IN THE MATTER OF:  The CANADA EVIDENCE ACT

- and -

The BARRISTERS AND SOLICITORS ACT,
R.S.N.S. 1989, c. 30, and the Regulations of the Nova Scotia Barristers’ Society, as amended

BETWEEN:

The Nova Scotia Barristers’ Society

- and -

W. Roger Corkum, a Barrister and Solicitor of Halifax, Nova Scotia

Before:  Marjorie A. Hickey, Chair
Gerald R. P. Moir, Q.C.
John McFarlane, Q.C.
Thomas Boyne, Q.C.
David MacDonald

Heard:  February 1 and 2, 1996

Counsel:  Alan J. Stern, Q.C., for the Nova Scotia Barristers’ Society
W. Roger Corkum, representing himself

(This page did not form part of the original Decision)
IN THE MATTER OF: The Canada Evidence Act

- and -

IN THE MATTER OF: The Barristers and Solicitors Act, R.S.N.S. 1989, c. 30, and the Regulations of the Nova Scotia Barristers' Society, as amended

- and -

IN THE MATTER OF: W. ROGER CORKUM, a Barrister and Solicitor, of Halifax, in the County of Halifax, Province of Nova Scotia

RESOLUTION

Counsel: Alan J. Stern, Q.C., Solicitor for the Nova Scotia Barristers' Society

W. Roger Corkum, unrepresented

Members of Discipline Sub-Committee "A" hearing and adjudicating this complaint:

Marjorie A. Hickey - Chairperson
Gerald R.P. Moir, Q.C.
John McFarlane, Q.C.
Thomas Boyne, Q.C.
David MacDonald

DATE OF HEARING: February 1 and 2, 1996

DATE OF DECISION: Oral Decisions rendered February 1 and 2, 1996
Written Decision issued April 2, 1996
RESOLUTION

BE IT RESOLVED pursuant to the provisions of Sub-Section 32(3)(f) of the Barristers' and Solicitors Act, R.S.N.S. 1989, c.30 that W. Roger Corkum, having been found guilty of professional misconduct, be issued a reprimand.

BE IT FURTHER RESOLVED that pursuant to the provisions of Sub-Section 32(9) of the Barristers' and Solicitors Act, R.S.N.S. 1989, c.30 that W. Roger Corkum shall pay costs to the Society in the amount of $1,500.00, inclusive of GST and disbursements.

DATED at Halifax, Nova Scotia, this 2nd day of April, 1996.

Marjorie A. Hickey
Chairperson
Panel of the Discipline Sub-Committee "A"
IN THE MATTER OF: The Canada Evidence Act

- and -

IN THE MATTER OF: The Barristers and Solicitors Act, R.S.N.S. 1989, c. 30, and the Regulations of the Nova Scotia Barristers' Society, as amended

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IN THE MATTER OF: W. ROGER CORKUM, a Barrister and Solicitor, of Halifax, in the County of Halifax, Province of Nova Scotia

DECISION

Counsel: Alan J. Stern, Q.C., Solicitor for the Nova Scotia Barristers' Society

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Members of Discipline Sub-Committee "A" hearing and adjudicating this complaint:

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INTRODUCTION

On the 14th day of September, 1995, the Nova Scotia Barristers' Society laid a formal complaint of professional misconduct or conduct unbecoming a barrister against W. Roger Corkum, which complaint was heard by the undersigned panel of members of Discipline Sub-Committee "A" pursuant to the Barristers and Solicitors Act, R.S.N.S. 1989, c. 30, on February 1 and 2, 1996.

The charges set out in the complaint against Mr. Corkum are as follows:

1. He, a Barrister, practising at Halifax, Nova Scotia, and while acting as solicitor for M.G.
   (a) failed to communicate appropriately with his client,
   (b) failed to safeguard his client's interests, and
   (c) failed to appreciate the necessity of keeping in contact with his client,


2. He, a Barrister, practising at Halifax, Nova Scotia, failed to conduct himself in a manner which would reflect credit on the legal profession and inspire the confidence, respect and trust of his clients and failed to observe the spirit of the rules of professional conduct, contrary to Chapter 23 of Legal Ethics and Professional Conduct (A Handbook for Lawyers in Nova Scotia) adopted by the Nova Scotia Barristers' Society as at August 1, 1990.

