



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

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Improper borrowing, Conduct unbecoming

Silver, Alan Bernard

Dundas, Ontario

Age 53, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Borrowed from a client
 - Failed to ensure client received independent legal advice
 - Misled a client
 - Failed to honour a financial obligation
- Conduct Unbecoming
 - Convicted of criminal offence of fraud

Recommended Penalty

- Disbarment

Convocation's Disposition (10/27/95)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Michael Brown

The Solicitor borrowed \$90,000 from a client through a second mortgage on a property. The Solicitor did not inform

his client about his personal interest in the purchase of the property nor that he had executed an undertaking in favour of the developer requiring him to postpone any second mortgage in favour of the developer if same had not been discharged by a set date. The Solicitor had his client sign a document to facilitate its repayment when, in fact, he used that documentation to postpone the mortgage. At no time did the Solicitor advise his client to obtain independent legal advice. The Solicitor failed to honour a financial obligation after a client's account was taxed and he was required to refund money to his clients. On May 14, 1993, the Solicitor was convicted of two counts of fraud contrary to section 380(1)(a) of the *Criminal Code* and was sentenced to imprisonment for a period of six and three months, concurrently, respectively.

The Solicitor had no discipline history. The Discipline Committee recommended disbarment. The Committee noted that although the Solicitor did not personally profit from the frauds, he assisted his client to defraud an elderly client and a young couple. It was the view of the Committee that save and except in extraordinary circumstances a Solicitor who is convicted of fraud in relation to his clients and sent to jail should be disbarred. The Committee found that no such extraordinary circumstances were present in this case. At Convocation the Solicitor was disbarred.

Failure to reply

Klymko, Anthony William

Toronto, Ontario

Age 49, Called to the Bar 1972

Particulars of Complaint

- Failed to reply to the Law Society (2)
- Failed to deliver to his client or his successor lawyer all papers and property and to facilitate the orderly transfer of the matter
- Failed to serve his client conscientiously and diligently
- Failed to file Forms 2/3

Recommended Penalty

- Permission to resign on condition that the Solicitor provide any materials he has on one of the matters

Convocation's Disposition (10/27/95)

- Permission to resign after winding up practice
- Otherwise, disbarment

Counsel for the Solicitor

David Zimmer (at Committee)

Counsel for the Law Society

Neil Perrier

The Solicitor failed to transfer to his successor lawyer all materials in a motor vehicle matter despite a pending motion to dismiss his client's action. In another motor vehicle claim the Solicitor failed to respond to telephone calls from his client and to advise him of his change of business address. In addition, he failed to reply promptly to the Law Society regarding complaints in both matters. Finally, the Solicitor failed to file his Forms 2/3 for the fiscal year ended December 31, 1993.

The Solicitor had received reprimands from the Discipline Committee in 1982 and 1990 and from Convocation in 1993. The Committee noted the apparent incapacity of the Solicitor to practise law and that none of the current or past complaints

Cases

- Chi Wing Chung, North York
- Stanley David Goldberg, Toronto
- Robert Allan Horwood, Mississauga
- Thomas Alan Kelly, Oakville
- Anthony William Klymko, Toronto
- Juergen Frederick Sagel, Kitchener
- Timothy David Salomaa, Mississauga
- Alan Bernard Silver, Dundas
- Irene Stich, London

reflected dishonesty. The Committee accepted the Joint Submission seeking permission to resign with the caveat that the Solicitor provide any materials he has on the second motor vehicle claim. At Convocation the Solicitor was granted permission to resign conditional upon his attendance at the Staff Trustee's office within 90 days of receipt of Notice of Convocation to cooperate in the winding up of his practice and the tendering of his resignation, failing which he is to be disbarred.

