



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

April 1995, Vol 3, No 4

Un governable solicitor

Hartley, John Melville

Toronto, Ontario

Age 43, Called to the Bar 1978

Particulars of Complaints

- Professional misconduct
 - Failed to reply to the Law Society (3)
 - Failed to comply with an undertaking to the Law Society to reply promptly (3)
 - Failed to release files to a client promptly

Recommended Penalty

- Disbarment

Convocation's Disposition (4/27/95)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil Perrier

The Solicitor did not respond promptly to the Law Society on three occasions, regarding complaints by clients and an inadequacy found in his Form 2. In not doing so, he breached his undertakings to the Society.

The Solicitor did not appear at two separate discipline hearings or at Convocation. The Discipline Committee determined that he had abandoned his law practice and exhibited ungovernability by the Law Society and unaccountability to his clients. As such, it recommended disbarment. At Convocation, the Solicitor was disbarred.

- Failed to honour a financial obligation (6)
- Breached his undertaking to correct a deed to incorporate the true legal description
- Failed to account for a \$500 retainer from a client
- Failed to deliver a files to clients upon their requests (3)

Recommended Penalty

- Disbarment

Convocation's Disposition (4/27/95)

- Disbarment

Counsel for the Solicitor

- Not represented

Counsel for the Law Society

- Christina Budweth

There were three complaints of professional misconduct against the Solicitor. He was neither represented nor present at his hearing. The Discipline Committee found him guilty of 33 particulars of professional misconduct.

The Committee noted that the misconduct in question had occurred over a period of four years between January 1990 and February 1994 and it expressed concern about an absence of any apology or explanation on behalf of the Solicitor. Although the Committee did note a letter indicating that the Solicitor had recently been diagnosed with cancer and was suffering a major depression, it held that the Solicitor's conduct "has shown that he is ungovernable" and stated that the Solicitor is "the type of lawyer who gives the profession a negative public image." The Committee recommended disbarment. At Convocation, the Solicitor was disbarred.

Un governable solicitor

Semenovs, Ansis

Toronto, Ontario

Age 54, Called to the Bar 1970

Particulars of Complaint

- Professional misconduct
 - Failed to reply to the Law Society (12)
 - Failed to serve his clients conscientiously and diligently (4)
 - Failed to reply to communications from another solicitor (2)
 - Failed to file Forms 2/3
 - Failed to produce his books and records
 - Failed to account for his client's monies received in trust (3)

Cases

- Peter D. Clark, Toronto
- Christophe M. Cloutier, Gloucester
- Donald J. Cosway, Scarborough
- Raymond V. Donohue, Sarnia
- John M. Hartley, Toronto
- Ian D. K. Henderson, Brampton
- Murray Herman, Thornhill
- David S. Hovland, Toronto
- Steven W. Junger, Toronto
- Stephen J. Kennedy, Mississauga
- Jeffrey B. Merriman, Haileybury
- Oscar J. Mullerbeck, Toronto
- Paul F. O'Neill, Mississauga
- David M. Pomer, Woodbridge
- Ansis Semenovs, Toronto

Conflict of interest

Kennedy, Stephen John

Mississauga, Ontario

Age 60, Called to the Bar 1979

Particulars of Complaint

- Professional misconduct
 - Acted in a conflict of interest in real estate transactions
 - Commissioned false statutory declarations
 - Commissioned statutory declarations not signed in his presence
 - Issued false reporting letters to his lender clients

Recommended Penalty

- Suspension for six months
- Undertaking to take part in the Practice Review Program
- Costs of \$11,500 to be paid within six months of the end of his suspension

Convocation's Disposition (4/27/95)

- Permission to resign

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina Budweth

The Solicitor represented both the lenders and borrowers in a series of real estate transactions, preferring the interests of the borrowers. He failed to disclose relevant facts, including the true purchase price of the properties, to his lender clients. The Solicitor also commissioned statutory declarations that the downpayments from the purchasers of the property came from the purchasers' own resources where he knew this to be false and sent false mortgage reports to his lender clients.

