

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 3rd April, 1997
9:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Adams, Angeles, Armstrong, Arnup, Backhouse, Carey, Carpenter-Gunn, Chahbar, Crowe, Curtis, DelZotto, Eberts, Epstein, Feinstein, Gottlieb, MacKenzie, Manes, Marrocco, Ortved, Puccini, Ross, Sealy, Stomp, Strosberg, Swaye, Thom, Topp, Wilson and Wright.

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IN PUBLIC

.....

The reporter was sworn.

DISCIPLINE COMMITTEE

Ms. Georgette Gagnon, Acting Senior Counsel-Discipline introduced Mr. Todd Ducharme who acted as Duty Counsel.

Re: Albert John BICKERTON - Toronto

The Secretary placed the matter before Convocation.

Messrs. Strosberg and MacKenzie withdrew for this matter.

Ms. Lesley Cameron appeared on behalf of the Society and Mr. Michael Lomer appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 4th February, 1997, together with an Affidavit of Service sworn 14th February, 1997 by Ron Hopple that he had effected service on the solicitor by registered mail on 7th February, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 3rd April, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Harriet Sachs, Chair
Robert B. Aaron
Gordon Z. Bobesich

3rd April, 1997

In the matter of
The Law Society Act
and in the matter of

Lesley Cameron
for the Society

ALBERT JOHN BICKERTON
of the City
of Toronto
a barrister and solicitor

Michael Lomer
for the solicitor

Heard: December 12, 1995
May 2 & November 27, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 20, 1993 Complaint D185/93 was issued; on April 15, 1994 Complaint D91/94 was issued; and , on May 26, 1994 Complaint D488/94 was issued, against Albert John Bickerton alleging that he was guilty of professional misconduct. Complaint D91/94 was withdrawn and replaced with Complaint D91a/94 on issued on May 9, 1994.

The matter was heard in public, with portions of the documentary evidence received *in camera*, on December 12, 1995 and May 2, 1996 before this Committee composed of Harriet Sachs, Chair, Robert B. Aaron and Gordon Z. Bobesich. The Solicitor attended the hearing and was represented by Michael Lomer. Lesley Cameron appeared on behalf of the Law Society. The hearing was reconvened by telephone conference on November 27, 1996 for submissions on penalty.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D185/93

2. a) He failed to provide a reply to the Law Society regarding a complaint by Greg Kimber despite letters dated January 6, February 26 and March 18, 1993 and a telephone message left by the Law Society on March 6, 1993.
- b) He failed to serve his client Greg Kimber in a conscientious, diligent and efficient manner in respect of a zoning violation matter in May, 1991.

Complaint D91a/94

2. a) He failed to produce books and records as required by Section 18 of Regulation 708 under the Law Society Act;
- b) He failed to comply with an Undertaking to the Law Society dated May 20, 1993.

3rd April, 1997

Complaint D488/94

2. a) He failed to file with the Law Society within six months of the termination of his fiscal year ending January 31, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of Regulation 708 made pursuant to the Law Society Act..

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statements of Facts:

Re:D185/93 and D 91a/94

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D185/93 and D91a/94 and is prepared to proceed with a hearing of this matter on January 11, 1995.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will be bringing a motion pursuant to Section 9(b) of the Statutory Powers Procedure Act to request that this matter be heard in camera.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D185/93 and D91a/94 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1978. He practised as a sole practitioner until he was suspended for non-payment of his annual fees on November 1, 1993.

COMPLAINT D185/93

- Particular 2(a) Failure to reply to the Law Society;
Particular 2(b) Failure to serve his client, Greg Kimber, in a conscientious, diligent and efficient manner.

5. On or about August 10, 1990, in Newmarket Greg Kimber retained the Solicitor to represent him with respect to an appeal of a Provincial Offences Court conviction, dated July 11, 1990, against him concerning a zoning violation and a \$5000.00 fine. Mr. Kimber provided the Solicitor with a retainer, in the amount of \$1000.00 (Tab 1, Document Book).

6. Mr. Kimber was out of town on June 20, 1991, the day the appeal was scheduled to be heard. Upon his return, when he was served with a Notice of Intent to Issue Warrant, he discovered that the Solicitor had failed to appear at the hearing of the appeal and as a result his appeal was dismissed and a fine of \$5300.00 had been levied against him.

7. Mr. Kimber placed several telephone calls to the Solicitor to inquire as to why the Solicitor had not attended at the appeal, however, the Solicitor did not return any of his calls.

3rd April, 1997

8. By letter received by the Law Society on November 10, 1992, Mr. Kimber filed a complaint against the Solicitor with the Law Society (Tab 2, Document Book).

9. By letter dated January 6, 1993 (Tab 3, Document Book), the Law Society forwarded to the Solicitor a copy of Mr. Kimber's letter of complaint. The Solicitor was requested to provide his comments to same to the Complaints department within a period of two weeks. The Solicitor was also advised that a copy of Mr. Kimber's complaint had been forwarded to the Law Society's Errors and Omissions Department. No response was received from the Solicitor.

10. By letter dated February 26, 1993 (Tab 4, Document Book), the Law Society forwarded to the Solicitor a copy of its January 6th letter, which remained unanswered. The Solicitor was requested to provide his reply within 14 days. No response was received from the Solicitor.

11. On March 6, 1993, a Law Society staff employee telephoned the Solicitor's office and left a message for the Solicitor that should he fail to respond to the Law Society by April 9, 1993, the matter would be referred to the Discipline Committee. A copy of the Law Society staff employee's handwritten telephone notes, dated March 6, 1993, are contained at Tab 5 of the Document Book. No response was received from the Solicitor.

12. By registered letter dated March 18, 1993 (Tab 6, Document Book), the Law Society forwarded to the Solicitor copies of its letters dated January 6, 1993 and February 26, 1993 and requested that the Solicitor provide a response to same. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was requested to provide his reply within a period of 7 days, or the matter would be referred to the Chair of the Discipline Committee for instructions. The matter was referred to the Discipline Committee on May 13, 1993. No response was received from the Solicitor.

13. The Solicitor has not returned to Mr. Kimber the \$1,000.00 retainer.

14. The Law Society's Errors and Omissions Department made a payment, in the amount of \$1000.00 to Mr. Kimber; and, subsequently closed their file on August 24, 1993.

COMPLAINT D91a/94

15. In relation to disciplinary proceedings on May 12, 1993, the Solicitor undertook (Tab 7, Document Book) to the Law Society and the Discipline Committee, by written undertaking dated May 20, 1993, as follows:

1. I undertake not to practise law for a three month period running from June 4, 1993 to June 30, 1993 and from September 1, 1993 to October 31, 1993.

2. I further undertake not to practise law for an indefinite period after October 31, 1993 until such time as my books and records and annual filings are brought up-to-date to the satisfaction of the Law Society.

3. I further undertake to produce to the Law Society my complete books and records, in their present state, within fifteen days hereof.

3rd April, 1997

4. *I further undertake to co-operate with the Practice Advisory Program of the Law Society and the Office of the Staff Trustee of the Law Society. (Hereinafter referred to as the "Undertaking")*

Particular 2(a) - Failure to Produce Books and Records

Particular 2(b) - Breach of Paragraph 3 of the Undertaking

16. On March 15, 1993, a Law Society Examiner attended at the Solicitor's business address of 120 Carlton Street, Suite 212, Toronto. The Examiner left her business card with the receptionist and left a message for the Solicitor to telephone the Law Society. The Examiner also left a message for the Solicitor on his voice mail and asked him to return the call. The Solicitor returned the Examiner's phone call and left a message stating that he would call back after 4:00 p.m. that day. The Solicitor did not call the Examiner back. A copy of the Examiner's handwritten notes dated March 15, 1993 are contained at Tab 8 of the Document Book.

17. By registered letter dated March 19, 1993 (Tab 9, Document Book), the Law Society requested the Solicitor to contact the Society before April 2, 1993 to arrange a date for an examination of his books and records. The Solicitor did not respond to this letter on or before April 2, 1993 as requested.

18. On or about April 5, 1993, the Solicitor left a message for the Law Society Examiner. The Examiner returned the Solicitor's call on April 6, 1993 and the Solicitor advised her that his books and records were at the trustee's office and that they would be completed by the end of the month. He further advised the Examiner that he would call back on April 7, 1993 to arrange a date for an examination of his books and records. The Solicitor did not call the Examiner back on April 7, 1993. On or about April 15, 1993, the Examiner telephoned the Solicitor and left a message for him to return the call. The Solicitor did not return the call. A copy of the Examiner's handwritten notes dated April 5, 1993, April 6, 1993 and April 15, 1993 are contained at Tab 10 of the Document Book.

19. By registered letter dated April 19, 1993 (Tab 11, Document Book), the Law Society referred to its letter dated March 19, 1993 and to its numerous telephone messages and requested the Solicitor to respond within 15 days to set up an appointment for the examination of his books and records. The Law Society further advised that if the Solicitor did not respond by May 4, 1993, the matter would be referred to the Discipline Department. The Solicitor did not respond to this letter.

20. On May 12, 1993, the Solicitor gave the Undertaking referred to in paragraph 15 herein, to the Law Society and the Discipline Committee (Tab 7, Document Book).

21. On May 25 and 26, 1993, a Law Society Examiner telephoned the Solicitor and left a message for him to return the call. On May 27, 1993 the Solicitor returned the Examiner's telephone messages and advised that he would bring his books and records directly to the Law Society for examination either on May 28, 1993 or the following Monday. The Solicitor did not bring his books and records to the Law Society as promised. On June 1, 1993, a Law Society Examiner telephoned the Solicitor and left a message for him indicating that the Law Society had not received his books and records and asked him to return the call. A copy of the Examiner's handwritten notes dated May 25, 1993, May 26, 1993, May 27, 1993 and June 1, 1993 are contained at Tab 12, Document Book. The Solicitor did not respond.

3rd April, 1997

22. By registered letter dated June 24, 1993 (Tab 13, Document Book), the Law Society enclosed a copy of the Solicitor's Undertaking, dated May 20, 1993 advising him that he was in breach of the Undertaking for failing to produce his complete books and records within 15 days of May 20, 1993. The Solicitor was further advised that if he failed to respond within 10 days, the matter would be referred to the Discipline Section. The Solicitor did not respond to this letter as requested.

23. On or about July 5, 1993, the Solicitor telephoned a Law Society Staff Trustee who reminded him that he was required to give his books and records to a Law Society Examiner. The Solicitor advised the Staff Trustee that he had been in the hospital in early June, 1993 and was unable to tend to his books and records. The Staff Trustee advised the Solicitor to contact the Law Society Examiner. A copy of the Law Society's Staff Trustee's memo to file dated July 5, 1993 is contained at Tab 14 of the Document Book. The Solicitor did not contact the Law Society Examiner.

24. On or about July 15, 1993, a Law Society Examiner telephoned the Solicitor. The Solicitor advised the Examiner that he had not received her letter dated June 24, 1993. He further advised that David Crack of the Law Society had granted him an extension until the end of July, 1993 to make his filings. The Solicitor also advised the Examiner that he would either telephone her the following week or would deliver his books and records directly to the Law Society offices at Osgoode Hall on July 26, 1993. A copy of the Examiner's handwritten notes dated July 15, 1993 are contained at Tab 15 of the Document Book. The Solicitor did not telephone the Examiner, nor did he produce his books and records on July 26, 1993.

25. On or about July 27, 1993, a Law Society Examiner telephoned the Solicitor and left a message for him to return her call. The Solicitor did not return the call. A copy of the Examiner's handwritten notes dated July 27, 1993 are contained at Tab 16 of the Document Book.

26. On or about August 3, 1993 the Solicitor attended at the Law Society and left his books and records at the reception desk. A Law Society Examiner commenced an examination of the Solicitor's books and records on same date. A copy of the Examiner's handwritten notes dated August 3, 1993 are contained at Tab 17 of the Document Book.

27. By letter dated August 4, 1993 (Tab 18, Document Book), the Law Society advised the Solicitor that a review of the books and records that he delivered to the Law Society on August 3, 1993 had been conducted and that the following materials were required to complete the examination of his books and records:

- (i) his General Account No. 1500112 Bank Statements for May, June and July, 1993 ;
- (ii) the original cashed cheques with respect to his General Account No. 1500112 for May, June and July, 1993;
- (iii) his General Disbursement Journals for 1991, 1992 and 1993;
- (iv) Fee Billings or statements of accounts for the following clients:

3rd April, 1997

1. Lloyd;
2. Beatty;
3. Wisotsky;
4. Sheikh;
5. Reid;
6. Parberry;
7. Lindstrom;
8. Kyselica;
9. Kamarovsky; and
10. Gabrielson.

(v) the following Client Files:

1. Kamarovsky;
2. Wilson;
3. McCormack;
4. McConnach;
5. Mehranvar;
6. McGowan;
7. Ly;
8. Reid;
9. Choc-Wai;
10. Longstaffe;
11. Delaney;
12. O'Brien; and
13. Saiffudin.

The Law Society requested the Solicitor to contact the Examiner in order to set-up an appointment to review the above-noted material that was not contained in the books and records the Solicitor provided to the Law Society.

28. On or about August 5, 1993, the Law Society Examiner telephoned the Solicitor and left him a message to return her call regarding the examination of his books and records and advised the Solicitor that she required further documents to complete her audit. A copy of the Examiner's handwritten notes dated August 5, 1993 are contained at Tab 19 of the Document Book. No response was received from the Solicitor.

29. By registered letter dated September 7, 1993 (Tab 20, Document Book), the Law Society enclosed a copy of its letter dated August 4, 1993 and requested the Solicitor to give this matter his early attention. No response was received from the Solicitor.

30. On or about September 16, 1993, the Law Society Examiner telephoned the Solicitor and left a message for him to return her call so that they could set up an appointment to review the records that were still required to be produced to complete the audit. A copy of the Examiner's handwritten notes dated September 16, 1993 are contained at Tab 21 of the Document Book. No response was received from the Solicitor.

31. By registered letter dated October 4, 1993 (Tab 22, Document Book), the Law Society requested a response with respect to the materials requested in its letter dated August 4, 1993 within two weeks. The Solicitor was further advised that if he did not respond with two within weeks, the matter would be referred to the Discipline Committee for further action.

3rd April, 1997

32. By letter dated October 19, 1993 (Tab 23, Document Book), the Solicitor advised the Law Society that he had been experiencing some medical problems, which were improving, but that he did not need threats of further discipline as he needed to relax completely and avoid any type of stress that could impede his recovery. He further indicated that he would provide the Law Society with the further material required by November 1, 1993, but that he would first need to pick up the material that he delivered to the Law Society on August 3, 1993. The Solicitor stated that he would pick up his books and records on or about October 26, 1993, at which time he would make an appointment with the Examiner to complete the audit of his books and records and would deliver up the required materials within a few days after he had scheduled the appointment.

33. On or about October 28, 1993, the Solicitor picked up his books and records from the Law Society. He did not however, schedule an appointment for the completion of the audit of his books and records.

34. By registered letter dated November 15, 1993 (Tab 24, Document Book), the Law Society enclosed a copy of the Solicitor's letter dated October 19, 1993 and advised the Solicitor that he still had not provided the requested material required for the completion of the audit of his books and records. The Solicitor was requested to respond within two weeks. No response was received from the Solicitor.

35. The Solicitor has not, to date, produced his complete books and records, nor has he made his annual filings for his fiscal years ending January 31, 1992, 1993 and 1994.

36. In respect of a disciplinary proceeding on April 28, 1989, the Solicitor provided to the Law Society and the Discipline Committee two letters from Dr. R. Wood Hill, a qualified medical practitioner and a psychiatrist, dated June 27, 1988 and November 14, 1988 respectively (Tab 25, Document Book) which stated that the Solicitor was suffering from depression, but showed no evidence of a personality disorder.

37. In respect of the current disciplinary proceeding, the Solicitor has provided to the Law Society two letters from Dr. Lal B. Takrani, a qualified medical practitioner and a psychiatrist, dated August 25, 1994 and November 24, 1994 (Tab 26, Document Book) which state that the Solicitor was hospitalized at the Queensway General Hospital from July 23, 1994 to August 9, 1994 and that he was diagnosed as suffering from reactive depression. The letter states that Dr. Takrani had seen the Solicitor once per week since his discharge from the hospital and that he had prescribed medication to be taken daily and that the Solicitor continues to see Dr. Takrani and to take medication. The letter further states that, as the depression that he suffered from was not treated for some time, it could have been responsible for his inability to comply with the requirements of the Law Society.

V. DISCIPLINE HISTORY

38. On April 28, 1989, the Solicitor was found guilty of professional misconduct with respect to Complaint D103/88, for failing to account to a client on the proceeds from the sale of a property and for failing to co-operate with the Law Society's investigation. The Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$2000.00.

39. By reasons of the Discipline Committee dated August 2, 1990, the Solicitor was found guilty of professional misconduct, with respect to Complaint D33/90, for failing to comply with the Order of the Discipline Committee, dated April 28, 1989 and failure to provide a reply to the Law Society respecting two separate complaints. The Solicitor was Reprimanded in Convocation on January 24, 1991.

3rd April, 1997

40. By reasons of the Discipline Committee, dated June 10, 1991, the Solicitor was found guilty of professional misconduct with respect to Complaint D116/90, for failing to reply to the Law Society, failing to make his annual filings and failing to comply with an Order of Convocation. The Solicitor was Reprimanded in Convocation on September 26, 1991.

41. On May 12, 1993, the Solicitor was found guilty of professional misconduct, with respect to Complaints D173/92, D206/92 and D88/93, for failing to serve a client in a conscientious, diligent and efficient manner, failing to respond promptly to communications from a fellow solicitor, failing to co-operate with an investigation of the Law Society regarding a possible negligence claim, failing to make his annual filings, failing to reply to the Law Society and failing to satisfy a financial obligation. The Solicitor was Reprimanded in Committee with an Undertaking.

DATED at Toronto this 11th day of January, 1995."

Re: D488/94

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D488/94 and is prepared to proceed with a hearing of this matter on October 3 & 4, 1995.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will be requesting that this matter be heard in camera pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D488/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1978. He has been suspended for non-payment of his annual fees since November 1, 1993.

5. The Solicitor's fiscal year end is January 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated August 5, 1994 was received by the Solicitor from the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

3rd April, 1997

7. By registered mail, the Solicitor received a Second Notice of Default in Annual Filing dated September 7, 1994 from the Law Society. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's Second Notice is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. The late filing fee began to accrue on September 23, 1994.

9. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

10. To date, the Solicitor has not filed for the fiscal years ending January 31, 1992, January 31, 1993 and January 31, 1994. The Solicitor owes \$4,500.00 in late filing fees plus a \$150.00 reinstatement fee.

V. DISCIPLINE HISTORY

11. On April 28, 1989, the Solicitor was reprimanded in committee for failing to account to a client and failing to co-operate with an audit investigation. The Solicitor was ordered to pay costs of \$2,000.00 which were paid by the Solicitor.

12. On January 24, 1991, the Solicitor was reprimanded in Convocation for failing to comply with an order of the Discipline Committee and failing to reply to the Law Society.

13. On September 26, 1991, the Solicitor was reprimanded in Convocation for failing to file for the fiscal years ending January 31, 1989 and January 31, 1990.

14. On May 12, 1993, the Solicitor was reprimanded in committee for failing to serve a client, failing to reply to another solicitor, failing to co-operate with the Law Society, failing to file, failing to reply to the Law Society and failing to satisfy a financial obligation. The reprimand in committee was conditional upon the Solicitor's Undertaking which included undertakings not to practise law from June 4, 1993 to June 30, 1993 and from September 1, 1993 to October 31, 1993 and not to practise for an indefinite period after October 31, 1993 until such time as his books and records and annual filings were brought up to date.

DATED at Toronto this 3rd day of October, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Albert John Bickerton be suspended from the practice of law except under the following conditions:

3rd April, 1997

1. The Solicitor continue to receive psychiatric treatment from his current treating psychiatrist, Dr. Takrani, or another psychiatrist preapproved by the Secretary of the Law Society at the frequency considered appropriate by such psychiatrist;
2. The Secretary of the Law Society receive quarterly reports from such psychiatrist asserting that the Solicitor has no mental illness which renders him incapable of practicing law, including addiction to alcohol or drugs;
3. The Solicitor practice law only as an employee and under the supervision of a member of the Law Society of Upper Canada in good standing and preapproved by the Secretary of the Law Society and will not operate a general or a trust bank account;
4. The Solicitor provide the Law Society with a letter from any such member stating that he or she is familiar with the Solicitor's discipline history and the conditions under which the Solicitor is permitted to practice and that he or she has agreed to supervise the Solicitor; and
5. The Solicitor make his annual filings for his fiscal year ending January 31, 1994, and such conditions will apply until such time as the Secretary of the Law Society agrees to dispense with or vary these conditions or until an order is made under Section 47 of the *Law Society Act*.

REASONS FOR RECOMMENDATION

6. The Solicitor requested that the Committee receive medical evidence *in camera*. The Society consented. The Committee was persuaded that the evidence was of a sufficiently intimate and personal nature that it should be received *in camera*.
7. The recommendation as to penalty which the Committee is making is the result of a joint submission by the Society and the Solicitor. The Committee was persuaded to accept this recommendation primarily because of the information contained in the medical reports received *in camera* which consisted not only of reports from the Solicitor's doctor, but the Society's as well.
8. On the face of these reports there is no dispute that the Solicitor's misconduct can be adequately explained by the medical condition he was suffering from. Further, that condition is now being adequately treated and the Solicitor is in remission and fit to practice.
9. The conditions imposed on the Solicitor via the penalty recommended should serve to adequately protect the public from being subject to the conduct which led to the Solicitor's appearance before this Committee.

3rd April, 1997

Albert John Bickerton was called to the Bar on the 13th day of April, 1978.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 4th day of February, 1997

Harriet Sachs
Chair

Convocation was advised that page 77 of the Report was in camera.

There were no submissions. The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended from the practice of law except under the conditions set out in the Report with regard to continuing to receive psychiatric treatment, practising only as an employee and completing his filings. These conditions will apply until such time as the Secretary agrees to dispense with them or an Order is made under Section 47 of the Law Society Act.

It was moved by Mr. Topp, seconded by Mr. Crowe that the reference in the recommendation that a psychiatrist be preapproved by the Secretary of the Law Society, be deleted.

Lost

It was moved by Ms. Sealy, seconded by Ms. Backhouse that the recommended penalty be adopted.

Carried

Re: Harvey Howard HACKER - Toronto

The Secretary placed the matter before Convocation.

Ms. Angeles withdrew for this matter.

Ms. Cameron appeared for the Society and Mr. Joseph Faust appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 6th November, 1997, together with an Affidavit of Service sworn 26th November, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th November, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd January, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas E. Cole, Chair
Larry A. Banack
Nora Angeles

In the matter of
The Law Society Act
and in the matter of

Lesley Cameron
for the Society

HARVEY HOWARD HACKER
of the City
of Toronto
a barrister and solicitor

Joseph J. Faust
for the solicitor

Heard: October 2, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 9, 1995 Complaint D84/95 was issued, and on June 24, 1996 Complaint D136/96 was issued against Harvey Howard Hacker alleging that he was guilty of professional misconduct.

The matter was heard in public on October 2, 1996 before this Committee comprising Thomas E. Cole, Chair, Larry A. Banack and Nora Angeles. The Solicitor attended the hearing and was represented by Joseph J. Faust. Lesley Cameron appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D84/95

- 2a) He misapplied the following mortgage payments received in trust:
- i) the sum of \$200,000.00 from his client, the Brian Ferrier Family Trust, of which he is the trustee, which was on account of a \$250,000.00 mortgage and paying the said monies to the Trust's other creditors and not to his investor/mortgagee clients, George Parras and George Maroudas;
 - ii) the sum of \$10,493.17 by allocating mortgage payments to the Brian Ferrier Family Trust which should have gone to the credit of his investor client, Tom Tzikos.

3rd April, 1997

- by:
- b) He failed to act in a diligent, conscientious and efficient manner
 - i) not preparing and sending in fourteen instances, a report to his clients in connection with their mortgage investments;
 - ii) not preparing in eight instances, trust declarations in connection with mortgages which he held in trust for clients;
 - iii) not obtaining appraisal reports in nine instances, on properties being encumbered in favour of his clients, thereby not ensuring that the clients' investments were adequately secure;
 - iv) discharging on July 23rd, 1990, a \$250,000.00 mortgage, registered against Part Lots 18, 19 & 20, West side of Park Street, Thurlow held by the Solicitor in trust for George Parras and George Maroudas, without the knowledge or authority of his clients and without the mortgage debt being satisfied;
 - v) postponing on two occasions, a second mortgage for \$650,000.00 registered against Part Lot 4, Concession 2, Parts 1-7, Plan 21R-9347, Thurlow, held by the Solicitor in trust for George Parras, Gus Xanthios, Tom Tzikos and 349643 Ontario Limited, to various mortgages held by H. Berholz in trust, without the knowledge or authority of his clients. The postponements resulted in the \$650,000.00 second mortgage becoming a fifth mortgage behind an additional \$900,000.00 in mortgages.
 - c) He acted in a conflict of interest in fourteen instances by acting for both the lender-client and borrower client in mortgage transactions.
 - d) He provided his personal guarantee in three instances of mortgages from his borrower-client which were in his name in trust for his lender-clients.
 - e) He breached Sections 14(1), 14(8)(c), and 14(10(a) of Regulation 708 made pursuant to the *Law Society Act* by:
 - i) failing to deposit trust monies to a trust account;
 - ii) withdrawing monies from trust without sending a fee billing or other written notification to the Brian Ferrier Family Trust; and
 - iii) by preparing trust cheques payable to cash.

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- 2a) He failed to reply promptly to the Society's letters dated August 15, 1995, October 2, 1995 and March 20, 1996;
- b) he failed to serve his clients Frank and Helen Iliodromitis in a conscientious, diligent and efficient manner in connection with mortgage investments which he arranged for him on property in the Township of Haldimand by:

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- i) advancing the client's funds for the benefit of the mortgagor before obtaining security; and
- ii) failing to follow the client's instructions to invest for a term of six to eight months;
- c) he misled his clients Frank and Helen Iliodromitis as to the existence of a mortgage on a property in the Township of Haldimand when the client asked for the return of his funds;
- d) he misled his client Gus Xanthios, as to the purchase price of three lots municipally known as RR #2, Stirling, Ontario, in connection with mortgage investments which he arranged for him on these three lots; and
- e) in acting on the transfer of a business, the Gerrard Tavern, and in arranging for a mortgage from his client, Gus Xanthios, to his client, Commercan Development Corporation, as part of the purchase price, the Solicitor acted for the purchasers, the vendor, Xanthios and Commercan Development Corporation without making adequate disclosure of the presence of a conflicting interest to the clients involved and without obtaining their written consent or recording their consent in a separate letter to each.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statements of Facts:

Complaint D84/95

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D84/95 and is prepared to proceed with a hearing of this matter on October 1 and 2, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed and admits the particulars of Complaint D84/95, subject to the amendment of paragraph 2(a)(i) by deleting the words "which was in default" and the amendment of the last sentence of paragraph 2(b)(v) to read as follows:

"The postponements resulted in the \$650,000 second mortgage being behind an additional \$900,000 in mortgages".

The Solicitor also admits that these particulars together with the facts set out below constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor was called to the Bar on March 20, 1975 and is practising in association with David Rovin, a Solicitor.

5. From 1987 to 1991, the Solicitor invested clients' funds in mortgages held in trust for these clients. Many of the mortgages were syndicated mortgages within the meaning of Rule 23 of the Rules of Professional Conduct, namely, mortgages having more than one investor. At Tab 1 of the Document Book is a summary of the Solicitor's mortgage transactions reviewed by the Law Society investigator.

6. The main parties to the various mortgage transactions were:

- (a) various individuals, including Gus Xanthios ("Xanthios"), George Parras ("Parras"), George Maroudas ("Maroudas") and Tom Tzikos ("Tzikos"). These individuals provided funds to the Solicitor to invest on their behalf, were represented by the Solicitor in the resulting mortgage transactions, and in the case of the four named individuals, are all unsophisticated investors for whom English is a second language;
- (b) the Brian Ferrier Family Trust (the "Ferrier Trust"), of which the Solicitor is a trustee and with which he had a long standing relationship as Solicitor. The Ferrier Trust was both a borrower from the Solicitor's other clients and an investor with other mortgagee clients in syndicated mortgages; and
- (c) Commercan Development Corporation ("Commercan"), Eastboro Developments (Belleville) Limited ("Eastboro") and Novare Contracting Limited ("Novare"), which corporations are controlled by the Ferrier Trust.

7. Brian Ferrier was not a party to any of the mortgage transactions, but is the controlling mind behind the Ferrier Trust.

2(a) The Solicitor misapplied the following mortgage payments received in trust:

- (i) the sum of \$200,000 from his client, the Brian Ferrier Family Trust of which he is the trustee, which was on account of a \$250,000 mortgage and paying the said monies to the Trust's other creditors and not to his investor/mortgagee clients, George Parras and George Maroudas

2 (b) The Solicitor failed to act in a diligent, conscientious and efficient manner by:

- (iv) discharging on July 23, 1990, a \$250,000 mortgage, registered against Part Lots 18, 19 & 20, West side of Park Street, Thurlow held by the Solicitor in trust for George Parras and George Maroudas, without the knowledge or authority of his clients and without the mortgage debt being satisfied.

8. By deed registered as Instrument No. 407693 on January 3, 1989, Commercan purchased a property on Park Street in Thurlow, Ontario, (the "Park Street Property") for a purchase price of \$975,000 (Tab 2, Document Book). Commercan gave the vendor a first mortgage of \$580,000.

