



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

January 1996, Vol 4, No 4

Improper borrowing

De Franco, Antonio Lorenzo

Nepean, Ontario
Age 47, Called to the Bar 1975
and 1986

Particulars of Complaint

- Professional Misconduct
 - Borrowed money from a client
 - Filed a false Form 2
 - Failed to reply to the Law Society
 - Failed to serve a client conscientiously and diligently

Cases

- Brian F. Adamson, Minden
- Derek G. Ball, Mississauga
- Brian D. Batchelar, Brampton
- Shawn D. R. Clancy, Toronto
- Antonio L. De Franco, Nepean
- Melvin N Diamond, Oshawa
- Lee E. Fingold, Thornhill
- Melvin D. Fischman, Oshawa
- William D. Gray, Toronto
- Frederick B. Kenwell, Toronto
- David C. M. Koma, Toronto
- Nancy G. Koster, Georgina
- Maurice A. Loton, Wasaga Beach
- Frank N. Mantello, Sault Ste. Marie
- Harvey S. Margel, North York
- Michele M. Meakes, Toronto
- Timothy D. Salomaa, Mississauga
- Kimberly A. Smith, Newmarket
- Irene Stich, London
- Nigel Svami, Toronto
- Robert M. Syer, Toronto
- Stanley Udell, Richmond Hill

Recommended Penalty

- Disbarment

Convocation's Disposition (01/25/96)

- Disbarment

Counsel for the Solicitor

Allan R. O'Brien

Counsel for the Law Society

Neil J. Perrier

The Solicitor borrowed the sum of \$24,500, more or less, in or around September and November 1991, from his client without ensuring that his client's interests were fully protected by the nature of the case and by independent legal representation. The Solicitor filed or caused to be filed a Form 2 for the period December 1, 1991 to November 30, 1992, which he knew or ought to have known was false and misleading as it failed to declare his indebtedness to his client. The Solicitor failed to serve his client in a conscientious, diligent and efficient manner in that he failed to respond to his client's numerous attempts to contact him by telephone; he failed to keep appointments without explanation; and he misled his client into believing that his divorce matter was proceeding, when in fact the Petition for Divorce had not been filed with the court. Finally, the Solicitor failed to reply to the Law Society regarding a complaint in the latter matter.

On February 24, 1983, the Solicitor was disbarred for misappropriation, borrowing from his clients, misrepresentations made to his clients and for filing a false Form 2. On February 28, 1986, the Solicitor was readmitted as a member of the Law Society with conditions. On October 15, 1991, the Solicitor received a Reprimand in Discipline Committee

for failing to serve a client conscientiously and diligently in a divorce matter. The immediate Committee recommended that the Solicitor be disbarred. In noting that the Solicitor had declared bankruptcy and that his former client would suffer a loss, the Committee emphasized the need for a progressive penalty given the Solicitor's discipline history and conduct upon which it made a finding of ungovernability. At Convocation, the Solicitor was disbarred.

Misappropriation

Fingold, Lee Edward

Thornhill, Ontario
Age 45, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Misappropriated client's funds
 - Borrowed from clients
 - Swore a false Form 2 statutory declaration
 - Failed to ensure a client received independent legal advice
 - Personally guaranteed clients' mortgages
 - Preferred own interests over those of his client

Recommended Penalty

- Disbarment

Convocation's Disposition (01/25/96)

- Disbarment

Counsel for the Solicitor

Brian Greenspan

Counsel for the Law Society

Janet L. Brooks and Christina M. Budweth (at Committee)

Janet L. Brooks (at Convocation)

On eight separate occasions in the

period July 1988 to February 1990, the Solicitor misappropriated for short periods of time a total of \$83,821.24 that belonged to his client, an estate in the period June 1988 to August 1989, the Solicitor borrowed funds in excess of \$1,000,000 from a number of his clients for real estate investments in which he had an interest. On or about July 12, 1989, the Solicitor swore a false Form 2 statutory declaration by declaring that he was not indebted to clients when in fact he was so indebted. On or about March 3, 1989, the Solicitor failed to ensure that his client obtain independent legal advice when he invested in a property in which the Solicitor had an interest. In 1989, the Solicitor personally guaranteed three mortgages in which clients were involved as borrowers or lenders. Finally, on or about January 20, 1989, the Solicitor preferred his own interests and those of his borrower clients to the interests of a lender client by misleading that client as to the purpose of her investment in a third mortgage, when, in fact, the Solicitor was to receive a portion of her advance.

