



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

February 1996, Vol 4, No 5

Failure to reply

deRoux, James Keith

Orangeville, Ontario
Age 43, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society (3)
 - Failed to comply with an undertaking (3)
 - Failed to file Forms 2/3
 - Failed to maintain books and records (2)
 - Misappropriated funds
 - Misapplied funds
 - Misled a fellow lawyer
 - Misled the Law Society
 - Borrowed from clients
 - Practised while under suspension (2)
 - Falsified deposit slips

Recommended Penalty

- Disbarment

Convocation's Disposition (02/22/96)

- Disbarment

Counsel for the Solicitor

Walter Fox

Counsel for the Law Society

Neil J. Perrier

The Solicitor failed to provide a satisfactory reply to the Law Society regarding an

Cases

- Vernon I. Balaban, Toronto
- James K. deRoux, Orangeville
- Chaim D. Freedman, Toronto
- Howard E. Kerbel, Toronto
- Byron D. Loney, Barry's Bay
- Yaroslav Mikitchook, Toronto
- William H. Morris, Oakville
- Clifford P. Moss, North York
- David M. O'Brien, North York
- Timothy E. Reilly, Toronto

inadequacy in his Form 2 for his fiscal year ending May 31, 1992, and he failed to comply with his March 13, 1992 Undertaking to reply in a prompt and comprehensive fashion to the Law Society. The Solicitor failed to file Forms 2/3 for his fiscal years ending May 31, 1991 and 1992. After a subsequent audit, the Solicitor failed to reply to the Law Society regarding inadequacies in his books and records, and again he failed to comply with his Undertaking. The Solicitor acted in similar fashion in regard to a complaint from a client filed with the Law Society. Between September 8, 1992 and September 30, 1993, the Solicitor misappropriated approximately \$44,289.47 for his own personal use and benefit. Between approximately January 14, 1993 and September 30, 1993, the Solicitor misapplied \$29,050.63, more or less, to benefit other clients. The Solicitor engaged in a "kiting scheme" and falsified deposit slips throughout the above periods. The Solicitor misled a fellow lawyer by confirming receipt of settlement funds which he had not received. He borrowed \$25,000 from a client and he failed to maintain his books and records by failing to identify the source of funds deposited to the trust account. Finally, the Solicitor breached Orders of Convocation that he suspend his practice for failure to pay his annual fees and for failure to pay his insurance levy by practising law during the periods November 26, 1993 to January 25, 1994 and June 1-16, 1993.

In 1990, the Solicitor was reprimanded in Discipline Committee for failing to reply to the Law Society. In 1991, he was reprimanded in Committee for failing to file his Forms 2/3 and for breaching an undertaking to the Law Society. The immediate Committee noted that although there were submissions that the Solicitor was unaware that he was suffering from clinical depression it was no defense, and recommended that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

Failure to serve clients

O'Brien, David Michael

North York, Ontario
Age 36, Called to the Bar 1986

Particulars of Complaint

- Professional Misconduct
 - Transferred fees without proper billings to clients
 - Transferred trust funds without explanation
 - Failed to serve numerous clients
 - Failed to reply to the Law Society (13)
 - Failed to reply to successor lawyers (2)
 - Failed to reply to fellow lawyers (5)
 - Failed to release former clients' files (2)
 - Misled the Law Society
 - Misapplied clients' funds
 - Failed to honour a financial obligation
 - Failed to file Forms 2/3

Recommended Penalty

- Twenty-month suspension with

Correction

Re: Kimberley Anne Smith

Newmarket, Ontario

The January 1996 issue of Discipline Digest (Vol 4, No 4) incorrectly summarized Convocation's disposition of this matter. The Solicitor was found guilty of professional misconduct and reprimanded in Convocation, ordered to participate in the Practice Review Program and to respond promptly to the Society in the future. The Society regrets the error and apologizes for any inconvenience it may have caused.

conditions on reinstatement
Convocation's Disposition (02/22/96)
 - Twenty-month suspension with
 conditions on reinstatement
Counsel for the Solicitor
 William Trudell
Counsel for the Law Society
 Georgette Gagnon

In August 1992, a spot audit by the Law Society found that the Solicitor was:

1. depositing retainers directly to his general account and billing clients later;
2. transferring fees from settlement funds received in trust and billing clients later (\$16,798.94); and
3. in some cases providing no explanation for deposits, without a record of a client billing or client file (\$99,727.51).

The Solicitor failed to serve numerous clients and missed limitation periods, delayed taking action on files and failed to release files to his clients. He failed to reply to the Law Society respecting numerous complaints from clients, failed to reply to fellow lawyers, and successor lawyers and failed to release former clients' files. The Solicitor misled the Law Society respecting a complaint. The Solicitor misapplied his clients' trust funds by using disbursement funds for purposes other than for payment of his clients' medical examinations relating to motor vehicle accident insurance claims. The Solicitor failed to file Forms 2/3 for his fiscal year ending January 31, 1994.

