



The Law Society of
Upper Canada

Barreau
du Haut-Canada

discipline Digest

March 1996, Vol 4, No 6

Misapplication of trust funds

Orzech, Morris Calvin

Scarborough, Ontario

Age 60, Called to the Bar 1962

Particulars of Complaint

- Professional Misconduct
 - Misapplied trust funds
 - Registered an unauthorized mortgage
 - Failed to report to a client (5)
 - Failed to obtain, ensure or register first mortgages and securities (3)
 - Falsely reported to a client (2)
 - Failed to comply with an undertaking to his client
 - Acted in a conflict of interest (2)
 - Failed to comply with a client's instructions (2)
 - Failed to ensure that a broker had the authority to execute

Cases

- Michael E. Chodos, North York
- John R. Dingle, Scarborough
- Stanley C. Ehrlich, Toronto
- Frederick A. Helson, Halton Hills
- Richard M. Ittleman, Richmond Hill
- Bert Jacques, Markham
- Alan D. Kurtz, Toronto
- Harry J. Levinson, Toronto
- Morris C. Orzech, Scarborough
- Joseph N. Solomon, Toronto
- Moshe Teller, Scarborough

- mortgage documents
- Improperly registered a mortgage
- Failed to serve a Notice of Sale directly to his client
- Prepared and registered property transfer documents without consent
- Advised clients to invest without ensuring they obtained adequate security
- Participated in a fee splitting arrangement with his client
- Breached a written representation to the Law Society
- Failed to comply with an undertaking to the Law Society
- Executed a false Land Transfer Tax Affidavit

Recommended Penalty

- Permission to resign
- Otherwise, disbarment

Convocation's Disposition (03/21/96)

- Permission to resign by April 15, 1996
- Otherwise, disbarment

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Elizabeth Cowie

On January 23, 1985, the Solicitor incorporated Southview Investments, Inc. for a Ms. Janice Raven as sole officer and director. The Solicitor was aware that Southview carried on business as a mortgage broker and investor though neither Southview or Janice Raven was registered as a licensed mortgage broker and Southview was not reg-

istered as a mortgage or loan investor pursuant to the provisions of the *Mortgages and Loans Trust Corporations Act*. Until March 1989, Southview used the Solicitor's offices, receptionist and telephone number. Subsequently, Southview moved to an adjoining suite and acquired its own telephone number, however it continued to utilize the Solicitor's receptionist. Between 1985 and 1993, the Solicitor referred a number of clients to Southview to invest mortgage monies while he was acting as solicitor for Southview and Janice Raven and committed the above 26 particulars of professional misconduct. On October 18, 1993, Southview and Janice Raven were petitioned into bankruptcy.

The Solicitor had no discipline history. The Discipline Committee accepted a Joint Submission as to penalty and recommended that the Solicitor be granted permission to resign his membership in the Law Society, such resignation to be submitted by April 15, 1996, failing which, the Committee recommended that the Solicitor be disbarred. The Committee noted the following mitigating factors: the Solicitor's lack of a discipline history after over 30 years of practice, his desire to never again practise law, his cooperation with the Law Society during the proceedings, his current

and past health and medical condition and his cooperation in the process culminating in the Joint Submission. At Convocation, the Solicitor was given permission to resign by April 15, 1996, failing which he is to be disbarred.

Misapplication of funds

Solomon, Joseph Nathan

Toronto, Ontario

Age 51, Called to the Bar 1971

Particulars of Complaint

- Professional Misconduct
 - Misapplied client's funds
 - Acted in a conflict of interest
 - Preferred the interest of one client over another
 - Borrowed money from a client
 - Failed to reply to the Law Society (5)
 - Failed to reply to a fellow lawyer
 - Failed to comply with an undertaking (3)
 - Breached his fiduciary duty (7)
 - Operated his practice through his trust account
 - Failed to comply with a citation
 - Failed to comply with a court order

Recommended Penalty

- Disbarment

Convocation's Disposition (03/21/95)

