



Discipline Digest

May 1994 Vol. 2 No. 5

Conflict of interest

Korman, Meyer
Brampton, Ontario
Age 48, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Acted in a conflict of interest
 - Failed to report to clients
 - Misapplied trust funds
 - Failure to co-operate with the Society (2)
 - Made false or misleading statements
 - Failed to serve clients (4)

Recommended Penalty

Permission to resign

Convocation's Disposition (May 26, 1994)

Permission to resign

Counsel for the Law Society

Don Jack

Counsel for the Solicitor

Arnold Zweig

The Solicitor acted in a conflict of interest, failed to report to clients, misapplied trust funds and made false and misleading statements. On several occasions, he failed to co-operate with the Law Society and to serve his clients. He admitted the particulars of the Complaint.

The Discipline Committee heard that the Solicitor has a severe alcohol problem, for which he is seeing a doctor. He was also being treated for depression. He had been sued many times for negligence, could no longer pay his Errors and Omissions insurance deductible and was almost bankrupt. The Committee determined the Solicitor must leave the profession, but in light of these mitigating factors, recommended he be granted permission to resign. Convocation accepted the Committee's recommendation.

Conduct unbecoming

Boughner, Byron Dean
Windsor, Ontario
Age 36, Called to the Bar 1987

Particulars of Complaint

- Professional misconduct and/or conduct unbecoming a barrister and solicitor

Recommended Penalty

- Permission to resign

Convocation's Disposition (April 21, 1994)

- Permission to resign

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

David Humphrey

The Complaint against the Solicitor contained four separate particulars pertaining to criminal convictions in June 1993. He was retained by C, the mother of two juveniles to defend them on charges of possession of tools with intent to break and enter. The Solicitor later hired his clients to do general maintenance work around his home. During this time, while in a position of trust and authority over the juveniles, he provided marihuana to child A and child B and he sexually exploited child A. The Solicitor was convicted of two counts of sexual touching (s.153(1)(a) of the *Criminal Code*), unlawful possession of a narcotic and unlawful trafficking of a narcotic.

The Committee noted that the Solicitor was genuinely contrite and remorseful for his conduct. He had no discipline history. Convocation accepted the Committee's recommendation that the Solicitor be allowed to resign.

Breached undertaking

Graham, Calum Donald
Mississauga, Ontario
Age 48, Called to the Bar 1979

Particulars of Complaint

- Professional misconduct
 - Failed to reply to the Law Society (10)
 - Failed to release client files (2)
 - Failed to honour financial obligation to another solicitor
 - Breached undertaking to the Society (4)
 - Failed to serve client conscientiously and diligently

Cases

- Roger E. Bellefeuille
Alexandria
- Byron D. Boughner
Windsor
- Anthony M. Butler
Ottawa
- George Clegg
Orillia
- Calum D. Graham
Mississauga
- Gabriele M. Hauser
Toronto
- Meyer Korman
Brampton
- Norman G. Matusiak
Etobicoke
- Robert E. Pritchard
Sault Ste. Marie
- Michael J. Taylor
Toronto
- David Wurga
North York
- John A. Zinszer
Kitchener

Recommended Penalty

- Suspension for indefinite period

Convocation's Disposition (May 26, 1994)

- Suspension for indefinite period

Counsel for the Law Society

Ron Cohen, Stephen Waisberg, Neil Perrier

Counsel for the Solicitor

R. Burke

The Solicitor continually failed to respond to the Law Society regarding complaints against him and breached undertakings given to the Society to make timely replies. He also failed to diligently and conscientiously serve a client, failed to release clients' files and did not honour a financial obligation made to another solicitor. He admitted to the particulars of the Complaints.

The Solicitor has a past discipline history. In 1988, he was reprimanded in Committee and ordered to pay costs of \$1000 after failing to file and to maintain his books and records. He was suspended by Convocation in 1991 until his Forms 2 and 3 were filed and his books and records were in order.

The Discipline Committee expressed sympathy at hearing evidence of the tragedies which had befallen the Solicitor - his son was killed in a car accident, as was his son's classmate two years later, and a fire seriously damaged his home. The committee accepted a joint submission that the Solicitor be suspended indefinitely until it is shown that he is capable of practising law and has responded to all the issues in the Complaints before the Committee. Convocation accepted this recommendation.