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9. By mortgage registered on October 4, 1989, Commercan gave to the Solicitor in trust a second mortgage of \$250,000 on the Park Street Property (the "Park Street Mortgage") (Tab 3, Document Book). A note written by the Solicitor indicates that he held the Park Street Mortgage in trust for Parras and Maroudas as to \$100,000 and \$150,000, respectively (Tab 4, Document Book).

10. The Park Street Mortgage became due and payable on March 29, 1990 but payments continued to be made on it until December of 1990. By letter dated June 29, 1990 (Tab 5, Document Book), the Solicitor wrote to O'Flynn, Weese & Tausendfreund enclosing a discharge of the Park Street Mortgage and a duplicate registered mortgage to be held in escrow. The letter also indicates that the Solicitor was providing the discharge in exchange for a payment of \$200,000.

11. The Solicitor advised a Law Society auditor that he accepted \$200,000 rather than \$250,000 because \$200,000 was all Commercan could provide and he planned to replace the remaining \$50,000 with a different investment.

12. The Solicitor's bank statements and a deposit slip indicate that the Solicitor deposited the \$200,000 for payment of the Park Street Mortgage on or about July 20, 1990 to account #10-447-90 (Tabs 6 and 7, Document Book).

13. The Solicitor did not pay the \$200,000 to Parras or Maroudas, nor did he tell them that he had received these funds. Instead, he paid various creditors of the Ferrier Trust, including \$50,000 to Commercan, \$50,000 to Melvin Solomon in trust, approximately \$22,000 to correct an overdrawn balance in the bank account maintained for the Ferrier Trust, \$12,000 to himself in payment of fees rendered as trustee of the Ferrier Trust and \$27,000 to the National Bank to reduce the Ferrier Trust's line of credit (Tabs 6, 8 and 9, Document Book).

14. On July 23, 1990, without consulting Parras or Maroudas and notwithstanding the fact that the Park Street Mortgage debt was not satisfied, the Solicitor registered a discharge of the Park Street Mortgage (Tab 10, Document Book). Neither Parras or Maroudas had been paid any principal at the time the discharge was registered.

15. Between July 19, 1990 and February 14, 1991, three additional mortgages totalling \$796,384 were registered on the Park Street Property (Tabs 11, 12 and 13, Document Book).

16. On June 14, 1991, a \$275,000 fifth mortgage from Commercan to the Solicitor in trust was registered on the Park Street Property. The Solicitor advises that he held this mortgage in trust for Parras and Maroudas in the same amounts as their interests in the Park Street Mortgage (Tab 14, Document Book).

17. At the time that this fifth mortgage was registered, the Solicitor was aware that there was an outstanding writ of execution against Commercan filed with the Sheriff for the County in which the Park Street Property is located, as indicated by a reporting letter to the Solicitor from O'Flynn, Weese & Tausendfreund dated June 19, 1991 (Tab 15, Document Book). The Solicitor did not disclose this execution to Parras or Maroudas. The Solicitor states that the writ did not concern him because Eastboro was the beneficial owner of the Park Street Property, notwithstanding the fact that Commercan was the owner on title.

18. The Park Street Property is now the subject of power of sale proceedings by another mortgagee.

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19. Maroudas states that he was never aware that he held a \$150,000 interest in a \$250,000 mortgage as the Solicitor told him that he had a second mortgage for \$150,000 on farm lands in Thurlow, Ontario.

20. Parras and Maroudas deny that they were told of the \$200,000 payment towards the Park Street Mortgage, deny authorizing the discharge of the Park Street Mortgage and deny that they were told that it had been discharged or replaced by a fifth mortgage.

21. The Solicitor states that Parras and Maroudas agreed to take back a new mortgage on the Park Street Property without reference to the priority of the mortgage based on an appraisal by Stanley Reid & Associates for \$3,500,000. No such appraisal was found in the Solicitor's file, but Stanley Reid confirms that he valued the property at \$3,500,000 at June 15, 1990 (Tab 16, Document Book).

2(a) The Solicitor misapplied the following mortgage payments received in trust:

(ii) the sum of \$10,493.17 by allocating mortgage payments to the Brian Ferrier Family Trust which should have gone to the credit of his investor client, Tom Tzikos.

22. In 1986, Kenneth and Anne Roberts (the "Roberts") were the owners of the properties known municipally as 310-312 Albert Street, Belleville, described as Lot 28, West side of Albert Street, Plan 87, City of Belleville, County of Hastings (the "Albert Street Property"). On June 11, 1986, the Roberts gave a second mortgage on the Albert Street Property to Novare for the principal sum of \$20,000 (Tab 17, Document Book). This second mortgage was assigned to the Solicitor in trust on July 11, 1986 (Tab 18, Document Book).

23. The Solicitor held this second mortgage in trust for Tzikos (Tab 19, Document Book). The Solicitor's client ledger titled "Hacker loan re Albert St. Belleville" (Tab 20, Document Book) indicates that on July 11, 1986, \$21,000 was disbursed to O'Flynn, Weese & Tausendfreund and \$22,000 was received from Xanthios. The Solicitor states that this \$22,000 was from Xanthios on behalf of Tzikos.

24. On September 2, 1986, the Albert Street Property was purchased by Alexander Harold Stephen, in trust. A third mortgage, for the principal sum of \$27,446.89 in favour of Novare and the Roberts as to an undivided one-half interest each was registered on September 2, 1986 (Tab 21, Document Book). On July 2, 1987 the Roberts assigned a their interest in this third mortgage to the Solicitor, in trust (Tab 22, Document Book).

25. Alexander Harold Stephen defaulted on the payments for the \$20,000 second mortgage. By way of a power of sale, the Solicitor sold the Albert Street Property to Lloyd Tucker, on August 16, 1989, for the purchase price of \$115,000. It was a term of the sale that the purchaser was to assume the existing first mortgage with Royal Trust in the amount of \$50,125, and the vendor would take back a second mortgage in the sum of \$51,500 (Tab 23, Document Book).

26. The \$51,500 second mortgage from Tucker to the Solicitor in trust was registered as Instrument No. 420115 on August 16, 1989 (Tab 24, Document Book).

27. The Solicitor also held \$20,000 of this \$51,500 second mortgage in trust for Tzikos. The rolling over of the previous second and third mortgages into the existing second mortgage of \$51,500 had the effect of diluting Tzikos' interest in the second mortgage.

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28. On September 10 and September 25, 1990, the Solicitor received \$10,000 and \$30,000 in trust, respectively, as partial payments of the \$51,500 second mortgage. The Solicitor did not advise Tzikos of these payments.

29. The Solicitor deposited the \$10,000 into his trust account No. 10-447-90, which is an account held for the Ferrier Trust (Tab 6, Document Book). The client trust ledger titled "Hacker loan re Albert St., Belleville" does not show a deposit of either \$10,000 or \$30,000 (Tab 20, Document Book).

30. The Solicitor deposited the \$30,000 into his line of credit Account No. 70-043-90 with the National Bank of Canada (Tab 25, Document Book). The Solicitor advised an auditor of the Law Society that this line of credit account is an account held for the Ferrier Trust and that it is in the Solicitor's personal name because the bank would not place a line of credit in the name of a trust (Tab 26, Document Book).

31. The client trust ledger titled "Hacker loan re Albert St., Belleville" indicates that on March 8, 1991, the Solicitor received the final payment of \$12,247.58 on the \$51,500 second mortgage (Tab 20, Document Book). On March 13, 1991, the Solicitor provided a discharge of the \$51,500 second mortgage to the solicitors for the mortgagor (Tab 27, Document Book).

32. Also on March 13, 1991, the Solicitor forwarded a trust cheque in the sum of \$12,006.83 to Tzikos (Tab 28, Document Book). This cheque represented \$2,500.00 in mortgage interest payments for January and February, 1981 and \$9,506.83 in principal on the \$51,500 second mortgage. After these payments, there remained \$10,493.17 owing to Tzikos, notwithstanding payment in full of the \$51,500 second mortgage to the Solicitor.

33. A handwritten note located in the Solicitor's file indicates the Solicitor gave Tzikos a \$10,500 interest in a \$27,500 mortgage on property known as 35 Bridge Street in Belleville, Ontario (the "Bridge Street Mortgage") (Tab 19, Document Book). The 35 Bridge Street property is the subject of power of sale proceedings by the first mortgagee.

34. The Solicitor's reporting letter to Tzikos dated March 13, 1991, enclosing his cheque, did not disclose that the \$51,500 second mortgage had been discharged and replaced by a \$10,500.00 interest in the Bridge Street Mortgage (Tab 28, Document Book). This further investment of the money was done without consulting Tzikos, and without an appraisal.

2(b) The Solicitor failed to act in a diligent, conscientious and efficient manner by:

(v) postponing on two occasions, a second mortgage for \$650,000.00 registered against Part Lot 4, Concession 2, Parts 1-7, Plan 21R-9347, Thurlow held by the Solicitor in trust for George Parras, Gus Xanthios, Tom Tzikos and 349643 Ontario Limited, to various mortgages held by H. Berholz in trust, without the knowledge or authority of his client. The postponements resulted in the \$650,000.00 second mortgage becoming a fifth mortgage behind an additional \$900,000.00 in mortgages.

35. By Instrument No. 379213 registered on July 10, 1987, Eastboro, a corporation controlled by the Ferrier Trust, purchased the lands known as Part Lot 4, Concession 2, Parts 1 - 7, Plan 21R-9347, Township of Thurlow (the "Thurlow Property") (Tab 29, Document Book).

36. By report dated December 6, 1988, Stanley Reid & Associates Limited appraised the Thurlow Property at \$2,700,000 (Tab 30, Document Book).

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37. On January 3, 1989, a first mortgage in favour of David Roy Jones Holding Inc for the principal amount of \$400,000 was registered as Instrument No. 407684 (Tab 31, Document Book).

38. On January 31, 1989, the Thurlow Property and two other properties were mortgaged by Eastboro in favour of the Solicitor in trust for \$650,000 (the "Thurlow Mortgage") (Tab 32, Document Book). The reporting letter dated February 8, 1989, from O'Flynn, Weese & Tausendfreund to the Solicitor indicates that the Thurlow Mortgage was subject only to a first mortgage in the principal amount of \$400,000 (Tab 33, Document Book).

39. When an auditor of the Law Society attended at the Solicitor's office, the Solicitor advised that he held the Thurlow Mortgage in trust for the following parties in the following amounts:

1.	Parras	\$250,000
2.	Xanthios	\$100,000
3.	Tzikos	\$ 50,000
4.	349643 Ontario Ltd.	\$150,000.

In addition, the Solicitor advised that only \$550,000 was advanced on the Thurlow Mortgage.

40. In letters from the Solicitor to Parras (Tab 34, Document Book), Ehrlich Electric Limited and 349643 Ontario Limited (Tab 35, Document Book), Vasiliki Kanborogolou (Tab 36, Document Book) and Tzikos (Tab 37, Document Book), each dated November 17, 1992, the Solicitor reported he held the Thurlow Mortgage in trust for each respective client as follows:

1.	Tom Tzikos	\$ 50,000
2.	Kanborogolou	150,000
3.	349643 Ontario Limited	40,000
4.	Ehrlich Electric Limited	60,000
5.	George Parras	250,000
Total		\$550,000

41. On March 6, 1989, a mortgage given by Eastboro to Harry Berholz, in trust for the principal amount of \$1,000,000 was registered on the Thurlow Property as Instrument No. 410452 (Tab 38, Document Book).

42. The Solicitor signed a Document General postponing the Thurlow Mortgage to the \$1,000,000 mortgage. This Document General was registered on the Thurlow Property on March 8, 1989 as Instrument No. 410566 (Tab 39, Document Book).

43. The Solicitor did not have instructions from the parties for whom he held the Thurlow Mortgage in trust to postpone the Thurlow Mortgage in favour of the mortgage to Berholz.

44. The first mortgage for the principal sum of \$400,000 was discharged on May 17, 1990 by Instrument No. 436361 (Tab 40, Document Book).

45. On May 17, 1990, a mortgage given by Eastboro to Harry Berholz, in trust for the principal amount of \$1,300,000 was registered on the Thurlow Property as Instrument No. 436362. This mortgage was guaranteed by both Brian Ferrier and the Solicitor (Tab 41, Document Book).

46. The \$1,000,000 mortgage to Berholz in trust was discharged on June 11, 1990, by Instrument No. 437744 (Tab 42, Document Book).

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47. On June 18, 1990, the Solicitor signed a Document General postponing the Thurlow Mortgage to the \$1,300,000 mortgage. This Document General was registered on the Thurlow Property as Instrument No. 438261 (Tab 43, Document Book).

48. The \$1,300,000 mortgage in favour of Harry Berholz, in trust went into default. The Thurlow Property was sold in 1993 under power of sale proceedings. There were insufficient funds to pay the first mortgage, and no funds available to pay the Thurlow Mortgage.

49. By virtue of the above postponements and discharges, the Thurlow Mortgage went from second position behind a \$400,000 first mortgage, to second position behind a \$1,300,000 first mortgage.

50. The Solicitor indicated to an auditor of the Law Society that an appraisal of the Thurlow Property dated June 15, 1990, reported the value of the property as \$3,000,000. The Solicitor stated that this information was transmitted to his investor clients.

51. In letters from the Solicitor to Parras (Tab 34, Document Book), Ehrlich Electric Limited and 349643 Ontario Limited (Tab 35, Document Book), Vasiliki Kanborogolou (Tab 36, Document Book) and Tzikos (Tab 37, Document Book), each dated November 17, 1992, the Solicitor reported that the Thurlow Property consisted of raw land, and he held in his file an appraisal dated December 8, 1988, valuing the property at \$2,700,000.

52. The investors Xanthios, Parras and Tzikos deny being consulted as to or providing authority for the postponements of their interest in the Thurlow Mortgage and deny receiving an appraisal report.

2(b) The Solicitor failed to act in a diligent, conscientious and efficient manner by:

- (i) not preparing and sending in fourteen instances, a report to his clients in connection with their mortgage investments;
- (ii) not preparing in eight instances, trust declarations in connection with mortgages which he held in trust for clients;
- (iii) not obtaining appraisal reports in nine instances, on properties being encumbered in favour of his clients, thereby not ensuring that the clients' investments were adequately secure.

53. In addition to the matters described above, the Law Society's investigation disclosed the following inadequacies in the Solicitor's handling of the transactions summarized at Tab 1 of the Document Book:

- (i) in fourteen instances, the Solicitor did not prepare and send to his clients a report in connection with their mortgage investments;
- (ii) in eight instances, the Solicitor did not prepare trust declarations in connection with mortgages which he held in trust for clients; and
- (iii) in nine instances, the Solicitor did not obtain appraisal reports for properties being encumbered in favour of his clients, thereby not ensuring that the clients' investments were adequately secured.

2(c) The Solicitor acted in a conflict of interest in fourteen instances by acting for both the lender-client and borrower client in mortgage transactions.

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54. The Law Society's investigation also disclosed that in fourteen instances, the Solicitor acted in a conflict of interest by acting for both the lender client and the borrower client in mortgage transactions. The Solicitor failed to disclose to the lender client the fact that he was also acting for the borrower and that the borrower client had a long-standing relationship with him and the Solicitor failed to suggest independent legal advice or representation. In transactions involving the Ferrier Trust or companies controlled by the Ferrier Trust, being Commercan, Eastboro and Novare, the Solicitor failed to disclose to his other clients that he was the trustee of the Ferrier Trust. The particulars of these fourteen transactions are found in the Chart located at Tab 1 of the Document Book.

2(d) The Solicitor provided his personal guarantee in three instances of mortgages from his borrower-client which were in his name in trust for his lender-clients.

55. The Solicitor guaranteed the following three mortgages:

- (i) a mortgage on a property known as 35 Bridge Street West, in Belleville, Ontario and registered as Instrument No. 444251 on October 11, 1990, from the Solicitor in trust for the Ferrier Trust, to National Trust Company (Tab 44, Document Book);
- (ii) a March 6, 1990, \$1,000,000 mortgage to Harry Berholz in trust (Tab 38, Document Book), which mortgage was given priority over a mortgage held in trust by the Solicitor for clients by a postponement agreement as described above; and
- (iii) a May 17, 1990, \$1,300,000 mortgage to Harry Berholz in trust for his clients (Tab 41, Document Book), which mortgage was given priority over a mortgage held in trust by the Solicitor for clients by a postponement agreement as described above.

56. The Solicitor advises that he was required to guarantee the two mortgages to Harry Berholz in trust because of his position as trustee of the Ferrier Trust, which controlled the owner of the mortgaged property and mortgagor, namely, Eastboro. He also advises that in exchange for providing these guarantees, Brian Ferrier promised him an interest in the properties being mortgaged. The Solicitor advises that the nature and size of the interest were never discussed.

2(e) The Solicitor breached Sections 14(1), 14(8)(c), and 14(10)(a) of Regulation 708 made pursuant to the Law Society Act by:

- (i) failing to deposit trust monies to a trust account;
- (ii) withdrawing monies from trust without sending a fee billing or other written notification to the Brian Ferrier Family Trust; and
- (iii) by preparing trust cheques payable to cash.

57. Also in the course of its investigation, the Law Society discovered that the Solicitor had signed several trust cheques payable to cash, thereby breaching section 14(10)(a) of Regulation 708 made pursuant to the Law Society Act (Tab 45, Document Book). These cheques were written against the trust bank account maintained by the Solicitor for the Ferrier Trust.

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58. The Solicitor also deposited both funds received in trust for the Ferrier Trust and personal funds to an account maintained at the National Bank of Canada in the name of the Solicitor and his wife, Carol Hacker, thereby breaching section 14(1) of Regulation 708 made pursuant to the *Law Society Act* (Tab 46, Document Book).

59. The Solicitor also withdrew monies from the trust account maintained for the Ferrier Trust without sending a fee billing or other written notification, thereby breaching section 14(8)(c) of Regulation 708 made pursuant to the *Law Society Act* (Tabs 6 and 8, Document Book).

60. Brian Ferrier, the creator of the Ferrier Trust, stated that he has known the Solicitor for over twenty years. He approved the cash payments to the Solicitor from the Ferrier Trust's trust account and approves of the Solicitor using whatever bank accounts he chooses to manage the Ferrier Trust. Although the Ferrier Trust has never received a fee billing from the Solicitor for trustee or other fees, he has never requested an accounting or fee billing and believes the amounts paid to the Solicitor are reasonable. The Solicitor orally accounted to him on an almost daily basis on all matters.

Compensation Fund Claims

61. Tzikos, Parras and Xanthios have all made Compensation Fund claims against the Solicitor in the sum of \$80,000, \$350,000 and \$390,000 respectively. The payment limit on each of these three claims is \$50,000. Maroudas has put the Lawyers' Fund for Client Compensation on notice that he may make a claim, but to date has not done so.

Payments by the Solicitor

62. The Solicitor has provided documents to the Society which indicate that he paid at least \$39,203.75 of his personal funds to investors after the mortgagor stopped making payments. These funds were raised by the Solicitor refinancing the mortgage on his home.

V. DISCIPLINE HISTORY

63. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of October, 1996."

Complaint D136/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D136/96 and is prepared to proceed with a hearing of this matter on October 1 and 2, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

3rd April, 1997

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D136/96 with his counsel. The Solicitor admits the particulars of Complaint D136/96 and admits that these particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 20, 1975 and is practising in association with David Rovin, a solicitor.

Background

5. The background to this Complaint is summarised in the Agreed Statement of Facts for Complaint D84/95, to be heard with this Complaint.

2(a) he failed to reply promptly to the Society's letters dated August 15, 1995, October 2, 1995 and March 20, 1996.

6. On August 9, 1995, an auditor of the Law Society of Upper Canada (the "Society") attended at the offices of the Solicitor to review files and related accounting records. During the course of his review, the auditor asked the Solicitor various questions. The Solicitor told the auditor he would need until September 15, 1995 to organize his answers and asked for a written list of the Society's questions.

7. By registered mail dated August 15, 1995 (Tab 1, Document Book) the Society's Auditor provided a list of the questions arising out of his review of the Solicitor's records and confirmed the understanding that answers would be provided by September 15, 1995.

8. On September 18, 1995, the Solicitor left a telephone message for the auditor advising that the Society would receive his reply by September 22, 1995 (Tab 2, Document Book).

9. No reply was received and by registered letter dated October 2, 1995 (Tab 3, Document Book) the Solicitor was advised that his failure to reply to the Society's August 15, 1995 letter was being reported to the Discipline Department of the Society.

10. By registered letter dated March 20, 1996 (Tab 4, Document Book) the Society reminded the Solicitor of his obligation to reply to the Society and told the Solicitor that if he did not respond, his failure to do so would be referred to the Discipline Department of the Society. The Society's March 20, 1996 letter was signed for and delivered on March 22, 1996.

11. By letter dated April 9, 1996 (Tab 5, Document Book) the Solicitor provided partial answers to the questions listed in the Society's letter of August 15, 1995.

12. By registered letter dated April 23, 1996 (Tab 6, Document Book) the Society asked the Solicitor to provide answers to outstanding questions and to provide information to complete the answers provided. The Society requested the Solicitor's response prior to May 16, 1996.

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HALDIMAND PROPERTY

2(b) The Solicitor failed to serve his clients Frank and Helen Iliodromitis in a conscientious, diligent and efficient manner in connection with mortgage investments which he arranged for him on property in the Township of Haldimand by:

- i) advancing the client's funds for the benefit of the mortgagor before obtaining security; and
- ii) failing to following the client's instructions to invest for a term of six to eight months.

2(c) The Solicitor misled his clients Frank and Helen Iliodromitis as to the existence of a mortgage on a property in the Township of Haldimand when the client asked for the return of his funds.

13. Wicklow Farms Inc. ("Wicklow") is a corporation controlled by the Brian Ferrier Family Trust ("Ferrier Trust"). A first page of an Agreement of Purchase and Sale found in the Solicitor's files indicates that in 1986, Wicklow agreed to purchase and Charlton International Inc ("Charlton") agreed to sell lands known as Parts of Lots 7 and 8, Concession A and Part of Lots 6 and 7, Concession B, both in the Township of Haldimand (the "Haldimand Property"), for the purchase price of \$100,000 (Tab 7, Document Book).

14. By deed registered on September 21, 1989 as Instrument No. 153521, the Haldimand Property was transferred from Charlton to the Solicitor, as trustee for the Ferrier Trust (Tab 8, Document Book).

15. In October of 1988, a client of the Solicitor named Frank Iliodromitis ("Iliodromitis") gave the Solicitor \$148,800 to invest. This money came from the sale of a family owned building. Iliodromitis and his father, Steve Iliodromitis, met with the Solicitor and asked him to locate a short-term mortgage investment for this money. Iliodromitis instructed the Solicitor to invest the funds for a term of either six or eight months and to register the mortgage in the name of his sister, Helen Iliodromitis, for income tax purposes.

16. Iliodromitis was advised by the Solicitor that they would receive a \$160,000 mortgage as security for the \$148,800 and that although they would not receive any interest during the life of the mortgage, they would be paid the difference of \$11,200 at maturity.

17. Neither Iliodromitis nor any other member of the family received a reporting letter, nor did they receive a copy of any documents pertaining to the mortgage. They received no other information about the mortgage.

18. The client ledger maintained for Wicklow (Tab 9, Document Book) indicates a receipt of the sum of \$148,800 from Iliodromitis on October 18, 1988. This ledger indicates that the Solicitor disbursed these funds as follows.

- (a) On October 18, 1988, \$43,928.73 was paid to the first mortgagees on the Haldimand Property, being Leonard and Mary Corkery. A letter dated October 18, 1988 from the Solicitor to Horwitz Finder, the solicitor for Charlton, encloses a certified cheque in this amount and requests a discharge of the Corkery mortgage (Tab 10, Document Book). A letter dated October 19, 1988 from Horwitz Finder to R. Cass, counsel for the Corkerys, forwards the cheque and requests a discharge and Notice of Discontinuance of a foreclosure action (Tab 11, Document Book).

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- (b) On October 24, 1988, \$91,026.85 was paid to Horwitz Finder. A letter dated October 24, 1988 (Tab 12, Document Book) from the Solicitor to Horwitz Finder encloses the cheque and indicates that the funds should be held in trust.
- (c) On September 20, 1989, \$4,266.66 was paid to Iliodromitis.
- (d) On each of September 22 and October 16, 1989, the sum of \$2,133.33 was paid to Iliodromitis.

All of these payments were made at a time when there was no mortgage in place.

19. The Wicklow client trust ledger indicates a receipt of \$138,750 from Stanley Griesman on November 15, 1989 (Tab 9, Document Book). Stanley Griesman's wife is a relative of the Solicitor.

20. A first mortgage on the Haldimand Property for the principal amount of \$150,000 from the Solicitor, in trust, as mortgagor, to Stanley Griesman as mortgagee, was registered as Instrument No. 154790 on November 20, 1989 (Tab 13, Document Book).

21. A second mortgage for the principal amount of \$160,000, from the Solicitor in trust, as mortgagor to Helen Iliodromitis as mortgagee, was registered on the Haldimand Property as Instrument #154791 on November 20, 1989 (Tab 14, Document Book).

22. The Solicitor did not tell anyone in the Iliodromitis family that he was acting for another investor who was related to the Solicitor, that this investor had provided funds subsequent to Iliodromitis and that this investor would be given a prior mortgage to Iliodromitis.

23. Approximately six or eight months after October of 1988, Iliodromitis asked the Solicitor for the return of the investment. The Solicitor told him that he could not find anyone to take over the mortgage and would need some time to locate new investors. In fact at this time, there was no mortgage in place.

24. Iliodromitis advises that he received payment of the \$160,000 from the Solicitor some time in 1990. The exact date of the payment is unknown as the Society auditor was unable to find this payment in the Solicitor's client trust ledgers. Iliodromitis suffered no financial losses as a result of his involvement with the Solicitor.

25. By letter dated April 9, 1996 (Tab 5, Document Book) the Solicitor advised the Society that the registration of the mortgage was delayed because he had planned to register the document when attending the property for inspection of ongoing construction.

THREE STIRLING LOTS

- 2(d) The Solicitor misled his client, Gus Xanthios, as to the purchase price of the three lots municipally known as R.R. #2, Stirling, Ontario, in connection with mortgage investments which he arranged for him on these three lots.

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26. By deed registered on August 8, 1989, as Instrument No. 419610, Novare Contracting Limited ("Novare"), one of the corporations controlled by the Ferrier Trust, purchased three lots, being Parts 1-3, on Reference Plan 21R-12119, Part of Lot 4, Concession 7 in the Township of Thurlow, County of Hastings, and known municipally as R.R. #2, Stirling, Ontario (the "Three Stirling Lots"). The purchase price for each of the Three Stirling Lots was \$24,000 (Tab 15, Document Book).

27. The purchase of the Three Stirling Lots was financed by Xanthios, as set out below.

28. Sometime prior to August 18, 1989, the Solicitor contacted Xanthios to advise him of an investment opportunity. The Solicitor told him that there was an opportunity to invest \$40,000 in each of three lots which had been purchased for \$55,000 per lot and were worth \$75,000 per lot.

29. Xanthios agreed to invest \$114,600 by way of two advances of \$76,600 and \$38,000. In return Xanthios would hold three \$40,000 mortgages. The difference of \$5,400 was interest on these mortgages.

30. The Solicitor did not tell Xanthios why the lots were worth \$75,000 each or any other information about the development of the property.

31. The Solicitor's client trust ledger for Xanthios' investment, titled "Smith/Green loan on 3 lots, Thurlow", indicates receipts from Xanthios of \$76,600 on August 4, 1989 and \$10,000 and \$28,800 on August 10, 1989 (Tab 16, Document Book).

32. This client trust ledger also indicates disbursements to O'Flynn, Weese & Tausendfreund of \$76,200 on August 4, 1989 and \$38,100 on August 9, 1989.

33. By letter dated August 4, 1989, the Solicitor forwarded \$76,200 to O'Flynn Weese & Tausendfreund (Tab 17, Document Book). The letter instructed Weese to register first mortgages for the principal sum of \$40,000 on each of the Three Stirling Lots in the names of Jack Smith and Michael Green. The letter also indicated that the balance of the funds of \$38,100 would follow by August 11, 1989.

34. On August 8, 1989, three mortgages in the sum of \$40,000 were registered against the Three Stirling Lots (Tab 18, Document Book). On the instructions of Xanthios, two of the mortgages were registered in the name of Jack Smith and the third in the name of Michael Green.

35. The three mortgages subsequently went into default on an unknown date. Xanthios retained counsel and ultimately received payment of \$35,000 in exchange for which he agreed to the discharge of the mortgage on one of the Three Stirling Lots. The mortgages on the remaining two of the Three Stirling Lots were assigned to Xanthios on April 7, 1992 and ultimately power of sale proceedings were commenced. To date, Xanthios has not realized his investment from the Three Stirling Lots.

2(e) In acting on the transfer of a business, the Gerrard Tavern, and in arranging for a mortgage from his client, Gus Xanthios, to his client, Commercan Development Corporation, as part of the purchase price, the Solicitor acted for the purchasers, the vendor, Xanthios and Commercan Development Corporation without making adequate disclosure of the presence of a conflicting interest to the clients involved and without obtaining their written consent or recording their consent in a separate letter to each.

3rd April, 1997

36. By Agreement of Purchase and Sale executed on October 25, 1989 and October 26, 1989 (Tab 19, Document Book), Ioannis Papadimopoulos ("Papadimopoulos") and Gregory Dimitriadis ("Dimitriadis") agreed to purchase the business known as The Gerrard Tavern from 408486 Ontario Limited, for the purchase price of \$400,000, payable by way of \$10,000 cash deposit, \$190,000 due on closing, and a vendor take back chattel mortgage for the principal sum of \$200,000. One of the principals of 408486 Ontario Limited was Xanthios.