The Solicitor had no prior discipline record. The Discipline Committee noted an absence of mitigating circumstances and recommended disbarment. At Convocation, the Solicitor was disbarred.

Failure to comply

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 L. Brooks

At Convocation (01/25/96), the Solicitor was disbarred after failing to comply, by December 31, 1995, with her March 28, 1995 Undertaking to bring all outstanding matters into compliance with the Law Society's requirements.

Improper billing

Svami, Nigel

Toronto, Ontario

Age 57, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Submitted inaccurate Legal Aid billing certificates
 - Improperly commissioned affidavits

Recommended Penalty

- Permission to resign (Majority)
- Disbarment (Dissent)

Convocation's Disposition (12/08/95)

- Permission to resign

Counsel for the Solicitor

Richard Baker

Counsel for the Law Society

Neil J. Perrier

In the period January 1, 1991, to March 27, 1992, the Solicitor submitted numerous Legal Aid billing certificates representing that he had performed work which was in fact performed by non-lawyer assistants whose services were compensable at a lower rate or not at all. He submitted certain billing certificates which included overlapping time claims with other billing certificates for an overcharge of \$81,764, and he improperly claimed travel expenses in the amount of \$10,417.75. The Solicitor also improperly commissioned affidavits without being present when the deponent signed the affidavit, or without administering any oath to the deponent of the affidavit.

The Solicitor had no prior discipline history. Two members of the

Discipline Committee recommended that the Solicitor be permitted to resign, while one member recommended that the Solicitor be disbarred. The Majority noted the mitigating circumstance of severe pressure from a rapidly growing refugee practice, and that the Solicitor did not intentionally seek to submit inaccurate certificates but rather failed to adequately train and supervise his secretary who prepared the accounts. In addition, the Majority noted the strong character evidence regarding the Solicitor and that the Legal Aid plan had received restitution. The Dissent which recommended disbarment contained a finding of recklessness amounting to wilful blindness. The member made reference to the *Kopyto* decision and noted that none of the evidence explained the Solicitor's lack of attention to such matters. At Convocation, the Solicitor was granted permission to resign.

Failure to file forms

Batchelar, Brian Douglas

Brampton, Ontario

Age 46, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Acted in a conflict of interest
 - Reported falsely to a client
 - Prepared and commissioned a false Statutory Declaration
 - Failed to produce books and records
 - Failed to reply to the Law Society
- Conduct Unbecoming
 - Swore a false Statement of Affairs

Recommended Penalty

- One-year suspension with conditions
- \$5,000 in costs

Convocation's Disposition (01/25/96)

- One-year suspension with conditions
- \$5,000 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Jane Ratchford

In December 1991, a client and friend of the Solicitor agreed to take title to a

certain property on the Solicitor's behalf and to execute two mortgages to finance the purchase. An Indemnity Agreement was executed by the Solicitor in favour of the client, however, the Solicitor failed to advise his client to obtain independent legal advice concerning the purchase transaction and the Indemnity Agreement. The Solicitor also failed to disclose that he was acting for both the purchaser and the vendor. In acting for the trust company in respect of its first mortgage secured on the property, the Solicitor falsely reported that the terms and conditions of a letter of commitment had been met and fully complied with. The Solicitor also prepared and commissioned a Statutory Declaration in which his client falsely declared that the property was his principal residence. On November 18, 1993, the Solicitor made an assignment in bankruptcy and the property was sold in September 1994. The Solicitor's sworn Statement of Affairs filed in his bankruptcy did not refer to his direct financial interest in the property. In August 1994, the Solicitor failed to produce his books and records and failed to reply to the Law Society. Finally, the Solicitor failed to file his Forms 2/3 for his fiscal year ending January 1, 1994.