At the commencement of the hearing Mr. Corkum agreed that the panel was properly constituted and that he had no objection to any of the members serving on the panel. Mr. Corkum then brought forward a motion seeking an adjournment of the hearing. Mr. Stern on behalf of the Society objected to the adjournment and called Janice Milton, Administrator for Discipline Sub-Committee "A", to give evidence in the matter. Ms. Milton testified that Mr. Corkum had been served with the complaint on September 28, 1995. She then reviewed the various communications between the Nova Scotia Barristers' Society and Mr. Corkum with respect to the setting of a date for the hearing, which consisted of a series of letters in October, November and December of 1995 proposing various dates. Mr. Corkum responded that he would not be available until April, 1996. The matter was then set down in January of 1996 for February 1 and 2 of 1996. A Notice of these dates was forwarded by courier to Mr. Corkum on January 12, 1996. Nothing further was heard
from Mr. Corkum prior to the commencement of the hearing.

After determining that proper notice had been issued in accordance with the Regulations under the Barristers and Solicitors Act, and after determining that Mr. Corkum did not intend to call any witnesses who would be unavailable for the hearing scheduled for February 1 and 2, 1996, the request for an adjournment was denied and the hearing continued.

Witnesses called on behalf of the Nova Scotia Barristers' Society were M.G. and Valerie MacKenzie. At the conclusion of the evidence called by the Nova Scotia Barristers' Society, Mr. Corkum made a motion for a "directed verdict" on the basis that insufficient evidence had been presented to establish the case on behalf of the Society. Upon its review of the evidence presented, the panel denied Mr. Corkum's motion, following which Mr. Corkum presented evidence on his own behalf.

THE EVIDENCE

Evidence of M.G.

M.G. testified that she initially contacted Mr. Corkum in December, 1992 after she had been served with a Notice of Petition for Divorce by legal counsel representing her husband. M.G.'s husband resided out of the jurisdiction. She presented the document to Mr. Corkum and advised him of a prior Family Court appearance involving herself and her husband whereby joint custody of M.G.'s daughter was awarded, with daily care and control of the child being given to M.G.. She had been awarded child maintenance in the amount of $300.00 per month.

M.G. indicated that she went to see Mr. Corkum following her receipt of the Notice of Petition for Divorce in order to ensure proper custody arrangements for her daughter. She indicated that Mr. Corkum advised her that he would charge her $200.00 to file and serve an Answer, and if matters were required beyond that, fees would be discussed.

M.G. returned to Mr. Corkum's office to sign the Answer, at which time she provided a cheque for $200.00 to Mr. Corkum.

M.G. was then advised in January, 1993 that her $200.00 cheque had been returned for non-sufficient funds (NSF). She couriered a money order for $200.00 to Mr. Corkum's office on January 15, 1993.

M.G. heard nothing further from Mr. Corkum until the spring of 1993, at which time Mr. Corkum forwarded to M.G. a copy of a letter from Mr. G.'s counsel,
advising that Mr. G. be returning to the jurisdiction.

M.G. received no further correspondence or other communication from Mr. Corkum. She received directly from the Prothonotary's Office a copy of a Divorce Judgment which was issued in the summer of 1993. She had received no notice that the Judgment was being issued. She did not contact Mr. Corkum following receipt of the Divorce Judgment. In the fall of 1993 M.G. then retained Valerie MacKenzie to represent her with respect to custody arrangements for her daughter. At that time M.G. contacted Mr. Corkum's office to obtain a copy of her file, and it was only then that she found in the file copies of correspondence between Mr. Corkum and her husband's counsel extending throughout the winter period of 1993. Of particular note were letters of February 12 and February 25, 1993 from Mr. G.'s counsel to Mr. Corkum which dealt with custody and access issues of concern to M.G..

Because the appeal period following the issuing of the Divorce Judgment had expired, M.G. then retained Ms. MacKenzie to proceed with an Application To Vary the provisions of the Divorce Judgment with respect to custody and access. She was ultimately successful in obtaining an Order for sole custody and structured access.

Evidence of Valerie MacKenzie

Ms. MacKenzie is a barrister and solicitor who practices principally in the field of Family Law. She testified that M.G. came to see her in the late summer or early fall of 1993 as she had been experiencing considerable difficulties with her husband concerning the custody and access arrangements for their child. Ms. MacKenzie requested M.G. to obtain a copy of her file from Mr. Corkum, and M.G. then provided this file to Ms. MacKenzie. Ms. MacKenzie also checked directly at the Prothonotary's Office to review the documentation which had been filed in connection with the divorce proceeding.