- Permission to resign

Counsel for the Solicitor

William Trudell

M.B. Ingram

Counsel for the Law Society

Christina Budweth (at Committee)

Neil Perrier (at Convocation)

The Solicitor misapplied funds from a client's estate by investing them in other than first mortgages contrary to the provisions of the client's will, and resulting in the likely loss of \$250,000. He acted in a conflict of interest by acting for the mortgagors and the mortgagees in some transactions, and he preferred the interests of a client over

the interests of his client's estate in addition to borrowing money from a client. The Solicitor advised his borrower clients to obtain independent legal advice from his lawyer-tenant. The Solicitor breached his fiduciary duty to six different clients by registering lower priority mortgages than instructed, delaying the registration of assigned interests in certain mortgages, incorrectly reporting that mortgages were not in arrears and failing to advance mortgage funds in full. The Solicitor operated his practice through his trust account in order to avoid Revenue Canada and then opened a general account in the name of his employee. The Solicitor failed to reply to fellow lawyers regarding an up-to-date accounting of an estate. He also failed to comply with a Citation to Executors to Bring in and Pass Accounts and a court order to that effect. Finally, the Solicitor failed to reply to the Law Society regarding five client complaints, and he failed to comply with his November 17, 1992 Undertaking to promptly reply to Law Society communications.

In 1992, the Solicitor was reprimanded in Discipline Committee with \$500 in costs for failing to reply to the Law Society. The Committee recommended disbarment. Since the time of the hearing before the Committee and when the matter came before Convocation, the Solicitor had effected restitution to the estate client of the sum of \$250,000. The passing of account in respect of the other estate had been completed. The Solicitor tendered psychiatric evidence before Convocation. At Convocation, the Solicitor was given permission to resign.

Conduct unbecoming

Chodos, Michael Elliot

North York, Ontario

Age 48, Called to the Bar 1975

Particulars of Complaint

- Conduct Unbecoming a Barrister and Solicitor
 - took steps to prevent a former client from realizing on a civil judgment against the Solicitor
 - That conduct was criticized in a civil judgment which was made public

Recommended Penalty

- Six-month suspension with payment of \$43,663 within six months thereafter
- Otherwise, disbarment

Convocation's Disposition (02/22/96)

- Six-month suspension

Counsel for the Solicitor

John Laskin (prior to 1994)

Brian Greenspan

Counsel for the Law Society

Nancy Spies

Robert MacKinnon

In November of 1988, the Solicitor's appeal of a judgment finding breach of confidence, professional negligence and an unreasonable lack of skill and fidelity in his fiduciary duties as a lawyer was dismissed, resulting in approximately \$170,000 in damages and costs owing to the Solicitor's former client. The Solicitor took steps to insulate an interest in property he acquired from his client's judgment, refused to settle the litigation at any stage of the proceeding, and liquidated RRSPs and shares he owned. The Solicitor failed to attend two judgment debtor examinations and filed a proposal in bankruptcy. His client's judgment comprised the Solicitor's largest portion of his debt. In the bankruptcy proceeding, the Solicitor's conduct was criticized in the judgment granting him a discharge conditional upon consenting to a judg-

ment to pay \$100,000. The Solicitor failed to make any payments pursuant to this judgment.

The Solicitor has a discipline history: reprimanded in Convocation in 1986 and 1989. The Discipline Committee recommended that the Solicitor be suspended for six months and that he pay his former client \$43,663 within six months thereafter, failing which he would be disbarred. The Committee found that the Solicitor engineered his financial affairs to avoid paying his former client's judgment and was motivated by a steadfast animus toward his former client. At Convocation, counsel for the Solicitor confirmed that approximately \$43,000 held in escrow would be paid to the Solicitor's former client.

Convocation accepted the joint submission of counsel and adopted the report of the Discipline Committee with the amendment that the Committee had jurisdiction to award costs. Convocation ordered that the Solicitor be suspended for six months commencing April 1, 1996.

