



DISCIPLINE CASE *DIGEST*

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Case 01-04

DAVIS, DAVID HIRSCH Winnipeg, Manitoba

Called to the Bar

June 29, 1989

Particulars of Charges

Conduct Unbecoming

- Sexually harassing client, contrary to Chapter 20 of the *Code of Professional Conduct*

Date of Hearing

May 23, 2001

Panel

D.J. Miller, Q.C. (Chair)

J.E. Neufeld, Q.C.

W.W.A. Riedel, Q.C.

Disposition

- 45 day suspension
- costs of \$1,000.00

Counsel

C.K. Dangerfield for The Law Society of Manitoba

R.L. Tapper, Q.C. for the Member

Sexual Harassment

Facts

Mr. Davis represented a client in respect of her claim for convention refugee status before

the Immigration and Refugee Board for a period of approximately six months commencing in July, 1999. Between July, 1999 and December, 2000 Mr. Davis sexually harassed his client by making comments and overtures of a sexual nature to her. Notwithstanding her resistance to his overtures, he kissed her, or attempted to do so, on a number of occasions. He attended at her home and presented her with a gift which she refused to accept.

Mr. Davis admitted that he had sexually harassed his client and that his conduct amounted to conduct unbecoming a barrister and solicitor.

Decision and Comments

The Committee determined that Mr. Davis had sexually harassed his client in circumstances where he could reasonably expect that his conduct would cause her discomfort, given that she explicitly and consistently resisted his advances.

The Committee concluded that sexual harassment is a serious type of professional misconduct in that it involves a breach of trust that fundamentally undermines the lawyer/client relationship. As such, the breach can be as serious, or more serious, as one resulting from the misappropriation of trust funds.

In the circumstances of this case, the seriousness of the member's conduct was buttressed by the particular vulnerability of the client. Mr. Davis was aware that her claim for refugee status was based in part on the client's allegations of sexual harassment and sexual assault suffered at the hands of her employer prior to fleeing to Canada.

Penalty

The Committee concluded that a suspension of 45 days was appropriate. Had it not been for the member's genuine remorse, his history of service to the legal and volunteer communities as well as his prior good character, the Committee would have been inclined to impose a suspension of a longer duration in accordance with the seriousness with which the Committee viewed the member's conduct.

The member filed an appeal to the Manitoba Court of Appeal from the Committee's decision with respect to sentence. The appeal was dismissed on September 6, 2001 with costs.

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