



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

January 1995, Vol 3, No 2

Conflict of interest

Vujic, Dragan

Kitchener, Ontario

Age 44, Called to the Bar 1985

Particulars of Complaint

• Professional Misconduct

- Acted in a conflict of interest by representing various parties in real estate transactions
- Assisted clients in inflating the prices of various properties and in over-financing properties
- Failed to report to clients within a reasonable time
- Charged unfair and unreasonable fees
- Attempted to evade service of legal processes
- Failed to discharge his duties with integrity
- Corresponded with another solicitor in an unprofessional manner
- Breached the solicitor/client privilege

Recommended Penalty

- Disbarment

Cases

- Thomas H. Box, Aurora
- Edward J. Brogden, Sarnia
- Bert Jacques, Markham
- Joseph Linzner, Scarborough
- Sidney I. Lovas, Toronto
- Stephen L. McDonald, Sudbury
- Charles Morgan, Toronto
- Jeffrey M. Neiman, Toronto
- Hugh G. O'Leary, Thunder Bay
- Robert E. Pritchard, Sault Ste. Marie
- David J. Royer, Cornwall
- Frederick B. Sussmann, Ottawa
- Dragan Vujic, Kitchener
- Lee E. Ward, Carleton Place
- Brian D. Woodley, Grimsby

Convocation's Disposition (1/26/95)

- Disbarment

Counsel for the Law Society

Christina Budweth

Gavin MacKenzie

Counsel for the Solicitor

Not represented

The Solicitor was involved in six real estate transactions in which he represented the vendors, purchasers and lenders, preferring the interests of the purchaser/borrower. He failed to disclose relevant information, including the inflated price of the properties, resulting in a loss of more than \$2 million to the lender. He did not report to his clients within a reasonable time about the transactions and charged unreasonable fees.

The Solicitor also evaded service of legal documents and wrote aggressive and unprofessional letters to another lawyer. He also disclosed information about a former client to Revenue Canada in response to that client's complaint about the Solicitor to the Law Society. The Discipline Committee strongly recommended the Solicitor be disbarred. Convocation accepted this recommendation.

Ungovernable solicitor

Woodley, Brian David

Grimsby, Ontario

Age 37, Called to the Bar 1986

Particulars of Complaint

• Professional Misconduct

- Failed to file Forms 2/3
- Practised while under suspension
- Failed to cooperate with the Law Society

Recommended Penalty

- Disbarment

Convocation's Disposition (1/26/95)

- Disbarment

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

The Solicitor has not filed any annual returns since 1991 and has been suspended since November, 1991. During that time, however, he continued to practise law. He also failed to cooperate with a Law Society auditor by cancelling appointments and refusing to provide his books and records.

The Solicitor did not attend the discipline hearing or Convocation. The Discipline Committee determined that the Solicitor was ungovernable and recommended that he be disbarred. Convocation accepted the Committee's recommendation.

Practising while suspended

Royer, David Jean

Cornwall, Ontario

Age 43, Called to the Bar 1979

Particulars of Complaint

• Professional Misconduct

- Breached escrow terms imposed by another solicitor
- Practised law while under suspension (2)
- Failed to file Forms 2/3
- Failed to account for client's money held in trust
- Failed to reply to the Law Society

Recommended Penalty

- Permission to resign
- If no resignation within 30 days, disbarment

Convocation's Disposition (1/26/95)

- Disbarment

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor breached escrow terms imposed on him by another lawyer by using letters delivered to him from that lawyer to lift registered executions with-

out complying with the agreed conditions. On two occasions, he practised while under suspension. During one of these periods, he accepted money from a client in trust, but has failed to account for it. He has not replied to the Law Society regarding a complaint by this client. As well, the Solicitor failed to file Forms 2/3 for the fiscal year ending June 30, 1992.

The Solicitor has been disciplined by the Society before for acting in a conflict of interest, misleading the Society and twice for borrowing from clients. The Discipline Committee recommended he be granted permission to resign if he did so within 30 days, failing which he would be disbarred. Convocation did not accept the recommendation and ordered that the Solicitor be disbarred.