The Solicitor has no prior discipline record. He did not attend his Discipline Committee hearing nor was he represented. The Committee recommended a one-year suspension to continue until all filings and fees are made and paid, with the following conditions applicable upon reinstatement: prohibition against acting for both vendor and purchaser in a real estate transaction; prohibition against acting for both vendor and purchaser in a real estate transaction; practice for one year in association with an experienced real estate practitioner approved by the Law Society; enrolment and cooperation with the Practice Review Program; payment of costs of \$5,000 repayment to commence six months after the return to practice by way of monthly instalments of \$200 per month. At Convocation, the Solicitor was suspended for one year with the above conditions.

Failure to file forms

Kenwell, Frederick Blake

Toronto, Ontario

Age 31, Called to the Bar 1991

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Practised law while under suspension (2)
 - Failed to maintain sufficient trust funds
 - Failed to maintain books and records

Recommended Penalty

- Nine-month suspension if filings made beforehand
- Otherwise, nine-month suspension to continue until filings are made

Convocation's Disposition (01/25/96)

- Nine-month suspension

Counsel for the Solicitor

Norman Panzica

Counsel for the Law Society

Kate Wootton (at Committee)

Elizabeth Cowie (at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal year ending March 31, 1994. The Solicitor practised law while suspended for failure to pay his annual fees between December 1, 1992 and March 1, 1993, and for failure to pay his filing fees between April 23, 1993 and September 15, 1993. On or about September 2, 1993, a Law Society audit revealed that the Solicitor had a trust shortage of \$485 and that his books and records were two years and three months in arrears.

The Solicitor did not have a prior discipline record. The Discipline Committee recommended that the Solicitor be suspended for nine months and that if he has not made his filings by Convocation that he be suspended indefinitely until such time as those are made. The Committee added a general deterrence suspension of 30 days to the 8 months representing the period of practising while under suspension. At Convocation, the Solicitor was suspended for nine months and thereafter indefinitely to run consecutively after his current indefinite administrative suspension.

Borrowing from clients

Diamond, Melvin Nathan

Oshawa, Ontario

Age 52, Called to the Bar 1969

Particulars of Complaint

- Professional Misconduct
 - Borrowed money from a client without ensuring independent legal advice
 - Personally guaranteed clients' mortgage investments
 - Failed to serve his client conscientiously and diligently (2)
 - Acted in a conflict of interest

Recommended Penalty

- Six-month suspension with conditions
- \$7,500 in costs

Convocation's Disposition (12/09/95)

- Six-month suspension with conditions
- \$7,500 in costs

Counsel for the Solicitor

Edward M. Morgan

Sandra A. Forbes

Counsel for the Law Society

Christina M. Budweth

(at Committee)

Michael F. Brown

(at Convocation)

Fischman, Melvin Diamond

Oshawa, Ontario

Age 53, Called to the Bar 1969

Particulars of Complaint

- Professional Misconduct
 - Borrowed money from a client without ensuring independent legal advice
 - Personally guaranteed clients' mortgage investments

Recommended Penalty

- Five-month suspension with conditions
- \$7,500 in costs

Convocation's Disposition (12/09/95)

- Five-month suspension with conditions
- \$7,500 in costs

Counsel for the Solicitor

Edward M. Morgan

Sandra A. Forbes

Counsel for the Law Society

Christina M. Budweth

(at Committee)

Michael F. Brown
(at Convocation)

Complaints against both Solicitors were heard jointly. The Solicitors incorporated a mortgage brokering company and then individually incorporated wholly owned corporations with interests in the original company. From 1988 until 1990 the Solicitors borrowed money from clients directly and indirectly through the corporations. The Solicitors had clients waive their right to independent legal advice by executing Acknowledgements instead of ensuring that they obtained such advice. From the 1970's, until the late 1980's, the Solicitors guaranteed approximately \$10 to \$12 million worth of mortgages and, as a result of the downturn in the real estate market, have been unable to honour all the guarantees made to the firm's clients.