The Committee recommended that the Solicitor be suspended for twenty months subject to conditions on reinstatement as set out in an undertaking signed by the Solicitor:

1. he satisfy the Law Society that he is psychologically fit to return to the practice of law;
2. he undertake to practise only as an employee or employed associate of a Law Society member in good standing, for three years;
3. he undertake to have no involvement in any trust account, not directly receive retainers, to not sign fee billings, and not have any cheque signing authority for the period of supervision; and
4. he participate in the Law Society's Practice Review Programme.

The Discipline Committee took note of several mitigating factors including the Solicitor's condition of depression resulting from several motor vehicle accident injuries, the Solicitor's inadequate management of his expanding law practice and staff, inappropriate handling of clients' money being misapplication and not misappropriation. By the date of the discipline hearing, the Solicitor had provided all

replies to the Law Society and co-operated with the Law Society's Audit Department.

Convocation ordered that the Solicitor be suspended for twenty months effective immediately and ordered that he be bound by the terms and conditions of the undertaking he signed respecting reinstatement to the practice of law.

Misappropriation

Kerbel, Howard Elliott
 Toronto, Ontario
 Age 52, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Misappropriated trust account funds
 - Made misleading representations to a Law Society audit investigator (2)
 - Failed to ensure cash was properly credited to the firm
 - Misappropriated client's funds

Recommended Penalty

- Eighteen-month suspension
- Convocation's Disposition (02/22/96)*
 - Eighteen-month suspension

Counsel for the Solicitor
 Brian Greenspan
Counsel for the Law Society
 Neil J. Perrier

On or about April 1, 1991, the Solicitor improperly appropriated the sum of \$3,000 from the mixed trust account of his law firm. Moreover, the Solicitor made representations which tended to mislead an audit investigator for the Law Society when he represented that the money was due to him to settle an account with his old firm. On or about October of 1988, the Solicitor failed to properly ensure that the sum of \$5,000 on account of a cash retainer was properly credited to his law firm. On or about November 21, 1989, the Solicitor improperly appropriated the approximate sum of \$2,500 of a cash retainer and made misleading representations to a Society investigator when he stated that the money was due to him on account of fees for prior services. Finally, in or about March of 1991, the Solicitor failed to allocate to his firm a portion of payment in the sum of \$1,200 on account of fees for services rendered.

On May 11, 1988, the Solicitor was reprimanded in Discipline Committee for improper borrowing. On June 19, 1980, he was reprimanded in Committee and ordered to pay costs for failure to meet financial obligations. The current Committee accepted a Joint Submission in recommending that the Solicitor be suspended for eighteen months, such suspension to commence on August 1, 1995. The Committee noted that the facts of this case did not indicate any

improper dealings with clients other than some irregularities, however, a lengthy suspension was required, particularly in light of the Solicitor's betrayal of his associates' trust to the law firm. At Convocation, the Solicitor was suspended for a period of eighteen months commencing August 1, 1995 (retroactive).

Failure to maintain records

Loney, Byron Douglas
 Barry's Bay, Ontario
 Age 34, Called to the Bar 1987

Particulars of Complaint

- Professional Misconduct
 - Failed to maintain books and records
 - Failed to maintain sufficient trust account balances
 - Appropriated trust funds without billing
 - Misappropriated trust funds
- Recommended Penalty*
 - Indefinite suspension with conditions, disbarment should conditions not be fulfilled by date of Convocation

Convocation's Disposition (02/22/96)
 - Twelve-month suspension with conditions
 - \$4,000 in costs

Counsel for the Solicitor
 Not represented and Solicitor not present at Convocation
Counsel for the Law Society
 Georgette Gagnon

The Solicitor failed to maintain his books and records and failed to maintain sufficient balances on deposit in his trust account. Overdrawn accounts in the amount of \$3,964.40 remained outstanding. From April of 1992 to March of 1993, the Solicitor appropriated trust funds totalling \$2,791 to his general account for fees without delivering a billing or other written notification to the clients. The Solicitor also misappropriated \$1,195 from his mixed trust account.

The Discipline Committee recommended that the Solicitor be suspended until he fulfills the following conditions: brings his records into good standing; replaces deficient trust monies; and accounts for the alleged misappropriation by justifying unbilled fees and disbursements. The Discipline Committee also recommended that on reinstatement, the Solicitor be required to practise law for a three year period under supervision, not operate a trust account during the three year period, and enter into and cooperate with

the Practice Review Programme. Should the Solicitor fail to fulfill the conditions before the date of Convocation, the Discipline Committee recommended that the Solicitor be disbarred.