Misappropriation

McDonald, Stephen Lorne

Sudbury, Ontario

Age 45, Called to the Bar 1977

Particulars of Complaint

• Professional Misconduct

- Misappropriated trust account monies
- Misapplied trust account monies (2)
- Failed to promptly notify clients of receipt of funds
- Failed to adequately safekeep clients' money
- Misled a client regarding the status of an insurance claim
- Borrowed money from a client

Recommended Penalty

- Permission to resign

Convocation's Disposition (1/26/95)

- Permission to resign

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Brian Greenspan

The Solicitor misappropriated and misapplied more than \$1.2 million from his trust account. He breached Rule 6 of the Rules of Professional Conduct by failing to notify clients of money received on their behalf from a personal injury settlement. He also breached Rule 2 by loaning a client's money without obtaining adequate security, and Rule 7 by borrowing money from a client. The Solicitor also misled a client by advancing trust account money under the pretext it was from an insurance company.

The Solicitor had a long history of severe mental illness. He had been hospitalized three times because of his illness and had attempted suicide on sev-

eral occasions. The Discipline Committee recommended that, because of the unique circumstances of the Solicitor's disability, he be granted permission to resign. Convocation adopted this recommendation.

Misappropriation

Box, Thomas Holyoake

Aurora, Ontario

Age 39, Called to the Bar 1984

Particulars of Complaint

• Professional Misconduct

- Failed to reply to the Law Society
- Failed to comply with undertaking to the Law Society (2)
- Misappropriation
- Failed to file Forms 2/3
- Practised while under suspension

Recommended Penalty

- Permission to resign

Convocation's Disposition (11/24/94)

- Permission to resign

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Walter Fox (at hearing)

Mark Sandler (at Convocation)

The Solicitor failed to reply to the Law Society regarding a complaint by a client and, in failing to do so, breached an undertaking made to the Society. He misappropriated \$4,360 from his mixed trust account. As well, the Solicitor failed to file Forms 2/3 for the fiscal year ending May 31, 1992, breaching an undertaking made to the Society to file promptly.

The Solicitor had a significant discipline history and was found by the Committee to have failed to comply with "the most fundamental requirements of the profession." He had previously been suspended from practising on two occasions. The Committee, which was presented with significant character evidence, recommended the Solicitor be given permission to resign. Convocation adopted this recommendation.

Failure to serve client

Ward, Lee Edward

Carleton Place, Ontario

Age 44, Called to the Bar 1978

Particulars of Complaint

• Professional Misconduct

- Failed to serve a client in a conscientious manner
- Misled client as to the status of file
- Misled the Law Society

Recommended Penalty

- Suspension for 12 months

- Payment of client's travel expenses for two useless trips
- Restrict his practise to criminal litigation, divorces and residential real estate
- Execute a co-signing agreement for all trust cheques
- Costs of \$5,000

Convocation's Disposition (1/26/95)

- Suspension for 12 months, plus some conditions

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Michael Neville

The Solicitor failed to serve a client in a conscientious and diligent fashion, misleading him as to the status of his litigation file. During this time, his client incurred travel expenses to sign releases, which were in fact, useless. The Solicitor also misled the Law Society during its investigation of this matter.

The Solicitor had been found guilty of professional misconduct on three previous occasions, for failing to serve clients in a conscientious manner and failing to reply to the Law Society. Given this history, the Discipline Committee recommended he be suspended for 12 months; be required to pay his client's expenses for travelling to sign the useless releases; restrict his practise to criminal defence litigation, uncontested divorces and residential real estate; execute a co-signing agreement for trust cheques; and pay costs of \$5,000. At Convocation, the Solicitor received a 12-month suspension to commence May 1, 1995, plus conditions with the exception of the co-signing requirement.

Practising while suspended

O'Leary, Hugh Gordon

Thunder Bay, Ontario

Age 47, Called to the Bar 1978

Particulars of Complaint

• Professional Misconduct

- Practised while under suspension (2)

Recommended Penalty

- Suspension of 75 days, beginning when the administrative suspension ends

Convocation's Disposition (1/26/95)

- Suspension of 75 days, beginning when the administrative suspension ends

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

In 1992, the Solicitor was suspended for one month for outstanding insurance

payments and fees. During that time, he practised law contrary to an Order of Convocation. He was also suspended in 1993 for non-payment of fees, and again engaged in the practice of law. At the time of the discipline hearing, the Solicitor was under administrative suspension.

The Solicitor was not present at the discipline hearing or at Convocation. The Committee recommended a suspension of 75 days, to begin when the administrative suspension ends. Convocation adopted this recommendation.