Neither Solicitor had a prior discipline history. The Discipline Committee noted that the Solicitors made voluntary disclosure to the Law Society at an early stage and cooperated throughout, particularly by admitting their misconduct. There was no apparent dishonesty, and the Solicitors engaged in substantial efforts at restitution. The Discipline Committee recommended that Solicitor Diamond be suspended for six months and that Solicitor Fischman be suspended for five months; that they participate in, and cooperate with, the Practice Review Program; that they undertake to cease mortgage brokering from the firm; that there be periodic audits at the Solicitors' expense; and that they each pay costs in the amount of \$7,500 payable in instalments of \$250 per month commencing after serving the suspension. The Committee further recommended that Solicitor Diamond serve his suspension and then Solicitor Fischman serve his with a one month overlap to provide for an orderly transition. At Convocation, Solicitor Diamond was suspended for six months with conditions commencing February 1, 1996, and ordered to pay \$7,500 in costs, payable in instalments. Solicitor Fischman was suspended for five months commencing September 1, 1996, with conditions, and ordered to pay \$7,500 in costs, payable in instalments.

Failure to serve clients

Margel, Harvey Samuel

North York, Ontario

Age 50, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Failed to serve his clients conscientiously and diligently (5)
 - Acted in a conflict of interest (18)
 - Reported incorrect information to his clients (4)
 - Breached his duty to his clients by failing to inform them fully (6)
 - Improperly borrowed from a client

Recommended Penalty

- Nine-month suspension

Convocation's Disposition (12/08/95)

- Six-month suspension

Counsel for the Solicitor

Brian Greenspan

Counsel for the Law Society

Gavin MacKenzie (at Committee)

Michael F. Brown (at Convocation)

The Solicitor was found guilty of professional misconduct. Most of the violations resulted from his firm's representation of a group of companies dealing in real estate which eventually became insolvent and defaulted on most of its 150 properties. The Solicitor was primarily responsible for servicing the group of companies. Much of the misconduct that was admitted by the Solicitor may be explained in part by the firm's inadequate resources and poor state of organization for which the Solicitor, with respect to the group of companies, must accept the principal responsibility. The Solicitor advanced mortgage funds prior to the registration of security documents, advanced mortgage funds prior to the registration of a deed to the borrower and failed to disclose fully his interest in a syndicate that borrowed from a client. The Solicitor incorrectly reported to his clients, incorrectly reported priority of mortgages, failed to report particulars and dollar value of prior encumbrances, failed to report a mortgage priority and incorrectly reported registration of a deed. The Solicitor also acted for more than one party in a number of transactions without making full disclosure to

and obtaining the consent of his client.

The Discipline Committee recommended a nine-month suspension. The Committee noted the lack of dishonesty on the part of the Solicitor, his medical evidence, letters of support and evidence of personal, professional and financial suffering. However, the Committee considered that the repetitious nature of the misconduct and found that the Solicitor had acted recklessly and carelessly. At Convocation (05/26/94), the matter was returned to Committee for clarification of its reasons. The Committee issued supplementary reasons and confirmed its recommendation of a suspension of nine months. On return to Convocation, the Solicitor's suspension was reduced to that of six months commencing February 17, 1996.

The Solicitor has appealed the order of Convocation and is seeking a stay of the suspension pending the hearing of the appeal.

Practising while suspended

Salomaa, Timothy David

Mississauga, Ontario

Age 49, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Practised law while under suspension
 - Failed to maintain sufficient trust balances

Recommended Penalty

- Four-month suspension
- \$2,000 in costs

Convocation's Disposition (01/25/96)

- Four-month suspension
- \$2,000 in costs

Counsel for the Solicitor

Holly Nickel (at Committee)

George Hately, Duty Counsel
(at Convocation)

Counsel for the Law Society

Jane Ratchford

The Solicitor practised law while under suspension for non-payment of his annual fees during the period from November 8, 1993 to December 22, 1993. The Solicitor failed to maintain sufficient trust account balances in the period September 1993 to December 1993.