Breach of undertaking

Dingle, John Rorie

Scarborough, Ontario

Age 53, Called to the Bar 1973

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3
 - Failed to honour an Order of Discipline Committee
 - Failed to comply with an undertaking to the Law Society
 - Failed to cooperate with the Law Society
 - Practised law while under suspension

Recommended Penalty

- Six-month suspension with conditions

Convocation's Disposition (02/22/96)

- Six-month suspension with conditions

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Christina M. Budweth

(at Committee)

Michael F. Brown

(at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal year ending May 31, 1994. He failed to honour an order of a Discipline Committee of March 10, 1994 to pay \$500 in costs. He also breached his undertaking to the Law Society to file monthly trust reconciliations for 18 months commencing March 15, 1994, by failing to make filings since September 14, 1994. Furthermore, the Solicitor failed to cooperate with the Law Society by not producing his books and records. Finally, the Solicitor failed to comply with an Order of Convocation that he be suspended from the practice of law for non-payment of his Errors and Omissions Insurance levy by continuing to practise during the period December 2, 1994 to March 23, 1995.

On March 10, 1994, the Solicitor was reprimanded in Discipline Committee, for failure to file Forms 2/3 for his fiscal year ending May 31, 1992, and was ordered to pay \$500 in costs. Previously, in 1984, the Solicitor received a Reprimand in Convocation for, *inter alia*, practising while under suspension. The current Committee recommended that the Solicitor be suspended for six months commencing July 31, 1995 to continue until he produces his books and records in sufficient form to satisfy the Law Society; obtains a medical report which satisfies the Society that he is fit to

return to practice; completes his filings and complies with his prior undertaking to pay \$500 in costs. The Committee noted that ordinarily the penalty for such misconduct would be a minimum of a nine-month suspension but took into account a number of factors including mitigating personal circumstances. At Convocation, the Solicitor was suspended for a period of six months effective July 31, 1995 to continue indefinitely until conditions are satisfied.

Failure to reply

Jacques, Bert

Markham, Ontario

Age 59, Called to the Bar 1976

Particulars of Complaint

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

Recommended Penalty

- Three-month suspension with conditions
- \$450 in costs

Convocation's Disposition (03/21/96)

- Three-month suspension with conditions
- \$450 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)

Georgette Gagnon

(at Convocation)

The Solicitor failed to reply to the Law Society's requests that he provide a response to two inadequacies discovered during an examination of his books and records on August 26, 1992, specifically, inactive and overdrawn trust ledger amounts. The Solicitor also failed to file Forms 2/3 for his fiscal year ending April 30, 1994.

On April 27, 1993, the Solicitor was reprimanded by the Discipline

Committee and ordered to pay costs of \$1,000 for practising law while under suspension and for failure to maintain books and records. The Solicitor also undertook to participate and cooperate with the Practice Review Program. On January 26, 1995, the Solicitor was suspended for three months for breach of duty to a client and issuance of a false report. The immediate Discipline Committee recommended that the Solicitor be suspended for three months following the current administrative suspension, such suspension to continue until the Solicitor replied in a manner satisfactory to the Law Society, filed his Forms 2/3 and paid \$450 in costs. At Convocation, the Solicitor was suspended for three months, such suspension to commence at the conclusion of any administrative suspension, and to continue until he has satisfied the recommended conditions, including \$450 in costs.

Failure to serve clients

Ehrlich, Stanley Charles

Toronto, Ontario

Age 41, Called to the Bar 1985

Particulars of Complaint

- Professional Misconduct
 - Failed to serve clients conscientiously and diligently
- (2)
 - Failed to reply to the Law Society (2)
 - Failed to comply with an undertaking to the Law Society
 - Misled the Law Society

Recommended Penalty

- Two-month suspension
- Honour previous undertaking, including Practice Review Program
- \$500 in costs and costs of the Professional Standards Department

Convocation's Disposition (03/21/96)