Failure to reply

Stich, Irene

London, Ontario

Age 46, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Failed to cooperate with the Law Society
 - Failed to produce books and records
 - Failed to reply to the Law Society (4)
 - Failed to comply with an Undertaking (5)
 - Failed to serve a client conscientiously and diligently
 - Failed to file Forms 2/3

Recommended Penalty

- Suspension until June 30, 1995, to continue until compliance with undertaking

Convocation's Disposition (10/27/95)

- Twelve-month suspension if compliance with undertaking by December 31, 1995
- Otherwise, disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Janet Brooks

The Solicitor failed to cooperate with the Law Society by failing to produce her books and records after an examiner attended at her office on January 27, 1994. The Solicitor failed to reply to the Law Society regarding four different complaints and in doing so, failed to comply with her April 30, 1990, Undertaking to reply promptly to all communications from the Law Society. The Solicitor failed to serve her client conscientiously and diligently

by failing to return to her an original Will and deeds to the client's property, despite repeated requests by the client. The Solicitor failed to comply with her June 28, 1991, Undertaking by releasing funds held in trust prior to obtaining confirmation from the purchaser that her client had satisfied payment of all outstanding liabilities in accordance with her Undertaking to the purchaser of the same date. Finally, the Solicitor failed to file Forms 2/3 for her fiscal year ended January 31, 1994.

On January 23, 1990, a Complaint was sworn against the Solicitor for failure to reply to the Law Society. The matter was withdrawn after the Solicitor provided an Undertaking to reply promptly to all Law Society communications. Both the majority and dissent of the Discipline Committee recommended that the Solicitor be suspended until June 30, 1995, to continue until she complies with her March 28, 1995, Undertaking to bring all her outstanding matters into compliance with the Society's requirements. The Solicitor did not attend at Convocation. At the time the matter was heard by Convocation, the Solicitor had not complied with a number of terms of her Undertaking. At Convocation the Solicitor received a twelve-month suspension if she complies with her Undertaking by December 31, 1995, failing which she is to be disbarred.

Failure to serve client

Horwood, Robert Allan

Mississauga, Ontario

Age 47, Called to the Bar 1974

Particulars of Complaint

- Professional Misconduct
 - Failed to cooperate with a fellow lawyer
 - Failed to release a former client's files
 - Failed to account for funds (2)
 - Failed to serve his client conscientiously and diligently
 - Failed to reply to a fellow lawyer
 - Failed to honour a financial obligation
 - Failed to comply with an Undertaking (2)
 - Misled a former client
 - Misled a fellow lawyer

Recommended Penalty

- Six-month suspension

Convocation's Disposition (10/27/95)

- Six-month suspension commencing November 1, 1995
- \$5,000 in costs

Counsel for the Solicitor

Brian Bellmore

Counsel for the Law Society

Neil Perrier

In 1984, the Solicitor borrowed approximately \$10,500 from a client. On July 8, 1986, at a previous discipline hearing, the Solicitor agreed to repay \$8,686.34 and undertook to his former client's counsel to hold the remaining amount of approximately \$2,000, - representing his account for a motor vehicle case in which he acted on his client's behalf - unless a taxation of the account was not initiated within 30 days. On October 9, 1986, an Assessment of Costs reduced the Solicitor's bill by \$940. After the Assessment Hearing the Solicitor misled his former client, and her lawyer, when he informed them that the funds were no longer held in trust. He then breached his Undertaking to the Discipline Committee and an Undertaking to a fellow lawyer when he released the funds after the taxation. The Solicitor also failed to reply to a fellow lawyer's requests for payment of a Small Claims Default Judgment regarding the Solicitor's debt to his former client. The Solicitor was retained to act on behalf of an estate and on behalf of one of the beneficiaries' son in a Young Offender matter. The Solicitor failed to provide his former client or his successor lawyer with his files and proper accounts for the two matters. He failed to serve his client conscientiously and diligently by failing to keep her reasonably informed and failed to return her phone calls without reasonable explanation.

In 1986, the Solicitor was suspended for six months for improperly borrowing money from two clients and improperly appropriating client funds to his own use. In 1988, the Solicitor was reprimanded in Convocation for failing to reply to the Law Society and for failing to file Forms 2/3. In 1991, the Solicitor was reprimanded in Discipline Committee for misconduct arising out of his handling of an estate

matter. The Committee recommended a six-month suspension but rejected the Law Society's request for costs on the grounds that it lacked jurisdiction to order costs. A Notice of Disagreement was filed by the Law Society. At Convocation the Solicitor was suspended for a period of six months. Convocation also determined that the *Law Society Act* empowered it to order Solicitors to pay the expenses incurred in an investigation or hearing of a complaint, and fixed the sum of \$5,000.