Upon her review of the file and the documents at the Prothonotary's Office, Ms. MacKenzie learned that the Answer had never been served on Mr. G., as required by the Civil Procedure Rules. A copy of the Answer had been forwarded to Mr. G.'s counsel, filed with the Prothonotary's Office following the expiration of the required time frame for filing, but never served on Mr. G.. The divorce was then processed as an uncontested divorce on the basis of an Affidavit filed by Mr. G.'s counsel.

Ms. MacKenzie testified that when M.G. came to see her in the fall of 1993 she had little knowledge about the divorce process.

Evidence of W. Roger Corkum
Mr. Corkum testified that he had been in practice for a period of 17 years. He indicated that M.G. initially came to see him in December, 1992. He discussed custody and access issues with her, but these issues were not an overriding concern as her husband lived out of the jurisdiction. Mr. Corkum's evidence was that M.G. would like to have more money being paid to her as child maintenance, but she did not wish the matter to go to Court. He indicated he would prepare and file an Answer on her behalf. He then prepared the Answer and M.G. returned to his office to sign the Answer within the time frames for filing an Answer as set out in the Civil Procedure Rules.

Mr. Corkum then forwarded a copy of the Answer to legal counsel for Mr. G. but did not file the Answer with the Prothonotary. He indicated he did not file the Answer as he had no money to file it. He further testified that it was not necessary to file the Answer as the Answer had already been sent to the other lawyer.

When M.G. brought in her money order for $200.00 in January, 1996, Mr. Corkum did not make application to extend the time for filing the Answer at that time, nor did he file the Answer. The Answer was not filed by Mr. Corkum until some months after his receipt of the $200.00 from M.G..

Throughout his testimony Mr. Corkum repeatedly noted that if his client did not want to go to Court, there was not much that he could do for her. He testified that he felt her interests were protected because Mr. G.'s counsel was in receipt of the Answer, and therefore knew that there were matters in issue.

Mr. Corkum confirmed that there were communications between himself and Mr. G.'s counsel following his meetings with M.G. in December, 1992. He confirmed receipt of various letters from Mr. G.'s counsel, copies of which were not provided to M.G.. He confirmed that he did not contact M.G. to advise that these letters had been received from Mr. G.'s counsel. Mr. Corkum gave a variety of reasons for not contacting M.G. including his belief that he had the ability to "put a block" on the divorce process because the Answer had been forwarded to Mr. G.'s counsel; that there was no need to communicate with his client unless a settlement was being advanced; and given that M.G. did not want to go to Court, he knew he would either have to withdraw from the case or "pull the plug".

When asked whether it would have been a safer practice to provide copies of the correspondence he received from Mr. G.'s counsel, Mr. Corkum replied in the negative. He denied that he had not communicated appropriately with M.G. throughout the winter of 1993. He did not believe such communication was necessary.

**FINDINGS**

Counsel for the Nova Scotia Barristers' Society withdrew Allegation
Two, such that submissions were heard only with respect to Allegation One.

The panel determined that it would be appropriate to consider Allegations 1 (a) and 1 (c) together, as the failure to appreciate the necessity of keeping in contact with the client was an aspect of failing to communicate appropriately with the client. In considering these two allegations, the Committee found the following:

(a) There was no documentation between Mr. Corkum and M.G. concerning the nature of Mr. Corkum's retainer;

(b) There was no evidence of correspondence written by Mr. Corkum to M.G. advising her of the status of her file, nor evidence of phone calls between Mr. Corkum and M.G. to advise her of the status of her file;

(c) There was no discussion between Mr. Corkum and M.G. with respect to options open to her with respect to the divorce;

(d) Despite his receipt of letters from Mr. G.’s counsel, Mr. Corkum failed to provide M.G. with copies of these letters (except on one occasion) or with any indication to her that such letters had even been received. In particular, Mr. Corkum failed to advise M.G. of correspondence received from Mr. G.’s counsel advising of settlement proposals concerning substantive issues involving the custody and access arrangements for M.G.'s child;

(e) Mr. Corkum's testimony at the February 1, 1996 hearing confirmed his present viewpoint that there was no necessity to have communicated with M.G. about the letters he had received from Mr. G.’s counsel or with respect to the status of her case.

