

RE A BARRISTER AND SOLICITOR

[HIGH COURT, 1999 (Scott J), 19 March]

A

Appellate Jurisdiction

Legal Practitioner- disciplinary proceedings- unprofessional conduct- conduct unbecoming- Legal Practitioners Act (Cap 254) Part VIII.

B

While dismissing an appeal against an adjudication by the Disciplinary Committee of the Fiji Law Society the High Court emphasised that the question of what amounts to professional misconduct is primarily a matter for the Disciplinary Committee.

Cases cited:

C

Allison v. General Council [1894] 1 QB 750
Bhandari v. Advocates Committee [1956] 3 All ER 742
Briginshaw v. Briginshaw (1938) 60 CLR 336
D'Alessandro v. Legal Practitioners Complaints Committee Sup. Ct. of Western Australia – 25/8/95
Ex-parte Attorney-General (Cth), Re a Barrister and Solicitor

D

(1972) FLR (Aust)234
In re a Barrister and Solicitor (1976) 11 ACTR 13
In re A Solicitor (No. 2) (1924) 93 LJKB 761
In re A Solicitor (1932) St. R. Qd 33
In re A Solicitor [1956] 1 WLR 1312; [1956] 3 All ER 516
In re A Solicitor [1975] 1 QB 475

E

In re A Solicitor ex-parte The Law Society [1912] 1 KB 302
Jones v. Dunkel [1959] 101 CLR 298
Kerin v. Legal Practitioners Complaints Committee (1996) 67 SASR 149
Myers v. Elman [1940] AC 282
Re a Barrister and Solicitor (1972) FLR 234
Re Hodgekiss (1962) 62 SR (NSW) 340

F

Appeal to the High Court from a disciplinary committee of the Fiji Law Society.

S. D. Sahu Khan for the Appellant

H. Lateef for the Respondent

Scott J:

G

On 15 April 1998 a Disciplinary Committee of the Fiji Law Society found the Appellant guilty of one count of professional misconduct and one count of conduct unbecoming a barrister and solicitor contrary to section 61 (1) of the Legal Practitioners Act (Cap 254). This Act – the Act – and the relevant Rules thereto were repealed on 1 January 1998 by the Legal Practitioners Act, 1997 however the matters complained of occurred prior to the passage of the new Act and accordingly are subject to the former legislation.

The Appellant appealed against the adjudication of the Disciplinary Committee on the amended grounds filed on 11 December 1998. He did so under the provisions of Section 74 (1) of the Act and the matter came before me under the proviso to the same Section by direction of the Chief Justice dated 21 May 1998.

A

The part of the Act governing the discipline of legal practitioners is Part VIII (Sections 58 to 75). The Rules governing disciplinary proceedings are the Barristers and Solicitors (Disciplinary Proceedings) Rules (Cap 254 Subs page 5 – the Disciplinary Rules) and the Rules governing this appeal are the Barristers and Solicitors (Disciplinary Appeals) Rules (the Appeals Rules) (Cap 254 Subs page 21).

B

On 3 July 1998 when the matter first came on for mention it emerged that the record of the proceedings before the Disciplinary Committee had not been prepared. It appeared that Rules 2 and 5 (1) of the Appeals Rules had been overlooked and that the secretary of the Disciplinary Committee had not been served with the originating Notice of Motion. I directed that the record be prepared and requested counsel to lodge written submissions. The record was filed in August 1998. The Appellant's written submissions were filed on 12 December and the Respondent's followed on 2 March 1999. On the day of the hearing Mr. Sahu Khan filed a supplementary submission which actually replaced the earlier submission. He also filed a list of authorities. I do not know when the submission and list of authorities were prepared but Chief Justice's Practice Direction No. 1 of 1984 requires lists of authorities to be filed and exchanged no less than 48 hours before the hearing. One of the principal purposes of this practice is to enable both the tribunal and the other side to acquaint themselves with the nature of the case and the same considerations apply to written submissions. I do not favour the practice of producing voluminous lists of authorities and written submissions for the first time at the hearing.

C

D

E

The facts which gave rise to the appointment of the Disciplinary Committee are as follows; page numbers refer to the record.