On December 17, 1991, the Solicitor was reprimanded in Discipline Committee for failing to reply to the Law Society. On July 9, 1992, he was reprimanded in Committee for practising law while under suspension. Finally, on June 24, 1993, the Solicitor was suspended for one month and ordered to pay \$4,500 in costs for failing to serve his client conscientiously and diligently. The immediate Discipline Committee recommended that the Solicitor be suspended for four months with \$2,000 in costs. The Committee noted the seriousness of the matter given the Solicitor's discipline history and his prior misconduct in practising while under suspension. At Convocation, the Committee's recommendation was approved to commence March 1, 1996.

Failure to serve client

Smith, Kimberly Anne

Newmarket, Ontario

Age 36, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct
 - Failed to serve a client conscientiously and diligently
 - Misled a client
 - Failed to reply to the Law Society

Recommended Penalty

- Three-month suspension to continue until conditions are met
- \$1,400 in costs

Convocation's Disposition (01/25/96)

- Three-month suspension to continue until conditions are met

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor failed to serve her client in a conscientious, diligent and efficient manner in that she failed to follow his instructions to register a business name with the Ministry of Consumer and Commercial Relations, failed to respond to his inquiries, and failed to render an account upon termination of her retainer. The Solicitor misled her client by falsely advising his wife that she had registered a business name. The Solicitor failed to reply to the Law Society regarding a complaint made by

her client in the above matter.

The Solicitor did not have a discipline history. The Discipline Committee recommended that the Solicitor be suspended for three months and indefinitely thereafter until such time as she provides a letter to her client enclosing a certified cheque in the amount of \$500; provides a copy of the letter and the cheque to the Law Society; responds to the Law Society in regard to this matter; and pays \$1,400 in costs. The Committee further recommended that the Solicitor be required to participate in the Practice Review Program and that she be required to respond promptly to the Law Society in the future. By Convocation, the Solicitor had satisfied all of the conditions with the exception of the payment of costs. The Solicitor was Reprimanded in Convocation, and ordered to participate in the Practice Review Program and to respond promptly to the Law Society in the future.

Failure to serve client

Adamson, Brian Francis

Minden, Ontario

Age 44, Called to the Bar 1979

Particulars of Complaint

- Professional Misconduct
 - Failed to serve clients conscientiously and diligently
 - Failed to reply to the Law Society (2)

Recommended Penalty

- Three-month suspension

Convocation's Disposition

- Three-month suspension

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Elizabeth Cowie

In 1991, the Solicitor failed to keep his clients reasonably informed as to his progress in obtaining statutory declarations and an up-to-date survey relating to their real estate transaction. He also failed to answer his clients' reasonable requests through their new solicitor for information. Finally, the Solicitor failed to reply to the Law Society in regard to two complaints.

The Solicitor did not attend his discipline hearing nor was he represented. The Discipline Committee found that service had been effected and that the Solicitor had notice of the proceedings. The Committee recommended a three-month suspension, such suspension to take effect upon the completion of any administrative suspensions which may affect the Solicitor. The Committee noted the seriousness of the Solicitor's breach which led to his clients' loss of \$5,000. At Convocation, the Solicitor was suspended for three months to be served consecutively after his previous one-month and indefinite discipline suspension (November 1995) and indefinite administrative suspension.

Failure to serve client

Gray, William Donald

Toronto, Ontario

Age 59, Called to the Bar 1969

Particulars of Complaint

- Professional Misconduct
 - Failed to serve a client conscientiously and diligently
 - Divulged confidential information

Recommended Penalty

- 60-day suspension
- \$2,000 in costs

Convocation's Disposition (12/09/95)

- 60-day suspension
- \$2,000 in costs

Counsel for the Solicitor

Roger Smith

Counsel for the Law Society

Stephen Foster

The Solicitor failed to serve his client in a conscientious, diligent and efficient manner in respect of matrimonial proceedings. In addition, he divulged confidential information relating to his client, without her authority, to opposing counsel. In response to a complaint to the Law Society from another lawyer concerning the Solicitor's conduct regarding the client's matrimonial proceedings, the Solicitor sent a copy of his response to the husband's lawyer without his client's consent.