Failure to file forms

Morgan, Charles

Toronto, Ontario

Age 31, Called to the Bar 1990

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Suspension for three months, to continue indefinitely until filings are made
- Costs of \$3,000

Convocation's Disposition (1/26/95)

- Suspension for three months, to continue indefinitely until filings are made
- Costs of \$3,000

Counsel for the Law Society

Georgette Gagnon

Counsel for the Solicitor

Not represented

The Solicitor has not filed Forms 2/3 since he was called to the Bar in 1990. He did not reply to notices from the Law Society and did not appear at the discipline hearing. The Committee recommended that the Solicitor be suspended for three months, such suspension to continue until the necessary filings are made. Should the Solicitor appear before Convocation having made the filings, the Committee recommended a penalty of a reprimand in Convocation. It also recommended that the Solicitor pay costs of \$3,000. At Convocation, the Solicitor was suspended for three months, such suspension to continue indefinitely until the necessary filings are made, and ordered to pay costs of \$3,000.

Practising while suspended

Lovas, Sidney Irving

Toronto, Ontario

Age 45, Called to the Bar 1977

Particulars of Complaint

- Professional Misconduct
 - Breached an Order of Convocation

by practising law while under suspension

- Failed to file Forms 2/3
- Failed to reply to the Law Society

Recommended Penalty

- Suspension for three months, continuing indefinitely until the Solicitor replies to the Law Society and files Forms 2/3
- Costs of \$2,500

Convocation's Disposition (1/26/95)

- Suspension for three months, continuing indefinitely until the Solicitor replies to the Law Society and files Forms 2/3
- Costs of \$2,500

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

The Solicitor practised law while suspended for non-payment of fees. He also failed to file Forms 2/3 for the fiscal year ending January 31, 1993. As well, the Solicitor failed to reply to the Law Society regarding inadequacies in his books and records which came to light during an audit.

The Solicitor was not present at the Discipline Committee or at Convocation. The Solicitor had no discipline record, however the Committee expressed concern over his "blatant disregard for his governing body." As such, the Committee recommended a three-month suspension, to continue until the replies to the Law Society and the necessary filings are made, with costs of \$2,500 to be paid by the Solicitor. Convocation adopted the Committee's recommendations.

Conflict of interest

Jacques, Bert

Markham, Ontario

Age 58, Called to the Bar 1976

Particulars of Complaint

- Professional Misconduct
 - Advanced mortgage funds intended to discharge a second mortgage directly to his borrower client without the permission of his mortgagor client
 - Issued a false report to his mortgagor client certifying they held a solid first mortgage when they did not

Recommended Penalty

- Suspension of three months
- Costs of \$3,000

Convocation's Disposition (1/26/95)

- Suspension of three months

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor acted for both a mortgage company and a purchaser on the refinancing of a residential condominium property. He was instructed by his mortgagor client that the money advanced was to be used to discharge existing first and second mortgages on the property. Contrary to the instructions, the Solicitor advanced the funds for payout of the second mortgage directly to his borrower client. The Solicitor then certified that they held a first mortgage on the property, when in fact it was second in priority because the borrower had not applied the funds advanced to him to pay out the second mortgage.

The Solicitor had a discipline history dating to 1993, when he was found guilty of professional misconduct for failing to maintain his books and records, and for practising law while under suspension. The Discipline Committee recommended the Solicitor be suspended for three months and pay costs of \$3,000. At Convocation, the Solicitor received a three-month suspension.

Failure to maintain records

Linzner, Joseph

Scarborough, Ontario

Age 43, Called to the Bar 1979

Particulars of Complaint

- Professional Misconduct
 - Failed to maintain proper books and records
 - Failed to produce evidence during a Law Society investigation
 - Failed to maintain sufficient trust account balances
 - Breached an undertaking to the Law Society not to practice law

Recommended Penalty

- Suspension of three months

Convocation's Disposition (1/26/95)

- Suspension of three months

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

An investigation by the Law Society revealed the Solicitor had not kept books and records for his law practice since 1988. He also failed to produce evidence, vouchers, records, books and papers required for the investigation. The investigation also disclosed a shortage of over \$18,000 in his trust account. The shortage was due to overpayments to clients and was not to the benefit of the Solicitor.