- Two-month suspension
- \$500 in costs

Counsel for the Solicitor

Lawrence Shapiro

Counsel for the Law Society

Rhonda Cohen

The Solicitor failed to serve his clients in a conscientious, diligent and efficient manner in connection with their mortgage re-financing in that he failed to obtain discharges of pre-existing mortgages in a timely manner and he failed to provide a report in writing respecting the re-financing of their property. Similarly, he failed to proceed with another client's civil action in a timely manner, he failed to answer reasonable requests from the client for information and he failed to account in a timely manner for monies entrusted him by the client in the sum of \$1,000. The Solicitor failed to reply to the Law Society regarding two complaints and he breached his Undertaking to the Law Society dated February 3, 1995, to provide full and complete responses to the Law Society. Finally, the Solicitor misled the Law Society with respect to the status of an action by advising that he filed a Notice of Discontinuance with the court, when in fact, that was not the case.

The Solicitor had no discipline history. The Discipline Committee accepted a Joint Submission as to penalty and recommended that the Solicitor be suspended for two months with \$500 in costs. The Committee also recommended that the Solicitor abide by his December 12, 1995 Undertaking to promptly reply to communications from the Law Society and fellow lawyers, to continue his participation in the Practice Review Program and to satisfy the costs of that program at \$50 per hour, and to satisfy his out-

standing debt of \$3252.60 to a former client resulting from a prior Assessment. At Convocation, the Report and Decision of the Discipline Committee was adopted and the Solicitor was suspended for two months effective January 18, 1996.

Failure to file forms

Teller, Moshe

Scarborough, Ontario

Age 38, Called to the Bar 1984

Particulars of Complaint

- Professional Misconduct
 - Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if the Forms are filed beforehand
- Otherwise, a one-month suspension to continue until the Forms are filed
- \$400 in costs

Convocation's Disposition (03/21/96)

- One-month suspension to continue until the Forms are filed
- \$400 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)

Elizabeth Cowie (at Convocation)

The Solicitor failed to file Forms 2/3 for his fiscal year ending January 31, 1995. The Solicitor had no discipline history. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation if he files his Forms beforehand, failing which, that he be suspended for one month, and thereafter until his Forms are filed. The Committee further recommended that the Solicitor pay \$400 in costs. At Convocation, the Solicitor was suspended for one month and thereafter until his Forms are filed with \$400 in costs.

Failure to file forms

Kurtz, Alan Douglas

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 the Forms are filed before matter reaches Convocation
- Otherwise, a one-month suspension to continue until the Forms are filed
- \$250 in costs

Convocation's Disposition (03/21/96)

- One-month suspension to continue until the Forms are filed

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 since his call to the Bar on June 25, 1993. The Solicitor had no discipline history. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation if he files his Forms 2/3 before the matter reaches Convocation, failing which, that he be suspended for one month to continue until his Forms are filed. The Committee further recommended that the Solicitor pay \$250 in costs. At Convocation, the Solicitor was suspended for one month to continue until his Forms are filed.

Conflict of interest

Helson, Frederick Arthur

Halton Hills, Ontario

Age 74, Called to the Bar 1957

Particulars of Complaint

• Professional Misconduct

- Maintained an interest in syndicated mortgages with various clients

- Acted in a conflict of interest
- Failed to report to clients
- Failed to provide declarations of trust for clients
- Loaned estate funds without first mortgage security
- Failed to disclose financial information to mortgagors
- Improperly signed the name of a client
- Swore a false affidavit

Recommended Penalty

- One-month suspension

Convocation's Disposition (03/21/95)

- One-month suspension

Counsel for the Solicitor

Michael Birley

Counsel for the Law Society

Neil Perrier

From 1985 through 1989 the Solicitor arranged approximately \$2,000,000 in mortgage financing for the construction of a client's home. Certain mortgage security ranked as low as tenth in priority and the Solicitor maintained an interest in one of the syndicated mortgages. The Solicitor did not provide reporting letters to his client nor did the Solicitor account for mortgagee trust funds or provide declarations of trust to investors. The Solicitor failed to maintain appropriate records for the mortgages for which he was responsible. He did not advise his mortgagee clients to obtain independent legal representation in connection with their mortgage loans to his other client and he did not disclose his interest in the mortgages on title to the property or that his client was not maintaining payments on the existing mortgages. The Solicitor lent \$157,000 of estate funds to the same client and, contrary to the *Trustees' Act*, failed to secure the loan with a first mortgage. In regard to another client, the Solicitor signed his client's name to cessation of charge documents and swore a false affidavit of subscribing witness. In addition,

the Solicitor did not report the results of the discharge transactions to his client. The Solicitor improperly executed the discharge documents believing he had the "general authority" to do so. But for the improper manner in which the Solicitor conducted himself, the mortgage was otherwise to have been discharged.