In 1984, the Solicitor was reprimanded in Discipline Committee for failure to answer and for failure to produce materials requested by the Law Society Audit Department. In 1989,

the Solicitor was suspended for 60 days for failing to reply to the Society, failing to comply with an undertaking, failing to honour an agreement to protect the fees of another solicitor, failing to maintain his books and records and improper use of his trust account. The Discipline Committee accepted a Joint Submission as to penalty and recommended that the Solicitor be suspended for 60 days with \$2,000 in costs. Convocation ordered that the Solicitor be suspended for 60 days and pay costs of \$2,000.

The Solicitor appealed the order of Convocation to the Divisional Court and was granted a stay of Convocation's order pending the hearing of the appeal.

Practising while suspended

Koma, David Clyde Magambo
Toronto, Ontario
Age 48, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Practised law while suspended
 - Failed to maintain books and records

Recommended Penalty

- Two-month suspension to continue until books and records are updated and filings are made
- Practice Review Program

Convocation's Disposition (01/25/95)

- Two-month suspension to continue until books and records are updated and filings are made
- Practice Review Program

Counsel for the Solicitor

Harry Black

Counsel for the Law Society

Georgette Gagnon (at Committee)
Rhonda Cohen (at Convocation)

From 1991 until 1993, the Solicitor was suspended on five separate occasions (with the last one still in effect) for failing to pay a late filing fee and for failing to pay his Errors and Omissions Insurance levies. After an examination on June 1, 1993, a Law Society Examiner reported deficiencies in the Solicitor's books and records. According to the Solicitor, he was

unable to afford the services of a book-keeper or accountant and attempted to maintain his books and records himself.

The Discipline Committee recommended a two-month suspension to commence at the conclusion of the five administrative suspensions and to continue indefinitely until the Solicitor's books and records are brought up to date and all his filings are made. In addition, the Solicitor must participate in the Practice Review Program. The Committee noted the financial difficulties of the Solicitor since his arrival in Canada as a refugee. After his call to the Bar, the Solicitor was unable to get a job in a firm or with government and he resorted to a limited practice in real estate and immigration. He proved unable to manage his practice due to the failure of his clients to pay his fees and he was burdened by extensive student loans. At Convocation, the Committee's recommendation was approved.

Failure to serve client

Ball, Derek Gordon
Mississauga, Ontario
Age 45, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Failed to serve his client conscientiously and diligently
 - Mised a client

Recommended Penalty

- One-month suspension
- \$1,425 in costs

Convocation's Disposition (12/08/95)

- One-month suspension
- \$1,425 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor failed to serve his client in a conscientious, diligent and efficient manner in that he failed to proceed with his client's child support enforcement proceedings in a timely manner. He misled his client by informing her that he had obtained an order increasing child support payments when this was not true and by telling her that he had obtained the sum of \$800 from her former spouse in

connection with support arrears when this was not true.

The Solicitor did not have a discipline history. The Discipline Committee recommended a one-month suspension and costs of \$1,425. At Convocation, the Solicitor was suspended for one month commencing January 8, 1996, and ordered to pay costs of \$1,425 forthwith.

Failure to file forms

Clancy, Shawn Dennis Randle
Toronto, Ontario
Age 42, Called to the Bar 1993

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if Forms filed beforehand
- Otherwise, one-month suspension to continue until the Forms are filed
- \$250 in costs

Convocation's Disposition (01/25/96)

- One-month suspension
- \$250 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)
Glenn Stuart (at Convocation)

The Solicitor failed to file his Forms 2/3 for his fiscal year ending February 5, 1994. The Solicitor has no prior discipline record. The Discipline Committee recommended a Reprimand in Convocation if the Forms were filed beforehand, failing which, the Solicitor was to be suspended for one month and thereafter until the Forms are filed. The Committee further recommended that the Solicitor pay \$250 in costs. At Convocation, the Solicitor was suspended for one month and thereafter until the Forms are filed with \$250 in costs. The suspension is to commence after the Solicitor's administrative suspension.

