



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

April 1996, Vol 4, No 7

Fraud and falsifying records

Cohen, Howard William

Thornhill, Ontario

Age 48, Called to the Bar 1974

Particulars of Complaint

- Professional Misconduct
 - Failed to Forms 2/3
 - Forged charges/mortgages
 - Failed to account properly to clients
 - Gave a personal guarantee to a client
 - Attempted to mislead the Law Society
 - Failed to maintain books and records

Recommended Penalty

- Disbarment

Convocation's Disposition (04/25/96)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil J. Perrier

The Solicitor was arrested on April 26, 1994, and charged criminally on two counts of breach of trust, forty-five counts of fraud over \$1,000 and forty-two counts of uttering a fraudulent document and falsifying records. On August 31, 1995, the Solicitor received a two and a half year sentence. On at least fifty occasions the Solicitor caused the creation of fraudulent mortgage documents resulting in a misappropriation of approximately \$862,000. In all of the transactions the Solicitor failed to provide reporting letters or accounting statements to his clients. For one mortgage, the Solicitor delayed the redemption of funds by giving his personal guarantee to a client that the funds would be repaid. In his Form 2, for his 1992 year end, the Solicitor attempted to mislead the Law Society by denying that he controlled mortgages in trust. The Solicitor's books and records have not been updated since April 30, 1992, and he has been suspended since May 9, 1994, for non-payment of his annual fee. Finally, the Solicitor failed to file Forms 2/3 for his fiscal year ending April 30, 1993.

On November 6, 1985, the Solicitor received a Reprimand in Discipline Committee for improper borrowing. On February 26, 1991, the Solicitor received a Reprimand in Discipline Committee for failing to maintain his books and records. The immediate Committee noted that the Solicitor did not attend his hearing and that he was not represented, although the Solicitor could have arranged for his attendance even though he was in jail. The Committee recommended

that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

Conduct unbecoming

Conrad, David Henry

Markham, Ontario

Age 52, Called to the Bar 1970

Particulars of Complaint

- Conduct Unbecoming
 - Convicted of fraud over \$1,000
 - Convicted of assault

Recommended Penalty

- Disbarment

Convocation's Disposition (04/25/96)

- Disbarment

Counsel for the Solicitor

E.J. Weisdorf

Counsel for the Law Society

Lesley Cameron

The Solicitor was found to have committed conduct unbecoming in that in or about May, 1992, the Solicitor was convicted of the offence of fraud over \$1000, contrary to the provisions of the *Criminal Code* and in or about October, 1987, the Solicitor was convicted of assault, contrary to the provisions of the *Criminal Code*. On October 22, 1991 the Solicitor was found guilty of professional misconduct for contempt of court, failure to serve clients, rude and intemperate remarks and failure to meet financial obligations to clients, though no penalty was imposed. On June 22, 1995, the Solicitor was suspended until he attends Convocation to receive his Reprimand and pays \$550 in costs for failing to file Forms 2/3 for

Cases

- Howard W. Cohen, Thornhill
- David H. Conrad, Markham
- John L. Deziel, Belle River
- Shane W. Edwards, Carlton Place
- George T. Gardiner, Scarborough
- David Harris, Toronto
- Derek G. Nayduk, Toronto
- Marvin H. Siegel, Toronto
- Robert D. L. Smith, Brampton
- Gary M. Yaffe, Toronto

his fiscal year ending January 31, 1994. The immediate Discipline Committee noted the seriousness of the Solicitor's fraud, the amount involved, and the absence of any significant mitigating factors, and recommended that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

Conduct unbecoming

Nayduk, Derek George

Toronto, Ontario

Age 33, Called to the Bar 1993

Particulars of Complaint

- Conduct Unbecoming
 - Convicted of aggravated assault and criminal harassment

Recommended Penalty

- Disbarment

Convocation's Disposition (04/25/96)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Neil J. Perrier

On May 3, 1995, the Solicitor was convicted of aggravated assault and criminal harassment contrary to the *Criminal Code* for which he was sentenced to a term of imprisonment totalling seven years. Discipline counsel confirmed that the Solicitor had received notice of the hearing and was permitted to attend the hearing if he chose to do so, though he did not. The Discipline Committee recommended that the Solicitor be disbarred. At Convocation, the Solicitor was disbarred.