The Solicitor had no discipline record in thirty-seven years of practice. The Discipline Committee rejected a Joint Submission for a Reprimand in Committee and recommended a one-month suspension. The Committee noted that the Solicitor had made full restitution at great personal expense (\$1,000,000) and that the possibility of recurrence was unlikely. None of the investor clients complained to the Law Society. At Convocation, the Solicitor was suspended for a period of one month effective April 1, 1996.

Failure to file forms

Ittleman, Richard Michael

Richmond Hill, Ontario

Age 42, Called to the Bar 1980

Particulars of Complaint

• Professional Misconduct

- Failed to file Forms 2/3

Recommended Penalty

- Reprimand in Convocation if Forms are filed and \$450 in costs paid before a one-month suspension to continue until the Forms are filed and \$450 in costs have been paid

Convocation's Disposition (03/21/96)

- Reprimand in Convocation
- \$450 in costs

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Audrey Cado (at Committee)

Georgette Gagnon

(at Convocation)

The Solicitor failed to file Forms

2/3 for his fiscal year ending January 31, 1994. On July 13, 1994 the Solicitor was reprimanded by the Discipline Committee and ordered to pay costs of \$500 for his failure to file for his fiscal year ending January 31, 1993, failure to maintain sufficient trust funds and failure to reply to the Law Society. The immediate Committee recommended that the Solicitor be reprimanded in Convocation if his filings have been completed and he has paid costs in the amount of \$450 by the time the matter is considered by Convocation, failing which he be suspended for one month and thereafter until his filings have been completed and the costs paid. At Convocation, the Solicitor received a Reprimand, as he had filed his Forms and paid costs of \$450.

Failure to serve client

Levinson, Harry Judah

Toronto, Ontario

Age 44, Called to the Bar 1987

Particulars of Complaint

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

Recommended Penalty

- Reprimand in Convocation

Convocation's Disposition (03/21/96)

- Reprimand in Convocation

Counsel for the Solicitor

Not represented

Counsel for the Law Society

Allan Maclure

The Solicitor failed to serve his client in a conscientious, diligent

and efficient manner by improperly withdrawing his representation of his client in a situation which resulted in serious prejudice to his client. As counsel of record in his client's immigration hearing, the Solicitor failed to appear to give final submissions at a continued hearing on December 21, 1992. On December 23, 1992, the client appeared before the Hearing Panel with a letter from the Solicitor which requested an adjournment so as to allow the client to obtain new counsel since Legal Aid would no longer fund her representation at the Hearing. On December 23, 1992, the Adjudicator proceeded to render the finding of the panel that the client did not meet the requirements of the relevant sections of the *Immigration Act*, and he ordered that she be excluded from Canada and be detained in custody until such time as she could post bond. The client subsequently retained new counsel who obtained in the Federal Court of Canada an Order requiring a new hearing for the client on grounds of a denial of procedural fairness due to lack of representation. Mr. Justice Rothstein of the Federal Court found that the Solicitor "...did desert the applicant at a critical stage...and left her in a position of disadvantage and peril."

The Solicitor had no discipline history. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation. The Committee noted that the Solicitor failed to do all that reasonably could be done to facilitate the orderly transfer of the matter to a successor lawyer and that non-payment of fees was not justifiable cause for terminating the lawyer-client relationship three weeks before the submission stage of the hearing. The Solicitor received a Reprimand at Convocation.

Alcohol/Drug/Eating Disorder/Addiction Problem?

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