At Convocation, the Solicitor was suspended for a fixed period of twelve months effective immediately, such suspension to continue indefinitely until he brings his records into good standing. Conditions on reinstatement include practising under supervision, no operation of a trust account for three years and enrolment in the Practice Review Programme. Convocation also ordered the Solicitor to pay \$4,000 in costs. Convocation stated that it would provide written reasons for its decision.

Abusive tactics

Balaban, Vernon Isadore

Toronto, Ontario

Age 51, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Engaged in unfair and abusive tactics

Recommended Penalty

- Six-month suspension
- \$1,000 in costs

Convocation's Disposition (02/22/96)

- Six-month suspension
- \$1,000 in costs

Counsel for the Solicitor

John Morin (at Convocation)

Counsel for the Law Society

Neil J. Perrier (at Convocation)

Christina M. Budweth (at Committee)

On May 19, 1994, the Solicitor attended an Examination in Aid of Execution on behalf of his client. During the Examination, the Solicitor became upset with the Judgment Debtor and his counsel for not bringing the corporation's Minute Book and other documents. When counsel and his client attempted to leave the Solicitor took some of the client's documents. The Solicitor then barricaded the door with his arms, and refused to permit them to leave. He also informed the Judgment Debtor that he was going to jail. The transcriber was permitted to leave through a slightly opened door at which time she summoned the police. The officer instructed the Solicitor that he must release the counsel and his client. The Solicitor refused to immediately release the documents in his possession, though they were later returned.

In 1986, the Solicitor was suspended for three months after being found in contempt of Court. In 1982, he received a Reprimand in Convocation for verbally abusing another lawyer during an

Examination and pouring coffee on some of his documents. In 1980, the Solicitor received a Reprimand in Discipline Committee for locking a student in a reception area against his will and slamming the door on the student's hand and foot. Noting the mitigating factor of the passage of time since the previous similar incidents, the Committee recommended a six-month suspension with \$1,000 in costs. At Convocation, the Solicitor was suspended for a period of six months commencing April 1, 1996 with \$1,000 in costs.

Failure to serve clients

Reilly, Timothy Edgar

Toronto, Ontario

Age 34, Called to the Bar 1989

Particulars of Complaint

- Professional Misconduct
 - Mised a client (4)
 - Failed to reply to the Law Society (3)
 - Failed to serve his clients conscientiously and diligently (4)

Recommended Penalty

- Five-month suspension with conditions
- Practice Review Programme

Convocation's Disposition (02/22/96)

- Five-month suspension with conditions
- Practice Review Programme

Counsel for the Solicitor

Charles C. Mark

Counsel for the Law Society

Neil J. Perrier

Between December of 1992 and March of 1993, the Solicitor misled his client regarding the status of documentation he had been instructed to forward to another party for execution and subsequently failed to reply to the Law Society regarding a complaint from that client. He also failed to reply to the Law Society in regard to complaints from two other clients. In similar fashion, the Solicitor failed to serve four separate clients in a conscientious, diligent and efficient manner by failing to carry out their instructions to pursue various actions and misleading them by advising them that he was actively undertaking such actions.

On February 2 and July 7, 1993, the Solicitor was reprimanded in Discipline Committee with respect to his failure to reply to the Law Society. The immediate Committee recommended that the Solicitor be suspended for five months and that he should participate in the Law Society's Practice Review Programme should he

return to practice. The Committee, noting that the Solicitor had given up his practice and was working as a part-time law clerk, recommended that after a period of two months of suspension the Solicitor should be permitted to resume working as a law clerk. At Convocation, the Solicitor was suspended for five months effective immediately. The Solicitor was instructed to bring an application before a Committee of Convocation, which has been established to consider individual Rule 20 applications, on the issue of whether a suspended Solicitor should be permitted to work for a lawyer.

Failure to reply

Mikitchook, Yaroslav

Toronto, Ontario

Age 49, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Failed to fulfill his responsibility to his clients following the discharge of his services
 - Failed to reply to written communications from a fellow lawyer
 - Failed to reply to the Law Society
 - Failed to comply with an undertaking to the Law Society

Recommended Penalty

- Six-month suspension to continue until Forms are filed

Convocation's Disposition (02/22/96)

- Three-month suspension
- \$1,000 in costs

Counsel for the Solicitor

Morris Singer

Counsel for the Law Society

Neil J. Perrier

The Solicitor failed to file Forms 2/3 for his fiscal year ending March 31, 1993. The Solicitor represented his clients in a subdivision application for which the Township required \$3,000 to process. The Solicitor received \$4,000 from his clients and indicated that he had paid the processing fee in full. However, as confirmed by a letter from the clerk of the Township, only \$2,000 had been paid. Subsequently, the Solicitor was instructed to forward his client's file to a fellow lawyer. The Solicitor failed to deliver all documentation and property to which his clients were entitled, he failed to give all information which was required regarding the case, he failed to account for all client funds received and disbursed and he failed to promptly render an account for outstanding fees and disbursements. In addition, he failed to respond to written communications from his successor lawyer

and failed to reply to the Law Society or comply with his Undertaking of May 1, 1990 to reply promptly to all Law Society inquiries.