Misapplication of trust funds

Zinszer, John Allen

Kitchener, Ontario

Age 47, Called to the Bar 1975

Particulars of Complaint

- Professional misconduct
 - Preferred interests of one party in real estate transaction (3)
 - Falsely reported to client
 - Failed to report to client (2)
 - Misapplied trust funds

Recommended Penalty

- Suspension for one month; Costs of \$2000

Convocation's Disposition (May 26, 1994)

- Suspension for three months; Costs of \$2000

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Peter Madorin

The misconduct occurred when the Solicitor delegated his real estate practice to a senior secretary and failed to properly supervise her. He admitted responsibility and has employed another lawyer to supervise the real estate end of his practice. The Solicitor has no prior discipline history. The misconduct occurred during a time of personal

and business stress. He made no personal gain, nor did any clients suffer losses. There was evidence of good character in the community. The Committee recommended he be suspended for one month and pay the Society's costs of \$2000. However, Convocation ordered that the Solicitor be suspended for three months and pay costs of \$2000 within 60 days. Counsel has notified the Society that the Solicitor intends to appeal to the Divisional Court. The suspension is presently stayed pending the appeal.

Failure to serve clients

Warga, David

North York, Ontario

Age 47, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Acted for more than one party in mortgage transactions without disclosure and obtaining their consent
 - Failed to serve client in a conscientious, diligent and efficient manner (2)
 - Failed to report to client

Recommended Penalty

- Three-month suspension

Convocation's Disposition (April 21, 1994)

- Three-month suspension

Counsel for the Law Society

Gavin MacKenzie

Counsel for the Solicitor

Brian Greenspan

During all times material to the complaints, the Solicitor was in partnership with another lawyer. He failed to serve clients in a conscientious manner in that he inaccurately reported the priority of mortgages and failed to secure a second mortgage. He also acted for more than one client on several transactions without obtaining the informed consent of the clients.

The Discipline Committee heard that much of the misconduct admitted by both lawyers during this time can be attributed to the firm's inadequate resources and poor organization. The Solicitor had health problems during this time, declared bankruptcy, lost \$1.8 million and lost his home. The Committee considered the numerous letters of support from clients who had lost money and the relatively minor role of the Solicitor in relation to that of his partner. The Committee recommended a three-month suspension, which Convocation accepted.

Failure to reply

Pritchard, Robert Emerson

Sault Ste. Marie, Ontario

Age 50, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society
 - Failed to honour obligations to fellow solicitors

- Failed to file Forms 2/3

Recommended Penalty

- Suspension of three months, to continue indefinitely until obligations to Law Society fulfilled

Convocation's Disposition (May 24, 1994)

- Suspension of three months, to continue indefinitely until obligations to Law Society fulfilled

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Solicitor was not present or represented

The Solicitor retained two lawyers to represent his client on an Application for Bail and failed to honour his accounts with them. He also failed to respond to the Law Society regarding the complaint laid by the solicitors. As well, the Solicitor failed to file Forms 2 and 3 for the fiscal year ending December 31, 1992. To this date, he has still not filed.

In 1989, the Solicitor was found guilty of professional misconduct for failing to serve clients and misleading a client, and suspended for one month. He was not present at the discipline hearing or Convocation, having no means of transportation to Toronto. Convocation accepted the Committee's recommendation he be suspended for three months, and indefinitely thereafter until his obligations as a member of the Law Society are fulfilled.

Practising while suspended

Taylor, Michael James

Toronto, Ontario

Age 39, Called to the Bar 1986

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society
 - Practised law while under suspension
 - Failed to cooperate with the Law Society

Recommended Penalty

- Two-month suspension
- Satisfy Law Society of fitness to practise law

Convocation's Disposition (April 21, 1994)

- Two-month suspension

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

While suspended because of non-payment of his annual fee, the Solicitor represented himself as a member in good standing with the Society, engaging in a real estate transaction during his suspension. He also failed to reply to a complaint and failed to cooperate with a Society representative trying to audit his books and records.

The Solicitor testified that he had been under considerable stress during this time due to the break-up of his marriage. As well, his mother was hospitalized during this time. The Discipline Committee recommended the Solicitor be suspended for two months and that he consult a psychiatrist and submit a report to satisfy the Law Soci-

ety that he is fit to practise law after the suspension. Convocation ordered a two-month suspension.

Failure to serve clients

Clegg, George

Orillia, Ontario

Age 68, Called to the Bar 1962

Particulars of the Complaint

- Professional Misconduct
 - Failed to make prompt and complete final and interim reports to clients (15)
 - Failed to serve clients in a conscientious, diligent and efficient manner (5)

Recommended Penalty

- Suspension for one month & costs of \$4,000

Convocation's Disposition (April 21, 1994)

- Suspension for one month & costs of \$4,000

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

P. Wymes

The Solicitor admitted that he had not served certain clients in a conscientious, diligent and efficient manner. In 1990, an examination of his books and records by a Law Society auditor disclosed that he had failed to deliver reporting letters to 15 of his clients. It was also agreed that the Solicitor failed to provide an adequate quality of service with respect to five particular clients.