37. The Solicitor acted for the vendors and the purchasers on the sale of the Gerrard Tavern.

38. Prior to closing, the Solicitor told Xanthios that the purchasers did not have sufficient funds to close. The Solicitor asked Xanthios if he would accept an \$80,000 mortgage held by Papadimopoulos as part of the purchase price.

39. Xanthios told the Solicitor that he would accept the \$80,000 mortgage if it was a secure mortgage. The Solicitor told him that it was a secure first mortgage and Xanthios agreed to accept the mortgage as part of the purchase price.

40. The mortgage in which Papadimopoulos had an interest was a \$75,000 mortgage from Commercan to the Solicitor, in trust, and was registered against property known municipally as 180 Church Street in the City of Belleville (Tab 20, Document Book).

41. By letter dated March 22, 1990 (Tab 21, Document Book), the Solicitor advised O'Flynn, Weese & Tausendfreund that he had arranged a new first mortgage for 180 Church Street. He asked Weese to prepare a new first mortgage for the principal amount of \$80,000 in favour of the Solicitor in trust. He also enclosed a discharge of the \$75,000 first mortgage in favour of the Solicitor in trust. The discharge of the \$75,000 mortgage was registered as Instrument No. 434921 on April 26, 1990 (Tab 22, Document Book). The \$80,000 mortgage from Commercan to the Solicitor in trust was registered as Instrument No. 434922 on April 26, 1990 (Tab 23, Document Book).

42. By letter dated March 22, 1990 (Tab 24, Document Book) the Solicitor reported to Commercan about the new first mortgage on 180 Church Street.

43. By letter dated May 31, 1990 (Tab 25, Document Book), the Solicitor reported to Xanthios and 408486 Ontario Limited, on the sale of the Gerrard Tavern to Papadimopoulos and Dimitriadis.

44. By letter dated May 31, 1990 (Tab 26, Document Book), the Solicitor reported to Papadimopoulos and Dimitriadis on their purchase of the Gerrard Tavern from 408486 Ontario Limited.

45. An Assignment of the \$80,000 mortgage from the Solicitor in trust to Xanthios was registered as Instrument No. 466055 on January 2, 1992 (Tab 27, Document Book).

46. Xanthios knew that the Solicitor also represented the purchasers of the Gerrard Tavern, namely Papadimopoulos and Dimitriadis, on the sale of the Gerrard Tavern. Xanthios was not informed of the presence or possibility of a conflict of interest either at the time the Solicitor was asked to act on the purchase and sale of the Gerrard Tavern or subsequently, when Xanthios was asked to assume the mortgage held by Papadimopoulos.

47. Xanthios was not informed by the Solicitor that the owner and mortgagor of 180 Church Street, namely Commercan, was a long standing client of the Solicitor, nor did the Solicitor recommend that he obtain independent legal advice or representation.

3rd April, 1997

48. By Transfer registered as Instrument No. 500896 on April 29, 1994, Xanthios sold the lands known as 180 Church Street under power of sale to Stephen Allen Weese, in trust, for \$58,500 (Tab 28, Document Book). Xanthios incurred a loss of approximately \$32,000.

V. PRIOR DISCIPLINE

49. The Solicitor has no discipline history.

DATED at Toronto, this 2nd day of October, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Harvey Howard Hacker be suspended for a period of fifteen months and that he be ordered to pay the Society's costs in the amount of six thousand dollars, payable monthly in the amount of \$250 commencing three months subsequent to his resumption of practice following the period of suspension.

The Committee also recommends that the Solicitor undertake not to act for both lender and borrower in mortgage transactions except when the lender is a financial institution. And further, that he undertake to the Society not to represent both vendor and purchaser when acting in a real estate transaction.

This Committee further recommends that Harvey Howard Hacker enrol in and co-operate with the Practice Advisory Review program on his resumption of practice.

REASONS FOR RECOMMENDATION

Counsel for the Law Society and for the Solicitor made the above noted recommendations as to penalty by way of a joint submission which was accepted by the Committee as falling within the appropriate range for the misconduct found.

Counsel referred the Committee to the following cases: Joseph Solomon, Brian Douglas Batchelor, Melvin Diamond and Sheldon Fischman, Harvey Samuel Margel, Jerome Samuel Ublansky, David Warga, and Meyer Feldman.

We have had careful consideration of the facts set out in Exhibits 3 and 4 as agreed to by the parties and note that the solicitor's degree of co-operation in this respect avoided the necessity for a lengthy hearing involving numerous witnesses should each of the allegations have been proven strictly.

While the Solicitor has admitted that the facts set out in the two exhibits constitute professional misconduct, we believe that they demonstrate a level of unacceptable conduct which is reckless and negligent in the extreme.

Without expectation of personal gain or motivation, certain of his clients' interests were jeopardized, resulting ultimately in losses which might otherwise have been avoidable had the Solicitor fulfilled his obligations to them.

3rd April, 1997

It is not necessary for the purpose of these reasons to separately review the individual transactions. We did, however, note and accept the Solicitor's evidence that other than receiving payment for fees in respect of the services rendered, he received no other financial compensation or benefit.

Counsel reviewed with the Committee the fact situation which was considered in each of the preceding cases. The Committee had the opportunity of hearing testimony from the member and is satisfied that there was no intention to favour any investor. And further, that the member received no personal gain or advantage in his negligent, careless mortgage dealings.

The Committee also finds that there was no evidence of dishonesty on behalf of the member and further, in mitigation, there was an attempt at restitution by the member when he placed a mortgage on his personal residence in an attempt to reimburse some of the clients who had lost funds.

In further mitigation, the Committee found that the member was remorseful. He indicated in his testimony that he had remorse that clients lost money. He had remorse about his practice patterns in costing members of the public money. He was remorseful about being before the Law Society to face the tribunal in this discipline matter. The member indicated to the panel that he had great respect for the Law Society of Upper Canada and the panel was impressed with his candour and forthrightness.

The Committee was also advised that the member had no previous discipline history.

In making the order as to costs, the Committee received evidence that the member had petitioned into bankruptcy in March of 1996 and he is yet undischarged.

He is currently practising law with a monthly gross billing of \$6,000, advising the Committee that he was netting \$3,000. The member advised the panel that he and his spouse had savings of approximately \$12,000, but that he required or would require this in order to continue to support his family, consisting of two children aged 19 and 16.

He also advised the Committee that his spouse was working with a net income of approximately \$2,000 per month. He also advised that the family matrimonial home had a first mortgage of approximately \$150,000 and a second mortgage encumbrance of \$35,000.

For the above reasons, the Committee recommends the penalty as set out.

Harvey Howard Hacker was called to the Bar on March 20th, 1975.

ALL OF WHICH is respectfully submitted

DATED this 6th day of November, 1996

Thomas E, Cole
Chair

There were no submissions. The finding was confirmed and the Report was adopted.

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The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 15 months, pay the Society's costs of \$6,000, undertake not to act for both lender and borrower in mortgage transactions except if the lender is a financial institution and not to represent both vendor and purchaser in a real estate transaction. It was further recommended that the solicitor enrol in and co-operate with the Practice Advisory Review program on his resumption of practice.

Ms. Cameron made submissions in support of the joint submissions made before the Discipline Committee that the solicitor be suspended for a period of 15 months.

Mr. Faust made submissions in support of the recommended penalty and reminded Convocation when this matter was adjourned in January that Convocation agreed that the suspension commence January 23rd, 1997.

It was moved by Ms. Backhouse, seconded by Ms. Ross that the recommended penalty be adopted, that the solicitor be suspended for a period of 15 months commencing January 23rd, 1997.

Carried

Re: Lawrence Isadore HERMAN - North York

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye and Ms. Ross withdrew for this matter.

Ms. Rhonda Cohen appeared for the Society and Mr. John Dare appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 28th January, 1997, together with an Affidavit of Service sworn 14th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 5th February, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C., Chair
Jane Harvey
Heather J. Ross

In the matter of
The Law Society Act
and in the matter of

LAWRENCE ISADORE HERMAN
of the City
of North York
a barrister and solicitor

Rhonda Cohen
for the Society

John Dare
for the solicitor

Heard: April 16 & October 23, 1996

3rd April, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 7, 1991 Complaint D4/91 was issued against Lawrence Isadore Herman alleging that he was guilty of conduct unbecoming a barrister and solicitor.. This complaint was withdrawn on consent and replaced by Complaint D4a/91 issued on April 16, 1996.

On January 23, 1996 Complaint D30/96 was issued alleging that the Solicitor was guilty of professional misconduct.

The matter was heard in public on April 16, 1996 before this Committee composed of Gerald A. Swaye, Q.C., Chair, Jane Harvey and Heather Ross. The Solicitor attended the hearing and was represented by John DaRe. Rhonda Cohen appeared on behalf of the Law Society. The hearing continued on October 23, 1996 with the Solicitor and his counsel in attendance and the panel participating by teleconference. Ms. Cohen appeared for the Law Society.

DECISION

The following particular of conduct unbecoming a barrister and solicitor was found to have been established:

Complaint D4a/91

2. a) He knowingly conducted the business of leasing and operating a gravel pit at RR #1 Claremont in a deliberately misleading manner against the lessee of the gravel pit.

The following particulars of professional misconduct were found to have been established:

Compliant D4a/91

2. b) On or about April 11, 1989, the Solicitor transferred the sum of \$10,623.79 from his trust account to his general account, purportedly for fees and disbursements, for which no fee billing or other written notification was delivered contrary to section 14(8)(c) of Regulation 708 under the *Law Society Act*.
- c) On or about July 20, 1989, the Solicitor improperly transferred the sum of \$20,000.00 from his mixed trust account to a general account thereby causing a trust shortage contrary to Section 14(8) of Regulation 708 under the *Law Society Act*.
- d) In the period of July 20, 1989, to February 27, 1990, more or less, the Solicitor failed to maintain sufficient balances on deposit in his trust account to meet all his trust obligations contrary to Section 14(12) of Regulation 708 under the *Law Society Act*.

3rd April, 1997

- e) On or about May 10, 1988, the sum of \$625,000.00 was borrowed from a client, Robert Hale, by a corporation in which the Solicitor's spouse had a substantial interest without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation contrary to Rule 7 of the *Rules of Professional Conduct*.
- f) He failed to disclose the client borrowing on his Form 2 annual filing with the Law Society sworn on August 28, 1989, contrary to Section 16(2) of Regulation 708 under the *Law Society Act*.
- g) He improperly executed the names of two of his clients, Joseph Starr and Ruth Starr, on certain real estate documents in order to facilitate the closing of a transaction.
- h) On or about December 12, 1989, the Solicitor disbursed the sum of \$30,000.00 on account of fees from his trust account directly to Dash, Sand & Gravel contrary to Section 14(9) of Regulation 708 under the *Law Society Act*, and further did not record the receipt of the said \$30,000.00 in his general account receipts book contrary to Section 15(1)(e) of Regulation 708 under the *Law Society Act*.

Complaint D30/96

- 2. a) The Solicitor breached Rule 7(2) of the Rules of Professional Conduct as follows:
 - i) On or about March 18, 1992, \$275,000.00 was borrowed from a client, Buttarazzi Investments Limited, by a corporation in which the Solicitor's spouse had a substantial interest without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation;
 - ii) On or about September 30, 1992, \$250,000.00 was borrowed from a client, Buttarazzi Investments Limited, by a corporation in which the Solicitor's spouse had a substantial interest without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation;
 - iii) On or about March 18, 1992, \$298,097.25 was borrowed from a client, Robert Hale, by a corporation in which the Solicitor's spouse had a substantial interest without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation;
 - iv) In or about January, 1992, \$50,000.00 was borrowed from a client, Adam Frederich Ulrich, by the Solicitor's spouse without ensuring that the client's interests were fully protected by independent legal representation;

3rd April, 1997

- v) On or about February 1, 1994, \$50,000.00 was borrowed from a client, Buttarazzi Investments Limited, by the Solicitor's spouse without ensuring that the client's interests were fully protected by independent legal representation.
- b) In or about November 1991 the Solicitor engaged in unsatisfactory professional practice when he invested \$75,000.00 more or less belonging to his client, Adam Frederick Ulrich, without ensuring his client had any security until August 14, 1992 when a mortgage was registered in his client's favour (Rule 2).
- c) The Solicitor failed to co-operate fully with the Law Society's investigation auditor, as required by Section 18(1) of Regulation 708, by failing to provide all the information requested in the Law Society's letters dated February 7, 1995 and April 28, 1995.

EVIDENCE

Part of the evidence before the Committee consisted of the following agreed statements of facts:

Re: Complaint D4a/91

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D4A/91 and is prepared to proceed with a hearing of this matter on April 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D4A/91 and this agreed statement of facts with his counsel, John DaRe, and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct, or conduct unbecoming, as the case may be.

IV. FACTS

4. The Solicitor is 50 years of age. He was called to the bar on March 23, 1973. At all material times the Solicitor was a sole practitioner practising primarily in the area of real estate law with some limited corporate work. At present, the Solicitor is not practising law, and manages a soil remediation company owned by his wife, Simone Herman.

5. At all material times, Simone Herman maintained the Solicitor's accounting records.

Particular 2(a) He knowingly conducted the business of leasing and operating a gravel pit at R.R. #1 Claremont in a deliberately misleading manner against the lessee of the gravel pit.

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Overview

6. Throughout the period 1984 to 1989, the Solicitor, in addition to practising law, was the President and directing mind of a corporation, Sweet William Sand & Gravel Limited ("Sweet William"). Sweet William operated a gravel pit in the Township of Uxbridge which gravel pit was owned by Lok Home Holdings Inc. ("Lok Home"). Throughout an eighteen month period ended in December 1988, the Solicitor wrongfully withheld from Lok Home approximately \$65,000.00 in royalties by deliberately understating the quantity of material removed from the gravel pit. The Solicitor also swore an affidavit on May 1, 1989 that contained false information.

Factual Matters

7. In or about July, 1984, the Solicitor entered into an agreement with Lok Home to lease the Lok Home gravel pit and to pay to Lok Home royalties based upon the quantity of material removed from the gravel pit.

8. Throughout the period 1987 to 1988, the Solicitor instructed his then employee, Ms. Vonne Haigh, to carry on the business of the gravel pit in such a manner so as to mislead Lok Home as to the quantity of material removed from the gravel pit. In particular:

- (a) Ms. Haigh commenced employment duties as a dispatcher and clerk for another corporation controlled by the Solicitor, Dash Sand and Gravel Ltd. ("Dash Sand"), on or about April 28, 1986;
- (b) During the six months following the commencement of her employment, Ms. Haigh's duties expanded to include responsibility for the recording of the removal by Dash Sand of material from the Lok Home gravel pit, the recording of sales, the invoicing of customers, the reconciliation of the trucker statements, the preparation of payroll and secretarial duties;
- (c) In or about June, 1987, the Solicitor advised Ms. Haigh that Sweet William, would become operational by removing and selling material extracted from the Lok Home gravel pit. From that time forward the Solicitor gave explicit instructions to Ms. Haigh whether a sale of material was to be attributed to Sweet William or Dash Sand;
- (d) From in or about July 1987, until the end of her employment with Dash Sand (December 14, 1988), Ms. Haigh provided to the Solicitor records and information concerning the extraction and sale of material from the Lok Home gravel pit by each of Dash Sand and Sweet William;
- (e) Throughout her employment, Ms. Haigh was instructed by the Solicitor to provide to Lok Home information relating only to the removal and sale of material from the gravel pit by Dash Sand. Ms. Haigh was specifically instructed by the Solicitor not to provide Lok Home with information relating to the removal and sale of material from the gravel pit by Sweet William;

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- (f) Throughout 1987, Dash Sand removed 373,449.06 tons of material from the Lok Home gravel pit, and Sweet William removed 87,008.27 tons of material from the Lok Home gravel pit;
- (g) Throughout the period January 1988 to November 1988, 248,889.13 tons of material was removed from the Lok Home gravel pit by Dash Sand, and 65,951.63 tons of material was removed from the Gravel Pit by Sweet William.
- (h) The removal of material by Dash Sand was reported to Lok Home. However, as instructed by the Solicitor, the removal of material by Sweet William was not reported to Lok Home;
- (i) In addition to not reporting the removal of material by Sweet William the Solicitor also directed that material from the gravel pit be transported by truck to another gravel pit owned by the Solicitor (Coppins Corners Pit) for use by another corporation -- Ready Mix Limited. On the Solicitor's instructions no reports were made to Lok Home with respect to the number of tons of material removed from the Lok Home gravel pit and hauled to the Coppins Corner Pit, and the removal of the material was not included in the summary of tonnage removed from the Lok Home gravel pit.

Ms. Haigh's affidavit sworn on May 25th 1989 is attached at Tab 1 of the Document Book.

Particular 2(b) On or about April 11, 1989, the Solicitor transferred the sum of \$10,623.79 from his trust account to his general account, purportedly for fees and disbursements, for which no fee billing or other written notification was delivered contrary to Section 14(8)(c) of Regulation 708 under the Law Society Act.

9. In or about early 1989, the Solicitor acted for a group of investors who owned and wished to sell a certain 82 acre parcel of land in the City of Brampton valued at approximately \$5,000,000.00. The Solicitor was also a part owner of the vendor group.

10. The purchase and sale transaction closed on April 10, 1989. On April 11 1989, the Solicitor transferred \$10,623.79 from his trust account to his general account purportedly on account of fees and disbursements (Tab 3, Document Book).

11. At no material time did the Solicitor deliver to his clients either of a final reporting letter or an account for services rendered.

12. At the request of the Law Society, the Solicitor prepared and delivered a written reporting letter in March, 1990 (Tab 4, Document Book).

Particular 2(c) On or about July 20, 1989, the Solicitor improperly transferred the sum of \$20,000.00 from his mixed trust account to a general account thereby causing a trust shortage contrary to Section 14(8) of Regulation 708 under the Law Society Act.

Particular 2(d) In the period July 20, 1989 to February 27, 1990, more or less, the Solicitor failed to maintain sufficient balances on deposit in his trust account to meet all his trust obligations contrary to Section 14(12) of Regulation 708 under the Law Society Act.

3rd April, 1997

13. During the period July 20, 1989 to February 27 1990, that there was a shortage in the Solicitor's trust account in the amount of \$20,000.

14. The shortage occurred as a result of a transfer on or about July 20, 1989, of the sum of \$20,000.00 from the Solicitor's trust bank account to a new bank account which had been opened by the Solicitor in the name "Herman & Associates" (Tab 5, Document Book). The transfer was executed by way of debit memo and not by cheque. Once transferred into the new account, the funds were, from time to time, transferred again by debit memo to the Solicitor's general account for use. These latter transfers were made as follows:

September 27, 1989	\$2,000.00
November 23, 1989	800.00
November 27, 1989	1,200.00
November 27, 1989	1,000.00
November 29, 1989	2,000.00
January 31, 1990	<u>2,500.00</u>

Total Transferred for General Use \$9,500.00

As at February, 15, 1990, the balance in this new bank account was \$11,275.84 which included approximately \$775.84 interest earned (Tab 6, Document Book).

15. The Law Society investigator first discussed this matter with the Solicitor on February 20, 1990. At that time, the Solicitor's books and records were approximately nine months in arrears. The Solicitor stated that the new account had been set up for something he referred to as the "Bathurst Syndicate". The Solicitor also stated that the \$20,000.00 had been drawn out of his trust bank account in multiples of \$300 on account of fees for his having advised the Bathurst Syndicate on matters wholly unrelated to his law practice.

16. As at March 8, 1990, the Solicitor's books and records had been brought fully up to date. At this time, the Solicitor explained to the Law Society investigator that the \$20,000.00 transfer from his trust account to the new account was an error. The Solicitor stated that he had opened the new account with the intention of depositing funds into it from the sale of a certain piece of equipment. The Solicitor also stated that it was a complete mystery to him who had called his bank requesting the original \$20,000.00 transfer from his trust account.

17. In or about February, 1990, the Solicitor transferred all of the remaining funds in the new account back into his trust bank account, made up the shortfall from his own resources and closed the new account. The Solicitor made up the shortfall by borrowing the sum of \$8,724.09 from a corporation controlled by his wife, Pink Flamingo Investments Ltd. (Tab 6a, Document Book).

Particular 2(e) On or about May 10, 1988, the sum of \$625,000 was borrowed from a client, Robert Hale, by a corporation in which the Solicitor's spouse had a substantial interest without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation, contrary to Rule 7 of the Rules of Professional Conduct.

Particular 2(f) He failed to disclose the client borrowing on his Form 2 annual filing with the Society sworn August 28, 1989, contrary to Section 16(2) of Regulation 708 under the Law Society Act.

3rd April, 1997

18. On or about May 10, 1988, the Solicitor's wife, Simone Herman, borrowed the sum of \$625,000.00 from the Solicitor's client, Robert Hale. Mr. Hale did not receive independent legal representation as required by Rule 7 of the Rules of Professional Conduct.

19. In addition, the Solicitor failed to disclose this borrowing on his Form 2 annual filing sworn on August 28, 1989, contrary to Regulation 708 under the Law Society Act (Tab 7, Document Book).

20. The borrowing by Simone Herman was secured by a first mortgage on her home at 22 Fairway Heights Drive, Thornhill. The mortgage was for a term of one year at a rate of interest of 10.5% (Tab 8, Document Book). Addition security was given to Mr. Hale on or about July 8, 1989, in the form of a \$395,000 collateral mortgage given by 755855 Ontario Limited, a corporation controlled by the Solicitor and which is the owner of the gravel pit at Coppins Corner (Tab 9, Document Book).

21. On or about June 4, 1990, at the request of the Solicitor, Mr. Hale swore a statutory declaration in which he stated, among other things, as follows:

(a) at the material time, the Solicitor *"was reluctant to have a mortgage registered between myself and his wife and suggested that I might use other council [sic] to protect my interest on the matter, and I insisted that he continue to do the legal work on these matters. I saw no reason to make any change simply because the identity of the borrower was related to him."*; and further

(b) *"I feel no anxiety with respect to the security provided to me by [the Solicitor] nor by the legal work performed by him."*

(Tab 10, Document Book)

Particular 2(g) He improperly executed the names of two of his clients, Joseph Starr and Ruth Starr, on certain real estate documents in order to facilitate the closing of a transaction.

22. The Solicitor acted for Joseph Starr, Ruth Starr, Norman Starr, Janice Starr and Nor-Starr Farms Ltd. on the sale of a farm property to Marisa Mastronardi in trust for the sum of \$2,350,000.00. At the material times, each of Joseph Starr and Ruth Starr were in their eighties and in poor health and the Solicitor dealt mainly with their son Norman Starr. Janice Starr is the wife of Norman Starr.

23. Prior to the closing of the transaction the Solicitor arranged for each of Joseph and Ruth Starr to execute certain documentation necessary to close the transaction. However, at the closing, it was discovered that certain documentation had not yet been executed by the Starrs whom by that time were residing in Florida for the winter months.

24. The Solicitor and Norman Starr executed the Starrs' respective names on the said closing documentation and closed the transactions (Tabs 11a - d, Document Book).

25. The Solicitor admits that he executed the Starrs' signatures without proper authorization, but states that each of Norman and Janice Starr were present at the time and approved of the Solicitor's actions.

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Particular 2(h) On or about December 12, 1989, the Solicitor disbursed the sum of \$30,000 on account of fees from his trust account directly to Dash, Sand & Gravel contrary to Section 14(9) of Regulation 708 under the Law Society Act and further did not record the receipt of the said \$30,000 in his general account receipts book contrary to Section 15(1)(e) of Regulation 708 under the Law Society Act.

26. In respect of the purchase and sale of the Starr property the total of the Solicitor's fees and disbursements was \$50,263.35. The Solicitor received the closing funds in trust and then transferred the sum of \$30,000.00 of the said funds directly from his trust account to his corporation, Dash Sand. The Solicitor made the said transfer to Dash Sand without first recording the \$30,000 in his general account cash receipts book pursuant to the requirements of Regulation 708, section 15(a)(e) (Document Book, Tab 12).

V. DISCIPLINE HISTORY

27. The Solicitor does not have a discipline history.

DATED at Toronto this 16 day of April, 1996."

Re: Complaint D30/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D30/96 and is prepared to proceed with a hearing of this matter on April 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D30/96 and this agreed statement of facts with his counsel, John DaRe, and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor is 50 years of age. He was called to the bar on March 23, 1973. At all material times the Solicitor was a sole practitioner practicing primarily in the area of real estate law with some limited corporate work. At present, the Solicitor is not practising law, and manages a soil remediation company owned by his wife, Simone Herman.

5. At all material times, Simone Herman maintained the Solicitor's accounting records.

Particular 2(a)(i) On or about March 18, 1992, \$275,000 was borrowed from a client, Buttarazzi Investments Limited, by a corporation in which the Solicitor's spouse had a substantial interest, without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation.

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Particular 2(a)(iii) On or about March 18, 1992, \$298,097.25 was borrowed from a client, Robert Hale, by a corporation in which the Solicitor's spouse had a substantial interest, without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation.

6. At all material times, the Solicitor, through his wife, Simone Herman, owned and was the directing mind of a gravel pit at Coppins Corner in the Regional Municipality of Durham.

7. The gravel pit consisted of three parcels of land (the "property"). A copy of the abstract of title is attached (Document Book, Tab 1). The first and largest parcel of land contains a gravel pit and has an area of 35 acres. The first parcel is registered in the name of 755854 Ontario Limited. The second parcel of land is across the road from the first parcel and has an area of 11 acres. The second parcel is registered in the name of 755855 Ontario Limited. The third parcel of land is a small piece at the front of the property. The third parcel is registered in the name of 755854 Ontario Limited.

8. Each of 755854 Ontario Limited and 755855 Ontario Limited is owned by Simone Herman. The corporate records for these two corporations are attached (Document Book, Tab 2 and Document Book, Tab 3). The Solicitor is the directing mind of each of the said corporations.

9. In 1988 and 1989, 755854 Ontario Limited borrowed funds from the Toronto Dominion Bank ("TD Bank"). The Solicitor personally guaranteed the corporation's indebtedness to the TD Bank.

10. The first of three borrowings was secured by a mortgage over the property in the amount of \$400,000.00 registered on July 8, 1988 as Instrument No. 284502 (Document Book, Tab 4) (the "First Mortgage"). A second borrowing was secured by a mortgage over the property in the amount \$200,000.00 registered on May 17, 1989 as Instrument No. 312256 (Document Book, Tab 5). A third borrowing was secured by a mortgage over the property in the amount of \$250,000.00 registered on November 14, 1989 as Instrument No. 328037 (Document Book, Tab 6).

11. As at 1990, 755854 Ontario Limited owed to the TD Bank approximately \$850,000.00, but was unable to repay the loans. At that time the TD Bank agreed not to take collection proceedings for three years to enable the gravel pit business to earn profits.

12. On September 21, 1990, a further mortgage over the gravel pit in the amount of \$850,000.00 was given by 755855 Ontario Limited to the TD Bank and registered on the 11 acre parcel of land as Instrument No. 350157 (Document Book, Tab 7). This mortgage was to provide additional security to the TD Bank.

13. Each the above mortgages were signed by the Solicitor on behalf of each of 755854 Ontario Limited and 755855 Ontario Limited, respectively. The Solicitor also acted for the TD Bank on each of the mortgage transactions.

14. After two of the three years (referred to in para. 11 above) had passed, 755854 Ontario Limited owed to the TD Bank the sum of \$1,064,572.99. The TD Bank contacted the Solicitor and demanded payment of its loans in full. The TD Bank retained Michael Kestenberg of the law firm Kestenberg Siegal Lipkus to act for it (Document Book, Tab 8).

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15. In or about early 1992, the Solicitor received a Notice of Sale on the First Mortgage. At that time, the total amount owing on the First Mortgage was \$527,197.76 (Document Book, Tab 9).

16. The Solicitor offered to redeem the First Mortgage provided that the TD Bank assigned the Mortgage to him. TD Bank agreed to do so.

17. In order to redeem the First Mortgage the Solicitor arranged for his wife, Simone Herman, to borrow funds from two clients of the Solicitor's law practice, Umberto Buttarazzi ("Mr. Buttarazzi") and Robert Hale ("Mr. Hale"). The Solicitor had acted for Mr. Buttarazzi from time to time throughout the previous 18 years, and Mr. Hale had been a client of the Solicitor's since approximately 1975.

18. The Solicitor borrowed the funds from his clients because he could not borrow the funds from elsewhere.

19. Neither of Messrs. Buttarazzi nor Hale received independent legal representation on the loan transactions. The Solicitor had each of Mr. Buttarazzi and Mr. Hale sign an acknowledgement dated February 28, 1992 (Document Book, Tabs 10 & 11) in which each confirmed that he:

- (a) had agreed to advance funds to Simone Herman to acquire a half interest in a first mortgage on the Coppins Corner gravel pit held by another corporation, Pink Flamingo Investments Ltd ("Pink Flamingo") (Tab 12, Document Book);
- (b) was aware of the relationship between the Solicitor and Simone Herman;
- (c) wanted the Solicitor to act for him and had no interest in securing other counsel; and
- (d) was apprised of the value of the property and the ability of Simone Herman to make payments.

20. At all material times, Pink Flamingo was owned by Simone Herman.

21. At the time of the respective loans from Messrs. Buttarazzi and Hale, and the execution of the aforesaid acknowledgements, Pink Flamingo did not hold a first, or any, mortgage on the gravel pit.

22. Mr. Buttarazzi paid \$275,000.00 for his one-half interest and Mr. Hale paid \$298,097.25 for his one-half interest in the purported Pink Flamingo first mortgage.