Failure to comply

Smith, Robert Douglas Laird

Brampton, Ontario

Age 43, Called to the Bar 1979

Particulars of Complaint

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

- Failed to maintain books and records
- Failed to maintain sufficient trust balances
- Failed to serve a client conscientiously and diligently

Recommended Penalty

- Disbarment

Convocation's Disposition (04/25/96)

- Disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Lesley Cameron

The Solicitor failed to comply with an October 13, 1992 undertaking to the Law Society in which he undertook to comply with his undertaking to a fellow solicitor. The Solicitor failed to correct deficiencies in his 1988 annual filing, and he failed to provide Forms 2/3 to cover the period from February 1, 1988 to the date his practice was closed, and for his fiscal year ending November 30, 1993. The Solicitor practised while under suspension from December 1, 1992 until November, 1993. The Solicitor failed to maintain his books and records, and he failed to reply to the Law Society regarding two matters. The Solicitor failed to maintain sufficient trust account balances. The Solicitor breached his undertaking to the Law Society dated September 13, 1993 by continuing to accept money into trust. Finally, the Solicitor failed to serve his client in a diligent, conscientious and efficient manner by failing to report in a timely fashion on two mortgage transactions.

On October 13, 1992, the Solicitor was reprimanded in Committee for failure to comply with an undertaking to a fellow lawyer. The immediate Committee recommended that the Solicitor be disbarred. The Committee noted that the nature of the particulars established against the Solicitor indicated that he is ungovernable. At Convocation, the Solicitor was disbarred.

Practising while suspended

Gardiner, George Thomas

Scarborough, Ontario

Age 41, Called to the Bar 1983

Particulars of Complaint

- Professional Misconduct
 - Practised while under suspension (3)
 - Failed to maintain books and records
 - Failed to reply to the Law Society
 - Failed to file Forms 2/3 (2)
 - Failed to maintain sufficient trust balances and improperly removed monies from trust for his personal use

Recommended Penalty

- One-year suspension with conditions

Convocation's Disposition (04/25/96)

- One-year suspension with conditions

Counsel for the Solicitor

David M. Midanik

Counsel for the Law Society

Lesley Cameron

During four separate periods the Solicitor practised law while under suspension. The Solicitor failed to maintain proper books and records and failed to reply to letters from the Society concerning his books and records. The Solicitor's books and records delivered to the Law Society on August 30, 1994 indicated a trust shortage in the sum of \$6,786.06, of which \$6,078.92 was improperly removed from trust by the Solicitor for his personal use. The Solicitor failed to file Forms 2/3 for his fiscal year ending June 30, 1992 and June 30, 1994.

The Solicitor had no discipline history. The Discipline Committee recommended a one-year suspension and that the Solicitor be allowed to return to the practise of law after the expiry of the one year period provided the following conditions can be met: the Solicitor continue to receive treatment from a psychiatrist preapproved by the Secretary of the Society; the Secretary

receive quarterly psychiatric reports indicating that the Solicitor is continuing in treatment and that there is no mental illness that might prevent the Solicitor from practising law responsibly; the Solicitor practise only in association with another lawyer and does not operate a general or trust bank account; the Solicitor is supervised by a member of the Law Society in good standing with whom he practises who is preapproved by the Secretary; and the Solicitor makes his annual filings for the fiscal year 1994. The conditions are to apply unless the Secretary agrees to vary them or the treating psychiatrist opines in writing to the satisfaction of the Secretary that the Solicitor is well enough to practise in an unsupervised or less supervised setting or an application is made under section 47 of the *Law Society Act*. At Convocation, the Solicitor was suspended for one year with the above conditions on his return to practice.

Failure to serve client

Harris, David

Toronto, Ontario

Age 46, Called to the Bar 1975

Particulars of Complaint

- Professional Misconduct
 - Failed to serve a client (7)
 - Failed to reply to the Law Society (10)
 - Failed to reply to a fellow lawyer (2)

Recommended Penalty

- Eight-month suspension with conditions and \$5,000 in costs (Majority)
- Five-month suspension with \$5,000 in costs (Minority)

Convocation's Disposition (04/25/96)

- Eight-month suspension with conditions and \$5,000 in costs

Counsel for the Solicitor

Morris Manning

Counsel for the Law Society

Rhonda Cohen

The Solicitor failed to serve various clients in a conscientious, diligent and efficient manner in that he failed to answer promptly reasonable requests

for information; he failed to report to his clients and keep them reasonably informed and advised as to the status of their actions; he failed to proceed with his clients' actions in a timely fashion; and he withheld information from a client about the status of an action in order to avoid disclosure of his neglect. The Solicitor failed to provide a prompt, full and complete response to two fellow lawyers and to various Law Society communications regarding his clients' complaints.

