitely until the Solicitor completes his filings and appears before Convocation. At Convocation, the Solicitor had not made the required filings and was suspended for one month to continue indefinitely until he makes his filings.

Practising while suspended

McKee, Donald James

Newmarket, Ontario
Age 47, Called to the Bar 1979

Particulars of Complaint

- Professional Misconduct
 - Practised while under suspension for non-payment of his late filing fee

Recommended Penalty

- 21-day suspension commencing July 1, 1995

Convocation's Disposition (06/22/95)

- 21-day suspension commencing July 1, 1995

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Kate Wootton

The Solicitor was suspended on April 23, 1993 for his failure to pay his late filing fee. The Solicitor then practised law from April 23, 1993 until May 17, 1993. He claimed not to have received notice of the suspension until he made a call to the Law

Society's Advisory Service. He immediately delivered a certified cheque to the Law Society on May 14, 1993 and was reinstated on May 17, 1993.

The Solicitor had a discipline history and had been suspended 10 previous times for non-payment of fees and insurance premiums. The Discipline Committee acknowledged that the Solicitor did not receive the registered letter from the Law Society dated April 27, 1993 advising him of his suspension, but held that the Solicitor should have known that he was under suspension on April 23, 1993, or, in the alternative, that he was recklessly and wilfully blind to his suspension. The Committee recommended a twenty-one day suspension commencing July 1, 1995. The Committee distinguished the *Laan* case in which Convocation held that in most cases a lawyer should be penalized a month suspension for practising while under suspension in addition to the time of his actual suspension. Convocation suspended the Solicitor for 21 days commencing July 1, 1995.

Failure to advise client

Carr, Roger Napier

Port Hope, Ontario
Age 54, Called to the Bar 1969

Particulars of Complaint

- Professional Misconduct
 - Failed to fully advise his client regarding the alteration of a deed and failed to properly guard against being involved in the registration of a false document

Recommended Penalty

- Reprimand in Convocation
- \$5,000 in costs

Convocation's Disposition (06/22/95)

- Reprimand in Convocation
- \$5,000 in costs

Counsel for the Solicitor

Douglas Crane

Counsel for the Society

Christina Budweth

The Solicitor represented a member of the Committee of Adjustments in a severance application. The severance was granted for purposes of building accommodations for his client's farmhand. The farmhand, however, was terminated before signing the deed, thereby precluding a necessary condition for maintaining the severance. The Solicitor refused to prepare a false deed in his client's name but did provide written instructions on how to alter the deed and referred his client to another lawyer. The Solicitor did not advise his client as to the criminality of registering such a document but did caution him against doing so. The client eventually registered the false document and was convicted of uttering a forged document.

The Solicitor had no discipline history in 25 years of practice. The Discipline Committee accepted a joint submission and recommended a reprimand in Convocation and \$5,000 in costs. The Committee noted the longstanding relationship between the Solicitor and his client and that the client, as a member of the Committee of Adjustments, ought to have been aware of the consequences of his actions, as important factors in their recommendation. Convocation adopted the recommendations.

Failure to serve client

Woogh, John Michael

Kingston, Ontario

Age 49, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Failed to serve his client conscientiously and diligently

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



- Failed to reply to the Law Society (2)
- Recommended Penalty*
- Reprimand in Convocation
 - \$1,000 in costs
- Convocation's Disposition (06/22/95)*
- Reprimand in Convocation
 - \$1,000 in costs
- Counsel for the Solicitor*
Not represented
- Counsel for the Law Society*
Neil Perrier

The Solicitor was retained for a wrongful dismissal action for which he received a \$1,075 retainer. However, he failed to keep his client reasonably informed of any steps taken with respect to her case or to answer requests from his client for information. He failed to proceed in a timely manner with the action; to render promptly an account upon termination of his retainer; and to account to his client for funds received in trust. The Solicitor also failed to reply to the Law Society regarding the client's complaint. The Solicitor also failed to reply to the Law Society regarding inadequacies found during a review of his trust comparisons and during audit in 1990.

The Solicitor had no discipline history. The Discipline Committee noted that the Solicitor's misconduct had done public harm to the profession which will not be readily rectified and that, "[h]is apology was too little, too late." The Committee recommended a reprimand in Convocation and \$1,000 in costs. Convocation adopted the recommendations.

Practising while suspended

Glassco, John Meredith

Sydenham, Ontario

Age 50, Called to the Bar 1988

Particulars of Complaint

- Professional Misconduct
 - Practised law while under suspension for non-payment of annual fee

Recommended Penalty

- One-month suspension
- \$300 in costs payable over three months

Convocation's Disposition (06/22/95)

- Reprimand in Convocation, no costs

Counsel for the Solicitor

Harry Black

Counsel for the Law Society

Georgette Gagnon

The Solicitor completed four real estate transactions after he was suspended on November 1, 1993 for non-payment of his annual fee. The Solicitor did not have a discipline history. The Discipline Committee recommended a one month suspension and \$300 in costs payable over three months. The Committee adopted the Fejes interpretation of *MacGregor* that allows discretion in imposing a one-month suspension as a general deterrent in addition to a suspension equal to the number of days the Solicitor practised while under suspension (15 days in this case). At Convocation, the Solicitor received a reprimand.