The Discipline Committee heard evidence that during this time, the Solicitor was under severe personal and financial stress derived from his daughter's serious car accident. Notwithstanding this, the Committee determined the Solicitor lacked integrity and recommended he be suspended for six months, undertake to participate in the Practice Review Program and pay costs of \$11,500 within six months of the end of his suspension. At Convocation, the Solicitor requested and was given permission to resign.

Misled client/Misled court

Merriman, Jeffrey Bernard

Haileybury, Ontario

Age 39, Called to the Bar 1983

Particulars of Complaint

- Professional misconduct
 - Failed to reply to the Law Society
 - Misled a client by representing to her that he obtained a divorce judgement for her
 - Prepared and delivered a certificate of divorce he knew to be false
 - Made false and misleading statements regarding the status of several young offenders during a show cause hearing

Recommended Penalty

- Suspension for 12 months, conditional upon:
 - Providing psychological reports as to his fitness to return to practice;
 - Undertaking to continue treatment as he requires it;
 - Practising under the supervision of another lawyer for two years;
 - Fully advising the supervising solicitor of the complaints;
 - Enrolment in the Practice Review Program should he commence sole practice after those two years;
 - Replying to a client complaint before the date of Convocation;
 - Paying costs of \$2,000 over one year

Convocation's Disposition (4/27/95)

- Suspension for 12 months with the above conditions
- Costs of \$2,000

Counsel for the Solicitor

Frank Marrocco

Counsel for the Law Society

Christina Budweth

The Solicitor advised his client he had obtained a divorce on her behalf, when in fact he had not. He also knowingly issued a false divorce certificate and provided it to the client. He also failed to reply to the Law Society regarding this complaint. As well, during a show cause hearing in a criminal matter while acting for the Crown, the Solicitor misled

the court regarding the status of several young offender appeals.

The Solicitor has no discipline history. The Discipline Committee recommended he be suspended for 12 months, conditional on the following terms: he would only be allowed to return to practice if he provides a psychological report indicating his capacity to return to practice; undertakes to pursue treatment if he requires it; practises under the supervision of another lawyer for two years; enrolls in the Practice Review Program if he decides to return to private practice; informs any supervising lawyer of the nature of these complaints and replies to his client's complaint before Convocation. The Solicitor would also pay costs of \$2,000 over one year. At Convocation, these recommendations were adopted.

Failure to serve client

Clark, Peter David

Toronto, Ontario

Age 35, Called to the Bar 1986

Particulars of Complaint

- Professional misconduct
 - Failed to cooperate with the Law Society
 - Failed to reply to the Law Society
 - Failed to serve his client conscientiously and diligently
 - Failed to keep his client reasonably informed
 - Failed to answer requests for information from his client
 - Failed to render an account for trust monies
 - Breached an Order of Convocation by practising while suspended
 - Failed to maintain books and records
 - Failed to advise his client a limitation period had expired
 - Failed to advise his client negotiations were continuing
 - Misrepresented funds paid to his client as a settlement
 - Misled the Law Society

Recommended Penalty

- Suspension of eight months to continue thereafter until the Solicitor has made his filings, made his books available to the Law Society, delivers the certain files to the Law Soci-

ety, and satisfies the Society he is fit to continue practising

Convocation's Disposition (4/27/95)

- Suspension of eight months to continue until conditions are met

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil Perrier

The Solicitor did not advise his plaintiff client a limitation period had expired and then paid his client money from his general account, misrepresenting it as a settlement. In another case, the Solicitor failed to issue a statement of claim or keep his client apprised. He also breached an Order of Convocation by practising for four months while under suspension for failing to pay his fees. He failed to maintain his books and records and did not produce them at the request of the Law Society.

The Discipline Committee determined that the Solicitor was unable to meet even the minimum administrative requirements to maintain practising. It recommended he be suspended for eight months, to continue thereafter until he makes his filings, makes his books available and delivers certain files to the Society. The Solicitor must also satisfy the Senior Discipline Counsel he is fit to continue practising law. Convocation accepted the Committee's recommendations.