The Solicitor was found guilty of professional misconduct in 1990 for not filing his Forms 2/3 for 1987, 1988 and

1989. He had undertaken not to practice law until his outstanding filings were made, however he breached this undertaking. The Discipline Committee recommended a three-month suspension from February 1, 1994, to April 1, 1994. Convocation adopted this recommendation. The Solicitor had already served his suspension prior to Convocation considering the matter.

Failure to reply

Pritchard, Robert Emerson

Sault Ste. Marie, Ontario

Age 52, Called to the Bar 1971

Particulars of Complaint

• Professional Misconduct

- Failed to reply to Law Society requests for trust account bank statements
- Breached an Order of Convocation by practising while under suspension

Recommended Penalty

- Suspension of 18 days
- An indefinite suspension to follow until:
 - Medical confirmation of ability to practise is received
 - The Solicitor authorizes his doctor to alert the Law Society should he discontinue his medication
 - The Solicitor may only practice in association with other solicitors apprised of his medical condition
- The Solicitor undertakes not to operate a trust account
- The Solicitor participates in a Practice Review Program

Convocation's Disposition (1/26/95)

- Suspension of 18 days to continue until conditions are met

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Not represented

The Solicitor did not provide a bank statement for his mixed trust account when requested to do so by Society auditor. He failed to reply to subsequent requests for the information in a timely manner. The Solicitor also continued to practise while under suspension.

The Solicitor had been suspended in

1989 for failing to serve his clients conscientiously and efficiently. Despite the absence of medical evidence, the Discipline Committee accepted that he had experienced severe depression. As such, the Committee recommended a suspension of 18 days, to continue indefinitely until the conditions outlined above were met. The Committee noted that the Solicitor was "unwell" and that the term of the suspension was less significant than the conditions of the Solicitors return to practise. Convocation adopted the Committee's recommendations.

Practising while suspended

Brogden, Edward John

Sarnia, Ontario

Age 55, Called to the Bar 1970

Particulars of Complaint

• Professional Misconduct

- Breached an Order of Convocation by practising while under suspension

Recommended Penalty

- Suspension of two months
- Costs of \$2,000

Convocation's Disposition (1/26/95)

- Suspension of two months
- Costs of \$2,000

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Joseph Foreman

The Solicitor was suspended in June 1993 for non-payment of his errors and omissions insurance plan levy. During the three-week suspension, he continued to practice law.

The Solicitor had been found guilty of professional misconduct on two previous occasions for failing to maintain his book records and improperly transferring money from his trust account; and for failing to reply to the Law Society and failing to provide mortgage documents to a client. The Discipline Committee recommended a two-month suspension and costs of \$2,000. Convocation accepted the Committee's recommendations and ordered the Solicitor's suspension to commence Feb. 1, 1995.

Counselled client to breach court order

Sussmann, Frederick Bernard

Ottawa, Ontario

Age 77, Called to the Bar 1973

Particulars of Complaint

• Professional Misconduct

- Counselling a client to breach a court order

Recommended Penalty

- Suspension for one month

Convocation's Disposition (1/27/95)

- Suspension for one month, commencing June 1, 1995

Counsel for the Law Society

Neil Perrier

Counsel for the Solicitor

Not represented

While acting for a wife in a matrimonial matter, the Solicitor counselled his client to breach the terms of a court order respecting access to the children. He did not move to alter the terms of the access order nor did he suggest there was any risk to the children to justify this advice.

The Solicitor has been a lawyer for more than 50 years in New York and Ontario, with an otherwise clean disciplinary record. In light of this, the Discipline Committee recommended he be suspended for one month. Convocation accepted this recommendation.

Practising while suspended

Neiman, Jeffrey Martin

Toronto, Ontario

Age 36, Called to the Bar 1987

Particulars of Complaint

• Professional Misconduct

- Practised law while under suspension during three separate periods

Recommended Penalty

- Suspension of 20 days
- Costs of \$200

Convocation's Disposition (11/24/94)

- Suspension of 20 days
- Costs of \$200

Counsel for the Law Society

Christina Budweth

Counsel for the Solicitor

Marek Tufman

The Solicitor was suspended on three occasions because of his inability to pay fees and insurance levies between December 1992 and June 1993. He continued to practise law during those times.

The Solicitor had no discipline history. The Discipline Committee recognized that the Solicitor's actions were directly related to his inability to pay fees. In light of these financial problems, the Committee accepted a joint submission that the Solicitor be suspended for 20 days and pay costs of \$200. Convocation adopted this recommendation.

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