On 11 August 1993 the then Secretary of the Fiji Law Society Mr. Subhash Parshotam wrote to the Appellant (18). He enclosed a copy of a letter dated 6 August 1993 which the Society had received from Mr. Narendra Prasad (the Complainant). According to Mr. Parashotam's letter the complainant complained of the Appellant's conduct as a Barrister and Solicitor but what the precise terms of the letter of complaint were I do not know since the compiler of the record, who did a thoroughly poor job, decided not to include it. The general nature of the complaint can however be gathered from the Appellant's reply (19) the first sentence of the third last paragraph of which reads:

F

G

"We have rendered full services to (the Complainant) in accordance with his instructions and am of the view that no monies are refundable to him."

It appears that Mr. Parshotam sent a copy of the Appellant's letter to the

A Complainant on about 19 August 1993 and on 31 August he replied (21). The Complainant is a layman and the full details of his allegations against the Appellant are not easy to follow but the gist of his complaint is clear. The Complainant, who was the trustee of his father's estate instructed the Appellant (22):

- (a) to obtain Provisional Title No. 24844 from Registrar of Titles as the application of Provisional Title was already lodged by me.
- B (b) to cancel the Power of Attorney issued to Mrs. Pushpa Krishna as the documents already were signed by me.
- (c) To preserve the trusteeship of my father's estate; attending Court cases and keep me informed."

C Accepting these instructions the Appellant took a fee of \$5,000 from the Complainant. The Complainant's case is that his instructions were not carried out and that when he remonstrated with the Appellant the Appellant told him to go and find another lawyer. In the first paragraph of the last page of his letter (25) the Complainant rejected the Appellant's claim to have "rendered full services" to him. He challenged the Appellant to provide documentary evidence to support his claim to have negotiated on his behalf and attended Court. Another version of the same complaint can be found at page 12 of the record which is a copy of a letter sent by the Complainant direct to the Appellant on 27 July 1993.

D On 23 September (26) Mr. Parshotam sent a copy of the Complainant's letter of 31 August to the Appellant and advised him that the matter would be considered by the Council of the Fiji Law Society to determine whether a prima facie case against the appellant had been established.

E On 24 September (27) the Appellant replied to Mr. Parshotam and accused the Complainant of lying.

F On 16 November Mr. Parshotam again wrote to the Appellant (28). The letter reads as follows:

"I thank you for your letter of 24 September 1993.

Further correspondence has ensued between the Complainant and I wherein I have been informed by the Complainant that he disputes the matters you said you have attended.

G In the premises, I now require you to furnish me an itemised Bill of Costs as to the matters you say you have attended to and the time spent on all such attendances. This request is made pursuant to sections 15, 33 (g) and 33 (j) of the Legal Practitioners Act and Rules 6.16 and 6.17 of the Code of Ethics."

On 7 December the Complainant made a formal complaint against the Appellant

in form 1 of the schedule to the Disciplinary Proceedings Rules (5) to which was attached an affidavit of complaint in Form 2 (6). The central complaint was paragraph 2 of the affidavit which reads as follows:

A

“(the Appellant) obtained the total legal fee of \$5,000 in cash advance to do the complete work in connection with CT 24844 to which he has not done it.”

On 14 June 1994 Mr. Parshotam also made a formal complaint against the Appellant (14). As appears from the supporting affidavit (16) the gravamen of Mr. Parshotam’s complaint was that the Appellant had not replied to his letter of 16 November 1993 (28).

B

On 14 June 1994 Mr. Parshotam wrote to the Chief Registrar of the High Court advising him that the Council of the Fiji Law Society had directed him, under the provisions of Section 59 of the Act to request the Chief Justice to appoint a Disciplinary Committee to investigate the two charges against the Appellant (3).

C

On 19 July 1994 the Chief Justice appointed a Disciplinary Committee (83). After one of the members had to be replaced a second Disciplinary Committee was appointed on 20 March 1995 (79).

On 27 April 1995 the Secretary to the Disciplinary Committee wrote to the Appellant enclosing a Notice of in Form 4 of the Disciplinary Rules and attaching a copy of the two charges against him together with the supporting affidavits (74 – 77). It is important to note paragraph 4 of the Notice which reads:

D

“You are required by the rules to furnish to every other party to the application and to me at least 14 days before the said 7 June 1995 a list (including a full description sufficient for identification) of all documents on which you propose to rely.”

E

In due course the hearing, which had been adjourned to suit the Appellant, took place on 8 July 1995. The transcript of the proceedings is at pages 41 and 42. The Form 5 Disciplinary Order of the Disciplinary Committee is at pages 30 and 31 and a further Order of the Committee which sets out the Committee’s reasons for making their Order is at pages 33 to 35.

