



Discipline Digest

January 1994 Vol. 2 No. 3

Cases

- Natalie Bronstein
Toronto
- Marvin L. Ellison
Scarborough
- Charles J. Lewonas
Woodstock
- Paul F. O'Neill
Toronto
- David J. Parsons
Frankford
- Andrew E. Steepe
London

Breach of undertaking

Bronstein, Natalie

Toronto, Ontario
Age 44, Called to the Bar 1978

Particulars of Complaint

- professional misconduct
- breached an undertaking to the Law Society

Recommended Penalty

disbarment
Convocation's Disposition (Jan 27, 1994)

Counsel for the Law Society

Christina Budweth
Counsel for the Solicitor
Not represented

In 1992, the Society found the Solicitor guilty of professional misconduct. As part of a joint submission on penalty, the Solicitor signed an undertaking on February 13, 1992, in which she agreed, among other things, to immediately wind up her practice; to "cease the practice of law effective Friday, February 14, 1992"; to "immediately release custody and control over all client files presently under (her) control"; and to "co-operate with the staff trustee in the winding up of (her) practice."

The Solicitor violated all of these terms of her undertaking.

The discipline record of the Solicitor was extensive. She was reprimanded by the Discipline Committee in 1985, 1986 and

1988 for failure to reply to letters from the Law Society and failure to follow the Rules of Professional Conduct with respect to the Society's Errors and Omissions Department, among other things. In 1992 she admitted 16 particulars of professional misconduct and entered into the undertaking referred to above.

The Committee recommended disbarment on the grounds that the professional misconduct in question, "involving a lack of co-operation with the professional governing body and the unauthorized practice of law, cannot be tolerated if the Law Society is to regulate its members in the public interest." The Committee further concluded that although "disbarment may seem an extreme sanction for this misconduct considered in isolation, the context of the Solicitor's entire discipline history warrants such a penalty."

Convocation accepted the Committee's recommendation.

Misled clients

Steepe, Andrew Earl

London, Ontario
Age 41, Called to the Bar 1978

Particulars of Complaint

- professional misconduct
 - misled the Toronto-Dominion bank
 - misled clients (3)
 - improperly signed and witnessed the

name of a client

- improperly prepared a promissory note
- failed to prepare and register a chattel mortgage
- acted for both a lender and borrower without ensuring that his lender clients obtained independent legal advice
- acted in a conflict of interest
- actively misled the Law Society
- failed to file his Forms 2/3

Recommended Penalty

permission to resign

Convocation's Disposition (Jan. 27, 1994)

permission to resign

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

In 1984, the Solicitor was retained to commence a civil action against CPR. In the summer of 1986, he informed his client that he won a favourable decision on his behalf in the approximate sum of \$15,000. In fact, no action had been commenced and no settlement had been agreed to. The Solicitor advanced \$4,000 of his own funds to the client in April 1987, which he represented as partial settlement paid by CPR. In December 1989, the Solicitor advanced a further \$2,000 to his client. This money was received from two other investor clients. Prior to a Law Society investigation, the Solicitor prepared two Promissory Notes, purportedly from the client who had wanted to start the action against CPR, to the clients whose money was used to pay the \$2,000. This was done to disguise the true nature of the transaction. In August 1986, the Solicitor sent a letter to the T-D Bank confirming that his client was expecting settlement funds in excess of \$15,000 from CPR. At the time, the client was negotiating a loan with the bank.

The Solicitor later misled the Society by denying that he had misled his client with regard to the CPR claim.

In 1988, another client retained the Solicitor to enjoin the Hospice of London from showing a certain film. The Solicitor told the client that a judge had heard the injunction application and had reserved his decision. In fact, no action had been taken. By the time the client learned that no steps had been taken by the Solicitor, the action was statute barred.

In 1989, the same client retained the Solicitor to represent his daughter, who was injured in a motorcycle accident. The Solicitor misled the client to believe that he was to receive an interim payment

for her of \$5,000 from the defendant insurance company when, in fact, no payment was expected.

In another case, the Solicitor breached the provisions of Rule 5 of the Rules of Professional Conduct by acting for both the lender and borrower in a loan transaction. He failed to ensure that either of the clients had independent legal advice. The Solicitor also failed to prepare and register an executed chattel mortgage and registered financing statement which were in place to secure the loan in question. The Solicitor, acting for the borrower, later sued the lender. In doing so, he further breached Rule 5 by acting against a client in the same matter in which he acted for him.

The Solicitor also failed to file his Forms 2 and 3 for the fiscal years ending January 1, 1990, and January 1, 1991.

The Solicitor has been suspended since November 1990 for failure to pay his Errors and Omissions levy. In May 1987, he was reprimanded in Convocation for misleading a client.

The Discipline Committee, after considering the cases of Donald Richard Manse and Michael Frank Stoyka, recommended that the Solicitor be permitted to resign. It also referred to several mitigating factors, including the fact that the Solicitor had not benefitted personally from his actions; that the money borrowed was repaid with interest; that his practice had been wound up; and that he had had a drinking problem during the period in question.

Convocation accepted the recommendation of the Committee.

Practising while suspended

Ellison, Marvin Larry

Scarborough, Ontario

Age 53, Called to the Bar 1968

Particulars of Complaint

- professional misconduct
 - Failed to maintain books and records
 - Engaged in the practice of law while under suspension

Recommended Penalty

majority: 19 month suspension & \$1900 costs

minority: 6 month suspension & \$1900 costs

Convocation's Disposition (Jan. 27, 1994)

19 month suspension & \$1900 costs

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor Not Represented

A Law Society examiner visited the Solicitor's office in October 1992. She was unable to determine whether or not the Solicitor had sufficient trust funds on hand to meet client liabilities because of the status of his books and records. Co-signing controls were instituted. She returned to his office more than a month later and found inadequacies remaining.