23. This was not the first time that the Solicitor's wife had borrowed funds from Mr. Hale. In May 1988, Simone Herman borrowed \$625,000.00 from Mr. Hale secured by a first mortgage on her home at 22 Fairway Heights Crescent, Thornhill (see Complaint D4/91).

24. The total amount paid by the Solicitor to redeem the First Mortgage was \$533,312.32 (Document Book, Tab 13). The final payment from the Solicitor occurred on or about March 17, 1992.

25. The TD Bank assigned the First Mortgage to the Solicitor and the assignment was registered on March 18, 1992 as Instrument No. 383713 (Document Book, Tab 14).

26. The same day, the Solicitor assigned the First Mortgage to Pink Flamingo and registered same as Instrument No. 383714 (Document Book, Tab 15). Consideration for the assignment was shown as \$530,000.00.

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27. On March 23, 1992, the Solicitor reported on the transaction to Mr. Buttarazzi (Document Book, Tab 16). In the reporting letter the Solicitor, among other things, advised that:

- (a) on March 18, 1992 a mortgage was acquired by Pink Flamingo, assigned from the TD Bank in the face amount of \$530,000.00;
- (b) "a Power of Sale was commenced on behalf of the company forthwith";
- (c) upon completion of the Power of Sale the land would be sold pursuant to an appraisal held by Pink Flamingo;
- (d) security for Mr. Buttarazzi's advancement of funds to date was in the form of *stock in Pink Flamingo* registered one half in Mr. Buttarazzi's name and one half in the name "Key Coffee Services Inc. [Mr. Hale's corporation] who has advanced a similar \$275,000.00 Cdn";
- (e) following the completion of the Power of Sale, a mortgage would be registered in which Buttarazzi Investments Limited would have a 50 percent interest in the mortgage in the amount of \$550,000.00 bearing interest at 12 percent payable monthly.

28. There is no evidence that the Solicitor prepared or delivered a reporting letter to Mr. Hale.

29. Notwithstanding the Solicitor's reporting letter to Mr. Buttarazzi, at no time did either of Messrs. Buttarazzi or Hale receive stock in Pink Flamingo, and power of sale proceedings had not been (and at no material time were) commenced.

Particular 2(a)(ii) On or about September 30, 1992, \$250,000 was borrowed from a client, Buttarazzi Investments Limited, by a corporation in which the Solicitor's spouse had a substantial interest, without ensuring that the client's interests were fully protected by independent legal representation.

30. In April 1992, Kestenberg Siegal Lipkus on behalf of the TD Bank commenced a lawsuit against the Solicitor for the balance of the funds owed by 755854 Ontario Limited. The statement of claim stated that the amount owing to the TD Bank was \$586,847.82 (Document Book, Tab 17).

31. On April 27, 1992, Kestenberg Siegal Lipkus wrote to the Solicitor to advise that that firm would be monitoring any sale of the subject property closely, and to request a copy of any appraisals conducted (Document Book, Tab 18).

32. On April 28, 1992, the Solicitor replied to the TD Bank's lawyers, stating that he did not think the value of the 33 acre gravel pit and the adjoining 11 acre property was worth any more than \$200,000.00 being the value which had been placed on the property by Royal LePage in November 1989, when the Solicitor had been negotiating with the TD Bank on a mortgage. The Solicitor ended his letter by stating that "*the mortgagees would be fortuitous if they [were] able to secure an offer equal to the amount outstanding on their mortgage*". (Document Book, Tab 19).

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33. The Solicitor's response did not satisfy Kestenberg Siegal Lipkus as set out in its responding letter of April 30, 1992 (Document Book, Tab 20).

34. On May 4, 1992, the Solicitor replied to the above letter (Document Book, Tab 21).

35. On May 25, 1992, the TD Bank obtained judgment against the Solicitor (Document Book, Tab 22) and on August 27, 1992, the Solicitor was petitioned into bankruptcy. The Solicitor's Statement of Affairs is attached in the Document Book at Tab 23.

36. In or about the Fall of 1992, Mr. Hale chose to be repaid his loan to Pink Flamingo (the Solicitor's spouse's corporation). On September 30, 1992, Mr. Buttarazzi paid to Pink Flamingo \$250,000.00 (Document Book, Tab 24) purportedly to purchase Mr. Hale's 50% interest in the Pink Flamingo stock.

37. On October 1, 1992, six months after Mr. Buttarazzi first advanced funds to the Solicitor's wife, Pink Flamingo purported to assign the First Mortgage to Buttarazzi Investments Limited. The mortgage document stated that the principal amount of the mortgage was \$525,000.00, the interest rate 12% and the maturity date October 1, 1993 (Document Book, Tabs 25 and 26).

38. On January 5, 1993, a Law Society examiner commenced an examination of the Solicitor's books and records. The Solicitor's trust account transactions were as follows:

Date	Source/Payee	Receipts	Payments
March 2/92	Buttarazzi Investments Ltd.	\$275,000.00	
March 2/92	Kestenberg Siegal		\$265,000.00
March 9/92	Crothers Ltd.		8,025.00
March 17/92	Robert Hale	298,097.25	
March 17/92	TD Bank		268,312.32
April 12/92	Buttarazzi Investments		2,750.00
April 14/92	Central Guaranty Trust Company		15,000.00
April 16/92	Harrington & Hoyle		2,251.56
April 27/92	Contractor's Equipment		6,258.37
May 2/92	Buttarazzi Investments Ltd.		2,750.00
June 2/92	Buttarazzi Investments Ltd.		2,750.00
	TOTAL	\$573,097.25	\$573,097.25

A copy of the trust ledger account is attached (Document Book, Tab 27).

39. The Law Society asked the Solicitor to provide full particulars of the borrowings from each of Messrs. Buttarazzi and Hale. The Solicitor responded to the Law Society by letter dated January 12, 1993 (Document Book, Tab 28) in which he stated among other things as follows:

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16. Circumstances - 755854 Ontario Limited had a mortgage with a Bank, the Bank was looking for payment on it's mortgage. Mrs. Herman contacted a number of parties known mutually by her and her husband who were clients of Mr. Herman who were aware of her ownership of this asset. *The original Bank mortgage was in the total sum of approximately \$1,300,000.00 and was being reduced down to \$525,000.00 with no other mortgages on title and the clients expressed interest in taking the mortgage at 12% per annum.*

17. *By way of an explanation and comment, Mrs. Herman is and continues to have and always has maintained an independent estate separate and apart from her husband's. The parties who lent monies to Mrs. Herman were friends of hers and clients of her husband's. In this instance, the lender was notified of their requirement of independent legal advice in securing another mortgage but was satisfied that since the security was by way of an assignment of a Bank mortgage, that they were aware of the value of the property and were not interested in any further expenditure of time and legal work. By way of a sub-note, Mrs. Herman is presently negotiating with a mortgage company for the possibility of refinancing the property with a financial institution or other lender, who does not happen to be a client of this solicitor.*

[emphasis added]

40. The information provided by the Solicitor about the "original TD Bank mortgage" was not correct, in that:

- (a) the mortgage was not being reduced down at the time of the borrowings; and
- (b) after the assignment of the First Mortgage to Pink Flamingo, there remained on title at least three other mortgages:
 - (i) 2nd mortgage - \$200,000.00 in favour of the TD Bank;
 - (ii) 3rd mortgage - \$350,000.00 in favour of Pauline Sporn (the Solicitor's mother-in-law); and
 - (iii) 4th mortgage - \$250,000.00 in favour of the TD Bank.

41. On or about March 2, 1994, the Solicitor, without the knowledge or consent of Mr. Buttarazzi, caused the First Mortgage to be struck off or discharged from the registry (Document Book, Tab 29).

42. Immediately thereafter, also on March 2, 1994, the Solicitor registered a mortgage in the principal amount of \$525,000.00 from 755854 Ontario Limited to Buttarazzi Investments Limited as Instrument No. 428560 (Document Book, Tab 30) ("the New Buttarazzi Mortgage"). This mortgage was intended to replace the First Mortgage which had then been struck off the registry.

43. However, unlike the First Mortgage which had ranked first in priority, the New Buttarazzi Mortgage ranked fourth, behind each of the mortgages referred to in paragraph 40 herein.

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44. The New Buttarazzi Mortgage matured on October 1, 1994. However, 755854 Ontario Limited did not pay out the mortgage and it went into default.

45. On April 4, 1995, Dominic J. Buffone, of the law firm Bianchi Presta advised the Law Society that he had recently been retained by Mr. Buttarazzi in respect of certain problems with Mr. Buttarazzi's mortgage on the Coppins Corner gravel pit. Mr. Buffone raised a number of issues on behalf of his client:

- (a) the New Buttarazzi Mortgage was a fourth mortgage on title when it should have been a first mortgage;
- (b) because of certain errors in describing the properties, all of the mortgages on title ran afoul of the Planning Act and were therefore invalid;
- (c) the propriety of the Solicitor acting for Mr. Buttarazzi in all of the circumstances; and
- (d) the Solicitor's breach of Rule 7 of the Rules of Professional Conduct.

46. On April 12, 1995, Mr. Buffone wrote to the Solicitor (Document Book, Tab 31) about his concerns and made a formal demand on behalf of Mr. Buttarazzi for full payment of the outstanding principal on the New Buttarazzi Mortgage in the amount of \$525,000.00 plus interest. In particular, Mr. Buffone confirmed the following:

- (a) although the New Buttarazzi Mortgage was to have been a first mortgage on the property, it appeared from the title documents that the mortgage stood fourth;
- (b) by acting as he did the Solicitor had created *"a flagrant breach of Solicitor and client trust relationship and one which is patent on its face that screams for ensuring that the parties obtain independent legal representation. The fact that Mr. Buttarazi was investing \$525,000.00 into your wife's assets, should have automatically excluded you from representing Mr. Buttarazzi. Your failure to proceed in this fashion is now evident in that there exists fatal flaws with the registration of the mortgage documents"*;
- (c) the registration of all the mortgages on title have violated the Planning Act;
- (d) the document upon which the Solicitor relied to initially secured Mr. Buttarazzi's investment (i.e. the assignment of the First Mortgage from Pink Flamingo to Mr. Buttarazzi's corporation) was not a proper transaction as Pink Flamingo was never a registered owner of the lands;
- (e) a Certificate of Action registered as Instrument #D3868210 in favour of Premier Installation Limited registered August 6, 1991 formed a further

cloud on title, it having been registered prior to Mr. Buttarazi's mortgage;

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- (f) a tax certificate registered by the Township of Uxbridge on December 24, 1993 formed a further priority lien on the subject property and, although the certificate was discharged as a result of one of the mortgagees (i.e. Pauline Sporn, the Solicitor's mother-in-law) having paid the sum of \$80,398.03 to the Township of Uxbridge, in the result Ms. Sporn held a first priority lien over the interest of any person to whom the tax arrears had been sent; and
- (g) Mr. Buttarazzi's mortgage matured as of October 1, 1994, yet the mortgagor had not paid out the mortgage despite a request for payment.

Mr. Buffone concluded his letter as follows:

"In view of the tenuous security which is held by Mr. Buttarazzi, his money remains at great risk. Accordingly, and in view of all of the foregoing, please consider this a formal demand for full payment of the outstanding principal amount of \$525,000.00 together with 12 percent interest. This request for payment is being addressed to you, as you appear to be one of the corporate officers of 755854 Ontario Limited. You are hereby requested to make full payment within 15 days of the date of this letter, failing which we shall be instituting legal proceedings against you and any other parties we deem necessary in pursuit of our client's interests. Please be further advised that we are forwarding a copy of this letter to the Law Society of Upper Canada, for purposes of putting them on notice of your potential exposure to liability as a solicitor, and to reopen any file which has been opened by them with respect to this matter. Please govern yourself accordingly."

47. The Solicitor did not pay out the New Buttarazzi Mortgage and, in the result, Mr. Buttarazzi commenced proceedings to restore his mortgage to first position on title. The Lawyers' Professional Indemnity Corporation ("LPIC") has been notified and, the Law Society is advised by the Solicitor, is taking steps to place the New Buttarazzi Mortgage in first place. At present, the litigation continues.

Particular 2(b) In or about November 1991, the Solicitor engaged in unsatisfactory professional practice when he invested \$75,000.00 more or less belonging to his client, Adam Frederick Ulrich, without ensuring his client had security until August 14, 1992, when a mortgage was registered in his client's favour.

Particular 2(a)(iv) In or about January, 1992, \$50,000 was borrowed from a client, Adam Frederick Ulrich, by the Solicitor's spouse, without ensuring that the client's interests were fully protected by the nature of the case and by independent legal representation.

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48. In October 1991, Adam Frederick Ulrich ("Mr. Ulrich Sr.") paid to the Solicitor, in trust, the sum of \$125,000.00 for investment in mortgages which were to pay to Mr. Ulrich Sr. 12% per annum.

49. At the time, Mr. Ulrich Sr. was approximately 90 years old and it was his son Adam Fred Ulrich who consulted the Solicitor about the mortgage investments. The Solicitor had prepared a will for Mr. Ulrich Sr. on November 21, 1991.

50. Eventually, Mr. Ulrich Sr. took a second mortgage in the amount of \$50,000.00 (behind a first mortgage in the amount of \$700,000.00) over the Solicitor's home at 22 Fairway Heights Crescent, Thornhill (the "Residence Mortgage"). A copy of the Residence Mortgage signed by Simone Herman on January 1, 1992 is attached at Document Book, Tab 32, and a copy of the abstract of title is attached at Document Book, Tab 33. The Residence Mortgage was not registered until December 2, 1992, eleven months after the loan transaction.

51. Meanwhile, the Solicitor had become involved in a condominium described as Unit 17, 6910 Kalar Road, Niagara Falls. An individual, Alexander Hettman, had purchased the condominium in December 1990, for the sum of \$104,900.00. The Solicitor did not act on that transaction.

52. Mr. Hettman was in arrears on the first mortgage on the condominium which had been given by Central Guaranty Trust Company (the "Central Guaranty Mortgage"), in the amount of \$70,000.00. A power of sale notice had been issued.

53. The Solicitor applied \$75,000.00 of Mr. Ulrich Sr.'s funds to acquire the Central Guaranty Mortgage which was then in default. The mortgage was assigned to the Solicitor, in trust, and registered on November 21, 1991 as Instrument No. 83254 (Document Book, Tab 34) (the "Condominium Mortgage"). The Solicitor did not acquire an appraisal of the condominium property prior to advancing Mr. Ulrich Sr.'s funds.

54. On November 22, 1991, the Solicitor, in trust, issued a Notice of Sale under mortgage. On August 4, 1992, the Solicitor sold the condominium property to an individual, Michael David Bailey, in trust for the sum of \$80,000.00. The deposit on the sale was \$1,000.00. The Transfer/Deed of Land was registered on August 14, 1992 as Instrument No. 087984 (Document Book, Tab 35).

55. The Solicitor also acted for Mr. Bailey on this transaction.

56. The same day, the Solicitor registered two mortgages on title:

- (a) as Instrument No. 087985 (Document Book, Tab 36) a mortgage from Michael David Bailey in trust to Mr. Ulrich Sr. in the principal amount of \$75,000.00 with interest at 10 % per annum; and
- (b) as Instrument No. 087986 (Document Book, Tab 37), a mortgage from Michael David Bailey in trust, to the Solicitor in trust in the amount of \$4,000.00.

57. The \$4,000.00 mortgage to the Solicitor, in trust, was to secure the Solicitor's fees and disbursements which Mr. Bailey owed to him on the transaction. On September 2, 1992, the Solicitor registered as Instrument No. 88324 (Document Book, Tab 38) an assignment of the \$4,000.00 mortgage in favour of the Solicitor in trust to Simone Herman. The assignment was signed on August 25, 1992, two days before the Solicitor was petitioned into bankruptcy by the TD Bank.

3rd April, 1997

58. In December 1992, Mr. Ulrich Sr. was referred to Irving Feldman of the law firm Feldman & Weisbrot for the purpose of preparing a new will. During their discussions Mr. Ulrich Sr. stated that he was having problems with two mortgages his son had arranged through the Solicitor's office.

59. Mr. Feldman conducted subsearches of both properties and, as a result, became aware of certain irregularities which he brought to the attention of the Law Society by letter dated February 8, 1993 (Document Book, Tab 39). In particular, Mr. Feldman confirmed the following:

- (a) at the time he advanced \$75,000.00 to the Solicitor, and received back the Condominium Mortgage, Mr. Ulrich Sr. was not aware that the said mortgage was based upon a sale of the property in the amount of \$80,000.00, nor was he aware that the purchaser had made a deposit of only \$1,000.00;
- (b) Mr. Ulrich Sr. would not have advanced his funds to the Solicitor had he been aware of the aforesaid terms of the sale;
- (c) Mr. Ulrich Sr. did not have the benefit of independent legal advice notwithstanding that the sale of the property was effectively made by the Solicitor who also acted for Mr. Ulrich Sr. and certified title to him;
- (d) prior to advancing his funds to the Solicitor, Mr. Ulrich Sr. had not been made aware that the Residence Mortgage was a second mortgage behind a first mortgage in the amount of \$700,000.00;
- (e) Mr. Ulrich Sr. would not have advanced his funds to the Solicitor had he been aware of the aforesaid facts; and
- (f) Mr. Ulrich Sr. received neither a report from the Solicitor nor independent legal advice in respect of the Residence Mortgage.

Mr. Feldman concluded his letter as follows:

"We reiterate that our client is not interested in renewing the [Residence] mortgage and he feels that since there was not full disclosure made with respect to the [Condominium] mortgage he does not wish to continue with that investment and he is therefore looking to you to make arrangements to have the mortgage which he gave on the said property repaid to him together with interest etc..."

60. The Solicitor responded to Mr. Feldman by letter dated February 15, 1993. The Solicitor's explanation for the delay in registering the Residence Mortgage was that the transaction was originally a simple loan and not a mortgage (Document Book, Tab 40). The Solicitor also had Adam Fred Ulrich swear a Statutory Declaration in which he states, in summary, that he and his father were at all times fully aware of the circumstances of the mortgage and security and happy with the investment (Document Book, Tab 41).

61. The Solicitor disclosed on his Form 2 Annual Filing for his year ended December 31, 1992 that he was indebted to a client either directly or indirectly (Document Book, Tab 42).

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62. In July 1993, Feldman and Weisbrot, on behalf of Mr. Ulrich Sr., commenced an action against the Solicitor, in respect of each of the Residence and Condominium Mortgage. A copy of the Statement of Claim is attached at Document Book, Tab 43. A copy of the Solicitor's Statement of Defence is attached at Document Book, Tab 44.

63. By letter dated August 30, 1993, the Law Society wrote to the Solicitor inquiring into the facts surrounding the Residence Mortgage (Document Book, Tab 45). The Solicitor replied by letter dated October 12, 1993 (Document Book, Tab 46). In his letter the Solicitor characterized the borrowing from Mr. Ulrich Sr. as a personal matter involving a long time family friend, and stated further that Mr. Ulrich Sr.'s funds went through the Solicitor's trust account inadvertently. The Solicitor admitted that the loan was in breach of Rule 7 of the Rules of Professional Conduct and that he was arranging to pay it off.

64. On September 3, 1993, the condominium property was refinanced and the Condominium Mortgage discharged (Document Book, Tab 47).

65. In respect of the Residence Mortgage, on October 6, 1993, Feldman and Weisbrot issued a Notice of Sale Under Mortgage to the Solicitor and Simone Herman (Document Book, Tab 48).

66. On October 29, 1993, the Solicitor wrote to Feldman and Weisbrot (Document Book, Tab 49) enclosing a certified cheque sufficient to pay off the Residence Mortgage.

Particular 2(a)(v) On or about February 1, 1994, \$50,000 was borrowed from a client, Buttarazzi Investments Limited, by the Solicitor's spouse, without ensuring that the client's interests were fully protected by independent legal representation.

67. On or about February 1, 1994, Simone Herman borrowed \$50,000 from Buttarazzi Investments Limited.

68. The loan was secured by a second mortgage on the Solicitor's home at 22 Fairway Heights Crescent, Thornhill and registered on February 1, 1994 as Instrument No. 633606 (Document Book, Tab 50).

68. The Solicitor acted on the transaction and Mr. Buttarazzi did not receive independent legal representation.

69. This mortgage was discharged in August 1994. A copy of the abstract of title is attached (Document Book - Tab 33).

Particular 2(c) The Solicitor failed to co-operate fully with the Law Society's investigation auditor, as required by Section 18(1) of Regulation 708, by failing to provide all the information requested in the Law Society's letters dated February 7, 1995 and April 28, 1995.

70. By letter dated February 7, 1995, the Law Society wrote to the Solicitor (Document Book - Tab 51) setting out the facts of each of the Buttarazzi, Hale and Ulrich matters and requesting that the Solicitor provide the Law Society with certain specific information. The Solicitor was asked to reply to the Law Society within one month of the date of the letter.

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71. By letter dated March 7, 1995, the Solicitor responded to the Law Society (Document Book, Tab 52). Among other things, the Solicitor advised that there was a title problem with the New Buttarazzi Mortgage, that he had notified LPIC, and that outside counsel had been retained to correct the title defect in order to bring the New Buttarazzi Mortgage back into first position. The Solicitor did not provide any of the specific information requested in the Law Society's letter dated February 7, 1995, and questioned why the Law Society was conducting an investigation.

72. By letter dated April 28, 1995, the Law Society wrote a follow up letter to the Solicitor (Document Book, Tab 53).

73. By letter dated May 30, 1995, the Solicitor replied to the Law Society (Document Book, Tab 54), once again failing to provide the specific information requested. Instead, the Solicitor made various false accusations about the Law Society's involvement in the matter and implied that if LPIC had to eventually make a payment to Mr. Buttarazzi it would be partly the fault of the Law Society.

V. DISCIPLINE HISTORY

74. The Solicitor does not have a discipline history.

DATED at Toronto this 16 day of April, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Lawrence Isadore Herman be suspended for a period of six months. The period of the six month suspension will begin on the day after the matter is heard by Convocation, and Convocation's decision is made.

With respect to the matter of costs, the Committee accepted the recommendation of the Society that the Solicitor pay the Society's costs in the amount of \$7,500.00. These costs will be paid within six months following Convocation's decision. In the event that costs are not paid he will be further suspended until the costs are paid.

REASONS FOR RECOMMENDATION

The Solicitor admitted that the particulars set out in Complaint D4a/91 were true and that those constitute professional misconduct or conduct unbecoming, as the case may be.

Further, the Solicitor in D30/96 agreed that the Statement of Facts were true, and he admitted that the facts alleged in the Complaint constituted professional misconduct.

Re: Conduct Unbecoming a Solicitor - Complaint D4a/91

2(a) In regard to this Complaint, the Solicitor operated a business known as "Sweet William", in the Township of Uxbridge. He was in the gravel pit business. Throughout an eighteen month period the Solicitor wrongly withheld from the lessor approximately \$65,000.00 in royalties by deliberately understating the quantity of material removed from the gravel pit. He swore an affidavit that contained false information.

3rd April, 1997

Further, in regard to this Complaint, he instructed his employee to carry on the business of the gravel pit in such a manner as to mislead the lessor as to the quantity of material removed from the gravel pit.

He instructed his employee not to advise the lessor in regard to other material taken from the gravel pit.

On the Solicitor's instructions, no reports were made to the lessor with respect to the number of tons of material removed from the lessor's gravel pit. The lessor's remuneration was based upon the amount of material removed from the gravel pit.

The Committee acknowledges that in regard to the transaction with the lessor, that this was conduct unbecoming a barrister and solicitor and bore out Complaint D4a/91 2(a).

2(b) The Solicitor transferred \$10,623.79 from his trust account to his general account purportedly for fees and disbursements for which no fee billing was delivered. A fee billing was ultimately delivered by the Solicitor.

2(c)(d) On July 20, 1989, the Solicitor improperly transferred the sum of \$20,000.00 from his trust account to his general account causing a trust shortage from July 20, 1989 to February 27, 1990. He failed to maintain sufficient balances on deposit in the trust account.

The Committee was advised in regard to these particulars, that all funds were repaid and put in proper order by the Solicitor. The funds, in regard to the shortage in the Solicitor's trust account, was made up by the Solicitor promptly. As set out in the Agreed Statement of Facts, this transfer in the trust account was an error. The Solicitor stated it was a complete mystery to him as to who had called his bank requesting the original \$20,000.00 transfer from his trust account. No evidence was called on this issue.

2(e)(f) The Solicitor made various borrowings from clients. He borrowed money from Robert Hale - \$625,000.00. The Committee was advised that Mr. Hale has not complained and has not suffered any loss whatsoever. However, he failed to disclose the same on his annual filing.

2(g) The Solicitor improperly executed the names of two of his clients on certain real estate documentation with the approval of the client's son. He did not sign the names "per" individuals. He did not have Power of Attorney. Rather, he signed their actual names to the documents. No loss was suffered by the Solicitor engaging in that type of conduct.

2(h) On or about December 12, 1989, the Solicitor disbursed the sum of \$30,000.00 on account of fees from his trust account directly to his company and did not record the receipt of the said \$30,000.00 in his general account.

Re: Complaint D30/96

In regard to this Complaint, on March 18, 1992, \$275,000.00 was borrowed from Buttarazzi Investments Ltd., by a corporation in which the Solicitor's spouse had a substantial interest, without ensuring that the client's interests were fully protected and by independent legal representation.

3rd April, 1997

At that time, the Solicitor, through his wife Simone Herman, owned and was the directing mind of a gravel pit in the Regional Municipality of Durham. The gravel pit was registered in the name of numbered companies. Each of the numbered companies was owned by the wife of the Solicitor. The Solicitor was the directing mind of each of the corporations.

In essence, the Solicitor borrowed funds from Mr. Buttarazzi and another because he could not borrow the funds from elsewhere.

It appears that Mr. Buttarazzi was given a first mortgage on the lands owned by the Solicitor's wife. In fact, what occurred was, as explained by the Solicitor, that in error, the first mortgage was discharged and the first mortgage ultimately became a fourth mortgage.

The Committee was concerned about Mr. Buttarazzi's rights being protected in this matter due to the fact that as of the date of the hearing, there was no evidence before the Committee that Mr. Buttarazzi's interest had been protected, or that his mortgage had regained itself to a first mortgage priority.

Subsequently, the penalty phase of the Committee's hearing was adjourned and the Solicitor satisfied the Committee that Mr. Buttarazzi had been paid off in full.

Further, the Solicitor borrowed approximately \$298,097.25 from a client, Robert Hale, by a corporation which the Solicitor's spouse had a substantial interest, without ensuring the client's interests were fully protected and by independent legal representation. The Committee was advised that Mr. Hale has not complained to the Law Society. He has not lost any funds whatsoever.

On September 30, 1992 \$250,000.00 was borrowed from a client, Buttarazzi Investments Ltd., by a corporation in which the Solicitor's spouse had a substantial interest, without ensuring the client's interests were fully protected by independent legal representation. This Complaint coupled with the previous borrowing from Buttarazzi Investments Ltd. indicated that Buttarazzi Investments Ltd. loaned the total sum of \$525,000.00 to the Solicitor. The Committee was advised that as of the date of the hearing of April 16, 1996, Mr. Buttarazzi was receiving monthly cheques for \$2,750.00 which represented 12% interest payments on the \$525,000.00.

On February 1, 1994, \$50,000.00 was borrowed from his client, Buttarazzi Investments Ltd., by the Solicitor's spouse.

This loan was secured by a second mortgage on the Solicitor's home in Thornhill and the Solicitor acted on the transaction. Mr. Buttarazzi did not receive independent legal advice. The mortgage was discharged in August, 1994.

In or about November, 1991 the Solicitor engaged in unprofessional practise when he invested \$75,000.00 more or less belonging to Adam Frederick Ulrich without ensuring his client had security until August 14, 1992, when a mortgage was registered in this client's favour. Also in January of 1992 \$50,000.00 was borrowed from Adam Frederick Ulrich by the Solicitor's spouse, without ensuring his client's interests were fully protected and by independent legal representation.

It should be noted that Adam Frederick Ulrich Sr. was paid 12% on his investment. He was approximately 90 years old. Mr. Ulrich has complained to the Law Society. However, the Committee was advised that Mr. Ulrich has not lost any funds because of the conduct of the Solicitor. However, he would not have advanced these funds to the Solicitor had he been aware of the various terms of the sale as set out in the Agreed Statement of Facts.

3rd April, 1997

The Solicitor, characterized the borrowing from Mr. Ulrich Sr. as a personal matter involving a long-time family friend, and stated that his funds went through the Solicitor's trust account inadvertently. In any event he admitted the loan was in breach of Rule 7 of the Rules of Professional Conduct and he arranged to pay the same off and we were advised it has been done.

The Solicitor failed to co-operate fully with the Law Society's investigation auditor. In fact the Solicitor did not provide any of the specific information requested in the Law Society's letter of February 7, 1995 and questioned why the Law Society was conducting an investigation.

By letter dated May 30, 1995, the Solicitor replied to the Law Society, once again failing to provide specific information requested by the Law Society. Instead, the Solicitor made various false accusations against the Law Society's involvement in the matter and implied that if LPIC had to eventually make a payment to Mr. Buttarazzi it would be partly the fault of the Law Society.

A joint submission was made by the Law Society for a six month suspension in this matter.

The Law Society brought to the Committee's attention the case of David Gene Royer, an order being made by Convocation dated June 24, 1993. In the Royer case, a one year suspension was ordered together with \$1,000.00 costs.

The Society distinguished the Royer case in this matter, stating that in the Herman matter what he did was not as serious as Royer. Although the amounts borrowed from the clients were greater than \$13,000.00, and done on six occasions, all the borrowings were done within a short period of time. The Solicitor misled the Law Society in regard to his Form 2 and did not disclose the borrowings. Apparently, he did not know that what he did was misconduct. Once this was brought to his attention, any subsequent borrowings that he made were disclosed in his Form 2.