As a result of the above, the panel finds that allegations 1 (a) and (c) have been proven. The panel finds that Mr. Corkum breached Chapter 3 of the Legal Ethics and Professional Conduct (Handbook of the Nova Scotia Barristers' Society,), and in particular the panel notes violations of the following commentaries:

3.1 (a) Failure to keep a client reasonably informed;

... (g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;

... (j) failure to inform a client of a proposal of settlement or to explain the proposal properly.

In rendering its oral decision on this issue to Mr. Corkum on February 1, 1996, the panel indicated to him that while a finding of misconduct was being made, the extent of the breach of Chapter 3 of the Legal Ethics and Professional
Conduct Handbook was on the lighter side of the scale when compared with other decisions involving breaches of this Chapter as disclosed in the Formal Hearing Digest.

With respect to Allegation 1 (b), the evidence with respect to this issue disclosed that Mr. Corkum

(a) forwarded a copy of M.G.'s Answer to Mr. G.'s counsel;

(b) failed to file the Answer within the time frame required by the Civil Procedure Rules;

(c) filed the Answer following the expiration of the time limit authorized by the Civil Procedure Rules; and

(d) at no time served the Answer on Mr. G.

Mr. Corkum testified that it was his belief that once the Answer was forwarded to opposing counsel, or in any event once it had been filed, that his client's interest was protected as the divorce should not have been processed without notice to his client. Mr. Corkum repeatedly referred to his belief that a party could not be "defaulted" in a divorce proceeding, and he provided some case authority for his belief.

The panel noted that Mr. Corkum forwarded the Answer to opposing counsel and belatedly filed the Answer in the honest and genuine belief that this was sufficient to safeguard the interest of his client. While an uncontested divorce was processed in this case on the basis of an Affidavit provided by Mr. G.'s counsel despite the Answer being filed, the panel is not prepared to hold Mr. Corkum responsible for this process. Accordingly, the panel dismisses allegation 1 (b).
DISPOSITION

Following its decision on February 1, 1996 that Mr. Corkum was guilty of professional misconduct arising from Allegations 1 (a) and (c), the Committee heard submissions from Mr. Stern and Mr. Corkum on February 2, 1996 with respect to the disposition of the matter.

Mr. Stern provided the panel with evidence of Mr. Corkum's prior disciplinary record with the Nova Scotia Barristers' Society, which consisted of two counsels and four cautions. In Mr. Corkum's submission to the panel, he sought to minimize the six previous complaints that led to the counsels and cautions and indicated that he does not understand why he was counselled and cautioned for these matters.

In view of Mr. Corkum's inability to understand why he had received two counsels and four cautions, the Committee wishes to be very clear to Mr. Corkum as to why he is being subjected to disciplinary penalties arising from his actions in this complaint.

Chapter 3 of the Legal Ethics and Professional Conduct Handbook establishes an ethical duty regarding quality of service. The commentary to the rule makes it clear that part of the duty is to keep the client reasonably informed. This case is as simple as that. Mr. Corkum failed to keep his client reasonably informed.

The principle of keeping a client informed is especially applicable when a lawyer is dealing with an unsophisticated client. M.G. in this case was as deserving of being kept informed as a client who could pay a larger account. Mr. Corkum failed to keep his client informed and he is therefore subject to discipline.

In his submissions, Mr. Corkum made it very clear that he did not hold the Nova Scotia Barristers' Society in high regard; he felt he had done nothing inappropriately or improperly to warrant prior counsels and cautions from the Barristers' Society; he felt he had done nothing inappropriately or improperly with respect to his handling of M.G.'s file; as of the date of the hearing he was not prepared to recognize that he should have forwarded to M.G. copies of correspondence received from her husband's counsel and to inform her of the status of her file; and he generally saw no need to forward communications received from other counsel unless progress was being achieved toward a settlement that he felt was worthwhile.

The panel expresses concern about Mr. Corkum's attitude towards clients and the Society.

In its oral decision rendered on February 2, 1996, the panel advised Mr. Corkum that he kept missing the point. Previous Discipline Committees have genuinely tried to have Mr. Corkum understand the ethical principles involved in the
cases which resulted in counsels and cautions to him. These Committees failed in making Mr. Corkum understand where he crossed the line and where he needed to make some changes. It is the view of the panel that these Committees failed because of Mr. Corkum’s attitude, and that Mr. Corkum is not listening to suggestions that he needs to change his attitude in a number of respects, particularly with respect to his communications with his clients and the Society.