F

As appears from the transcript and the statement of reasons the Appellant’s answer to the first charge was that so far as he was concerned the matter was at an end. This was because on 4 January 1994 the Complainant had written to him (43) suggesting that the dispute be settled upon refund to him by the Appellant of one half of the fee - \$2,500. The Appellant’s Counsel (Mr. S. D. Sahu Khan) then produced a copy of a letter (44) which the Appellant affirmed that he had sent to the Complainant on 22 January 1994, accepting the offer. When asked by the Chairman of the Disciplinary Committee why this correspondence (which was of course by then 18 months old) had not been produced before as required by the

G

Form 4 Notice "no satisfactory answer was given to this".

A As also appears from the transcript and statement of reasons the Appellant's answer to the second charge was to admit not replying to Mr. Parshotam's letter but to submit that his failure was exculpated by his assumption "on reasonable grounds that the Complainant would withdraw the complaint". No particulars of the "reasonable grounds" for the Appellant's assumption were advanced.

B As will be seen from the Order (30) the Committee found that it had been "proved and admitted" that the Appellant had committed both offences with which he had been charged. The Disciplinary Committee then went on to form the opinion that the Appellant had "thereby been guilty of misconduct in his professional capacity and conduct unbecoming a solicitor". It imposed a penalty of \$200 on the first charge and \$150 on the second. Contrary to what is stated in the original grounds of appeal filed on 18 May 1998 the Appellant was not censured.

C The amended grounds of appeal filed on 11 December 1998 are clear and unambiguous. It is not necessary to set them out in full here again. Mr. Sahu Khan's written submission, despite my earlier criticisms, are a model of clarity and industry upon which he should be commended. Indeed without his invaluable research and assistance the Court, given the deplorably run down condition of the High Court library, would have been severely handicapped.

D The first ground of appeal relates to the first charge. It is that there was no evidence that the Appellant had charged the Complainant an unreasonably excessive fee. This submission involves two limbs: the first is the alleged lack of evidence, the second is the nature of that evidence.

E As to the first, the documentary evidence before the Committee, copies of which, as has already been noted, were sent to the Appellant on 27 April (74) consisted of the two supporting affidavits. Although the Complainant did not attend it can be seen from the transcript (42) that the Appellant was given an opportunity to and did in fact give evidence albeit that he chose to confine his evidence to the single issue of the letter of 24 January 1994 (44).

F Rules 8 and 9 of the Disciplinary Rules are relevant:

G "8 – If any party fails to appear at the hearing, the Disciplinary Committee may, upon proof of service on such party of the Notice of Hearing or without such proof if the Committee considers his attendance unnecessary proceed to hear and determine the application or complaint in his absence.

9 – The Disciplinary Committee may in its discretion either as to the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit :

Provided that any party to the proceedings may require the attendance upon subpoena of any deponent to any such affidavit

for the purpose of giving oral evidence unless the Disciplinary Committee are satisfied that the affidavit is purely formal or that the content thereof may be disregarded or that the requirement of the attendance of the deponent is made with the sole object of causing delay.”

A

No request was made by the Appellant for either the Complainant or Mr. Parshotam to attend the hearing personally. In these circumstances and given the course taken by the Appellant at the hearing I am satisfied both that the Disciplinary Committee acted on evidence and that it was reasonable for it to act on that evidence, principally affidavit evidence, which it had before it.

B

The next question is whether the evidence constituted evidence of charging an unreasonably excessive fee. Citing a passage from D'Alessandro v Legal Practitioners Complaints Committee Sup. Ct. of Western Australia 25 August 1995, Mr. Sahu Khan submitted that there had been no examination by the Disciplinary Committee of what, in the circumstances of this case a reasonable fee would have been, no examination of the difficulty of the case, the novelty or complexity of the legal issues presented, the experience of the practitioner, the quality of his work, the amount of time spent by the practitioner on the matter, the responsibility involved and the amount or value of the subject matter in issue.

C

Mr. Lateef's answer to this submission was that the Disciplinary Committee had been unable to carry out such an examination for the simple reason that the Appellant had failed to reply to Mr. Parshotam's letter of 16 November (28) the subject matter of the second charge. If, therefore, the Disciplinary Committee was driven to acting merely on the basis of evidence presented by the Complainant then the Appellant had nobody but himself to blame.