Deprived partners of fees

Sagel, Juergen Frederick

Kitchener, Ontario

Age 47, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Wrongfully deprived his partners of fees
 - Failed to keep clients reasonably informed of developments in their litigation

Recommended Penalty

- Twelve-month suspension
- \$5,000 in costs

Convocation's Disposition (10/27/95)

- Six-month suspension
- \$5,000 in costs

Counsel for the Solicitor

Brian Bellmore

Counsel for the Law Society

Michael Brown

The Solicitor joined a Waterloo firm as partner in late 1987. Between May and August 1990 he wrongfully deprived his partners of fees that they were entitled to share by arranging for certain clients to pay fees to him personally in respect of legal services that he rendered while he was a partner in the law firm. Subsequently, the Solicitor joined another law firm and failed to fairly and promptly report to his former firm with respect to his representation of former clients of the firm pursuant to charging orders of the Ontario Court (General Division). In addition, the Solicitor failed to keep certain clients reasonably informed of developments in their litigation.

In the evidence before the Committee, the Solicitor asserted that it was his belief that his partners had not recognized his financial contribution to the firm in the distribution of the partnership profits. The Committee held that it was of little consequence that the Solicitor felt entitled to the money. It was the Committee's view that partnerships are founded on trust and a lawyer has a fiduciary obligation in respect of his or her partners.

The Solicitor had no discipline history. The matter was pre-tried and a Joint Submission as to penalty was made recommending a six-month suspension with \$5,000 in costs. However, the Discipline Committee increased the suspension penalty to that of one year. At Convocation the Joint Submission was upheld and the Solicitor was suspended for six months commencing November 1, 1995, with \$5,000 in costs.

Conflict of interest

Salomaa, Timothy David

Mississauga, Ontario

Age 48, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Acted in a conflict of interest
 - Failed to serve his client conscientiously and diligently
 - Failed to advise his clients to seek independent legal advice
 - Personally guaranteed his client's loan

Recommended Penalty

- Three-month suspension
- Enrolment in the Practice Review Program
- Undertaking not to act for both sides in any transaction
- Undertaking not to attempt to set aside the mortgage on his cottage property
- \$6,000 in costs

Convocation's Disposition (10/27/95)

- Three-month suspension with conditions
- \$6,000 in costs

Counsel for the Solicitor

Geoffrey Adair

Counsel for the Law Society

Christina Budweth (at Committee)

Neil Perrier (at Convocation)

Some time around July 1989, the Solicitor arranged a \$70,000 loan from a longstanding client to be used as bridge financing on a real estate transaction or transactions. The funds were actually being borrowed for another of the Solicitor's clients. The Solicitor failed to advise the lender to the transaction of the nature of his conflict of interest and failed to obtain their consent to his continuing to act. The Solicitor also failed to ensure that the lender/client received adequate security for the loan. The Solicitor did not advise the lender/client to seek independent legal advice when it became apparent that the borrower could not repay the loan. Eventually, he attempted to personally guarantee the loan with mortgages on his condominium and summer cottage.

In 1991, the Solicitor was reprimanded in Discipline Committee for failing to reply to the Law Society. The Committee noted that the Solicitor had been suspended by Convocation in 1993 for more serious misconduct arising from somewhat similar facts. However, since the discipline in that case was not imposed prior to the commission of the offenses in the current case the Committee considered it not to be a prior record in the full sense, but merely a circumstance. The Committee also noted the substantial financial reverses suffered by the Solicitor in his attempts to safeguard his client's position and that he had no intention of personal advantage. The Committee recommended a three-month suspension, enrolment in the Practice Review Program, an undertaking not to act for both sides in any transaction, an undertaking not to attempt to set aside the mortgage on his cottage property and \$6,000 in costs. At Convocation the Solicitor was suspended for three months with conditions commencing December 1, 1995 with \$6,000 in costs.