In the Royer decision, Mr. Royer had a prior discipline history arising out of the same type of offences. The Solicitor has no discipline history whatsoever.

The Society also indicated that the Solicitor, as far as the Society is concerned, showed no intention to mislead in this case.

The Society indicated that there is absolutely no evidence before us to say that the Solicitor had done anything intentionally to mislead the Law Society.

The Solicitor has practised for some 23 years without any discipline history.

The Society indicated the following:

1. There is no evidence before us that the borrowing by the Solicitor or his wife was for risky business.
2. All parties have been paid including Mr. Buttarazzi.
3. There has been no deception before us.
4. The trust fund infractions were minor infractions.
5. There were no allegations of misappropriation of funds.
6. Once the discrepancies were outlined to the Solicitor, his books and records were brought up to standard.

3rd April, 1997

7. The Society brought to the Committee's attention the matter of Bellefeuille, an Order of Convocation dated September 22, 1993. In that matter there were various loans. There was a discipline history. False affidavit was sworn. There was a joint submission for three months together with \$3,000.00 costs. The Society's position was that this case was less serious than the Solicitor's matter.

The borrowing in the Solicitor's matter was considerably larger than Bellefeuille. However, there was no loss to any of the Solicitor's clients save and except Buttarazzi, and Mr. Buttarazzi has now been paid.

8. The third decision brought to the Committee's attention was that of Diamond and Fischman. There were significantly greater breaches than just improper borrowing. In that matter, 709 mortgages at a stated amount of some \$44,000,000.00 was at risk. This was a mortgage brokering case.

Re: Co-operation

Since this matter was brought to discipline the Solicitor has been very co-operative. When his breaches were explained to him, he acknowledged the same.

In this matter, the following has occurred:

1. Hale has not complained.
2. Buttarazzi has complained.
3. Ulrich Sr. has complained.
4. Stars have not complained.

We were advised that both Buttarazzi and Hale wanted to do their deals, notwithstanding that they did not get independent legal advice.

Re: Undertakings

The Society has indicated that there is an undertaking by the Solicitor whereby he would not borrow funds in the future from clients, and in addition would respond fully to written communication from the Society within a period of ten days.

At the hearing of the matter at the penalty phase, the Solicitor has indicated that everyone has been paid back.

Re: Joint Submission

As previously stated, this has been a joint submission by the Society and the Solicitor for a six month suspension. The rule of course is that the Committee should give deference to joint submissions. In that regard, the Committee is prepared to accede to the suspension for a six month period.

It should be pointed out that the Solicitor has not practised law for some 15 months. He is now an entrepreneur. However, he does remain a member of the Law Society of Upper Canada.

Re: Costs

In regard to this matter, the Society has indicated that their costs were in excess of \$20,000.00.

Counsel for the Solicitor indicated that impecuniosity was not a concern in regard to this matter.

3rd April, 1997

The Panel therefore finds that the Solicitor has the ability to pay the said costs, fixed in the sum of \$7,500.00, the sum requested by the Society herein. Such costs are to be payable within six months of Convocation approving the same.

It is the recommendation of this Committee that in the event that the costs are not paid, that the Solicitor be suspended indefinitely until the costs have been paid.

Lawrence Isadore Herman was called to the Bar on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1997

Gerald A. Swaye, Q.C.
Chair

There were no submissions. The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months beginning on the day after the matter is heard by Convocation and pay costs in the amount of \$7,500 within 6 months following Convocation's decision.

Both counsel made submissions in support of the joint submissions made before the Discipline Committee that the solicitor be suspended for a period of 6 months.

Counsel for the solicitor advised that the solicitor was out of the country but wished to convey his apologies for his conduct in this matter.

It was moved by Mr. Wilson, seconded by Mr. Chahbar that the recommended penalty be adopted.

Carried

Re: Bonnie Esther Turner DERBY - Toronto

The Secretary placed the matter before Convocation.

Mr. Epstein withdrew for this matter.

Mr. Glenn Stuart appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 14th February, 1997, together with an Affidavit of Service sworn 5th March, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 20th February, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 10th March, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Phillip M. Epstein, Q.C.

In the matter of
The Law Society Act
and in the matter of

Audrey Cado
for the Society

BONNIE ESTHER TURNER DERBY
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 12, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 18, 1996 Complaint D134/96 was issued against Bonnie Esther Turner Derby alleging that she was guilty of professional misconduct.

The matter was heard in public on December 12, 1996 before this Committee composed of Philip M. Epstein, Q.C., sitting as a single bencher. The Solicitor attended the hearing and was unrepresented. Audrey Cado appeared on behalf of the Law Society.

DECISION

The following particular of professional misconduct was found to have been established:

Complaint D134/96

- 2 a) she failed to provide a reply to correspondence from the Law Society regarding inadequacies discovered in her books and records as a result of a review by a Law Society examiner on June 23, 1994 despite letters dated October 19, 1995, November 27, 1995 and March 4, 1996 and telephone requests on January 2, 1996, January 4, 1996 and January 5, 1996.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

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AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D134/96 and is prepared to proceed with a hearing of this matter on December 12, 1996.

II. IN PUBLIC CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D134/96 and admits the particular contained therein. The Solicitor further admits that the said particular constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1976. She practises as a sole practioner.

5. One June 6, 1994, June 22, 1994 and June 23, 1994 a Law Society examiner attended at the Solicitor's office to review the books and records of her practice.

6. One June 23, 1994, the examiner prepared and reviewed her report (Document Book, Tab 1) with the Solicitor. The Solicitor signed the following Acknowledgement (Document Book, Tab 2):

I/We acknowledge receipt of a Law Society report on the deficiencies in my/our law practice's books and records. I/We have discussed the deficiencies with the Law Society's representative and understand the requirements of the Regulation respecting books and records. I/We agree to ensure that these deficiencies are correct forthwith in order to comply with the Law Society's Regulation respecting books and records. I/We agree to ensure that these deficiencies are correct forthwith in order to comply with the Law Society's Regulation 708 (sections 14 and 15) respecting books and records, and with the Law Society's Rules of Professional Conduct.

7. By letter dated September 7, 1994 (Document Book, Tab 3), the Law Society forwarded to the Solicitor an article on the spot audit programme and a pamphlet setting out sections 13 to 18 of Regulation 708 of the Law Society Act. As a result of the deficiencies disclosed during the examination of the Solicitor's books and records, the Solicitor was requested to:

- include in her trust cash disbursements record the full details required by subsection 1(b) of section 15 of the Regulation; ensure in the future the clients' trust ledger accounts are maintained in a central location; institute a formal general cash receipts book of original entry immediately and notify the Society, in writing, within a month of the date of this letter that such a record is in place; include in her general cash disbursements record the full particulars required by subsection 1(f) of section 15 of the Regulation; insist her bookkeeper produce to her, on or before the 15th of each month, a copy of a trial balance of the clients' trust ledger at the preceding month-end, identifying each client and showing each trust ledger balance, a copy of the detailed trust bank account

3rd April, 1997

reconciliation at the same date, remit to the Law Society, within twenty days of the effective date of her trust comparison, copies of the listing of trust obligations, the trust bank reconciliation and the trust bank statement for each month ended May 31, 1994 to April 30, 1994 inclusive; ensure in the future, deposit slips for her practice bank accounts are properly detailed showing the source of money received and on whose behalf money deposited. Investigate the differences on the monthly trust comparisons for the 12-month period preceding the auditor's visit. The Law Society also requested the Solicitor report to the Law Society on her findings within one month of the date of this letter. Confirm with the Law Society, her bank reconciliations are prepared in accordance with section 15 of the Regulation, prepare a listing of the trust ledger account balances including a column showing the date of the 1st in each account. The Law Society requested the Solicitor provide a copy of the next regular monthly trial balance of the clients' trust ledger showing the balances remaining after her review; advise the Law Society, in writing, when a separate interest bearing account had been opened for a client, Doris Khoo, and to submit to the Law Society for a period of six months for the opening of the account, bank reconciliations, along with the trust comparisons for her mixed trust account. Acknowledge receipt of this letter, in writing, and confirm with the Law Society she is in compliance with section 14 and 15 of Regulation 708 and the Rules of Professional Conduct.

8. By Letter October 25, 1994 (Document Book, Tab 4), the Law Society forwarded to the Solicitor a copy of its September 7, 1994 letter. The Solicitor was requested to respond forthwith. No reply was received.

9. By registered mail, dated November 29, 1994 (Document Book, Tab 5), the Law Society forwarded to the Solicitor a copy of its September 7, 1994 and October 25, 1994 letters. The Solicitor was reminded of her obligation to respond promptly to communications from the Law Society. The Solicitor was advised should she fail to provide a full and complete written response within fifteen days, and that the matter would be referred to the Discipline Committee for authorization of a formal complaint. The Law Society's November 29, 1994 letter was signed for and delivered on December 1, 1994.

10. By letter dated March 20, 1995 (Document Book, Tab 6), the Solicitor forwarded to the Law Society her trust listing obligations, trust bank reconciliation and trust bank statement for the period ended May 31, 1994 to January 31, 1995. The Solicitor advised she would forward her reconciliation for February 28, 1995 by the end of the week. The Solicitor advised she had undertaken the Law Society's recommendations. The Solicitor stated she had isolated the errors between the total trust obligations and the total trust funds on deposit and would meet with her accountant the following day to confirm that the monthly trust comparisons were now complete. The Solicitor stated she would deal with the inactive trust ledger accounts as suggested by the Law Society and would clear them up over the next four weeks. The Solicitor stated she advised the Royal Bank to set up a separate account for Doris Khoo and she would request the balance remaining in her mixed trust account be transferred to the separate account.

11. By letter dated April 11, 1995 (Document Book, Tab 7), the Law Society advised the Solicitor of several discrepancies discovered upon reviewing her trust comparisons from May 1994 to January 1995. The Solicitor was requested to explain the reason for each of the discrepancies. The Solicitor was advised a response had not been received to items 3, 7, 8 and 10 of the Society's September 7, 1994 letter. The Solicitor was requested to respond forthwith. The Solicitor was advised her trust comparisons for February and March, 1995 were overdue and she was, therefore, requested to provide a copy of the listing of trust obligations, trust bank reconciliation, and trust bank statement for the months ended February 28, 1995 and March 31, 1995. No reply was received.

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12. By letter dated May 19, 1995 (Document Book, Tab 8), the Law Society forwarded to the Solicitor a copy of its April 11, 1995 letter. The Solicitor was requested to provide her response forthwith. No reply was received.

13. By registered mail dated June 28, 1995 (Document Book, Tab 9), the Law Society forwarded to the Solicitor a copy of the Law Society's April 11, 1995 and May 19, 1995 letters. The Solicitor was reminded of her obligation to promptly reply to communications from the Society. The Solicitor was advised should she fail to provide a full and complete written response within fifteen days, the matter would be referred to the Discipline Committee for authorization of a formal complaint. The Law Society's June 28, 1995 letter was signed for and delivered on July 4, 1995.

14. The Solicitor left a telephone message for the Law Society on July 17, 1995. The Solicitor advised she hoped to have all the material today but requested an extension to July 21, 1995 to reply. A copy of the Law Society's handwritten Telephone Transaction form, dated July 17, 1995, is contained in the Document Book, Tab 10.

15. A Law Society staff employee spoke with the Solicitor by telephone on July 18, 1995. The Solicitor was granted an extension to reply to July 19, 1995. The Solicitor requested an extension until July 24, 1995. The Solicitor was requested to forward her request for an extension by facsimile transmission. A copy of the Law Society's handwritten Telephone Transaction form, dated July 18, 1995, is contained in the Document Book, Tab 11.

16. By facsimile transmission, dated July 19, 1995 (Document Book, Tab 12), the Solicitor advised the Law Society she would provide a full reply to its April 11, 1995 letter on or before July 24, 1995. No reply was received.

17. A Law Society staff employee spoke with the Solicitor by telephone on July 25, 1995. The Solicitor advised the documents would be delivered that same day. A copy of the Law Society's handwritten Telephone Transaction form, dated July 25, 1995 is contained in the Document Book, Tab 13.

18. By letter dated July 24, 1995 (Document Book, Tab 14), the Solicitor advised the discrepancies noted in the trust comparisons had been reviewed and corrected and would be submitted with her annual filing due at the end of August. The Solicitor advised she had remedied the inactive trust ledger accounts and her current review of the trust account ledger did not disclose any inactive balances. The Solicitor advised items 3, 7, and 8 of the Society's September 11, 1994 letter have been attended to. The Solicitor advised with respect to item 10, she would be opening a new account as suggested. The Solicitor advised over the past year the trust balance had been depleted and she would transfer the balance to the new account. The Solicitor forwarded to the Law Society the trust account listing, bank reconciliations and bank statements for February and March 1995.

19. By letter dated October 19, 1995 (Document Book, Tab 15), the Law Society advised the Law Society the Society's Annual Filing's department was a separate department and as such, requested the Solicitor forward the amended copies of the listing of trust obligations, trust bank reconciliation and trust bank statement for the months ended May 31, 1994 to September 31, 1994. The Solicitor also requested to provide her trust comparisons for April, 1995 which included the listing of trust obligations, the trust bank reconciliation and trust bank statement for the month ended April 30, 1995. The Solicitor

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was requested to advise why a reconciling difference of \$20.04 was permitted to exist uncorrected over a period in excess of one month (November, 1992 to April, 1994). The Solicitor was reminded to submit to the Law Society her trust comparisons for a period of six months commencing with the end of the month for which the separate interest bearing account for Doris Khoo is opened, which should include the listing of trust obligations, trust bank reconciliation, the trust bank statement and the passbook for the interest bearing account. No reply was received.

20. By letter dated November 27, 1995 (Document Book, Tab 16), the Law Society forwarded to the Solicitor a copy of the October 9, 1995 letter. The Solicitor was requested to provide her reply forthwith. No reply was received.

21. A Law Society staff employee left a telephone message for the Solicitor at her office on January 2, 1996 requesting she return the call. A copy of the Law Society's handwritten telephone Transaction form, dated January 2, 1996 is contained in the Document Book, Tab 17.

22. The solicitor left a telephone message for the Law Society on January 4, 1996 advising she was away for the afternoon and she would call again later that day or the following. A copy of the Law Society's handwritten Telephone Transaction form, dated January 4, 1996 is contained in the Document Book, Tab 17.

23. The Solicitor advised the Law Society by telephone on January 5, 1996 she was working on a response and would respond by January 12, 1996. No reply was received. A copy of the Law Society's handwritten Telephone Transaction form, dated January 5, 1996 is contained in the Document Book, Tab 17.

24. By registered mail dated March 4, 1996 (Document Book, Tab 18), the Law Society forwarded to the Solicitor a copy of its October 19, 1995 and November 27, 1995 letters. The Solicitor was reminded of her obligation to promptly reply to communications from the Law Society. The Solicitor was advised should she fail to provide a written response within seven days of the date of this letter, the matter would be further to the Discipline Committee. No reply was received.

25. By letter dated April 8, 1996, the Solicitor filed for the fiscal year ended February 28, 1995 (Document Book, Tab 19). The Solicitor enclosed with her 1995 annual filing her trust balance, trust reconciliation and trust bank statement for February 28, 1995.

26. The Solicitor responded to the Law Society's October 19, 1995 by letter dated October 11, 1996 (Document Book, Tab 20). The Solicitor advised the Law Society her accounting records were in storage pending a move of her office scheduled for October 26-27, 1996. The Solicitor requested the Law Society advise, pending her move, should it require copies of the listing of trust obligations, trust bank reconciliations and trust bank statement. The Solicitor stated she was enclosing her trust comparison for April, 1995. The Solicitor advised the difference of \$20.02 was due to two clerical errors and that the error had been corrected. The Solicitor advised she had not opened a separate interest bearing account for Doris Khoo as the trust balance had been depleted over time. The Solicitor advised at certain times of the year the account holds larger sums to pay realty taxes on two properties owned by Ms. Khoo. The Solicitor stated as she was previously associated with a larger firm that handled Ms. Khoo's account in this fashion, she did not appreciate the necessity to set up a separate account.

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27. By letter dated October 15, 1996 (Document Book, Tab 21), the Law Society advised the Solicitor, it still required the amended copies of the listing of trust obligations, trust bank reconciliation and trust bank statement for each month ended May 31, 1994 to September 31, 1994 inclusive. The Solicitor was advised her trust comparison or the month ended April 30, 1995 was not enclosed with her memorandum and she was requested to forward to the Law Society the listing of trust obligations, trust bank reconciliation and trust bank statement for the month ended April 30, 1995. The Solicitor was requested to explain how and when the difference of \$20.04 was corrected to forward to the Law Society copies of the trust ledgers illustrating her explanation. The Solicitor was referred to her letter of July 24, 1996 in which she indicated she would open a separate interest bearing account for Doris Khoo. The Law Society recommended the Solicitor place the funds in a separate interest bearing account so the client could benefit from the interest as the trust comparisons indicated there is a substantial amount in the client trust fund at any given time. Once the separate account had been opened, the Solicitor was requested to forward to the Law Society copies of the listing of trust obligations, trust bank reconciliation, trust bank statement and pass book for the interest bearing account for each month end, beginning the month in which the separate interest bearing account was opened. No reply was received.

28. By letter dated November 29, 1996 (Document Book, Tab 22), the Law Society forwarded to the Solicitor a copy of its October 19, 1995 and October 16, 1996 letter. The Solicitor was requested to provide an appropriate response forthwith.

29. By letter dated December 10, 1996 and two facsimile transmission on December 11, 1996 (Document Book, Tab 23), the Solicitor responded to the Law Society's correspondence.

V. DISCIPLINE HISTORY

30. The Solicitor was found guilty of professional misconduct and reprimanded in committee on July 30, 1991 with respect to her failure to serve a client and her having misled a client.

31. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$200.00 on November 30, 1994 with respect to her failure to file for the fiscal year ended February 28, 1993.

32. The Solicitor was found guilty of professional misconduct and reprimanded in committee on April 10, 1995 with respect to her failure to file for the fiscal year ended February 28, 1995.

DATED at Toronto this 12th day of December , 1996"

RECOMMENDATION AS TO PENALTY

The Committee recommends that Bonnie Esther Turner Derby be reprimanded in Convocation and Law Society pay costs of \$1,075.00

REASONS FOR RECOMMENDATION

In the matter of Bonnie Esther Turner Derby, the Solicitor is charged with professional misconduct for failure to reply to correspondence from the Law Society regarding inadequacies discovered in her books and records.

3rd April, 1997

There is an agreed statement of facts in which the Solicitor admits that the particulars constitute professional misconduct. The agreed statement of facts reveals a lengthy attempt by the Society to examine the books and records of the Solicitor and have the deficiencies properly completed.

The Solicitor was dilatory in responding and dealing with the Society with respect to its requests.

The matter came before me in October of 1996 and I adjourned the matter to give the solicitor one further chance to bring the filings up to date. Fortunately, the Solicitor took advantage of that opportunity and by the time the matter came before me on December the 12th, the filings had been completed to the satisfaction of the Society.

In light of the admissions, the Solicitor is found guilty of professional misconduct.

The matter of significant concern is that the Solicitor has a discipline history extending back to 1991 and this is the fourth time that the Solicitor has been found guilty of professional misconduct.

While this complaint does not involve matters that would normally lead to a significant penalty, they are nevertheless serious matters and in particular, it is extremely serious that the Solicitor finds herself back before the Society on a fourth count of professional misconduct.

On three other occasions, the Solicitor has been reprimanded in committee. This has not served as a sufficient deterrent to the Solicitor, nor as a sufficient reminder of her obligations to the Society.

In all the circumstances and particularly in light of the Solicitor's previous discipline history, I believe that it must be brought home to this Solicitor, and to the bar that the continued failure to comply with the Law Society's rules and regulations cannot be dealt with lightly. The Solicitor has had previous warnings and disregarded them.

In all of the circumstances, a reprimand in Convocation is a reasonable disposition of the matter. Had counsel for the society sought a more significant penalty, in light of the previous history, it might well have been considered. In light of the recommendation of the Society's counsel that it be a reprimand in Convocation and in light of all the circumstances, I see no reason to depart from that request and accordingly, I recommend to Convocation that the Solicitor be reprimanded and pay costs of \$1,075.

Bonnie Esther Turner Derby was called to the Bar on April 9, 1976.

ALL OF WHICH is respectfully submitted

DATED this 14th day of February, 1997

Philip M. Epstein, Q.C.

Mr. Stuart asked that Convocation accept the following amendments:

- (1) that at the end of the extract in paragraph 7. of the Report on page 3, the words "No reply was received." be added.
- (2) that on page 4 of the Report, paragraph 9., 5th line, the word "and" be deleted after the words "fifteen days".

3rd April, 1997

- (3) that on page 6 of the Report, paragraph 19., 2nd line, the words "the Law Society" be deleted and the words "the solicitor" be inserted.
- (4) that on page 8 of the Report, paragraph 28., 2nd line, the date "October 16, 1996" be changed to read "October 15, 1996".
- (5) that on page 10 of the Report under the heading Recommendation as to Penalty the sentence be changed to read "The Committee recommends that Bonnie Esther Turner Derby be reprimanded in Convocation and pay the Law Society's costs of \$1,075.00."

The finding was confirmed and the Report as amended was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded and pay costs in the amount of \$1,075.

Mr. Stuart made submissions in support of the recommended penalty.

The solicitor did not contest the recommendation.

It was moved by Mr. Armstrong, seconded by Ms. Ross that the recommended penalty be adopted.

Carried

The Treasurer administered the reprimand.

Re: Robert Noel BATES - Burlington

The Secretary placed the matter before Convocation.

Messrs. Topp, Crowe, Chahbar, Adams, Wright, Swaye and Feinstein and Ms. Eberts withdrew for this matter.

Mr. Stuart appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

The Report of the Discipline Committee dated December 12th, 1996 together with the Affidavit of Service was filed as Exhibit 1. The Acknowledgement, Declaration and Consent was filed as Exhibit 2. The Report of the Discipline Committee dated February 27th, 1997 together with the Affidavit of Service was filed as Exhibit 3.

A letter from Mr. Bates dated March 31st, 1997 was circulated to the Benchers.

Mr. Stuart made submissions that the letter from the solicitor should not be considered in evidence.

There were questions from the Bench.

It was moved by Ms. Sealy, seconded by Mr. MacKenzie that the February Report not be considered at this time.

Withdrawn

It was moved by Mr. Armstrong, seconded by Ms. Ross that both Reports be adjourned.

Counsel, the reporter and the public withdrew.

3rd April, 1997

It was moved by Mr. Armstrong, seconded by Ms. Ross that both Reports be adjourned to the next Discipline Convocation at the end of April peremptory to the solicitor.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision to adjourn these matters to the next Discipline Convocation in April peremptory to the solicitor.

Convocation took a brief recess at 10:25 a.m. and resumed at 10:45 a.m.

Re: Clayton James WALLACE - Hamilton

The Secretary placed the matter before Convocation.

Mr. Marrocco and Ms. Angeles withdrew for this matter.

Ms. Cohen appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Ms. Cohen advised that this matter had been before Convocation in January and that the Report had been adopted and that Convocation was seised of this matter.

A quorum of Benchers who were present at the January Convocation and seised of this matter were present as follows:

(The Treasurer), Adams, Arnup, Backhouse, Crowe, DelZotto, Gottlieb, MacKenzie, Sealy, Strosberg and Wright.

The recommended penalty of the Discipline Committee was that the solicitor be suspended until he complies with his obligation to produce his books and records to the Law Society and that he be suspended for a further period of 3 months following his compliance.

Ms. Cohen made submissions in support of the recommended penalty and advised that there was another Complaint issued against the solicitor.

Counsel, the reporter and the public withdrew.

It was moved by Mr. DelZotto, seconded by Ms. Backhouse that the solicitor be disbarred.

Lost

The recommended penalty was voted on and adopted.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended until he complied with his obligation concerning his books and records and that following his compliance with his books and records obligation he be suspended a further 3 months.

Re: Laura Lee BOUGHNER - Windsor

The Secretary placed the matter before Convocation.

Messrs. Marrocco and Manes, Ms. Backhouse and Ms. Angeles withdrew for this matter.

Ms. Cohen appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

3rd April, 1997

Convocation had before it the Report of the Discipline Committee dated 12th February, 1997, together with an Affidavit of Service sworn 5th March, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 19th February, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy Backhouse, Chair
Nora Angeles
Ronald Manes

In the matter of
The Law Society Act
and in the matter of

Rhonda Cohen
for the Society

LAURA LEE BOUGHNER
of the City
of Windsor
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 19, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 8, 1996 Complaint D217/96 was issued against Laura Lee Boughner alleging that she was guilty of professional misconduct.

The matter was heard in public on November 19, 1996 before this Committee composed of Nancy Backhouse, Chair, Nora Angeles and Ronald Manes. The Solicitor did not attend the hearing, nor was she represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

3rd April, 1997

Complaint D217/96

2. a) She failed to serve her client, Scotiabank, in a conscientious, diligent and efficient manner in that she failed to complete a mortgage transaction on a property described as lot 189, plan 932, in the City of Windsor, Ontario;
- c) she failed to reply to communications from the Law Society regarding a complaint by Mr. Harry D. Clout of Scotiabank.

Service

Numerous attempts as set out in the Service Brief (Exhibit 1) were made to contact the Solicitor. The Solicitor confirmed to Rhonda Cohen, Counsel for the Law Society, that she had received the Complaint and did not intend to participate in the hearing.

The Facts

The Solicitor has been administratively suspended since December 31, 1995, for non-payment of her E&O Insurance levy. She was previously suspended May 27, 1994, for the same reason and reinstated on June 16, 1994. Her annual filing for four years is in arrears. The Solicitor has confirmed that she no longer intends to practise law.

The Law Society received a complaint from the Bank of Nova Scotia to the following effect: the Solicitor acted on behalf of Scotia Mortgage Corporation on a refinancing of a mortgage for its client, John Bedard. The Bank advanced \$101,439.00 to Mr. Bedard. The Solicitor failed to register the mortgage or follow through with subsequent discharges. Harry Clout, Branch Manager of the Bank of Nova Scotia, testified that when the Bank had failed to receive a reporting letter from the Solicitor after numerous attempts to obtain the same, it requisitioned a title abstract on Mr. Bedard's property. This showed that the mortgage had not been registered and the subsequent discharges had not been made. Another solicitor was retained on behalf of the Bank. The original file could not be located so new documents were drawn up and registered at a cost to the Bank of Nova Scotia of \$1,600.00.

Mr. Clout confirmed receiving an account from the Solicitor (Tab.1 of Exhibit 5) which charged as a disbursement \$50.00 for registering a mortgage and \$150.00 for registering 3 subsequent discharges, none of which was done.

Tab. 11 of Exhibit 5 is a purported letter from the Solicitor to Harry Clout which provides an explanation in response to his complaint to the Law Society. In this letter, which was never received by Mr. Clout, the Solicitor says that the mortgage was registered on the wrong property and that the discharges were not registered because the client had failed to satisfy her account. This letter was found by the Law Society Auditor, having apparently been in an unrelated file of the Solicitor. Despite Counsel for the Law Society having forwarded this letter to the Solicitor, no further explanation was forthcoming from her.

An Affidavit was filed by John Bedard sworn November 18, 1996, confirming the evidence of Mr. Clout and denying that he had failed to satisfy the Solicitor's account.

3rd April, 1997

RECOMMENDATION AS TO PENALTY

The Committee recommends that Laura Lee Boughner be suspended for a period of three months commencing at the conclusion of her administrative suspension, and that she pay the Law Society costs in the amount of \$1,000. The suspension is to continue in effect until the costs are paid.

REASONS FOR RECOMMENDATION

In the absence of any participation by the Solicitor in this hearing and the complete failure of the Solicitor to provide any explanation to this Committee for the conduct complained of, we have no choice but to find that the Solicitor is guilty of professional misconduct.

The Scotiabank which advanced \$101,439.00 to its client in reliance upon the Solicitor, was left in an unprotected position and was forced, at its own expense, to hire another solicitor to perform the required work. The Solicitor rendered an account to the Scotiabank which included disbursement charges which she did not incur. When Scotiabank made repeated efforts to obtain a reporting letter from the Solicitor, none was received, nor was any response made by the Solicitor to the complaint by Scotiabank to the Law Society. The misconduct is serious. The Law Society has been put to considerable expense by the Solicitor's failure to co-operate.

Under the circumstances, we recommend that the appropriate penalty is a three month suspension to commence on the completion of the Solicitor's administrative suspension. We further recommend that the Solicitor be required to pay costs of \$1,000.00

The Solicitor has no prior disciplinary record apart from her failure to make her filings. In the absence of such a disciplinary record, we are not inclined to accept the submission of Counsel for the Law Society that the Solicitor should be disbarred for ungovernability.

Laura Lee Boughner was called to the Bar on March 26, 1990.

ALL OF WHICH is respectfully submitted

DATED this 12th day of February, 1997

Nancy Backhouse
Chair

There were no submissions. The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months commencing at the conclusion of her administrative suspension and that she pay the Society's costs in the amount of \$1,000 and that the suspension continue until the costs are paid.

Ms. Cohen made brief submissions in support of the recommended penalty.

Counsel, the reporter and the public withdrew.

3rd April, 1997

It was moved by Mr. Gottlieb, seconded by Ms. Ross that the order for costs be deleted.

Lost

It was moved by Mr. Epstein, seconded by Ms. Sealy that the recommended penalty be adopted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 3 months and pay the Society's costs.

Re: Dean Randall ADEMA - Brampton

The Secretary placed the matter before Convocation.

Mr. Wright withdrew for this matter.