Practising while suspended

Cloutier, Christophe Marc

Gloucester, Ontario

Age 35, Called to the Bar 1984

Particulars of Complaint

- Professional misconduct
 - Practised law while suspended

Recommended Penalty

- Suspension of eight months

Convocation's Disposition (4/27/95)

- Suspension of eight months

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil Perrier

While under suspension for non-payment of Errors and Omissions fees, the Solicitor continued to practise law. He acted as counsel for a defendant in an Ontario Securities Commission prosecution in Provincial Court, continued to advertise and distribute business cards, and held himself out as a lawyer in real estate and mortgage transactions.

The Solicitor has no prior discipline history. The Discipline Committee determined an eight-month suspension was appropriate, being equivalent to the time the Solicitor practised while under suspension. Convocation accepted this recommendation.

Financial nondisclosure

Henderson, Ian Douglas Knoll

Brampton, Ontario

Age 43, Called to the Bar 1985

Particulars of Complaint

- Professional misconduct
 - Failed to disclose to members of a co-tenancy of which he was a party of his financial status
 - Improperly personally guaranteed a mortgage

Recommended Penalty

- Suspension for two months
- Costs of \$2,500

Convocation's Disposition (4/27/95)

- Suspension for two months, commencing July 1
- Costs of \$2,500

Counsel for the Solicitor

Martin Teplitsky

Counsel for the Law Society

Janet Leiper

The Solicitor was part of a group of five investors, acting as the lawyer for the co-tenancy. He advised his clients to seek independent legal advice, however, they waived this suggestion. The investment required refinancing and, shortly before this took place, the Solicitor transferred his interest in his principal asset to his wife. He did not disclose his changed financial position to the other investors, one of whom advanced additional funds personally for the refinancing. The Solicitor also improperly guaranteed the

mortgage to this co-investor client. Some months later, the Solicitor stopped contributing to the investment and eventually declared bankruptcy. The property that was the subject of the investment was sold under power of sale.

The Discipline Committee accepted a joint submission from the Solicitor and counsel for the Law Society that he be suspended for two months and pay costs of \$2,500. Convocation accepted these recommendations.

Failure to maintain records

Herman, Murray

Thornhill, Ontario

Age 60, Called to the Bar 1965

Particulars of Complaint

- Professional misconduct
 - Failed to maintain sufficient balances in his trust account to meet client obligations
 - Failed to maintain his books and records
 - Withdrew fees from his trust account before billing his clients
 - Failed to deposit retainer funds totalling \$5,000 in his trust account
 - Improperly withdrew over \$1,600 from his trust account
 - Breached an undertaking to the Law Society to respond promptly to communications (2)
 - Failed to honour a financial obligation
 - Failed to pay audit costs of \$1,712
 - Failed to reply to the Law Society regarding the audit costs

Recommended Penalty

- Suspension for two months
- Continued participation in the Practice Review Program, filing monthly trust reconciliations with the Law Society for two years and implementing a file tickler system in his office
- Costs of \$2,500

Convocation's Disposition (4/27/95)

- Suspension for two months with conditions
- Costs of \$2,500

Counsel for the Solicitor

Alan S. Price (at Committee)

Counsel for the Law Society

Christina Budweth

The Solicitor's trust account was overdrawn several times during 1990. A Law Society examination revealed he failed to maintain sufficient books and records. The Solicitor withdrew fees from his trust account before billing his clients, failed to deposit \$5,000 in retainers from various clients into his trust account and withdrew over \$1,600 from trust improperly. During this time, he breached undertakings to reply promptly to the Law Society and failed to pay the costs for an audit. The Solicitor also failed to honour a financial obligation.

The Discipline Committee noted that the Solicitor's books and records have been brought up-to-date and he has cooperated with the Law Society. In light of the fact that no client losses were involved, the Committee recommended he be suspended for two months, continue to participate in the Practice Review Program, file monthly trust reconciliations for two years, implement a file-tickler system in his office and pay costs of \$2,500. Convocation accepted this recommendation.