The Solicitor was reprimanded in Convocation in 1993 for failing to reply, failing to comply with his undertaking, failing to serve and misleading his client. The Discipline Committee noted that the Solicitor evidenced a reluctance to be governed and that previous disciplinary actions had failed to rectify his behaviour. The Committee recommended a six-month suspension to continue until the Forms are filed. The Solicitor's counsel submitted that the period of suspension should be in the range of a reprimand in Convocation to a one-month suspension. Counsel for the Law Society argued that the suspension should be for a period of three months. At Convocation, the Solicitor was suspended for three months commencing March 14, 1996, with \$1,000 in costs.

Failure to maintain records

Morris, William Hubert
Oakville, Ontario
Age 45, Called to the Bar 1978

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Failed to maintain books and records
 - Failed to reply to the Law Society
 - Issued cheques to his secretary from his trust account

Recommended Penalty

- Three-month suspension with conditions

Convocation's Disposition (02/22/96)

- Three-month suspension with conditions

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley M. Cameron

The Solicitor failed to file Forms 2/3 for his fiscal years ending January 31, 1990 to 1994. The Solicitor failed to maintain his books and records from January of 1989 on

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and, failed to respond to the Law Society's requests for information about his books and records. The Solicitor breached section 14 of Regulation 708 by signing two cheques totalling \$1,131.41 drawn on his trust account, payable to his secretary.

The Solicitor had no previous discipline record. The Discipline Committee recommended that the Solicitor be suspended for three months to continue until his Forms are filed and he provides the Law Society with the requested information. At Convocation, the Solicitor was suspended for three months with the above conditions, effective immediately.

Failure to file forms

Freedman, Chaim David
Toronto, Ontario
Age 33, Called to the Bar 1990.

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- One-month suspension to continue until Forms are filed and books and records are produced
- \$1,000 in costs

Convocation's Disposition (02/22/96)

- One-month suspension to continue until Forms are filed and books and records are produced
- \$1,000 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Glenn Stuart

The Solicitor failed to file Forms 2/3 for his fiscal year ending November 30, 1993. The Solicitor did not attend his hearing nor was he represented, though the Discipline Committee found that he had received proper notice. The Committee recommended a one-month suspension to begin at the conclusion of any administrative suspension, and to continue until the Solicitor files the requisite forms and produced the required books and records to the Law Society. The Committee further recommended that he pay \$1,000 in costs. At Convocation, the Solicitor was suspended for one month to continue until his Forms are filed and he produces his books and records, such suspension to commence at the conclusion of any administrative suspension, with \$1,000 in costs.

Failure to serve client

Moss, Clifford Paul
North York, Ontario
Age 32, Called to the Bar 1989

Particulars of Complaint

- Professional Misconduct
 - Failed to serve a client conscientiously and diligently
 - Failed to reply to the Law Society (3)
 - Failed to provide a final report to a client

Recommended Penalty

- Reprimand in Convocation
- Practice Review Programme
- \$750 in costs

Convocation's Disposition (02/22/96)

- Reprimand in Convocation
- \$750 in costs

Counsel for the Solicitor

Edward R. White

Counsel for the Law Society

Elizabeth Cowie

In 1994, the Solicitor failed to serve his client in a conscientious, diligent and efficient manner in that he failed to provide her with a report on the closing of her real estate purchase and he failed to account for monies entrusted to him by her. The Solicitor then failed to reply to the Law Society in regard to a complaint from the client. The Solicitor failed to provide a final report on a mortgage transaction to another client and failed to reply to the Law Society in regard to a complaint from the same matter. Finally, in 1995, the Solicitor failed to reply to the Law Society regarding a complaint from a client involving certain support and custody issues.

The Solicitor had no prior discipline record. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation, that he participate in the Law Society's Practice Review Programme, and that he pay \$750 in costs. The Committee noted that the Solicitor's problems were caused by a combination of illness and a lack of support staff and that there were no losses to any clients. At Convocation, the Solicitor received a Reprimand and was ordered to pay \$750 in costs on or before March 4, 1996.

Alcohol/Drug/Eating Disorder/Addiction Problem?

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