Ms. Elizabeth Cowie appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 12th September, 1996, together with an Affidavit of Service sworn 20th September, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail to 201-6 Etobicoke Drive on 19th September, 1996 (marked Exhibit 1), the Report and Affidavit of Service sworn 5th November, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail to 7820 McLaughlin Road on 21st October, 1996 (marked Exhibit 2), the Report and Affidavit of Attempted Service sworn 10th December, 1996 by James Gooding that he had attempted service on the solicitor personally on 3rd and 4th December, 1996 (marked Exhibit 3) the Report and the Affidavit of Service sworn 14th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to 201-6 Etobicoke Drive on 7th February, 1997 (marked Exhibit 4) and the Report and Affidavit of Service sworn 14th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to 7820 McLaughlin Road on 7th February, 1997 (marked Exhibit 5). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Bradley H. Wright, Chair

In the matter of
The Law Society Act
and in the matter of

Allan Maclure
for the Society

DEAN RANDALL ADEMA
of the City
of Brampton
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 12, 1996

3rd April, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 4, 1996, Complaint D115/96 was issued against Dean Randall Adema alleging that he was guilty of professional misconduct.

The matter was heard in public on June 12, 1996, before Bradley H. Wright at a single panel Bencher hearing. The Solicitor did not attend the hearing and was not represented by counsel. Allan Maclure appeared on behalf of the Law Society.

DECISION

The following particular of professional misconduct was found to have been established:

- 2.a) He failed to file with the Society within six months of the termination of his fiscal year ending March 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

RECOMMENDATION AS TO PENALTY

The Committee finds Dean Randall Adema guilty of professional misconduct, and recommends that he be suspended for a period of three months and from month to month thereafter until his filings are completed to the satisfaction of the Law Society, such suspension to commence at the conclusion of his current administrative suspension. It is further recommended that the Solicitor pay Law Society costs in the amount of \$500 forthwith.

REASONS FOR RECOMMENDATION

In May 1995, the Member was invited to attend for failing to file Forms 2 and 3. In January 1996, the Member was disciplined for failing to cooperate with the Society on an audit of his books and records.

In the latter case, the Member indicated in the Agreed Statement of Facts that he wished to resign, but his request was denied, and he was reprimanded in Committee. As he did not attend the hearing, the reprimand was issued by way of a written decision. The Society attempted to serve the decision on him but was unsuccessful. Thus, technically, the reprimand has not been administered.

This is the third time the Member has been involved in discipline proceedings in 13 months, and he is currently under administrative suspension. He was properly served but did not attend the hearing.

3rd April, 1997

The circumstances call for more than the usual period of suspension for failing to file. This is the second complaint for failing to file and he has also failed to cooperate with an audit.

While it is doubtful that he will be specifically deterred from misconduct given his desire to resign and failure to attend the hearing, the profession ought to continue to be made aware that ignoring the obligations to file and to cooperate with not be treated lightly.

Dean Randall Adema was called to the Bar on the 9th day of February, 1993.

ALL OF WHICH is respectfully submitted

DATED this 12th day of September, 1996

Bradley H. Wright
Chair

There were no submissions. The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months and from month to month thereafter until his filings are completed to the satisfaction of the Law Society, such suspension to commence at the conclusion of his current administrative suspension. In addition the solicitor is to pay the Society's costs of \$500.

Ms. Cowie made submissions in support of the recommended penalty.

There were questions from the Bench.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Epstein, seconded by Ms. Ross that the recommended penalty be adopted but be amended by deleting costs and the reference to the Invitation to Attend.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 3 months and from month to month thereafter until his filings were completed, such suspension to commence at the conclusion of his current administrative suspension. In addition the order for costs was deleted and reference to the Invitation to Attend in the Report was deleted.

Re: Christopher Stanley GODFREY - North York

The Secretary placed the matter before Convocation.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

3rd April, 1997

Convocation had before it the Report of the Discipline Committee dated 26th November, 1996, together with an Affidavit of Service sworn 16th December, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 2nd December, 1996 (marked Exhibit 1), and the Report and Affidavit of Service sworn 14th January, 1997 by David Munro that he had effected service on the solicitor personally on 11th January, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Neil Finkelstein, Chair
Larry A. Banack
Thomas E. Cole

In the matter of
The Law Society Act
and in the matter of

Christina Budweth
for the Society

CHRISTOPHER STANLEY GODFREY
of the City
of North York
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 1, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 5, 1996 Complaint D160/96 was issued against Christopher Stanley Godfrey alleging that he was guilty of professional misconduct.

The matter was heard in public on October 1, 1996 before this Committee comprising Neil Finkelstein, Chair, Larry A. Banack and Thomas E. Cole. The Solicitor attended the hearing and represented himself. Christina Budweth appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D160/96

2. a) Regarding his client, David Gerlach:

3rd April, 1997

- (I) on or about August 10, 1994, the Solicitor misapplied \$21,771.54 more or less from his mixed trust account by paying this amount from his mixed trust account to various third parties for the benefit of his client;
 - (ii) between September 10, 1994 and October 25, 1994, the Solicitor misappropriated \$8,228.46 more or less from his mixed trust account in partial payment of an account owing by this client.
- b) In connection with a mortgage transaction involving clients 828665 Ontario Limited and Magaly Bianchini:
- (I) the Solicitor breached Rule 5 of the Rules of Professional Conduct by acting in a conflict of interest in that he acted for both the borrower and the lender without complying with the provisions of Rule 5;
 - (ii) the Solicitor failed to serve his client Magaly Bianchini in this transaction by:
 - a) failing to disclose to her that there were arrears on the existing first mortgage at the date of her mortgage advance;
 - b) releasing the mortgage funds without ensuring that the term of the advance had been met namely without ensuring Ms. Bianchini had obtained first mortgage security; and
 - c) by failing to report and account to her respecting the transaction.
- (c) In circumstances relating to the mortgage transaction described in particular 2(b) above, the Solicitor allowed his mixed trust account to be overdrawn in the amount of \$9,554.13, more or less, on or about January 16, 1995.
- (d) In regard to the mortgage transaction described in particular 2(b) above, the Solicitor preferred his own interests to those of his client Bianchini by paying to himself \$84,712.39 from the Bianchini mortgage advance for fees owing to him by the president of 828665 Ontario Limited without ensuring the client, Bianchini, received the first mortgage security which the Solicitor had been instructed to obtain.
- (e) In the circumstances of particular 2(b) above, the Solicitor breached Section 15.2 of Regulation 708 under the *Law Society Act* by failing to complete and maintain Forms 4 and 5.
- (f) In regard to a sale of assets by the Solicitor's client Fiorentino Di Michele to Philip Demolition Inc., the Solicitor breached his undertaking dated March 3, 1993, given to Philip Demolition Inc., to withhold sufficient funds from the proceeds of the sale to discharge a charge on the equipment being purchased by Philip Demolition Inc.
- (g) The Solicitor breached his fiduciary duty to clients by pre-signing blank trust cheques for use by his office staff in his, the Solicitor's, absence from the office.

3rd April, 1997

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D160/96 and is prepared to proceed with a hearing of this matter on October 1 and 2, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D160/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitutes professional misconduct.

IV. FACTS

4. The Solicitor is 46 years of age. He was called to the Bar in 1978 and thereafter practised in the firm of Armstrong, Godfrey & Keller until August of 1978. He then practised in the firm of Godfrey & Keller until November 1, 1979. During the period 1979-1981 he was a sole practitioner. He ceased sole practice in 1981 to become involved in real estate and development. In April 1991 he began the practice of law again as a sole practitioner. During the period April 1992 to July 1993 he was part of a partnership with another solicitor which ended in July 1993 when he began practice as a sole practitioner again. The Solicitor has been suspended for non-payment of his annual fee as of December 31, 1995.

Particular 2(a)(I) Misapplication - \$21,771.54

5. B. Gerlach and Son are excavators. The Solicitor and Mr. Gerlach were long time acquaintances. Mr. Gerlach was a long standing client of the firm. For a significant period of time in the Solicitor's firms history, Mr. Gerlach was either the largest or second largest client.

6. On July 27, 1994, the Solicitor held \$100,330.36 in trust for Gerlach. As a result of a payment of fees and a transfer of funds to Mr. Gerlach's wife's company, this amount was reduced to \$42, 228.46 by July 31, 1994.

7. While the Solicitor was on vacation in August, 1994, Mr. Gerlach called the Solicitor's junior secretary, Vicki Coristine and asked to be paid \$110,000.00 of his money being held in the Solicitor's trust account. Mr. Gerlach told Ms. Coristine that if he was not paid these funds, he would report the Solicitor to the Law Society. Ms. Coristine spoke to the Solicitor, the Solicitor informed her that he was taking part of Mr. Gerlach's funds held in trust for fees and that she should send Mr. Gerlach a cheque for approximately \$40,000.00. At that time, \$30,000.00 was transferred to the Solicitor's general account and credited against Gerlach's fees.

3rd April, 1997

8. Ms. Coristine sent Mr. Gerlach a letter dated July 26, 1994 regarding the demand for payment but as she did not receive a reply from Mr. Gerlach, the funds referred to in this letter were not sent by her. Instead, upon the Solicitor's return from vacation, he met with Mr. Gerlach who pressured him for the funds and as a result issued to him a cheque in the amount of \$64,000.00 from his trust account. This payment created a \$21,771.54 trust shortage in the client trust sub-ledger and in the firm's mixed trust account. A copy of the ledger is attached as Exhibit 2 to this Agreed Statement of Facts.

Particular 2(a)(ii) Misappropriation - \$8,228.46

9. On September 10, 1994, the Solicitor paid to himself, out of the Gerlach trust sub-ledger a cheque in the amount of \$4,878.46. On September 25, 1994, the Solicitor paid to himself, out of the Gerlach trust sub-ledger two further amounts of \$2,137.22 and \$1,212.78. By making these three payments to himself, the Solicitor, when there were insufficient funds in the client trust ledger to allow him to do so, the Solicitor misappropriated \$8,228.46 from the general client pool of funds.

10. According to the Solicitor, Mr. Gerlach owed him a great deal of money and the funds he had taken represented a portion, but not all of the monies owing to him. A copy of the account receivable scheduled prepared by the Solicitor which lists invoices owing by Gerlach is attached as Exhibit 3 to this Agreed Statement of Facts. The auditor's review of the Solicitor's account receivable list as compared to a random sample of invoices reflected in the list have satisfied the auditor that amounts allegedly owing by Mr. Gerlach to the Solicitor were indeed owing. At this time the Solicitor had another client, Mr. Enzo Mizzi, who also owed him a substantial amount of money and had promised payment of \$30,000.00 by way of equipment from which the Solicitor intended to repay the shortage. That was never received.

11. A review of the Solicitor's file indicates a correspondence between the Solicitor and Mr. Gerlach which reveals a growing lack of confidence between the two and confirms the substantial amounts owing by Mr. Gerlach to the Solicitor. Copies of this correspondence are attached collectively as Exhibit 4 to this Agreed Statement of Facts.

12. Following the attendance of the Law Society at the Solicitor's office and the discovery of the trust shortage, the Solicitor contacted his bookkeeper, Leslie Cudney to discuss the shortage. Ms. Cudney had notified the Solicitor in August that he did not have the funds to pay Mr. Gerlach but he insisted on drawing the \$64,000.00 cheque in any event. The Solicitor acknowledges that at the time he issued the cheque he knew it would create an overdraft but succumbed to Mr. Gerlach's pressure and felt that it would be covered by Mr. Mizzi's funds expected shortly thereafter. In December during the Law Society audit of his account, the Solicitor and Ms. Cudney agreed she would accept the blame for the shortage as a bookkeeping error and she agreed to do so. Later, Ms. Cudney had a change of heart and advised the Solicitor's secretary and an employed lawyer in his office of her concerns regarding the trust shortage. During a conversation with the auditor in February, 1995, the Solicitor admitted that he initially planned to place the blame for the shortage with his bookkeeper.

3rd April, 1997

Particular 2(b)(I) 828665 and Magaly Bianchini

13. Magaly Bianchini had been a client of the Solicitor's for approximately 6-7 months prior to December 1994 although they had known one another for several years prior to that. In or about December, 1994, the Solicitor asked Ms. Bianchini if she was interested in investing money in a mortgage. Ms. Bianchini subsequently advanced \$150,000.00 which was invested in a first mortgage on a property located at 138 Lawson Road, Scarborough, Ontario. The property had been purchased in April 1994 by 828665 Ontario Limited ("828665") for the purpose of dividing the land into four lots and erecting a dwelling on each. The president of 828665 is Enzo Mizzi. The shares of the corporation are wholly owned by Mr. Mizzi's brother-in-law, Patrick Campisi. Both Enzo Mizzi and 828665 were represented by the Solicitor at times material to this particular.

14. The Solicitor prepared a commitment letter dated December 21, 1994 to 828665. He faxed the letter to Ms. Bianchini with a note requesting that she photocopy it onto her letterhead, sign it and fax it back to him. A piece of the Solicitor's original letter and the copy with Ms. Bianchini's letter are attached collectively as Exhibit 5 to this Agreed Statement of Facts.

15. Although the letter states that a promissory note shall be executed, no note was ever signed. The letter also indicated that Ms. Bianchini's mortgage would be in first position; however, no postponement of the existing first mortgages was ever registered, and the Bianchini mortgage remains in second position.

16. The letter further stated that the funds provided by Ms. Bianchini would not be released until all of the conditions of the security were satisfied; however, approximately \$84,712.39 of the funds were taken by the Solicitor for his own fees and the security required by the lender was never provided.

17. On the same day that Ms. Bianchini faxed the signed commitment to the Solicitor, the Solicitor received a fax from the solicitors representing the first mortgagee advising him that the mortgage was \$14,808.21 in arrears. The Solicitor did not report this to Ms. Bianchini. The Solicitor would testify that he believed Ms. Bianchini was aware of the arrears on the 1st mortgage and power of sale proceedings. Ms. Bianchini would testify that this was not the case. The Solicitor and the Society have agreed that a determination of this fact will not be a factor in the determination as to penalty.

18. Ms. Bianchini's money was received on December 21, 1994. The mortgage was registered on December 22, 1994. The purchase price of the property in April 1994 was \$370,000.00 and the first mortgage registered was \$330,000.00. The schedule attached to the first mortgage stated:

"Provided the mortgage is not in default and the mortgagor/chargor has completed the land severances before building lots and the mortgagor/chargor has caused to be erected on such lot or lots new premises in accordance with the Municipal By-Laws and upon such premises being completed such that the same are fully bricked and have the roof installed, of obtaining a postponement of the within Mortgage for each lot upon which such premises have been so erected in favour of a new first construction Mortgage on each lot up to the amount of seventy-five thousand dollars (\$75,000.00) per lot."

19. On December 22, 1994, the Solicitor sent a letter to Fleury, Comery attempting to confirm the postponement of the first mortgage.

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20. By return fax, a copy of which is attached as Exhibit 6 to this Agreed Statement of Facts, the solicitors for the first mortgagee denied the request for postponement.

21. The following chart summarizes the payments made by the Solicitor with Ms. Bianchini's \$147,000.00 advance:

Date	Amount Transferred to General Account	Amount Paid to Sub-Contractors	Amount Paid to Ontario Court	Amount Paid to Bring First Mortgage into Good Standing	Account Balance	Document Book - Tabs	Notes
Dec. 21, 1994					\$147,000.00		
Dec. 22, 1994	\$50,000.00				\$97,000.00	17, 25, 26, 27 and 28	
Jan. 5, 1995	\$15,000.00				\$82,000.00	17, 29, 30, 31 and 32	
Jan. 10, 1995		\$4,850.00			\$77,150.00	17, 33 and 30	1
Jan. 11, 1995	\$15,044.00				\$62,106.00	17, 34, 30, 35 and 32	
Jan. 12, 1995				\$14,997.69	\$47,108.31	17, 36 and 30	2
Jan. 12, 1995			\$25,000.00		\$22,108.31	17, 39 and 30	3
Jan. 16, 1995	\$4,668.39				\$17,439.92	17, 40, 30, 41 and 32	
Jan. 16, 1995		\$3,494.05			\$13,945.87	17, 42 and 30	4
Jan. 16, 1995		Cheques totalling \$23,500.00 (#204 - \$4,500.00, #205 - \$9,000.00 and #207 - \$10,000.00)			(\$9,554.13)	43 and 44	5
Total	\$84,712.39	\$31,844.05	\$25,000.00	\$14,997.69			

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22. On January 12, 1995, the Solicitor wrote to Fleury, Comery, stating:

"Two of the houses will have their roofs on at the end of this week. I would ask that you prepare postponements of your mortgage in favour of our Second Mortgage on those two lots...I am making arrangements to replace your mortgage which I understand becomes due on February 24, 1995."

A copy of the Solicitor's letter is attached as Exhibit 7 to this Agreed Statement of Facts.

23. Having reference to the chart contacted above, as at January 16, 1995, there was \$13,945.87 left in the trust ledger account of 828665. The Solicitor had, however, written a number of cheques on December 16, 1994 totalling \$29,000.00. When these cheques cleared the account, a shortage of \$9,554.13 was created in the firm's mixed trust account. The Solicitor would testify that a \$25,000.00 certified cheque that he did not intend to be cashed was cashed without his knowledge or consent. While the Society cannot confirm or deny this, the Solicitor admits that his failure to properly maintain care and control of the cheque and the resultant trust shortage warrants a finding on this particular.

24. On January 18, 1995, Enzo Mizzi faxed the Solicitor's office with a list of sub-contractors that needed to be paid that day. The total amount to be paid was \$29,200.00 but as there was already a shortage in the trust account, this further amount could not be paid.

25. On January 20, 1995, Mr. Mizzi told the Society's auditor that although he owed the Solicitor a substantial amount in fees, they had reached an agreement whereby he would pay \$2,000.00 per month. Mr. Mizzi indicated he was shocked that the Solicitor had already taken fees out of the mortgage advance without discussing it with him. The Solicitor does not accept this evidence. The Society takes the position that it is not necessary for this Committee to reconcile this in order to make a determination of this matter.

26. On February 6, 1995, the Solicitor prepared and faxed a Statutory Declaration to Mr. Mizzi for his signature, a copy of which is attached as Exhibit 8 to this Agreed Statement of Facts. Mr. Mizzi did not sign the Declaration as he advised the Law Society auditor he did not agree with its contents.

27. On March 14, 1995, a Notice of Sale under the Mortgage was issued by Fleury, Comery.

28. Throughout the transaction, the Solicitor did not advise either Ms. Bianchini or Mr. Mizzi to obtain independent legal advice or representation. Nor did he advise them of the fact that he was acting in a conflict of interest and the possible implications of that conflict. After January 1995, the Solicitor did so.

29. The Solicitor paid himself a total of \$84,712.39 from the Bianchini mortgage advance and although he had told Ms. Bianchini that some of her advance would be used to pay his fees, he paid himself a sum far in excess of that represented to her and did so without ensuring that she had received the security she had been promised before doing so. As such, the Solicitor preferred his own interests to those of his client Bianchini.

Particular 2(e) Breach of Section 15.2 of Regulation 708

30. The Solicitor's explanation for failing to prepare and maintain Forms 4 and 5 in the Bianchini file was that he was not aware he was required to maintain these forms in order to comply with Section 15.2 of Regulation 708.

Particular 2(f) Breach of Undertaking

31. The Solicitor acted for Fiorentino Di Michele on an asset sale to Philip Demolition Inc. By letter dated March 3, 1993, a copy of which is attached as Exhibit 9 to this Agreed Statement of Facts, the Solicitor certified to Philip that he had conducted PPSA Registration searches which indicated that Mr. Di Michele had good and valid title to the said equipment. The Solicitor also undertook to withhold sufficient funds from the proceeds of sale to discharge the charge upon the assets being transferred.

32. On March 5, 1993, Philip provided to the Solicitor \$92,575.20. The Solicitor paid out the entire proceeds from trust instead of withholding sufficient funds to discharge registered security interest. The Solicitor had been told by his client that he was in the process of negotiating. The Solicitor in paying out the funds several weeks after receiving them provided the client with a \$25,000.00 certified cheque payable to the debtor, and a release to be signed by the debtor. He was advised by the client that he had settled the account for this amount.

33. In September 1993 the Solicitor received the uncashed, certified cheque representing the holdback back from the client and it was reccredited to the trust account. Further monies were paid out after receipt of the cheque (\$10,000.00 to the client, \$11,000.00 to Richie Bros Auctioneers for equipment and \$3,044.00 to the Solicitor for fees). The Solicitor later repaid the trust account from his own funds and the \$25,000.00 is still available.

34. There were in fact two PPSA Registrations against assets transferred. A PPSA search revealed that two financing statements for \$15,000.00 were registered against the assets in February 1993, both expired on June 5, 1993. On April 15, 1994, the solicitors for Philips caused to be issued a Statement of Claim against Mr. Di Michele and the Solicitor for damages for breach of a written undertaking and misrepresentation. A copy of the Statement of Claim is attached as Exhibit 10 to this Agreed Statement of Facts. The Solicitor did not defend the Philip action and has been noted in default. The Solicitor wrote to the solicitors for Bonavia, the lender by letter dated May 17, 1994, a copy of which is attached as Exhibit 11 to this Agreed Statement of Facts.

Particular 2(g) Pre-signing Blank Trust Cheques

35. The Solicitor has made a practice of leaving signed blank trust cheques whenever he leaves his office on vacation or for business reasons.

V. DISCIPLINE HISTORY

36. The Solicitor does not have a prior discipline history.

DATED at Toronto this 30th day of September, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Christopher Stanely Godfrey be disbarred.

REASONS FOR RECOMMENDATION

This matter proceeded upon an Agreed Statement of Facts which was marked as Exhibit 2. Mr. Godfrey gave evidence as well.

Mr. Godfrey accepts all of the facts in the Agreed Statement of Facts as correct except as otherwise noted in the Agreed Statement itself, and agrees that they constitute professional misconduct. Mr. Godfrey also agrees that he should no longer be a member of the Law Society of Upper Canada or be able to practise law. The only issue is whether he should be disbarred or given permission to resign.

Mr. Godfrey accepts responsibility for his actions, but asks that he not be disbarred. He relies heavily on the report of Dr. Michael Bloudoff that he suffers from an illness diagnosed as "pathological compulsive gambling". This addiction as a compulsive gambler does not relate to the frequenting of casinos or race tracks, rather engaging in financial schemes which are of extremely high risk'.

Mr. Godfrey's father was an alcoholic and, from the age of ten years old onward, Mr. Godfrey was essentially the male adult of the family. This gave him what he characterized as a tremendous sense of hopelessness, because he could not effect solutions to family problems. He had his first depressive episode in grade nine, explained it to his home room teacher, and his home room teacher was not able to deal with it. After that incident, Mr. Godfrey did not expose his depression until well into adulthood.

Mr. Godfrey attended the University of Waterloo, married after his second year, and attended the University of Toronto Law School commencing in 1973. Just prior to his call to the Ontario Bar, Mr. Godfrey was diagnosed with malignant melanoma. He had surgery which was successful in the physical sense, but, as he described it, the experience 'unhinged him'. He did not seek or receive any treatment for the psychological effects of having serious cancer. Instead, he started to exhibit a pattern of gambling activity - that is, engaging in high risk business ventures - around that time.

Mr. Godfrey practised as a sole practitioner from 1979 to 1981, and then went into the real estate development business until 1991. He returned to the practice of law in 1991, but apparently with an understanding that he was not suited to the pressures which made him leave the practice of law in the first place in 1981. He testified that he 'somehow forgot' those pressures. In 1991, on his return to the practice of law, he wrote out a series of rules to guide him. Those notes were marked as Exhibit 5. The rules which he wrote for himself are precisely the rules which he broke and which brings him before us.

It is the Committee's view that, Mr. Godfrey knew the difference between right and wrong, and knew that he was not totally in control of himself when he went back into practice in 1991. He nevertheless chose to go back into practice and to impose the risks of that on the public.

Mr. Godfrey's specific submission to us is that, as a consequence of his addiction to gambling, he committed the series of acts of professional misconduct itemized in the complaint. The Committee does not agree that his compulsive gambling, if that is what it is, is an extenuating circumstance in this case.

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Dealing firstly with the Di Michele particular, 2(f), Mr. Godfrey testified that his non-fulfillment of his undertaking was based upon his need to be friends with his client. In fact, Mr. Godfrey understood that the breach of the undertaking was wrong. He admitted that he simply made a judgment that all would work out in the end, and it did not. There is nothing

in this particular, 2(f), which is addressed by Dr. Bloudoff's letter or which could be excused by 'compulsive gambling'.

Mr. Godfrey has referred us to the Discipline Committee's report in Gordon Carmen DeMarco heard on January 28, 1982, and he particularly relies upon the following quotation from page 14 of the case:

"In a general way, but as applicable specifically to the Solicitor, Mr. Morrow testified that both the business and moral judgment of the pathological gambler are severely impaired. He cannot properly predict the consequences of his gambling. The dominant theme of his life is to have money to continue gambling. He was questioned as to whether and when a compulsive gambler would know right from wrong and his evidence was that at all times the compulsive gambler would know intellectually that taking money to feed his gambling activity was wrong but that the impulse to gamble has become so dominant that the gambler is unable to resist it and it is in control of his moral judgment. Specifically, in respect of stealing money for this purpose, the pathological gambler rationalizes the act of stealing on the basis that he is really only borrowing and that the money will be paid back."

What is particularly important in the above quotation is that, in DeMarco, the Solicitor was questioned as to whether, and when, a compulsive gambler would know right from wrong, and his evidence was that at all times the compulsive gambler would know intellectually that taking money to feed his gambling activity was wrong, but that the impulse to gamble has become so dominant that the gambler is unable to resist it and it is in control of his moral judgment.

In this case, the Committee is satisfied that Mr. Godfrey knew right from wrong, both intellectually and morally, and that he simply wanted to perpetuate his practice in order to remain in business. It will become more clear as we review the Gerlach and Bianchini complaints, that this simply involved either robbing Peter to pay Paul or, as in the Bianchini case, robbing Peter to pay himself. We might also say, in this regard that, in DeMarco, the committee said the following:

"The consequence of the expert evidence was that the Solicitor's uncontrollable impulse to gamble put his cognitive judgment and moral conscience 'on hold', not non-existent."

We are all of the view that such is not the case here. Mr. Godfrey's 'uncontrollable impulse to gamble' was not what drove his behaviour.

With regard to the Gerlach particular, 2(a), Mr. Godfrey's evidence is that Mr. Gerlach was a consistent client, but that Mr. Gerlach owed him a considerable amount of money. Somehow, notwithstanding that Mr. Gerlach owed him a considerable amount of money, and not vice versa, Mr. Gerlach managed to threaten Mr. Godfrey that, if Mr. Godfrey did not pay him certain sums of money, Mr. Gerlach would sue Mr. Godfrey and complain to the Law Society. Mr.

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Godfrey gave Mr. Gerlach money from his trust account, putting his trust account in arrears to the tune of \$21,000. Again, Mr. Godfrey admitted that he knew that what he was doing was wrong. He suggests, however, that the 'gambling' part of his misdeed was the carrying on of his law practice itself. He somehow made the implausible submission to us that carrying on his law practice was the sort of high risk venture to which he was addicted, and that accordingly he should not suffer disbarment for the misapplication of the \$21,000 which, he said, flowed from this "gambling addiction".

The Committee is of the view that really all he was doing was taking from his trust account to pay a particular client, and leaving his trust account in an imbalance.

In the Bianchini particular, 2(d), the context is important. By the time the facts giving rise to it arose, the Law Society of Upper Canada was auditing Mr. Godfrey's practice and was aware of the deficit in his trust account consequent upon the Gerlach matter. Mr. Godfrey testified that he was 'in a panic' as a consequence of the Gerlach shortage having been revealed. He thought that the only way to get out of his predicament was to make a large amount of money and repay everyone. He was, as he described it, 'desperate for money'. He therefore took the \$84,700 from the Bianchini account for himself. He admitted to the Committee that Ms. Bianchini did not owe him the money, and indeed her receivable to him was not in excess of \$2,000. Mr. Godfrey took it for his own benefit in order to keep his practice going and to keep a business venture in Nigeria afloat.

Mr. Godfrey said that he was in a panic and was desperate for money. Dr. Bloudoff does not say that this is the result of any gambling addiction. The Committee is of the view that all it demonstrates is a desire to keep his practice going by whatever means are at hand.

We note that, with respect to the Gerlach matter in particular 2(a), \$25,000 is still owing to Mr. Godfrey's trust account. With respect to the Bianchini matter, the entire amount of \$147,000 is outstanding, including the \$84,700 which he took personally from Ms. Bianchini. Mr. Godfrey accepts responsibility for this, but it is unlikely that he will ever be able to repay the money.

We have been referred to the following cases: Farouq Mallal, Ronald Paul Milrod, Daniel Gilad Cooper, David John Fraser, Henry Peter Steponaitis, and Gordon Carmen DeMarco.

In our view the DeMarco and Mallal cases are good background but not helpful to Mr. Godfrey. We have already reviewed the DeMarco case and, for the reasons given, are of the opinion that it is inapplicable here. As to Mallal, in particular at page 11, the case is clearly distinguishable from the one at bar. First, there was medical evidence that compulsive cocaine use seriously interfered with Mr. Mallal's judgment and decision making. In this case, this was far more a matter of taking money from trust funds to keep Mr. Godfrey's practice going than an addiction to gambling. It is interesting, in that regard, to note that Dr. Bloudoff does not relate his comments to any of the specific complaints. Mallal is also distinguishable because, in that case, Mallal retained a lawyer to make arrangements for his clients and instructed that lawyer to report the misappropriations to the Law Society. In this case, Mr. Godfrey not only did not self-report, but in fact took from Ms. Bianchini because he was 'in a panic' that the Law Society had already discovered the Gerlach matter.