On May 5, 1992, the Solicitor was reprimanded in Convocation with \$12,500 in costs for failing to serve his client in a conscientious, diligent and efficient manner; failing to cooperate with the Law Society's investigation; and failing to provide prompt and full replies to Law Society communications. On May 29, 1984, the Solicitor was reprimanded in Discipline Committee for failing to serve his clients in a conscientious, diligent and efficient manner. A majority of the immediate Committee recommended that the Solicitor be suspended for eight months; be required to enrol in the Practice Review Programme; pay \$5,000 in costs prior to resuming the practice of law; and attend for medical treatment pursuant to the undertaking given in the in-camera discipline hearing. The Discipline Committee also received two undertakings executed by the Solicitor and filed at the hearing. One of the undertakings requires the Solicitor to, among other things, institute a system whereby at least one of his partners shall monitor the timeliness of the Solicitor's responses to correspondence and telephone messages. The minority of the Committee recommended that the Solicitor be suspended for five months with \$5,000 in costs. At Convocation, the Solicitor was suspended for eight months to commence May 15, 1996, with conditions and \$5,000 costs.

Failure to reply

Edwards, Shane William

Carlton Place, Ontario

Age 39, Called to the Bar 1987

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3 (2)
 - Failed to reply to the Law Society

Recommended Penalty

- Reprimand in Convocation if Law Society requirements met beforehand
- Otherwise, a three-month suspension to continue until requirements met

Convocation's Disposition (04/25/96)

- Three-month suspension to continue until requirements met

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)

Rhonda Cohen (at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal years ending April 30 of 1993 and 1994. The Solicitor also failed to reply to the Law Society regarding deficiencies in his books and records. The Solicitor had no discipline history. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation if he has complied with all the requirements of the Law Society beforehand, failing which, that he be suspended for three months, to continue month to month until he has complied fully. At Convocation, the Solicitor was suspended for three months to continue indefinitely until he has complied with the requirements of the Law Society.

Failure to file forms

Siegel, Marvin Harvey

Toronto, Ontario

Age 64, Called to the Bar 1960

Particulars of Complaint

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

Recommended Penalty

- Reprimand in Committee if Forms are filed by March 15, 1995, failing which Reprimand in Convocation if Forms are filed prior to Convocation, failing which, a one-month suspension to continue month to month until Forms are filed

Convocation's Disposition (04/25/96)

- One-month suspension to continue indefinitely thereafter until Forms are filed

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)

Allan Maclure (at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal years ending December 31 of 1990, 1991 and 1992. The Discipline Committee recommended that the Solicitor be reprimanded in Committee if he filed his Forms by March 15, 1995, failing which he be reprimanded in Convocation if the filings were made beforehand. Otherwise, the Committee recommended that the Solicitor be suspended for one month and month to month thereafter until the Forms are filed. The Solicitor has not made his filings. At Convocation, the Solicitor was suspended for one month to continue indefinitely until the Forms are filed.

Failure to serve client

Deziel, John Lawrence

Belle River, Ontario

Age 49, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Failed to serve clients
 - Misled clients

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*Recommended Penalty*

- Reprimand in Convocation with conditions
- \$1500 in costs

Convocation's Disposition (04/25/96)

- Reprimand in Convocation with conditions
- \$1,500 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina Budweth (at Committee)

Michael F. Brown (at Convocation)

In or about April, 1994, the Solicitor began representing his clients in connection with a construction lien claim. However, over the next several months the Solicitor failed to serve his clients in a conscientious, diligent and efficient manner, in that he failed to proceed with his clients' lien claim in a timely manner. The Solicitor also misled his clients by failing to disclose his lack of progress regarding the lien action.

On September 14, 1993, the Solicitor received a Reprimand in Discipline Committee with \$3,000 in costs for borrowing \$45,000 from his client. On February 2, 1988, the Solicitor received a Reprimand in Committee with \$1,000 in costs for failing to produce his records and for failing to correct inadequacies in his books and records.

In its Report to Convocation the Committee recommended that the Solicitor be reprimanded in Convocation; that he attend the Professional Responsibility portion of the Bar Admission Course and pass the examination in that course; that he enroll in and cooperate with the Law Society's Practice Review programme; and that he pay \$1,500 in costs. The Committee noted that the Solicitor had made restitution in the amount of \$2,500 and cautioned the Solicitor that he would be unlikely to receive such leniency again. At Convocation, the Solicitor received a Reprimand with conditions and \$1500 in costs.

Failure to file forms

Yaffe, Gary Michael

Toronto, Ontario

Age 31, 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, a thirty-day suspension to continue until the filings are made

Convocation's Disposition (04/25/96)

- Reprimand in Convocation to be administered at a later date

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Glenn Stuart

The Solicitor failed to file Forms 2/3 on or before November 30, 1994. The Discipline Committee noted that the Solicitor was not practising law at the present time, and he appeared to have left the Province. The Committee recommended that the Solicitor be reprimanded in Convocation if his Forms were filed beforehand, failing which that the Solicitor be suspended for thirty days to continue until the Forms are filed, such suspension to take effect after the conclusion of his administrative suspension. The Solicitor had filed his Forms prior to Convocation, but he was not in attendance, now being resident out of the province. Convocation decided to reprimand the Solicitor at Convocation, the Reprimand to be administered on a future date.

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