The panel struggled with the question of making it a condition of Mr. Corkum’s practice that he attend the Professional Standards Course at Dalhousie University. The panel's debate was as to whether that would help Mr. Corkum or whether it would make him more seething in his attitude towards the Discipline Committee and the Society. The panel has decided against making such an Order.

While the panel determined that the finding of misconduct against Mr. Corkum falls on the lighter side of findings when compared to other decisions of the Barristers’ Society, the Committee finds that Mr. Corkum’s attitude in failing to recognize that he has done anything wrong, and in holding the disciplinary process in such disregard, aggravates the circumstances. While the panel found Mr. Corkum to be an experienced and generally respected lawyer, it found these factors to be aggravating circumstances rather than mitigating circumstances. The panel felt it would be inevitable that more complaints would be laid against Mr. Corkum if he fails to recognize his transgressions and fails to take steps to improve upon his conduct.

Pursuant to Sub-Section 32(3), the panel imposes a reprimand on Mr. Corkum in recognition of the findings against him and the aggravating circumstances outlined above.

While the panel is hopeful that its decision will provide Mr. Corkum with some guidance concerning his need to improve his communications with his clients, the panel parenthetically adds advice to Mr. Corkum on two levels. Firstly, it is recommended that Mr. Corkum consult a lawyer familiar with ethics, the Discipline Committee and the workings of the Society in order to understand why the findings in this and prior cases have been made against him. Panel members would only be too pleased to give Mr. Corkum names of people who would be objective and well-informed on these subjects. Secondly, should a complaint be laid again Mr. Corkum, it is recommended to him that he take advice from a lawyer familiar with disciplinary matters, in order to gain some objectivity in the circumstances. Such objectivity was clearly lacking in Mr. Corkum’s presentation to the panel.

With respect to costs, as one allegation was dismissed, the panel does not believe that full costs should be awarded. Mr. Corkum is ordered to pay $1,500.00, inclusive of disbursements and GST. Such costs shall be paid on or before the 3rd day of April, 1996.

Marjorie A. Hickey
Chairperson

Gerald R.P. Moir, Q.C.

John McFarlane Q.C.

Thomas Boyne, Q.C.

David MacDonald
IN THE MATTER OF: The Canada Evidence Act,

- and -

IN THE MATTER OF: The Barristers and Solicitors Act, being c. 30, R.S.N.S. 1989, and the Regulations of the Nova Scotia Barristers' Society, as amended,

- and -

IN THE MATTER OF: W. ROGER CORKUM, a Barrister and Solicitor, of Halifax, in the County of Halifax, Province of Nova Scotia.

ORDER

BEFORE THE PROTHONOTARY:

UPON HEARING Alan J. Stern, Q.C., Solicitor for the Nova Scotia Barristers' Society;

AND UPON HEARING READ the Affidavit of Barbara Penick, sworn the 12th day of April, 1996, and the Resolution of Subcommittee "A" of the Discipline Committee of the Nova Scotia Barristers' Society, dated the 2nd day of April, 1996, attached to the said Affidavit as an Exhibit;

NOW UPON MOTION:

IT IS ORDERED:

1. THAT W. Roger Corkum, a Barrister of the Supreme Court of Nova Scotia, is hereby reprimanded.

2. THAT W. Roger Corkum reimburse to the Nova Scotia Barristers' Society costs in the amount of One Thousand Five Hundred Dollars ($1,500.00), inclusive of G.S.T., in accordance with the provisions of the Resolution.

DATED at Halifax Regional Municipality, Province of Nova Scotia, this 29th day of May, 1996.

DEPUTY PROTHONOTARY
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX SS

IN THE MATTER OF: The Canada Evidence Act,

- and -

IN THE MATTER OF: The Barristers and Solicitors Act, c. 30, R.S.N.S. 1989, and the Regulations of the Nova Scotia Barristers' Society, as amended,

- and -

IN THE MATTER OF: W. ROGER CORKUM, a Barrister and Solicitor, of Halifax, in the County of Halifax, Province of Nova Scotia.

ORDER

McInnes Cooper & Robertson
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Per: Alan J. Stern, Q.C.
Solicitor for the Nova Scotia Barristers' Society

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