D

As already seen, the essence of the Complainant's complaint against the Appellant was that he had paid him \$5,000 to perform certain legal tasks on his behalf but that he had failed to perform them. The Appellant's only answer to this complaint was a denial coupled with the unsubstantiated assertions contained in his letter of 12 August (19) that he had rendered full services to the Complainant. It is also interesting to note that he claimed in this letter to have had "many months of negotiations with Mr. Anu Patel" whom he intended to call as a witness. In the event Mr. Anu Patel did not, as appears from the transcript, give evidence at the hearing (57).

E

F

Strictly speaking there was no evidence at all to contradict the Complainant's assertions although the Appellant could easily have answered them when he gave his evidence. It strikes me as specious to suggest that the Disciplinary Committee should have examined the work that the Appellant had done in order to establish whether the fee charged was excessive when the Appellant himself chose not to make such an examination possible by refusing to furnish particulars of the work which he claimed, in a letter, to have done. On the evidence before it I am of the

G

A view that the Disciplinary Committee was fully entitled to find that the Complainant's allegation had been proved, in other words that the Appellant had done none of the things that he had been paid to do and that therefore the fee charged was not only unreasonably but indeed wholly excessive. No fee for doing nothing can be reasonable. This ground fails.

B The second ground of appeal suggests that the Disciplinary Committee was "estopped" from proceeding with the Complainant's complaint on the ground that the Complainant had agreed to settle the matter on the basis of a refund of \$3,000 and the return of his files (see letter from Messrs G.P. Shankar & Co to the Complainant dated 1 June 1995 - 48).

C This ground faces two major difficulties. The first is that the evidence that the Complainant reached an agreement on the basis of a refund of \$3,000 and the return of the files is only contained in the letter which was written, not by the Complainant but by G.P. Shankar and Co. In passing it may be observed that it is odd, to say the least, that the Complainant should be negotiating settlement with the Appellant through another solicitor in June 1995 if, as stated by the Appellant on affirmation, the matter had been settled 18 months previously by the letter of 22 January 1994 (44). Of more significance however is the endorsement on the letter of 1 June 1995 (48) signed by the Complainant which D clearly states that he is not prepared to withdraw in the absence of an admission of liability by the Appellant and repayment of the whole sum. The fact is, rightly or wrongly, the Complainant refused to withdraw the complaint and, as is clear from the third and fourth paragraphs of the reasons for the Order (34) this refusal was known both to the Disciplinary Committee and to the Appellant on the day of the hearing, the letter having been received by the Disciplinary Committee on E about 1 June 1995 (47).

The second and even more fundamental objection to this ground of appeal is that it overlooks Rule 20 (2) of the Disciplinary Rules which provides that:

F "No application or complaint shall be withdrawn after a Disciplinary Committee has been appointed to investigate it except with the leave of the Committee."

No application was made to withdraw either of the complaints either by the Complainant or by Mr. Parshotam. The matter of settlement whether actual or imagined, partial or complete was therefore irrelevant to the question of the Appellant's guilt. This ground fails.

G The third ground of appeal is that the Disciplinary Committee misdirected itself on the onus and standard of proof. Mr. Sahu Khan cited In re A Solicitor (1932) St. R. Qd 33 as to onus and Kerin v Legal Practitioners Complaints Committee (1996) 67 SASR 149 as to standard.

While I accept the correctness and applicability of both these authorities I find

that there is nothing in the papers before me to suggest that the Disciplinary Committee either reversed the onus of proof or applied a mere balance of probabilities test to the matters at issue before it. Mr. Sahu Khan suggested that paragraphs 5 and 7 of the reasons for Order (34) appeared to show that an onus had been unfairly placed on the Appellant. I disagree. The Appellant presented no answer in evidence to the Complainant's claim that he had done no work for the fee which he had earned although he had ample opportunity to do so. Ever since Jones v Dunkel [1959] 101 CLR 298 it has been undoubted law that when a party who is capable of testifying fails to give evidence without explanation this failure may lead rationally to an inference that the party's evidence would not help his case. The mere fact that the Disciplinary Committee commented on the Appellant's failure to present any evidence in answer to the Complainant's central allegation does not, in my view, suggest any reversal of the onus of proof. A

As to the standard of proof it is well known that in professional misconduct enquiries a high standard of proof is called for (see Bhandari v Advocates Committee [1956] 3 All ER 742 and Briginshaw v Briginshaw (1938) 60 CLR 336). B C