Failure to serve client

Junger, Steven Walter

Toronto, Ontario

Age 32, Called to the Bar 1990

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3
 - Failed to serve his client conscientiously and diligently
 - Failed to provide his client with complete information on real estate transactions (2)
 - Failed to reply to the Law Society (3)
 - Failed to provide his client with complete information on a mortgage transaction

Recommended Penalty

- Suspension for one month
- Costs of \$1,500

Convocation's Disposition (4/27/95)

- Suspension for one month, commencing June 16
- Costs of \$1,500

Counsel for the Solicitor

Ken Jones

Counsel for the Law Society

Georgette Gagnon

The Solicitor failed to provide clients with sufficient information regarding real estate and mortgage transactions. When these clients complained to the Law Society, the Solicitor did not reply to the Law Society. He also failed to file his Forms 2/3 for the fiscal year ending November 1992.

The Discipline Committee heard that the Solicitor recently started practising as a sole practitioner and that he had no support staff, no regular bookkeeper and his records were not complete. It determined that his practice was out of control. At the time of his discipline hearing, the Solicitor had corrected all outstanding problems to the satisfaction of the Law Society. The Committee recommended the Solicitor be suspended for one month and pay costs of \$1,500. Convocation accepted this recommendation.

Failure to serve client

Cosway, Donald John

Scarborough, Ontario

Age 61, Called to the Bar 1964

Particulars of Complaint

- Professional misconduct
 - Failed to serve clients conscientiously and diligently
 - Breached an undertaking to the Law Society to reply promptly

Recommended Penalty

- Suspension for one month

Convocation's Disposition (4/27/95)

- Suspension for one month, commencing July 1

Counsel for the Solicitor

Douglas Crane

Counsel for the Law Society

Christina Budweth

The Solicitor did not provide timely advice to a client regarding an estate mat-

ter, nor did he keep the client reasonably informed. Over a four-year period, he failed to complete a divorce for another client or to keep his client informed. He breached an undertaking to the Law Society to reply promptly after the second client complained regarding the Solicitor's conduct.

Since 1991, the Solicitor has been reprimanded three times for failing to serve his clients and failing to reply to the Law Society. The Discipline Committee noted that since 1992, he had made "real improvements in a disastrous method of practice." The Committee recommended the Solicitor be suspended for one month. Convocation accepted this recommendation.

Improper use of trust account

Donohue, Raymond Vincent

Sarnia, Ontario

Age 65, Called to the Bar 1956

Particulars of Complaint

- Professional misconduct
 - Improperly withdrew money from his trust account

Recommended Penalty

- Reprimand in Convocation
- Costs of \$2,500

Convocation's Disposition (4/27/95)

- Reprimand in Convocation
- Costs of \$2,500

Counsel for the Solicitor

David Humphrey

Counsel for the Law Society

Kate Wootton

The Solicitor improperly operated his trust account, using it for general account transactions to avoid creditors. The Discipline Committee noted that there was no question he was entitled to the money at issue, however, the operation of these transactions through his trust account was a serious misuse of the account.

The Discipline Committee recommended the Solicitor be reprimanded in Convocation and pay costs of \$2,500. In March 1995, Convocation accepted this recommendation. However, because the Solicitor was not present, the reprimand

was to be delivered in April. If he failed to attend in April, Convocation ordered that the Solicitor be suspended indefinitely until he appears before them. In April 1995, the Solicitor received a reprimand in Convocation and was ordered to pay costs.

Failure to serve client

Mullerbeck, Oscar Jan

Toronto, Ontario

Age 40, Called to the Bar 1984

Particulars of Complaint

- Professional misconduct
 - Failed to report the closing of a real estate transaction to his client
 - Failed to account for monies received and disbursed
 - Failed to respond to his client's numerous inquiries
 - Failed to answer his client's communications
 - Failed to reply to the Law Society regarding a complaint by his client
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if his filings are made by that time; or
- Suspension for one month, to continue until his filings are completed
- Costs of \$1,000

Convocation's Disposition (4/27/95)

- Reprimand in Convocation
- Costs of \$1,000

Counsel for the Solicitor

Bernard McGarva

Counsel for the Law Society

Neil Perrier

The Solicitor failed to serve his client during a real estate purchase. He did not report the closing of the transaction to her and did not respond to her telephone messages and registered letter. He did not reply promptly to the Law Society regarding his client's complaint. He also failed to file his Forms 2/3 for the fiscal year ending October 1993.