The Discipline Committee heard evidence of mitigating circumstances — in 1988, 1989 and 1990, the Solicitor was overwhelmed, carrying approximately 500 active files per year. As well, he testified that he had significant difficulty maintaining adequate legal support staff. During this time, his wife also became seriously ill. The Discipline Committee also considered the Solicitor's high level of community involvement in the past.

The Committee recommended that he be suspended for one month and pay costs of \$4,000. Convocation accepted this recommendation.

Failure to reply

Hauser, Gabriele Monika

Toronto, Ontario

Age 42, Called to Bar 1986

Particulars of Complaint

- Professional misconduct
 - Failed to reply to the Law Society

Recommended Penalty

- 60-day suspension

Convocation's Disposition (April 21, 1994)

- One-month suspension

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor failed to reply to letters and telephone calls

from the Law Society regarding a complaint made after a negative decision in a refugee case. In March 1993, the Solicitor was reprimanded in Convocation for professional misconduct for failing to reply to the Law Society on an unrelated matter. At that time, she was also ordered to enrol in the Professional Standards Practice Review Program and pay costs of \$1,250. Previously, the Solicitor had been reprimanded in Committee for failing to reply to the Law Society.

The Discipline Committee rejected a joint submission from the Solicitor and the Society that the penalty involve a reprimand in Convocation and costs. Instead, the Committee recommended that she be suspended for 60 days. Convocation suspended the Solicitor for one month.

Failure to file forms

Bellefeuille, Roger Edgar

Alexandria, Ontario

Age 42, Called to the Bar 1978

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation & \$500 costs if filings made; otherwise, 30-day suspension to continue indefinitely until filings made

Convocation's Disposition (April 21, 1994)

- 30-day suspension to continue indefinitely until filings made

Counsel for the Law Society

Stephen Foster

Counsel for the Solicitor

Not represented

The Solicitor failed to file Forms 2 and 3 for the fiscal year ending January 30, 1992. He had also breached an undertaking made to the Law Society on May 18, 1993, to bring his books and records up to date by July 31, 1993. The Solicitor had still not filed his forms at the time of the hearing before Convocation.

Convocation accepted the Committee's recommendation and suspended the Solicitor for 30 days and indefinitely thereafter until filings are made.

Failure to reply

Matusiak, Norman Gerald

Etobicoke, Ontario

Age 59, Called to the Bar 1964

Particulars of Complaint

- Professional misconduct
 - Failed to respond to the Law Society
 - Breached an undertaking to the Law Society

Recommended Penalty

- Reprimand in Convocation and costs of \$750
Convocation's Disposition (April 21, 1994)

- Reprimand in Convocation and costs of \$750
Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

J. Douglas Crane

The Solicitor failed to respond in a timely manner to the Law Society during its attempts to audit his books and records. He subsequently breached an undertaking to bring his books and records up to date. He admitted there was no impediment to supplying the information to the Law Society. However, he was formerly a Crown attorney for 24 years, and has found the transition to private practice difficult. The Solicitor also had some personal problems and extraordinary expenses during this time.

The Discipline Committee noted the Solicitor's recent reprimand in Committee for failing to file Forms 2/3 for 1990. The Discipline Committee took into account his public service record and concern over the proceedings in recommending that the Solicitor be reprimanded in Convocation and pay \$750 in costs. Convocation accepted this recommendation.

Failure to file forms

Butler, Anthony Morris

Ottawa, Ontario

Age 50, Called to the Bar 1970

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if filings made by Convocation; One-month suspension to continue indefinitely if filings not made; Costs of \$500

Convocation's Disposition (April 21, 1994)

- Reprimand in Convocation & costs of \$500

Counsel for the Law Society

Janet Brooks

Counsel for the Solicitor

Not represented

Despite repeated requests for the Solicitor's annual filing for the fiscal year ending September 30, 1992, he had failed to file the required forms at the date of the hearing before the Discipline Committee.

The Solicitor had no discipline history. The Discipline Committee accepted a joint submission by the Solicitor and the Law Society as to penalty — a reprimand in Convocation if the filing is made by Convocation date, a one-month suspension to continue indefinitely if filing is not made, and costs of \$500. The filing was made. Convocation accepted the Committee's recommendation, administered a reprimand and ordered costs of \$500.