Although as pointed out in Kerin (supra) it is undoubtedly a wise practice for tribunals of enquiry to make specific reference to the standard of proof, I do not believe that a failure in that regard necessary amounts to a fatal procedural defect particularly when, as here there, was no challenge offered to the basic facts which constituted the two complaints. This ground fails. D

The fourth ground of appeal suggested that the Disciplinary Committee misdirected itself when in the 7th paragraph of its reasons (34) it concluded that the admitted refund of \$3,000 by the Appellant to the Complainant constituted an admission that the fee collected from the Complainant was unreasonably excessive. E

Mr. Lateef did not dispute his ground of appeal. He could not have done so. There may be many reasons for settling a dispute including the desire to avoid further litigation. These settlements may include repayment of sums claimed but such repayments do not constitute admissions. This ground of appeal succeeds. F

The fifth ground of appeal suggested that the Disciplinary Committee had erred in concluding that the Appellant's failure to answer Mr. Parshotam's letter of 16 November 1993 (28) constituted conduct unbecoming a solicitor. In support of this proposition Mr. Sahu Khan cited in re: A Barrister and Solicitor (1976) 11 ACTR 13. He supplemented this ground by additionally arguing that there was nothing to show that Mr. Parshotam had the authority of the council of the Fiji Law Society to send his letter to the Appellant and that accordingly the Appellant's admitted failure to reply did not constitute a case of conduct unbecoming. G

As to the first point, the Supreme Court of the Australian Capital Territory (ACT) in 1976 expressed itself as follows:

"Although we feel it is highly desirable that there be some sanction against neglect or refusal to reply to the Society's letter regarding

A alleged misconduct we do not think that, taken alone, such refusal or neglect will *necessarily* amount to professional misconduct. It does not fit easily within the phrase "professional behaviour" which would seem to be aimed at the practice of the profession rather than dealing with a professional body of which the practitioner may or may not be a member." (emphasis added).

B With the greatest respect to the Supreme Court I disagree both with its reasoning and its conclusions. It may also be noted that in Fiji membership of the Fiji Law Society by legal practitioners is compulsory.

C Neither the Act nor the Rules thereto define what constitutes professional misconduct or conduct unbecoming a Barrister and Solicitor. The Act is not at all exceptional in this regard. In the absence of a statutory definition to determine whether or not conduct amounts to either, the found circumstances are to be judged in accordance with the established meaning of the expression and the general nature of the conduct which is involved. Since at least 1894 it has been accepted that "professional misconduct" is conduct which would reasonably be regarded as disgraceful and dishonourable by Solicitors of good repute and competency (see Allinson v General Council [1894] 1 QB 750; In re: a Solicitor ex parte the Law Society [1912] 1 KB 302; Myers v Elman [1940] AC 282 and Ex parte Attorney-General (Cth), Re a Barrister and Solicitor (1972) FLR (Aust) 234.

D As was pointed out by Widgery CJ in In re: a Solicitor [1975] 1 QB 475, 484:

E "It has been laid down over and over again that the decision as to what is professional misconduct is primarily a matter for the profession expressed through its own channels, including the Disciplinary Committee."

His Lordship then went on to say:

F "I do not ... for one moment question that if a properly constituted Disciplinary Committee says that this is the standard now required of solicitors that this Court ought to accept that that is so and not endeavour to substitute any views of its own on the subject."

G According to the Law Report none of these authorities was considered by the Supreme Court of the ACT and neither did it consider the remarks of Owen J in Re Hodgekiss (1962) 62 SR (NSW) 340 who said:

"Before proceeding to deal with the facts and in view of certain submission which were made to us I think it is desirable to state shortly my view as to the way in which the Court should approach an appeal of this nature. The Statutory Committee is a tribunal of practicing solicitors of standing appointed by the Chief Justice under the terms of the Legal Practitioners Act for the purpose of hearing

charges of professional misconduct Such a tribunal is eminently fitted to decide whether the conduct of a solicitor in any given set of circumstances amounts to professional misconduct and to determine what is the proper penalty to be imposed in any particular case. While an appeal from its decision to the court is in the nature of a rehearing the Court should give great weight to and be slow to differ from the Committees' opinion that particular acts or omissions of a solicitor do or do not amount to professional misconduct and the Court should attach the same weight to a decision of the Committee as to the appropriate order to be made in a particular case (see In re A Solicitor (No. 2) (1924) 93 LJKB 761; Re a Solicitor [1956] 1 WLR 1312; [1956] 3 All ER 516)."