In 1989, the Solicitor was reprimanded in Convocation for failing to respond to communications from the Law Society. The Discipline Committee noted that the Solicitor had undergone

some personal difficulties and was receiving counselling. The Committee recommended he be reprimanded in Convocation if his filings have been made at that time. If not, he should be suspended for one month, to continue until he files. He is also responsible for costs of \$1,000. The Solicitor made his filings and, at Convocation, was reprimanded and ordered to pay costs.

Failure to file forms

Hovland, David Samuel

Toronto, Ontario

Age 42, Called to the Bar 1992

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3 with the Law Society since his call to the Bar in 1992

Recommended Penalty

- Reprimand in Convocation
- If filings have not been made by Convocation, a suspension of one month, to continue until filings are made
- Costs of \$250

Convocation's Disposition (4/27/95)

- Reprimand in Convocation
- Cost of \$250

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor has not filed his Forms 2/3 since he was called to the Bar in 1992. A late filing fee began to accrue in November 1993 and he was suspended in March 1994. The Solicitor paid the fees but had not filed the required forms.

The Discipline Committee recommended the Solicitor be reprimanded in Convocation if the filings have been made at that time. If not, the Committee recommended he be suspended for one month, to continue until the forms are filed. He should also pay costs of \$250. At Convocation, the Solicitor received a reprimand and was ordered to pay costs.

Failure to serve client

Pomer, David Michael

Woodbridge, Ontario

Age 44, Called to the Bar 1978

Particulars of Complaint

- Professional misconduct
 - Failed to file Forms 2/3
 - Failed to reply to the Law Society regarding a client's complaint
 - Failed to serve his client conscientiously and diligently
 - Failed to release his client's file promptly

Recommended Penalty

- Reprimand in Convocation

Convocation's Disposition (4/27/95)

- Reprimand in Convocation

Counsel for the Solicitor

J. Douglas Crane

Counsel for the Law Society

Janet Brooks

The Solicitor failed to file Forms 2/3 for the fiscal year ending February 28, 1993. He also failed to serve a client who retained the Solicitor to obtain an injunction to stop a former business partner from using the business telephone number. He did not reply to the Law Society regarding this client's complaint and did not release the files promptly to his client's new lawyer.

The Discipline Committee noted that the Solicitor had flagrantly disregarded the client's and the Law Society's communications. He has, however, enrolled in the Practice Review Program. The Committee recommended the Solicitor be reprimanded in Convocation. Convocation accepted this recommendation.

Reinstatement

O'Neill, Paul Francis

Mississauga, Ontario

Age 59, Called to the Bar 1962

Particulars

- Solicitor was suspended indefinitely on January 27, 1994, for failing to file Forms 2/3, practising law while suspended and failing to maintain proper books and records

Recommendation

- Reinstatement with conditions:
 - Maintain proper books and records;
 - Make all filings within prescribed time periods;
 - Submit monthly account reconciliations to the Law Society for his trust and general accounts;
 - Inform his accountant of his legal obligations to the Law Society;
 - Operate newly established trust and general accounts

Convocation's Disposition (4/27/95)

- Reinstatement

Counsel for the Solicitor

Martin Rosen

Counsel for the Law Society

Georgette Gagnon

The Solicitor was suspended in January 1994 until such time as his books and records were updated and his filings made to the satisfaction of the Law Society. Both the Law Society auditor and the Solicitor's accountant provided evidence that the Solicitor's trust account was satisfactory. However, the Solicitor's general account could not be satisfactorily reconstructed as documents had been destroyed by a third party. The Discipline Committee heard that nothing more could be done to bring the general account into compliance with the Regulation.

The Committee recommended that the Solicitor's suspension be terminated. At Convocation, the Solicitor was reinstated with conditions.

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