The Solicitor also practised law while under suspension during two periods – during a six-month period between November 1990 and May 1991 and during a 12-month period between November 1991 and November 1992. Although the Solicitor's practice was minimal, he handled trust funds during both periods and acted on behalf of clients in both the purchase and sale of real property.

The Discipline Committee noted that it was impressed with the forthrightness of the Solicitor. He appeared solemn, contrite and without arrogance. However, a majority of the Committee concluded that he ought to be suspended for a period of 19 months – representing the eighteen months when he practised under suspension plus an additional month. It emphasized that, following the reasoning in the *MacGregor* decision, a solicitor should not receive a lesser penalty than he would have faced had he complied with his obligations in the first place.

One member of the three-member panel felt that the Solicitor should be suspended for six months, as recommended by counsel for the Law Society. Convocation, however, accepted the majority recommendation.

Failure to file forms

O'Neill, Paul Francis

Toronto, Ontario

Age 58, Called to the Bar 1962

Particulars of Complaint

- professional misconduct
 - Failed to file Forms 2/3
 - Engaged in the practice of law while suspended
 - Failed to maintain proper books and records

Recommended Penalty

reprimand in Convocation plus \$500 costs and indefinite suspension if filings not made

Convocation's Disposition (Jan. 27, 1994)

reprimand in Convocation and suspension indefinitely

until his books and records are up to date and his filings made to the satisfaction of the Law Society plus costs of \$500

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

Greg Bowden

The Solicitor failed to file his Forms 2/3 for the fiscal years 1991 and 1992.

He was briefly suspended for eight days for failing to pay the late filing fee which applied on defaults in filings. During the period of his suspension, the Solicitor engaged in the practice of law.

On May 27, 1992, a Society examiner attended the Solicitor's offices. His books and records had not been entered or reconciled since January 1991.

The Solicitor had been found guilty of professional misconduct in 1982 for acting in a manner which was grossly negligent of his duties to his clients.

Convocation accepted the Committee's recommendation, reprimanded the Solicitor and ordered that the Solicitor be suspended indefinitely until his books and records are up to date and his filings are made to the satisfaction of the Law Society.

Trust fund shortage

Parsons, David John

Frankford, Ontario

Age 40, Called to the Bar 1979

Particulars of Complaint

- professional misconduct
 - caused a shortage in his trust account
 - failed to file Forms 2/3

Recommended Penalty

-reprimand in Convocation (for shortage in trust account)
 -\$3500 Costs
 -reprimand in Convocation if forms filed by date of Convocation; if not filed by date of Convocation, indefinite suspension until forms filed

Convocation's Disposition (Jan. 27, 1994)

-suspended indefinitely until forms filed
 -reprimanded in Convocation (for shortage in trust account)
 -suspended until he appears before Convocation to be reprimanded
 -costs of \$3500

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

Solicitor was not present nor represented by counsel

The two complaints were decided by separate discipline committees which made their recommendations independently of each other.

The first discipline committee found the Solicitor guilty of professional misconduct for failing to maintain sufficient trust funds on deposit in his trust account to meet his trust his trust liabilities. The shortage in his trust account was caused by transfers of funds totalling \$13,855 from his trust to his general account. The Solicitor explained that he had intended to distribute the funds to the beneficiaries of the estate in question. A dispute had arisen among the beneficiaries which delayed distribution, but the Solicitor left the funds in his general account. The overdrafts were eventually rectified by the Solicitor.

The second discipline committee found the Solicitor guilty of professional misconduct for failing to file his Forms 2 and 3 for the fiscal year ending December 31, 1991.

With regard to the first complaint, Convocation ordered that the Solicitor be reprimanded in Convocation, that he be suspended until he appear before Convocation for the reprimand and pay the costs of the Society in the amount of \$3,500. With regard to the second complaint, Convocation ordered that the Solicitor be suspended indefinitely until the filings have been made.

Failure to file forms

Lewonas, Charles John

Woodstock, Ontario

Age 52, Called to the Bar 1970

Particulars of Complaint

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

-Violated the provisions of a co-signing agreement

Recommended Penalty

30-day suspension to continue until books maintained satisfactorily plus \$1700 Costs

Convocation's Disposition (Jan. 27, 1994)

30-day suspension to continue until books maintained satisfactorily plus \$1700 Costs

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Janet Leiper

The Solicitor failed to file his Form 2/3 for the fiscal year ending March 31, 1992, within six months of the fiscal year end. Despite receiving four notices from the Law Society, he still failed to file the necessary forms.

The Solicitor also failed to maintain his books and records in accordance with the provisions of the Law Society Act. In fact, his general books and records had not been brought up to date as of the date of the discipline hearing. The most serious complaint against the Solicitor was that he breached an undertaking to the Society to have his cheques co-signed. The Solicitor failed to obtain a co-signing signature for nine cheques drawn against his trust account during the month of June 1992.

The Discipline Committee recommended that the Solicitor be suspended for a period of 30 days and so long thereafter until his books and records are maintained in accordance with the provisions of the Regulations under the *Law Society Act*. The Committee also recommended that he pay the costs of the Society in the amount of \$1,700.

Convocation accepted the recommendation of the Committee.

The Law Society
of Upper Canada



Discipline Digest

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



Printed on
paper containing
recycled material