A

B

In the present case the Disciplinary Committee formed the view that in all the circumstances (including the Appellant's unexplained prescience - that, in November he could know that he would receive a letter from the Complainant the following January) his failure to reply to Mr. Parshotam amounted to conduct unbecoming a solicitor. This conclusion was not at all unusual or surprising: in the latter part of 1997 the Parliament of Fiji was of a similar general view when it passed the new Legal Practitioners Act which specifically provides in Section 85 (4) (a) that such failure may amount to professional misconduct. In my view the conclusion reached by the Disciplinary Committee was in the circumstances entirely reasonable and I am not disposed to interfere with it.

C

D

As to Mr. Parshotam's authority to write the letter of 16 November 1993 (28) it must be pointed out first, that this matter was not raised at the hearing and secondly that, unlike the Queensland Law Society Act the Act does not give the sole management of the Society to the Council. The Law Society in Fiji was, in 1993, a very different type of organisation from the Law Society in Queensland. It had no offices and no full time employees. The extent of its activity was largely dependent on the energy and enthusiasm of its President and Secretary. In the absence of any thing to suggest that Mr. Parshotam was not acting with the authority of the Council (and the reverse is, if anything, to be inferred from paragraph 6 of his affidavit (16)) *omnia praesumuntur legitime facta donec probetur in contrarium*. This ground of appeal fails.

E

F

This sixth, seventh and eighth grounds were not argued.

The ninth ground of appeal relies on the lapse of time between the hearing on 8 July 1995 and the ruling of the Disciplinary Committee which was not delivered until 15 April 1998. Mr. Lateef, a former President of the Fiji Law Society, was not proud of this delay and did not seek to excuse it. Such delays are clearly to be deplored and even amount to violations of human rights (see e.g. Section 29 (3) of the 1997 Constitution) but apart from suggesting that the Committee would not have been able to remember the demeanour of the witnesses three years later when credibility was not, as already explained, in issue, Mr. Sahu Khan was unable to advance any reason why a delay in delivering the ruling in the

G

circumstance of this case could affect its validity. This grounds also fails.

A Ground 10 was not argued.

The final ground of appeal, ground 11 was based on the Disciplinary Committee's decision, taken after the close of the hearing, to write to the Complainant asking him whether he had in fact received the letter which the Appellant claimed to have sent him on 22 January 1994 (44 & 40). The Complainant replied in July 1995 denying that he had received the letter (37). Once again, Mr. Lateef did not attempt to defend what the Disciplinary Committee did but suggested it merely wanted clarification.

B
C In my view the Disciplinary Committee was quite wrong to act as it did. If it thought that the letter was crucial and it wanted further evidence from the Complainant on the matter then it should have adjourned the hearing to allow the additional evidence to be adduced either by affidavit or by the Complainant in person. It should then have afforded the Appellant an opportunity to rebut the evidence if he could.

D In most circumstances what the Disciplinary Committee did would certainly amount to an incurable breach of its obligation to comply with the rules of natural justice. In the circumstances of this case, however as already explained, it appears that both the Appellant and the members of the Disciplinary Committee were under the impression that the complaint could simply be withdrawn following settlement between the Appellant and the Complainant. Not only was that not the case because of Rule 20 (2) of the Disciplinary Rules but also, as was quite clear from the Complainant's endorsement on the letter of 1 June 1995 (48), which letter was before the Committee at the hearing, the matter had not in fact been settled at all. Whether or not the letter of January 1994 was actually sent was therefore not an issue in any way determinative of the Appellant's guilt.

E
F Of the 11 grounds of appeal filed all have failed or not been argued except ground 4. As repeatedly emphasised there was no evidence to contradict the Complainant's fundamental assertions against the Appellant. In those circumstances there was no room for doubt as to the facts. Although the Disciplinary Committee was clearly wrong in drawing the inference that it did from the repayment by the Appellant of \$3,000 to the Complainant there were, in my opinion more than sufficient facts and legitimate inferences to be drawn therefrom to found the general conclusion of professional misconduct reached by the Disciplinary Committee. There was, in other words, no substantial miscarriage of justice. The irregularity, of course, only affected the first charge.

G
In all the circumstances the appeal fails and is dismissed.

(Appeal dismissed.)