For the foregoing reasons, the Committee is of the opinion that there are no extenuating circumstances in this case, and the general rule of disbarment ought to follow.

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Christopher Stanley Godfrey was called to the Bar on April 14, 1978.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1996

Neil Finkelstein
Chair

There were no submissions. The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Ms. Budweth made submissions in support of the recommended penalty.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Topp, seconded by Ms. Puccini that the solicitor be permitted to resign failing which he would be disbarred.

Lost

It was moved by Mr. Epstein, seconded by Ms. Ross that the recommended penalty be adopted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be disbarred.

Re: Frederick Bernard SUSSMAN - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Marrocco, Wilson, Crowe and Wright withdrew for this matter.

Ms. Budweth appeared for the Society. Mr. Glen Schruder, counsel for the solicitor and the solicitor were present by way of a conference call.

Convocation had before it the Report of the Discipline Committee dated 28th November, 1996, together with an Affidavit of Service sworn 16th December, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 2nd December, 1996 (marked Exhibit 1) together a letter from Mr. Schruder to Ms. Budweth dated April 1st, 1997 and a letter from Ms. Budweth addressed to the solicitor dated March 11th, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Richmond C. E. Wilson, Chair
Marshall Crowe
Bradley Wright

In the matter of
The Law Society Act
and in the matter of

Neil Perrier
for the Society

FREDERICK BERNARD SUSSMANN
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 16, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

1. On May 31, 1996, Complaint D46/96 was issued against Frederick Bernard Sussmann alleging that he was guilty of professional misconduct.

2. The matter was heard in public on October the 16th 1996, before a Committee composed of Richmond C. E. Wilson, Q.C., Chair, Marshall Crowe and Bradley Wright. At the opening of the Hearing Mr. Sussmann was not in attendance. Some forty minutes into the Hearing Mr. Sussmann was heard to arrive. The Hearing was adjourned to receive Mr. Sussmann's explanation for his absence and to hear his application that the Hearing be dismissed. Upon being advised that his request would not be granted, Mr. Sussmann left the Hearing and took no further part in the proceedings. Mr. Sussmann was not represented at any point in the Hearing. Neil Perrier appeared on behalf of the Law Society.

DECISION

3. The following particulars of professional misconduct were found to have been established:

- (a) He failed to serve his client Keith Woleston in a conscientious, diligent and efficient manner in that:
 - (1) He failed to provide proper legal advice regarding the client's dispute with his Mortgagee.
 - (2) He rendered accounts to his client which were excessive.

3rd April, 1997

- (3) He failed to refund a retainer with interest and costs in the amount of \$3,100 to his client pursuant to an Order of an Assessment Officer contained in Reasons dated September 9, 1992 and Reasons Re: Costs dated November 1992,
- (b) He failed to serve his clients Hubert and Helen Weber in a conscientious, diligent and efficient manner in that:
 - (1) He persuaded his clients to pursue litigation that was frivolous and vexatious.
 - (2) He rendered accounts to his clients that were excessive.
 - (3) He failed to refund fees with interest and costs in the amount of \$47,553.24 to his clients pursuant to an Order of an Assessment Officer contained in Reasons dated June 14, 1995 and Reasons on Costs dated August 16, 1995.

REASONS FOR DECISION

Background

4. The Solicitor, Frederick Bernard Sussmann, is identified in the complaint as being of the City of Ottawa, and on his appearance it was clear he was a frail elderly man suffering from some lapses of memory. From materials gleaned from an earlier report by a Committee of the Bench, it is identified that he was called to the Bar of the Province of Ontario on the 15th of June 1973. Prior to that date he was a member of the Bar of the State of New York, U.S.A. and has been such since March of 1944. He came to Canada to join the Faculty of Law at the University of Ottawa, and upon his retirement took up practice in the City of Ottawa. We were also advised that at present his status is that of a member "administratively suspended". We were also advised that as a result of the administrative suspension, Mr. Sussmann is not carrying on practice. At the time that the alleged misconduct took place, being September 1990 to February of 1991 and December 1993 to October 1994, Mr. Sussmann is identified as having an office and advertising material in the yellow pages. Letterhead used by Mr. Sussmann in June of 1994 advised the reader that he was "Professor of Law Emeritus, University of Ottawa", and had an office at Barrister House on Elgin Street in Ottawa, together with an office on 44th Street in New York City.

Issue of Service and Process

5. Before commencing the Hearing, Mr. Perrier was requested to provide confirmation of appropriate service. The Committee was advised that the original complaint was mailed by registered post and that the acknowledgement card had been returned with Mr. Sussmann's signature on it. By letter dated August 7, 1996, Mr. Perrier confirmed earlier correspondence and advised Mr. Sussmann that the date of the Hearing would be October 7, 1996. He further advised that if there was any difficulty with this date the Hearing's Assignment Tribunal would be meeting on September 3, 1996, at which time Mr. Sussmann's expressed desire not to proceed with this matter might be dealt with. The penultimate paragraph provides as follows:

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" It will be the Law Society's position at that time that this matter should proceed in October. Given that there is another Hearing scheduled for October 16th, it will be my position that this matter should be set to proceed on October 16" (Exhibit 2, of the Hearing).

6. On approximately September 23, Mr. Sussmann contacted Mr. Perrier by telephone and indicated that he would be requesting an adjournment because he intended to seek leave to appeal the decision of the Court of Appeal confirming the earlier decision of the Taxing Master under which he became obliged to repay the Webers all fees paid to date. The objection to proceeding was not acceded to by Mr. Perrier on that occasion and this refusal to accede to the objection was confirmed in writing. On Friday, October 11, 1996, Mr. Perrier again responded to Mr. Sussmann's call again requesting the same adjournment. The information provided to Mr. Sussmann at that time again confirmed that no adjournment would be acceptable to Mr. Perrier and Mr. Perrier confirmed the time and place of the Hearing. As Mr. Sussmann had not yet arrived, the Board determined that there had been adequate service and that the matter should proceed in Mr. Sussmann's absence.

7. Approximately forty minutes into the Hearing, Mr. Sussmann arrived and explained his lateness as being either a result of traffic conditions, his failure to remember the fact of his being required to attend at this Hearing until he checked his voice mail, or the fact that he had left his jacket at home. Having made his explanation, Mr. Sussmann was advised that the Hearing had commenced in his absence and that the panel was aware that he had previously indicated to Mr. Perrier that he wished an adjournment. This request for an adjournment was not pressed. Instead, Mr. Sussmann argued for a dismissal on the basis that any finding on the Weber matter depended upon the outcome of his pending appeal of the decision of Assessment Officer Lamoureux given on the 14th of June 1995. This decision was not confirmed by Mr. Sussmann and accordingly the matter was heard by Mr. Justice Soubliere on the 15th of January, 1996 (decision being granted on March 20, 1996) in which the decision of Assessment Officer Lamoureux was confirmed in all respects. Costs were awarded against Mr. Sussmann in the amount of \$2,270. Mr. Sussmann advised that this decision had been appealed to the Court of Appeal and that on the 18th of June 1996, a decision had been given against him from the Bench dismissing the appeal. Mr. Sussmann advised that he had sixty days in which to file his request to the Supreme Court of Canada for leave to appeal and that while this matter had not yet been attended to it was his intention to do so. It was pointed out to him that even accepting his understanding that July and August would not be counted within the sixty day framework, there were only two days left in which to file the notice. Mr. Sussmann responded that he believed that further leave could be provided to him to extend the time for such a matter to be appealed.

8. As a rhetorical question, Mr. Sussmann was asked if he was prepared to proceed on the Woleston matter as it stood independent of the Weber matter. Mr. Sussmann responded that he would not be prepared to proceed on the Woleston matter as it was clearly "de minimus". It was pointed out to him that the evidence suggested that the matter was not "de minimus", but he refused to change his position.

9. Mr. Sussmann was given complete opportunity to explain his position. He said that the basis of his appeal would be that the Assessment Officer Lamoureux, not being a lawyer, was incompetent to make the finding and that presumably the matter should be reheard ab initio. Having heard from Mr. Perrier, the Committee determined that the public interest could only be served by proceeding at this time. Mr. Sussmann would have ample opportunity to provide evidence with regard to his position and he was assured that the lack of finality would be understood by the Board, but that the matter would

3rd April, 1997

proceed. Mr. Sussmann then rose and indicated that he was leaving. He was warned that the matters were of sufficient gravity that disbarment might be the penalty and that his failure to avail himself of the opportunity to cross examine the witnesses and to provide evidence on his own part might be prejudicial to his position. Notwithstanding this admonition and warning, Mr. Sussmann left the room and did not return.

10. The panel was of the opinion that regardless of the bona fides of Mr. Sussmann's presentation and his sincerity in launching an appeal to the Supreme Court of Canada and the apparent improbability of its success, there was the entire Woleston matter to be heard, and that two of the three allegations in the Weber matter had nothing to do with whether accounts were excessive. In addition there had already been two reviews both confirming Assessment Officer Lamoureux' Decision on the Weber account, one by Mr. Justice Soubliere and one by the Court of Appeal.

Facts

11. The Matter of Keith Woleston

Keith Woleston gave evidence before the panel. He is a real estate broker who in May 1990 was the owner of the equity of redemption of an apartment building on Flora Street, in the City of Ottawa. At this time an acquaintance, Mr. Robinson, was employed by Mr. Sussmann to "learn to be a paralegal". In May of 1990 Mr. Robinson invited Mr. Woleston to join with a group of others in their community to meet with Mr. Sussmann and to see whether Mr. Sussmann might assist them in their various problems. Mr. Woleston's problem was that the mortgage on his property and the realty taxes were in arrears and that he feared that he would receive a Notice of Power of Sale at any moment. Approximately \$3,100 were in arrears at the time Mr. Sussmann was consulted. Mr. Sussmann must have indicated that he might be of some assistance because, when Mr. Woleston's problems continued into September of 1990, he called Mr. Sussmann and had an appointment at his office on a Sunday. Having reviewed the facts with the client, Mr. Sussmann requested a retainer of \$1,000 and advised the client that the bank had acted entirely improperly and that he would resolve the matter. On the 17th of September 1990, an account was sent to Mr. Woleston indicating that Mr. Sussmann had spent 7 1/4 hours in dealing with the matter during the period September 3 to September 14, and that there was then owing \$87.50, being the balance of the account after deducting the retainer. On the 5th of October, 1990 Mr. Woleston was requested to attend to execute an affidavit, which he did.

12. No communication was received by Mr. Woleston thereafter. In mid December as a result of a conversation with Mr. Robinson, Mr. Woleston became worried that perhaps nothing further had happened on the file. Phone calls were made to Mr. Sussmann and in all instances they were not responded to. It was not until January 7th that Mr. Sussmann was reached by phone and a further appointment arranged. Mr. Sussmann advised Mr. Woleston that he had not proceeded any further with his matter because of Mr. Woleston's failure to provide funds. Mr. Woleston denies having received any request, and provided to the Committee Mr. Sussmann's account dated February 20, 1991 covering the period September 15, to October 5, 1990. It is alleged that in this period of time 16 1/4 hours were expended in pursuing the interests of Mr. Woleston. It was the finding of the panel that Mr. Sussmann had not communicated with Mr. Woleston in the interim and that his failure to communicate with his client and carry out his commitments to Mr. Woleston satisfied the onus on the Society to provide evidence that Mr. Sussmann "failed to provide proper legal advice regarding the client's dispute with his Mortgagee".

3rd April, 1997

13. Mr. Woleston gave evidence that he had arranged a line of credit of \$8000 in order to provide the initial retainer to Mr. Sussmann. It was urged upon the panel that from the initial interview in May of 1990, appropriate advice to Mr. Woleston would have been to protect his investment by borrowing the money and satisfying the demands of the Mortgagee. While this is an attractive conclusion, the panel was not in a position to conclude that Mr. Sussmann had any responsibility until September of 1990 when he was retained. The panel felt that the reasons of Assessment Officer Lamoureux in the subsequent assessment of the accounts, made at the initiative of Mr. Sussmann, provided sufficient evidence that Mr. Sussmann had not fulfilled his professional responsibilities. The reasons state in part as follows:

"Mr. Sussmann took the position that the Mortgagee did not act fairly with the Mortgagor and that this was a matter of equity and fair play. He stated that notwithstanding the fact that Mr. Woleston did not abide by the terms of the Mortgage notwithstanding the Mortgagee was exercising its rights under the Mortgage and notwithstanding the Statutes, Rules or Regulations or any documentation he may have signed, the Court should take into consideration the fact that Mr. Woleston was an average citizen with very little legal knowledge who was battling the giant corporation mortgagee and should allow the Mortgagor an opportunity to redeem the property and reverse the order obtained on the default.

"Mr. Sussmann stated that the procedure which he proposed to follow in this case was not what the average lawyer would do in these circumstances, because he says there is nobody in the area who, as he put it, "has the guts or the initiative to go against the normal procedure, break new ground, or set sail in uncharted waters". Mr. Bowley, the current solicitor for the client, stated that the remedy that the client was asking for is a simple and straightforward application for an Order to set aside the Order for the Writ of Possession and Vacating the Writ of Possession under the Default Rules. He added that this type of procedure is usually handled by Junior Counsel and in fact often delegated to Articling Students who are nearing the end of their Articles, subject to review by Senior Counsel."

14. By absenting himself from the Hearing, Mr. Sussmann lost any opportunity to expand on his position or explain away the findings of Mr. Lamoureux. In any event, the panel found that the case had been made on this issue.

15. The second allegation in this matter relates to excessive accounts. The decision of Mr. Lamoureux speaks for itself. Having reviewed the decision in the Court of Appeal in Cohen and Kealey and Blaney 1985, CPC (2nd) at 211, he concluded that, "I find that the services rendered by Mr. Sussmann are worth nothing to the client and I assess them at zero dollars. Mr. Woleston has paid \$1,000 as a retainer and it should be refunded to him."

16. The third allegation relates to Mr. Sussmann's failure to abide by the Order and repay the client. The panel accepted Mr. Woleston's evidence that he has received no money on this matter.

17. Mr. Woleston indicated that his new solicitor was successful in remedying part of the mortgage problem. The solution in part included a payment from the Client Compensation Fund. These monies related to matters other than Mr. Sussmann's account.

18. The Matter of Hubert and Helen Weber

The panel heard evidence regarding these allegations from Steven Malek, a solicitor subsequently retained by Mr. and Mrs. Weber, from Francois Henrie, the solicitor for a Condominium Corporation with which Mr. and Mrs. Weber were having difficulties, and from Mr. and Mrs. Weber. Witnesses were excluded and throughout the evidence of all witnesses was consistent as to the following:

19. Mr. and Mrs. Weber resided beside a Condominium. The Condominium Corporation engaged an engineer to examine some cracking in the basement. The Engineer's Report advised that the cracking was caused by the roots of the trees on the Weber property. Weber was asked by the Corporation to allow the Corporation to take down the offending trees. After consulting Robin MacKay, a solicitor practising in the community of Manotick, Mr. and Mrs. Weber were urged to accept a compromise position (the earlier offer by the Corporation having been withdrawn apparently because of the Webers' failure to immediately accept). Mrs. Weber was dissatisfied with the opinion provided by Mr. MacKay and found Mr. Sussmann's advertisement in the yellow pages in which Mr. Sussmann identified himself as being a former University Professor, now retired. Mrs. Weber explained that she and her husband were Belgian immigrants to Canada, and that in her background it was understood that "Professors" were men of eminence and it was that kind of an opinion which she sought. Mr. Sussmann attended upon her for an hour, charged her \$175.00 which was paid forthwith, and provided to her the advice that the Condominium Corporation had no right to insist that her trees be removed and that he would write a firm letter to them which would end further discussion. Mrs. Weber indicated that she would have to consult with her husband. Having consulted with her husband, she attended for a second visit. She was charged \$175.00 for this visit, and Mr. Sussmann indicated that he would soon get this matter settled. These two meetings took place on or about July 16 and July 23 in 1992. On September 4, 1992 (Exhibit 10), Mr. Sussmann submitted to Mrs. Weber an account for \$1,225.00, confirming that he had received \$350 against this account and that there was balance owing of \$875. It was Mr. Sussmann's allegation in the account that the additional 5 hours were occupied in researching the law and drafting a letter to the solicitors for the Condominium Corporation. It is germane to note that when Mr. Sussmann's accounts were later taxed, the account directed to Mrs. Weber and paid by her was not included in the matters. Mrs. Weber contends that it had been misplaced at the time of the assessment but that she had not thought it reasonable. Matters remained out of Mr. Sussmann's hands until about the 27th of October, 1993. In the interim, Mr. Weber had determined to remove the offending trees. By this stage the Corporation was no longer satisfied with this resolution and insisted that Mr. and Mrs. Weber reimburse them \$1,600 in legal fees. In October of 1993, the Corporation issued a Small Claims Court claim for this amount.

20. Mr. Weber, remembering his wife's discussion earlier with Mr. Sussmann, determined to bring the Small Claims Court claim to Mr. Sussmann. Mr. Weber candidly testified that he wished Mr. Sussmann to "stop them". Mr. Sussmann's advice was that Small Claims Court had a limit of only \$6,000 and that was not large enough. Mr. Sussmann indicated that he knew of a cause of action which would be successful and that he should be retained to proceed with a huge claim which could then be reduced in order to extract a settlement. In pursuit of this claim from the 15th of December 1993 to the 26th of October 1994, Mr. Sussmann alleges that he expended 215.5 hours and was entitled to bill a total of \$41,014.99 which includes disbursements of \$618.71 and G.S.T.

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of \$2,683.53. The activities of Mr. Sussmann included the preparation of a dispute in the Small Claims action, the preparation of a Claim in General Division for "damages in an amount to be determined for intentional infliction of nervous and emotional shock" and "interest pursuant to the provisions of *The Courts of Justice Act...*". While no specific sum was set out in the Claim, it was indicated that there was a loss of income of about \$25,000, and a loss of \$25,000 in the market value of the house. There was evidence that Mr. Sussmann believed that the claim was in the range of \$5,000,000. In an Offer to Settle dated June 27, 1994, Mr. Sussmann urges the solicitors for the Condominium Corporation to pay \$500,000 to each of Mr. and Mrs. Weber and indicates: "A conservative valuation for such intangible losses, would I submit be 2.5 million dollars for each of Mr. and Mrs. Weber. An Offer of Settlement for only 20% of these amounts is obviously most reasonable" (Exhibit 6). Mr. Weber was asked whether he had ever received any written material, or oral instruction as to the nature of Mr. Sussmann's approach to his problem. He agreed that correspondence arrived from time to time and provided to us two samples. One dated April 6, 1994 gives a brief factual report and includes a copy of the Revised Statement of Claim. It also includes one of the many accounts. The other is a letter dated October 26, 1994 arising out of Mr. Sussmann being requested to deliver the file to Mr. Malek, Mr. and Mrs. Weber's new solicitor. This letter is filed as Exhibit 11 and probably best reflects Mr. Sussmann's relationship with his clients. Mr. Sussmann begins by describing Mr. Malek's letter to him as "outrageous", and goes on to say:

"I will shortly advise him (Malek) that I shall complain of his conduct before the Law Society as in my view he has been guilty of gross professional misconduct and should be disciplined.... I do not blame you for trying to get back the money you paid me. The difficulty is as it has been all along, is that you simply don't understand the legal proceedings, and although I have explained them to you repeatedly many times, you still don't understand. Indeed as you told me on the telephone, you apparently thought that Mr. Francois Henrie (solicitor for the Condominium Corporation) had won because he talked twice as fast as I did. Yet you seemed to think that Judge Mercier was biased against me. I think so too and not only because of what I consider his ridiculous decision in your case, but because of his behaviour with respect to motions in other cases (another case - numbers 13 and 14 on the calendar) and some cases where he ruled as to motions not even on the calendar. I intend to complain of his conduct to the Canadian Judicial Council which has the power to discipline him. Meanwhile, I will give Mr. Malek the benefit of my thinking with respect to strategy if we lost the Motion (an Appeal and a new Motion of Settlement in a lesser amount). I believe that an Appeal must succeed even in Mr. Malek's hands, and I want you to win it. The Judge's bias should be one of the grounds of appeal and I shall offer Mr. Malek anything I can do to support the Appeal. In my filed Factum which he now has, he has all the other grounds."

21. The event which stimulated Mr. and Mrs. Weber's change of solicitors and Mr. Sussmann's comments was a successful Motion brought by the Condominium Corporation striking out and dismissing Mr. Sussmann's claim without a Hearing.

22. With regard to this matter, it is alleged that Mr. Sussmann "persuaded his clients to pursue litigation that was frivolous and vexatious". The mere fact that Mr. Sussmann's advice resulted in a Trial Judge striking out the Claim as drafted does not in itself result in a finding of professional misconduct. In this case it is Mr. Sussmann's patent failure to properly advise his clients as to the financial perils they were running when, instead of litigating a \$1,600 Small Claims Court claim on its merits, they began a \$5,000,000 lawsuit without so much as a single piece of engineering evidence, medical evidence, real estate valuations, or other indication that such a claim had any basis in fact. Mr. Sussmann's tactic was to use a major bluff in hopes that the Condominium Corporation would settle. Mr. Weber testified that, although he was paying significant sums of money, his 'Professor' lawyer was not somebody to be questioned or challenged and that lawyers needed to be paid. In the letter of October 26, 1994, Mr. Sussmann even urges that the case proceed on the basis that Judge Mercier "was biased against me". No foundation for this inappropriate allegation was given. Fortunately for Mr. and Mrs. Weber, their travels took them to Mr. Malek who appropriately assessed the situation.

23. Among the steps taken by Mr. Malek was the assessment of the accounts submitted to Mr. Weber. Mr. Lamoureux reviewed the matter in its entirety and followed the appropriate method of analysis. At page 9 of his report he says:

"It appears to me that the Webers at the urging of Mr. Sussmann spent some \$50,000 for defending a \$1,600 claim and pursuing an action against the Condominium Corporation which Mr. Justice Mercier described and dealt with as follows: 'there is nothing extraordinary about this action. If I were to permit this lawsuit based on intentional infliction of emotional shock I would have to do the same with any civil action, because the commencement of a civil action necessarily constitutes the intentional infliction of emotional shock upon the Defendants'...."

"Having considered all of the above I find that the services rendered are of no value to the client and I assess them at zero. The Webers have paid \$40,453.24 and it will be refunded to them. My report shall issue accordingly."

24. In addition, costs were awarded by Mr. Lamoureux in the amount of \$5,400 and interest was awarded to them in the amount of \$2,100.

25. The panel appreciates that there is a remote possibility that the Decision of Mr. Lamoureux in this matter may again be reviewed, this time by the Supreme Court of Canada. Nevertheless, following the principles enunciated in Rule 9 with regard to Fees and Disbursements, the need to protect the public, and the jurisprudence enunciated in the Decision of Mr. Lamoureux, the panel is of the opinion that, Mr. Sussmann rendered accounts to his clients which were excessive. The panel accepted Mr. and Mrs. Weber's evidence that no money has been repaid to them to date. Accordingly, the third allegation has been established.

26. In the unanimous view of the panel, professional misconduct on the part of the Member has been proven on all counts.

RECOMMENDATION AS TO PENALTY

27. The Committee recommends that Frederick Bernard Sussmann be disbarred.

REASONS FOR RECOMMENDATION

28. Having reviewed the evidence and having had the opportunity to meet briefly with Mr. Sussmann, the panel was satisfied that Mr. Sussmann should not at this time be offering his services to the public. There was no evidence which would suggest anything to mitigate Mr. Sussmann's treatment of his clients at the time of the events under review here. Mr. Sussmann's approach to the practice of law and to the acceptance of the appropriate responsibilities to his clients extended at least from September 1990 to October 1994. Mr. Sussmann's failure to redeem his financial obligations or make any arrangements for them up to the date of the Hearing tell of a continuing denial of responsibility. Mr. Sussmann, in the instances before us appears to be blind to the most basic premises under which members of our Society are permitted to practice. Rules 3 and 9 are the Society's attempt to make specific an over-riding premise that when clients seek the advice of their lawyer, they are entitled to receive competent opinions based upon a sensible understanding of the matter under discussion. Mr. Sussmann's approach to these clients and his obvious failure to recognize his professional responsibilities are such that he must be precluded from continuing to have an opportunity to be engaged for legal services by the public.

29. Mr. Sussmann may have had an exemplary career as a law professor and may have had a period in which as a practitioner his approach was acceptable. Mr. Sussmann was invited to provide to the panel evidence which would assist in this regard. Not only was none provided to the panel, there was a complete lack of remorse. His depiction of the predicament still facing Mr. Woleston as "de minimus" is both insensitive to the client and demeaning to the profession. Not only did Mr. Woleston require the services of another solicitor, but the reimbursement received from the Law Society only partly reimbursed him for his problems. He continues to be out of pocket about \$10,000 plus loss of income which he estimates to be about \$50,000 - \$60,000. Mr. Sussmann has still not repaid him any of the monies ordered by the Court.

30. With regard to Mr. and Mrs. Weber, Mr. Sussmann managed to bill them \$11,759.95 during the one month of August, 1994, and a total of more than \$40,000. The information in the fee sheets indicated that the August dockets were largely for opposing the Application for Summary Judgment. The Application for Summary Judgment was billed later in the fee sheet for September of that year. In light of the scathing indictment of the Assessment Officer, it is beyond comprehension how Mr. Sussmann could continue to refuse to reimburse even a portion of the monies. His assertion that he wants a third review of the Weber assessment, not on any matter of substance, but rather that the duly appointed officer of the Court was incompetent to fulfil his functions, is a matter of great concern. The fact that Mr. Sussmann had attained a level of some eminence in his teaching career cannot stand in mitigation in this matter. There was no evidence of feebleness of mind or body while these events were happening. There was no evidence of medical explanation for his lack of appropriate behaviour, in particular, his grossly excessive billing.

31. Disbarment may seem a harsh conclusion to a fine career in the law, but the purpose of the discipline process is to maintain the good reputation of the profession even, if necessary, at the expense of an individual member's sensibilities. As stated in Bolton v Law Society, 1 WWR 512 at 519, "The reputation of the profession is more important than the fortunes of any individual member." Bolton also stands for the proposition (at page 519) that, as law society disciplinary orders are not primarily punitive, considerations which would ordinarily weigh in mitigation have less effect on the determination of a discipline order than in other contexts.

3rd April, 1997

32. The within complaints are the result of very serious lapses in professional conduct. The Committee carefully considered recommending that the Member be granted permission to resign, but concluded that permission to resign would not be the appropriate recommendation and would not send the required message to the profession and the public. Accordingly, the recommendation for disbarment was reached unanimously.

Frederick Bernard Sussmann was called to the Bar on June 15, 1973.

ALL OF WHICH is respectfully submitted

DATED this 28th day of November, 1996

Richmond C. E. Wilson
Chair

A preliminary point was raised by Mr. Schruder that the reference on page 2, 1st paragraph of Ms. Budweth's letter did not relate to dishonesty by the solicitor but that the monies paid out of the Compensation Fund were paid on the basis of compassion for clients in the unique circumstances.

In addition a correction was made to Ms. Budweth's letter, first page, last line, that the words "Rule 50" be deleted and changed to "section 30".

It was moved by Mr. Epstein, seconded by Ms. Backhouse that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Ms. Budweth did not oppose the solicitor's request to be permitted to resign as outlined in her letter dated March 11th, 1997.

Mr. Schruder made submissions in support of the solicitor being granted permission to resign.

It was moved by Mr. Epstein, seconded by Ms. Backhouse that the solicitor be granted permission to resign.

Carried

Re: Anthony Morris BUTLER - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Marrocco and Epstein withdrew for this matter.

Ms. Jane Ratchford appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 14th February, 1997, together with an Affidavit of Service sworn 5th March, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 20th February, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C.

In the matter of
The Law Society Act
and in the matter of

Jane Ratchford
for the Society

ANTHONY MORRIS BUTLER
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 12, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 15, 1996 Complaint D222/96 was issued against Anthony Morris Butler alleging that he was guilty of professional misconduct.

The matter was heard in public on December 12, 1996 before this Committee composed of Philip M. Epstein, Q.C. sitting as a single benchner. The Solicitor did not attend the hearing, nor was he represented. Jane Ratchford appeared on behalf of the Law Society.

DECISION

The following particular of professional misconduct was found to have been established:

2. a) he failed to reply to the Law Society regarding a complaint by Pauline Baron despite letters dated February 7, 1996 and April 12, 1996 and telephone requests on March 22, 1996 and April 2, 1996.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Anthony Morris Butler be suspended for a period of one month definite commencing at the conclusion of his current suspension, and from month to month thereafter until he has satisfactorily responded to the complaint of Ms. Baron.

3rd April, 1997

REASONS FOR RECOMMENDATION

I am satisfied as to service. The Solicitor did not appear. The Complaint has been established. There is a finding of professional misconduct. I am concerned that the Solicitor is ungovernable, but I suppose it's always possible that Mr. Butler has some explanation, and notwithstanding the proper service in accordance with the Act, I am concerned that perhaps Mr. Butler does not have actual notice of these proceedings.

In all of the circumstances, therefore, I think the appropriate penalty is that Mr. Butler be suspended for one month definite, if and when he is relieved of his earlier suspension for failure to file, then from month to month thereafter until he has satisfactorily responded to the complaint of Ms. Baron.

It may be that Mr. Butler can tender some other explanation that would persuade Convocation to impose a different penalty, but based on the limited information available to me, that is the best I can do in the circumstances.

Anthony Morris Butler was called to the Bar on March 19, 1970.

ALL OF WHICH is respectfully submitted

DATED this 14th day of February, 1997

Philip M. Epstein, Q.C.