Failure to file forms

Meakes, Michele Marie

Toronto, Ontario

Age 51, Called to the Bar 1983

Particulars of Complaint

- Professional Misconduct
 - Failure to file Forms 2/3 (2)

Recommended Penalty

- Reprimand in Convocation if filings made beforehand
- Otherwise, one-month suspension to continue until filings are made

Convocation's Disposition (01/25/96)

- One-month suspension to continue until filings are made

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor failed to file Forms 2/3 for her fiscal years ending January 31, 1993 and 1994. The Discipline Committee recommended that the Solicitor be Reprimanded in Convocation if her filings were made by Convocation, failing which, a one-month suspension, to continue until the filings are made. At Convocation, the Solicitor was suspended for one month, to continue until her filings are made. The suspension is to run concurrently with her administrative suspension.

Failure to reply

Koster, Nancy Grace

Georgina, Ontario

Age 44, Called to the Bar 1978

Particulars of Complaint

- Professional Misconduct
 - Failed to reply to the Law Society

Recommendation to Convocation

- Reprimand in Convocation
- \$750 in costs

Convocation's Disposition (01/25/95)

- Suspension until appearance at Convocation

Solicitor's Counsel

Not represented

Discipline Counsel

Christina M. Budweth
(at Convocation)
Michael F. Brown
(at Convocation)

The Solicitor was audited on March 15,

1990, and was requested by letter to address inadequacies in her books and records. The Solicitor provided the Law Society with an Undertaking dated July 12, 1990, in which she undertook to file with the Society monthly trust comparisons until such time as the trust balance was zero. The Solicitor was reprimanded in Discipline Committee on July 7, 1993, for failing to reply, failing to comply with her Undertaking and for failing to account for trust funds remaining in her control. In the matter before Convocation (01/25/95), the Solicitor failed to reply to five subsequent letters from the Law Society requesting further trust account information.

The Solicitor was reprimanded in Convocation in 1989, for misleading a client, failure to reply to the Law Society and failure to file Forms 2/3. The Solicitor was reprimanded in Committee in 1990, for failure to reply and in 1993, as mentioned above. The Discipline Committee recommended a reprimand in Convocation and \$750 in costs, payable at \$50 per month. The Committee noted the leniency of the 1993 Reprimand in Committee given the Solicitor's prior discipline history. At Convocation, the Solicitor was suspended until she appears before Convocation to be reprimanded.

Conflict of interest

Loton, Maurice Alfred

Wasaga Beach, Ontario

Age 57, Called to the Bar 1967

Particulars of Complaint

- Professional Misconduct
 - Acted in a conflict of interest

Recommended Penalty

- Reprimand in Convocation
- Undertaking to never act for both sides in a transaction
- \$7,392.05 in costs

Convocation's Disposition (01/25/96)

- Reprimand in Convocation
- Undertaking to never act for parties with adverse interests
- \$7,392.05 in costs

Counsel for the Solicitor

D. Kevin Carroll (at Committee)

Counsel for the Law Society

Janet L. Brooks

In four different real estate transactions

from December 1988 to June 1991, the Solicitor failed to advise his client, the mortgagee, that he was also acting for the mortgagor. The Solicitor failed to advise his client to obtain independent legal advice and he recommended a course of action that was not in the best interests of his client, the mortgagee, in order to protect the interests of his other client, the mortgagor.

The Solicitor had no prior discipline record. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation and ordered to pay costs in the amount of \$7,392.05. The Committee also recommended that the Solicitor be required to sign an undertaking to never again act for both sides in any transaction whatsoever. The Committee noted the severity of the loss of over \$70,000 by the Solicitor's mortgagee client but emphasized mitigating factors including a lack of dishonesty found in the misconduct and, a lack of personal gain to the Solicitor. At Convocation, the Solicitor received a Reprimand and was given one year to pay \$7,392.05 in costs. The Solicitor also agreed to an Undertaking to never represent parties with adverse interests unless one of the parties is a financial institution giving a mortgage loan.