Failure to reply

Kelly, Thomas Alan

Oakville, Ontario

Age 47, Called to the Bar 1981

Particulars of Complaint

• Professional Misconduct

- Failed to reply to the Law Society (2)
- Failed to cooperate with a Society audit by failing to produce books and records

Recommended Penalty

- Three-month suspension to continue until the Solicitor replies and permits an audit of his books and records

Convocation's Disposition (10/27/95)

- Three-month suspension effective October 27, 1995 and thereafter until the Solicitor replies and permits an audit of his books and records

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Rhonda Cohen

The Solicitor failed to reply to the Law Society regarding two separate complaints pertaining to financial obligations incurred by the Solicitor through his practice. The Solicitor also failed to cooperate with the Society by failing to produce his books and records despite numerous attempts by the Society to schedule appointments to conduct an audit.

On July 7, 1993, the Solicitor was reprimanded in Discipline Committee with costs for failing to file his Forms for the fiscal year ended October 31, 1991, and on June 14, 1994, the Solicitor was reprimanded in Committee with costs for failing to reply to the Society and failing to honour accounts. The Solicitor was also found guilty of professional misconduct for failing to file for his fiscal year ended October 31, 1993, with the

matter pending Convocation. The Committee recommended a three-month suspension to continue until the Solicitor replies to the Society and permits an audit of his books and records. The Committee noted that the Solicitor was under administrative suspension since November of 1994 for non-payment of fees and that Discipline Counsel believed that the Solicitor had not paid his costs from the previous discipline matters. At Convocation the Solicitor was suspended for three months effective immediately to continue until he has provided a satisfactory reply to the Law Society and permitted an audit of his books and records.

Failure to reply

Goldberg, Stanley David

Toronto, Ontario

Age 72, Called to the Bar 1972

Particulars of Complaint

• Professional Misconduct

- Failed to reply to the Law Society
- Failed to comply with an undertaking
- Failed to file Forms 2/3

Recommended Penalty

- Two-month suspension to continue until Forms are filed

Convocation's Disposition (10/27/95)

- Two-month suspension to continue until Forms are filed

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil J. Perrier

The Solicitor failed to reply to the Law Society regarding a complaint and failed to comply with his May 31, 1991, Undertaking to reply promptly to all communications from the Society. In addition, the Solicitor failed to file Forms 2/3 for his fiscal year ending January 31, 1994.

In 1991, the Solicitor was reprimanded once in Committee for failing to reply to the Society and for failing to honour a financial obligation, and once more for failing to reply and failing to comply with an undertaking. The Solicitor was also reprimanded in Convocation for failing to file his Forms for his fiscal year ended January 31, 1993. The Discipline Committee

recommended a two-month suspension to continue indefinitely until the filings are made. The Committee noted the hardship imposed on a sole practitioner as a result of a suspension but felt it necessary, given the Solicitor's discipline history, to bring home to the Solicitor the importance of his professional obligations. At Convocation the Solicitor was suspended for two months effective immediately to continue until his Forms are filed. The Solicitor has notified counsel of his intention to appeal Convocation's decision to Divisional Court.

Failure to file

Chung, Chi Wing

North York, Ontario

Age 47, Called to the Bar 1993

Particulars of Complaint

• Professional Misconduct

- Failed to file certificate since call to the Bar

Recommended Penalty

- Reprimand in Convocation if his filings are completed before Convocation
- Otherwise, a 30-day suspension to continue until his filings are completed

Convocation's Disposition (10/27/95)

- Reprimand in Convocation

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Jane Ratchford

The Solicitor was not present at the hearing nor was he represented. He was found guilty of professional misconduct for failing to file a certificate in the form prescribed by the Rules since his call to the Bar in 1993 thereby contravening Section 16(3) of Regulation 708 made pursuant to the *Law Society Act*. The Discipline Committee recommended a reprimand in Convocation if the Solicitor makes his filings before Convocation, and if not, the Committee recommended a 30-day suspension to continue until the filings are made. The Solicitor filed in advance of Convocation and was therefore reprimanded in Convocation.

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