Failure to serve client

Udell, Stanley

Richmond Hill, Ontario

Age 60, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Failed to serve his client conscientiously and diligently
 - Provided blank letterhead to a third party
 - Signed a report without verifying its accuracy

Recommended Penalty

- Reprimand in Convocation
- \$1,000 in costs

Convocation's Disposition (01/25/96)

- Reprimand in Convocation
- \$1,000 in costs

Counsel for the Solicitor

Alan S. Price

Counsel for the Law Society

Neil J. Perrier

The Solicitor failed to serve his client in a conscientious, diligent and efficient manner in that he failed to conduct appropriate searches or take other steps to ensure that the mortgage was registered as a first mortgage. The Solicitor improperly delegated his responsibilities to a company involved in arranging the said mortgage without advising or seeking the consent of his client, and he failed to properly report on the transaction. The Solicitor provided the company with blank copies of his letterhead so that it could prepare a report to his client and he signed a letter dated April 13, 1992, prepared by the company purporting to report on the registration of a first mortgage without first informing himself as to the accuracy of its contents.

The Solicitor had no prior discipline record. The Discipline Committee accepted a Joint Submission in recommending that the Solicitor be reprimanded in Convocation and be required to pay \$1,000 in costs, payable within six months of being reprimanded. At Convocation, the recommended penalty was approved.

Failure to file forms

Syer, Robert Marven

Toronto, Ontario

Age 55, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Failed to reply to the Law Society
 - Failed to produce books and records

Recommended Penalty

- Reprimand in Convocation with conditions
- \$700 in costs

Convocation's Disposition (01/25/96)

- Reprimand in Convocation with conditions
- \$700 in costs

discipline Digest

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Counsel for the Solicitor

Martin Teplitsky

Counsel for the Law Society

Christina Budweth (at Committee)

Georgette Gagnon
(at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal year ending February 28, 1994, and failed to provide a reply to the Law Society regarding an ongoing investigation of a complaint by a client. The Solicitor failed to produce his books and records in spite of attempts by the Law Society to conduct an audit.

The Solicitor's discipline history included a reprimand in Discipline Committee for failing to file Forms 2/3 for his fiscal year ending February 2, 1990, and a reprimand in Committee and costs of \$750 for failure to reply to the Law Society. Regarding the immediate complaints, the Discipline Committee accepted a joint submission and recommended that the Solicitor be reprimanded in Convocation with the following conditions: the Solicitor continue a course of therapy with a physician; the physician provide the Society with a progress report every two months until the physician indicates it is appropriate to terminate treatment; the Solicitor enter into and cooperate with the Practice Review Program; the Solicitor pay \$700 in costs, payable at a rate of \$100 per month commencing on a date to be fixed by Convocation. At Convocation, the Solicitor received a Reprimand with the above conditions, and enter into and cooperate with the Practice Review Program "upon being reinstated", as the Solicitor was under administrative suspension. Costs are to be paid by the end of each month.

Borrowed from a client

Mantello, Frank Neno

Sault Ste. Marie, Ontario

Age 67, Called to the Bar 1970

Particulars of Complaint

- Professional Misconduct
 - Borrowed from a client (3)
 - Failed to disclose indebtedness to Law Society

Recommended Penalty

- Reprimand in Convocation with conditions

Convocation's Disposition (12/08/95)

- Reprimand in Convocation with conditions

Counsel for the Solicitor

Joseph A. Bisceglia

Counsel for the Law Society

Christina M. Budweth

(at Committee)

Neil J. Perrier (at Convocation)

The Solicitor obtained four loans totalling \$277,000 from two clients over an eighteen month period in 1989 and 1990. The Solicitor repaid \$188,000 and \$277,771 (of which there is a large interest component) remains unpaid. The Solicitor notified the Law Society of two of the above loans in 1991 and 1992.

The Solicitor did not have a discipline history. None of the clients in question complained to the Law Society. The Discipline Committee noted that the evidence showed two previous loans from clients in 1982 and 1983, that the Solicitor did not know he was breaching the Rules of Professional Conduct and that the partial non-disclosure of indebtedness to the Society did not appear to be intentional. The Committee recommended a reprimand in Convocation provided the following conditions are first met: the Solicitor takes immediate steps to resolve his outstanding loan and liabilities; the Solicitor provides an Undertaking to the Society not to borrow any further funds from clients; the Solicitor provides the Society with written resolutions of his remaining indebtedness; and the Solicitor provides the Society with a sworn financial statement for he and his wife. The Solicitor received a reprimand in Convocation.

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