Ms. Ratchford addressed the issue of service and that the solicitor was served in accordance with the Act.

The finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month definite commencing at the conclusion of the current suspension and from month to month thereafter until the solicitor has satisfactorily responded to the complaint of Ms. Baron.

Ms. Ratchford made brief submissions in support of the recommended penalty.

It was moved by Ms. Ross, seconded by Mr. Wilson that the recommended penalty be adopted but be amended by adding that the Complaint of Ms. Baron be responded to, to the satisfaction of the Secretary.

Carried

Re: Donald Frederick MORRIS - Ottawa

The Secretary placed the matter before Convocation.

Mr. Epstein withdrew for this matter.

Ms. Ratchford appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

3rd April, 1997

Convocation had before it the Report of the Discipline Committee dated 19th February, 1997, together with an Affidavit of Service sworn 5th March, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 26th February, 1997 (marked Exhibit 1), together with three letters from the solicitor dated March 17th, 1997, December 11th, 1996 and March 6th, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C.

In the matter of
The Law Society Act
and in the matter of

Jane Ratchford
for the Society

DONALD FREDERICK MORRIS
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 12, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 12, 1996 Complaint D198/96 was issued against Donald Frederick Morris alleging that he was guilty of professional misconduct.

The matter was heard in public on December 12, 1996 before this Committee composed of Philip Epstein, Q.C. sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented. An attempt was made to reach the Solicitor by conference call, he was unavailable and the matter was stood down. Another attempt was made to contact the Solicitor by conference call and again there was no answer. Jane Ratchford appeared on behalf of the Law Society.

DECISION

The following particular of professional misconduct was found to have been established:

2. a) he failed to file with the Society within six months of the termination of his fiscal years ending November 30, 1994 and November 30, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

3rd April, 1997

RECOMMENDATION AS TO PENALTY

The Committee recommends that Donald Frederick Morris be suspended for a period of one month definite and from month to month thereafter until his filings are made.

REASONS FOR RECOMMENDATION

I have reviewed the documents and the Compliant, and I have looked at the correspondence between the Society and Mr. Morris. I adjourned this matter on the last occasion so that Mr. Morris could appear and make representations. I am aware from the correspondence, that Mr. Morris thinks the Society is persecuting him. I am also cognizant of the fact that there appears to be a genuine effort on behalf of the Society to obtain the necessary documentation in some form of reasonable compromise, and the co-operation does not seem to be forthcoming in order to complete the matter. I do not think I have any alternative but to find Mr. Morris guilty of professional misconduct and I so find.

Again, in light of the correspondence, and not without due consideration for concerns that Mr. Morris raises in those letters, and also taking into account what appears to be Mr. Morris' difficult financial circumstances, I am left with no alternative at this point in time, other than to recommend to Convocation that Mr. Morris' rights and privileges be suspended for a period of one month definite and from month to month thereafter until his filings are made. Since Mr. Morris undoubtedly will have an opportunity to review my findings, I point out that unless the Law Society receives the proper forms and unless it is able to satisfy itself from examination of the books and records as to the propriety of Mr. Morris' practice, the public is left entirely unprotected.

I have no reason to doubt that Mr. Morris has acute financial problems, but he does not seem to understand and recognize that there are some fundamental obligations to the Society that must be met before his resignation can be processed.

It may be that upon reviewing these reasons, Mr. Morris can be in touch with the Society and work out some arrangement that can satisfy the Society's requirements and more importantly, satisfy the Society's obligation to protect the public, and also, be able to complete his resignation so that the matter can be finally closed. It may be that if some steps are taken before Convocation deals with this matter, then Convocation may be able to reconsider and adjust the penalty accordingly, but until that event occurs, I do not believe there is any alternative but to recommend to Convocation the penalty I have suggested, and I so recommend.

Donald Frederick Morris was called to the Bar on March 28, 1990.

ALL OF WHICH is respectfully submitted

DATED this 19th day of February, 1997

Philip Epstein, Q.C.

Ms. Ratchford made submissions in response to Mr. Morris' letters.

3rd April, 1997

There were questions from the Bench.

It was moved by Mr. Adams, seconded by Ms. Sealy that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month definite and from month to month thereafter until his filings are made.

It was moved by Mr. Strosberg, seconded by Mr. MacKenzie that the recommended penalty be adopted.

Carried

Re: Darlene Mae McOUAT - Toronto

The Secretary placed the matter before Convocation.

Mr. Stuart appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 11th December, 1996, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 30th January, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Stephen T. Goudge, Q.C.

In the matter of
The Law Society Act
and in the matter of

Glenn Stuart
for the Society

DARLENE MAE McOUAT
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

The complaint against the solicitor is that she failed to file with the Society by November 30, 1993 a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules, thereby contravening s.16(2) of Regulation 708 made pursuant to the Law Society Act.

3rd April, 1997

Proof of services, as required by the Act was tendered, indicating that there had been service of the complaint by registered to the last business address of the solicitor known to the Society.

The Society has also attempted to contact the solicitor through a Bell Canada telephone search and a motor vehicle search. Both have been unsuccessful.

Further, the Society has contacted the law firm where the solicitor was conducting her practice, that being the firm at her last known business address. That firm has no knowledge of the present whereabouts of the solicitor.

Service has therefore been made as required by the Act. All additional efforts that are reasonable in the circumstances have also been made. I determined to proceed, given proper service, despite the non-attendance of the solicitor.

The evidence called by the Society through the supervisor of the Annual Filing Department demonstrated the following.

The solicitor's last filing with the Society was November 30, 1994, covering the period of time from May, 1992 to May, 1994. This filing was made as a non-practicing solicitor.

In May, 1994 the solicitor advised the Society that she intended to resume practice and was noted at that point as a solicitor returning to practice on the Society's records.

Pursuant to the Society's requirements, the next filing due from the solicitor was required by November 30, 1995, one year after the last filing. Coincidentally, this date of November 30, 1995 coincides with six months following the last possible year end available to the solicitor, having recommenced practice in May of 1994.

The evidence discloses that the solicitor has not made the required filing as of November 30, 1995, nor to date.

This constitutes professional misconduct.

RECOMMENDED PENALTY

It is recommended that if the necessary filings are made with the Society by the solicitor by the time this matter is considered in Convocation, the penalty be a reprimand in Convocation.

If the necessary filings have not been made by that date, and if at that time the solicitor's filings are not brought up to date, it is recommended that the solicitor be suspended for one month and thereafter until all filings are up to date.

DATED this 11th day of December, 1996

Stephen T. Goudge

3rd April, 1997

Mr. Stuart addressed a procedural issue relating to the service of the Report not being in strict compliance of the 30 days notice and asked Convocation to waive compliance with no prejudice to the solicitor.

It was moved by Mr. Swaye, seconded by Mr. Adams that the 30 day requirement be waived on the facts in this matter.

Carried

The finding was confirmed and the Report was adopted.

Mr. Stuart advised that the necessary filings had not been made.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and thereafter until the filings were completed.

Mr. Stuart made submissions in support of the recommended penalty of the 1 month suspension and asked that the suspension commence at the end of the current administrative suspension.

It was moved by Mr. Epstein, seconded by Ms. Backhouse that the recommended penalty be adopted but amended by adding that the suspension commence at the end of the current administrative suspension.

Carried

Re: Michael James MOBERG - Niagara Falls

The Secretary placed the matter before Convocation.

Ms. Curtis and Mr. Marrocco withdrew for this matter.

Mr. Stuart appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 16th October, 1996, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 30th January, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 11th March, 1997. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Stephen T. Goudge, Q.C.

In the matter of
The Law Society Act
and in the matter of

Audrey Cado
for the Society

3rd April, 1997

MICHAEL JAMES MOBERG
of the City
of Niagara Falls
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

The complaint against the solicitor is that he failed to cooperate with the Law Society by failing to produce the books and records of his practice, despite telephone requests on January 10, January 11, January 17 and January 22, 1996 and letters dated January 31, February 22 and March 18, 1996.

This matter was endorsed on October 16, 1996 to proceed on November 13, 1996 and was ordered peremptory to the solicitor.

Service of this direction was made on the solicitor by regular mail.

In addition, the Society had a process server take a letter containing notice of this direction to the solicitor's residence door.

The solicitor did not attend today. Nonetheless I determined adequate notice had been given and the matter could proceed.

By letter of October 11, 1996, the solicitor agreed to the attached Agreed Statement of Facts, and that they constitute professional misconduct.

This Agreed Statement discloses that the solicitor was called to the bar on February 7, 1992.

Starting in January, 1996, the Law Society attempted to examine the books and records of the solicitor. These numerous and repeated attempts have been met with a complete lack of cooperation and, indeed, perhaps what one might characterize as obstruction. To date the solicitor has not made himself available in order that the books and records of his practice can be examined. Nor has he made his books and records available for examination.

In the circumstances, and given the attempts made by the Law Society to conduct the examination, it is clear that the solicitor's conduct constitutes professional misconduct.

RECOMMENDATION AS TO PENALTY

The solicitor has no prior discipline history.

Nonetheless, it is vital that in these circumstances the Society be able to access the books and records of the solicitor. Obstruction is not acceptable.

It is therefore recommended that unless the books and records of the Solicitor are produced to the examiner by the time this matter reaches Convocation, the solicitor be suspended for one month and thereafter until the books and records are properly produced.

3rd April, 1997

Given that the solicitor is currently under an administrative suspension for failure to pay his insurance premiums, such suspension should follow the termination of the administrative suspension.

The Society should also have its costs in the amount of \$1,250.00.

If indeed the solicitor produces his books and records by the time of Convocation, it is proposed that the penalty be a reprimand in Convocation.

DATED this 11th day of December, 1996

Stephen T. Goudge

Mr. Stuart asked Convocation to waive the 30 day requirement relating to the service of the Report.

It was moved by Ms. Sealy, seconded by Mr. Adams that the 30 day requirement be waived.

Carried

The finding was confirmed and the Report was adopted.

Mr. Stuart advised that the filings had not been completed.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and thereafter until the books and records are produced and that the suspension commence at the end of the administrative suspension. In addition the solicitor is to pay costs in the amount of \$1,250.

Mr. Stuart made submissions in support of the recommended penalty.

It was moved by Mr. Strosberg, seconded by Ms. Sealy that the recommended penalty be adopted.

Carried

Re: Charles Jellett PUBLLOW - Richmond

The Secretary placed the matter before Convocation.

Messrs. Topp and Crowe and Ms. Angeles withdrew for this matter.

Mr. Stuart appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 16th January, 1997, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to P. O. Box 509, Richmond on 29th January, 1997 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to 60 Bernier Terrace, Kanata on 30th January, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert B. Aaron, Chair
Nora Angeles
Marshall A. Crowe

In the matter of
The Law Society Act
and in the matter of

Glenn Stuart
for the Society

CHARLES JELLETT PUBLOW
of the Township
of Richmond
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 5, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 4, 1995, Complaint D373/95 was issued against Charles Jellett Publow alleging that he was guilty of professional misconduct.

The matter was heard in public on June 5, 1996, before this Committee composed of Robert B. Aaron, Chair, Nora Angeles and Marshall A. Crowe. The Solicitor did not attend the hearing nor was he represented by counsel. Glenn Stuart appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

- 2.a) He failed to deal with another solicitor and the Law Society courteously and in good faith in that:
 - i. he transmitted by facsimile machine on October 27, 1994, an abusive message to another solicitor, R. Ben Sorensen; and
 - ii. he wrote a letter to the Law Society dated May 30, 1995, complaining about R. Ben Sorensen which letter contained statements inconsistent with the proper tone of a communication from a solicitor.
- b) He failed to co-operate with the Law Society by failing to respond to Law Society communications dated May 18, 1995 and by failing to appear in Ottawa.

EVIDENCE

All of the evidence was presented and accepted in affidavit form.

3rd April, 1997

EVIDENCE OF RICHARD BEN SORENSEN:

Richard Ben Sorensen, Q.C., practises law in of the City of Ottawa. He made a complaint to the Law Society in October 1994 regarding the conduct of Charles J. Publow (referred to in these reasons as the "Barrister"). Sorensen is a Member in good standing of the Law Society of Upper Canada, having been called to the Bar on June 24, 1954. He received his Queen's Counsel on January 1, 1972. Sorensen maintains a general practice in Ottawa as a sole practitioner and has practised in the Ottawa area for all but six of his forty-one years of practice.

To the best of his recollection, he had no dealings with the Barrister prior to the events which are the subject of this complaint.

In October 1994, Sorensen acted for the vendor in a real estate transaction in which the Barrister acted for the purchaser. The transaction involved a parcel of approximately 650 acres of undeveloped rural land with a house and a trailer situated on the property. There were 6 or 8 lakes on the property, and they were spread over 5 or 6 lots in several concessions as part concessions.

At the time the agreement of purchase and sale was executed, Sorensen had available a large package of materials relating to the subject property, including surveys and photographic aerial surveys, which Sorensen offered to make available to the Barrister to assist him in completing the transaction and to apprise him and his client of the possibilities for 8 severances of parcels without the need for an application to the Land Severance Committee. He brusquely declined the offer.

On or about October 20, 1994, the Barrister faxed Sorensen an executed waiver of the conditions under the agreement of purchase and sale. On the same day, Sorensen provided the Barrister with a draft Statement of Adjustments and Direction for Funds.

The transaction was scheduled to close on October 27, 1994. On October 24, 1994, the Barrister contacted Sorensen's office and asked that the closing be extended as he was then out of town. Sorensen's client refused to extend the closing, and Sorensen advised the Barrister accordingly. Up to the scheduled date of closing, Sorensen had anticipated that the two lawyers would proceed with an escrow closing in this matter as the property would have to be registered in the registry office in Almonte which is at least 40 miles from Ottawa. In Sorensen's forty-one years of practice, it had been Sorensen's experience that lawyers in the Ottawa area would always arrange for escrow closings on out-of-town matters, and Sorensen assumed that this matter would be handled in the same manner. By correspondence between Sorensen's assistant and the Barrister's secretary this was agreed upon. Sorensen received the purchaser's requisitions and draft documentation from the Barrister shortly before noon on October 27, 1994, the date fixed for closing. While the submission of requisitions and draft documentation at noon on the date fixed for a real estate closing is not either misconduct or negligence in and of itself, this Committee finds that the practice of preparing for real estate transactions at or even after the very last minute is a dangerous practice which may indicate the lawyer's lack of attention to the matter, a potential negligence claim in the making and at the very least a lawyer who exhibits discourtesy to his own client, and the lawyer and client on the other side of the transaction. In this case, the conduct appears to have been at or near the beginning of a series of acts which led to drastic consequences for the Barrister.

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At noon on closing day, the Barrister advised Sorensen that he was not prepared to have an escrow closing in Sorensen's office or his (Publow's) office. Sorensen promptly sent a facsimile to the Barrister asking if they could complete an escrow closing whereby Sorensen would provide the executed documentation to him allowing him to hold the funds in trust until the transfer was registered and Sorensen would send a courier to his office for the money when he had completed his registration. A copy of the one page facsimile was filed as an Exhibit. This Committee finds that Sorensen's request was perfectly reasonable in the circumstances.

By facsimile dated October 27, 1994, a copy of which was filed, the Barrister replied to Sorensen and advised that he was not prepared to have any type of escrow closing but insisted that both parties attend at the Registry office in Almonte that afternoon. At the conclusion of the Barrister's letter, he added the following statement:

"If your firm cannot handle this transaction in a normal matter [sic] Sorensen suggest you transfer the file to a more capable firm."

At the time Sorensen received the Barrister's letter and documentation, it would have been extremely difficult to complete the transaction in Almonte, rather than by escrow closing in Ottawa..

Sorensen took great offence to the Barrister's gratuitous insult as Sorensen did not believe that there was any basis for it. Sorensen responded immediately to the Barrister, by letter, dated October 27, 1994, which Sorensen forwarded to him by fax, and demanded an immediate apology. A copy of that letter, dated October 27, 1994, was filed as an Exhibit.

The Barrister responded to Sorensen's letter by returning the second page of Sorensen's letter to him, by fax, with the following words scrawled across the bottom of the page: "TRY THIS BEN. FUCK YOU." A copy of the Barrister's return facsimile was filed as an exhibit.

Notwithstanding the Barrister's handling of, and conduct in, this matter, the two lawyers closed the transaction in Almonte late that afternoon. Subsequently, by letter dated October 31, 1994, a copy of which was filed as an Exhibit, Sorensen made a complaint to the Law Society of Upper Canada with respect to the Barrister's conduct.

Sorensen never received an apology from the Barrister with respect to this incident. Furthermore, other than correspondence forwarded to him by the Law Society, Sorensen received no correspondence from the Barrister regarding this incident.

In the summer of 1995, Sorensen was contacted by Dave Brown, a reporter with the Ottawa Citizen, regarding this matter. Mr. Brown had been contacted by Mr. Publow, who had advised him of this incident, and he called Sorensen for further comments. Sorensen's comments to Mr. Brown were accurately reflected in his article of July 7, 1995, a copy of which was filed as an Exhibit.

Under the heading "Paralegal job suits this lawyer," Brown's column states in part:

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"Publow says his frustration showed when he reacted injudiciously to a faxed message from another lawyer. A deal had been concluded, and at the end of it Ben Sorensen felt he was owed an apology.

Publow scrawled the F-word on the fax and sent it back. Soresen passed the matter on to the law society, and the discipline committee got involved.

"Here we are with this crushing [insurance] debt, and the law society can still spend time and money on a trivial matter like this" [Publow said.]

In December 1995, the Barrister commenced a Small Claims Court action against Sorensen for \$6,000 in damages for libel and defamation. The Barrister alleged that Sorensen defamed him in his letter of complaint to the Law Society.

The Barrister's action had been pre-tried at the time of the hearing in this matter. The Barrister was ordered to give particulars of the statements on which he is basing his claim by June 7, 1996, failing which his action would be dismissed. By June 5, Sorensen had not received the particulars which the Judge presiding on the pre-trial ordered be served upon him. The trial of the action was scheduled for June 18, 1996.

Sorensen deposed that he does not consider himself a prude. The use of the F... word is not in itself offensive to him. Sorensen uses it himself kibitzing with friends. It is not the word which offends, but rather the context in which it is used. Further, Sorensen took offence at the remark regarding the competence of his firm after the kindness Sorensen had offered to him.

EVIDENCE OF R. PAUL McCORMICK:

R. Paul McCormick, deposed that on June 10, 1991, he commenced his employment with the Law Society's Practice Advisory Service. He is currently a Staff Lawyer with the Complaints Department of the Law Society of Upper Canada and has held this position since September, 1991.

By letter dated October 31, 1994, R. Ben Sorensen made a complaint to the Law Society of Upper Canada concerning a fellow Barrister, Charles Jellett Publow (hereinafter "the Barrister").

McCormick sent a letter dated November 17, 1994 to the Barrister enclosing a copy of Mr. Sorensen's letter and requested the Barrister's reply within two weeks.

On December 19, 1994, McCormick received a handwritten note from the Barrister which reads as follows: "I don't feel the material you forwarded discloses very compelling evidence of the complainant[']s allegations. I feel that neither you nor I should spend a lot of time analyzing all the details of this personal feud."

McCormick sent a letter dated January 6, 1995 to the Barrister advising that the Law Society had concerns about the handwritten comments on page two of Mr. Sorensen's letter dated October 27, 1994. The Barrister was asked to respond within ten days.

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McCormick received a letter dated January 16, 1995 from the Barrister advising that he was concerned about the possible bias regarding the comment which was attributed to him personally although unsigned. In the letter, the Barrister further advised that the situation was that of a "momentary passionate response to an inflammatory letter".

On February 8, 1995, McCormick referred the matter to the Chair and Vice-Chairs of the Discipline Committee. He sent a letter dated February 23, 1995 to the Barrister advising that the Discipline Committee suggested that the Barrister offer an apology to Mr. Sorensen. McCormick did not receive a reply to this letter.

On March 9, 1995, McCormick again referred the matter to the Chair and Vice-Chairs of the Discipline Committee at which time an Invitation to Attend was authorized. The Invitation to Attend initially scheduled for May 19, 1995 in Ottawa was cancelled. McCormick sent a letter dated May 18, 1995 to the Barrister by registered mail and by courier providing the Barrister with alternative dates for the Invitation to Attend. McCormick advised the Barrister that, if the Society did not hear from him within seven days, the matter would be scheduled for June 16, 1995. The Law Society's registered letter was returned "unclaimed". The Law Society's letter sent by courier was delivered on May 23, 1995.

McCormick received a letter dated May 30, 1995 from the Barrister complaining about a letter Mr. Sorensen had sent him. The Barrister alleged that Mr. Sorensen's letter made statements which were inappropriate. McCormick did not receive a copy of Mr. Sorensen's letter referred to by the Barrister.

McCormick sent a letter dated June 9, 1995 to the Barrister requesting him to provide the Law Society with a copy of Mr. Sorensen's letter. On July 5, 1995, McCormick received a handwritten note from the Barrister on the Law Society's letter dated June 9, 1995 which reads as follows: "Kindly adress [sic] future correspondence concerning my complaint so that it shows that C. Publow is the complainant. - or are you too biased in this matter to do so?" The Barrister did not provide the letter McCormick requested of him. McCormick received no further correspondence or communication from the Barrister.

EVIDENCE OF GEORGETTE GAGNON:

Georgette Gagnon is a Discipline Counsel for the Law Society of Upper Canada and has been employed in this capacity since September 1994. On Friday, June 16, 1995, she was counsel for the Law Society on a variety of matters which were to be heard by a Discipline Committee of the Law Society in Ottawa. The first matter on the agenda that day was an invitation to attend for Charles Jellett Publow.

Mr. Publow did not attend at the Law Society's Ottawa offices, where the hearing was to be held, at any time prior to the conclusion of the hearings that day. At the end of the day, Ms. Gagnon advised the Discipline Committee that Mr. Publow was not in attendance for the invitation to attend and asked the Committee to endorse the matter to be placed before the Chairs and Vice-chairs of Discipline. The Complaint was endorsed accordingly.

EVIDENCE OF SCOTT KERR:

Scott Kerr is an Assistant Secretary of the Law Society of Upper Canada, with responsibility for the Complaints Department. He has been employed in this capacity since 1986.

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Kerr is responsible for supervising the Complaints Department of the Law Society. Accordingly, he oversees the investigations of complaints against members of the Law Society which are conducted by the staff of the Complaints Department. In cases where a complaint is made against a member of Kerr's Department's staff, Kerr assumes responsibility for reviewing the complaint and determining the most appropriate manner of addressing it.

In July 1995, the Complaints Department received a complaint against Paul McCormick ("McCormick"), a staff lawyer in the Complaints Department, from Charles Publow (the "Barrister"). McCormick had previously been assigned the investigation of a complaint made against the Barrister by Ben Sorensen, Q.C. ("Sorensen"), and a related complaint by the Barrister against Sorensen. This letter of complaint was referred to Kerr for reply as it related to a staff lawyer in the Complaints Department.

The following week, the Complaints Department received a further complaint from the Barrister against Sorensen. Given that the Barrister had at that time made a complaint against McCormick, who had carriage of the complaints by and against the Barrister, this letter was also referred to Kerr for a response.

By letter dated July 11, 1995 Kerr advised the Barrister that it was his view that there was no basis for the Law Society to investigate his complaint against Sorensen. Kerr further advised him that his complaint regarding McCormick would be brought to the attention of the Chair and Vice-Chairs of the Discipline Committee.

In Kerr's letter of July 11, 1995, he also advised the Barrister that his failure to attend at the invitation to attend was being referred to the Chair and Vice-Chairs of the Discipline Committee for further instructions. By letter dated August 29, 1995, Kerr advised the Barrister that the Chairs and Vice-Chairs of the Discipline Committee had considered both Sorensen's complaint against him and his complaints against Sorensen and McCormick. As a result of that review, a formal disciplinary Complaint had been issued against the Barrister. Conversely, the Chair and Vice-Chairs of the Discipline Committee had concluded that there was no basis for investigation of either of the complaints made by the Barrister.

Kerr had not received, at any time, any correspondence, either written or oral, from the Barrister in response to or in relation to Kerr's correspondence to him.

EVIDENCE OF GRANT CARL SMITH:

Grant Carl Smith of Ottawa deposed that he is the General Manager of Bouchard & Associates Process Inc., a company of process servers operating in the Ottawa-Carleton area.

As General Manager of Bouchard & Associates Process Inc., his responsibilities include reviewing requests for service when they are received to assess the work that is required, assigning work to various employees, reviewing problem assignments with the involved employee, and, in certain cases, serving materials himself.

Smith has been working as a process server with Bouchard & Associates Process Inc. for approximately ten years.

On April 23, 1996, Smith received a request for service from Michelle Brodie in the Discipline Department at the Law Society of Upper Canada. Ms. Brodie required his firm to serve a letter, dated April 18, 1996, from Glenn M. Stuart, Discipline Counsel, to Charles J. Publow, on Charles J. Publow (the "Barrister").

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The address for service indicated on the letter was Lot 2, Concession 4, North Gower. In accordance with Smith's usual practice when reviewing a request for service, he attempted to confirm that the address for service was correct. To that end, he sent Steve DeGooyer, an employee of Bouchard & Associates Process Inc., to North Gower to ascertain if the Barrister resided there. Smith was advised by Steve DeGooyer that, on the basis of his inquiries, he determined that the Barrister did not reside in North Gower. Subsequently, Smith attempted to find another address for the Barrister in the legal directory and obtained a business address at Suite 101, 308 Palladium Drive, Kanata. As a result of inquiries at that address, Smith determined that the Barrister's office was not located there, but the current tenant did provide a telephone number at which it was believed the Barrister could be reached. On April 25, 1996, Smith called this number, (613) 592-0494, and left a message for the Barrister to call him.

Smith subsequently confirmed with Bell Canada that the address at which (613) 592-0494 was listed was 60 Bernier Terrace, Kanata. The listing was not held in the Barrister's name, but in the name of C. Palen.

The Barrister returned Smith's message later on April 25, 1996. As the telephone numbers from which incoming calls are made are displayed on his telephone, Smith knew that the Barrister was calling from the same number at which Smith had left the message. As the listing was in a name other than the Barrister's, Smith became suspicious that the Barrister may attempt to evade service.

When the Barrister returned his call, Smith advised him who he was and that he had a letter from the Law Society which he had been retained to serve upon him. The Barrister refused to provide either his home telephone number or his home address, adding that he did not provide that information to anyone. Consequently, Smith suggested to him that Smith could meet with him at some place other than his residence. He refused to do so. Smith indicated to him again that he just wanted to serve this letter on him and asked him not to be a jerk about it. The Barrister told Smith to "fuck off" and slammed down the telephone.

Smith made some cross-references to confirm that the Barrister resided at 60 Bernier Terrace, Kanata, including ordering a title search for the property. On the evening of April 26, 1996, Smith sent Vince Akalski ("Akalski"), an employee of Bouchard & Associates Process Inc. to attempt service of the letter from the Law Society upon the Barrister at 60 Bernier Terrace, Kanata. Akalski was unable to effect service on the Barrister at that time.

In the ordinary course of the business of Bouchard & Associates Process Inc., a process server who is unable to effect service on a particular individual reports to Smith on the attempted service immediately after the attempt is made so that Smith may review with the process server what subsequent actions need to be taken. Following Akalski's attendance at 60 Bernier Terrace, Akalski advised Smith that the following series of events had occurred. Akalski had attended at the residence and rung the front door bell. Although he could see someone inside the property, no one answered the door; consequently, he proceeded to the back door where he knocked again. A woman answered the door; however, when Akalski identified himself, she denied knowing the Barrister and indicated that she was only there to feed the animals.

On April 28, 1996, Smith received a letter, dated April 27, 1996, from C. Palen, who purported to reside at 60 Bernier Terrace, Kanata, threatening legal actions if his company made any further attempts to contact the occupants at that address.

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Based on the contents and legalistic style of this letter, Smith formed the opinion at that time that the Barrister did in fact reside at that address.

On April 30, 1996, Smith received a radio call from Akalski. Akalski advised him that he was, at that time, at the Ottawa Court House with a conveyancer who had done a number of real estate closings with the Barrister, and, therefore, could identify him. He further advised that the Barrister was at the Court House and that Smith could serve him if he brought the letter to the Court House.

Smith immediately left his office and began driving to the Court House. While he was in transit, Smith was contacted by Akalski by cellular telephone. Akalski advised him that the Barrister had left the Court House on foot and boarded a municipal bus; however, Akalski followed the Barrister onto the bus, and he kept Smith advised of the bus location by radio.

Smith ultimately caught up to the bus and boarded the bus at a regular bus stop. Akalski identified the Barrister, and Smith served him with the letter from the Law Society. Upon Smith serving him, the Barrister denied that he was Charles Publow and suggested that there was some type of mistake. Smith confirmed to him that he had been served and left the bus. On April 30, 1996, Smith received the abstract of title for 60 Bernier Terrace, Kanata, showing Charles Publow as the registered owner of the property.

On May 1, 1996, Smith wrote to the Barrister to express to him his dismay at his conduct in this matter.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Charless Jellett Publow be disbarred.

REASONS FOR RECOMMENDATION

We were referred to the decision in the case of Peter Michael Hollyoake (Committee - November 18, 1991; Convocation December 6, 1991). In that case, involving one particular of professional misconduct and one of conduct unbecoming, the Barrister became emotionally involved and upset by the litigation he was handling, and wrote a letter to opposing counsel saying, at one point, "As usual, your client is full of shit." In the complaint of conduct unbecoming, the Barrister told Denise Ashby, a lawyer employed by the Law Society who was investigating a complaint against him, to "fuck off." The Committee in Hollyoake had no doubt that he was under enormous pressure because of family problems and litigation within his own family. The hearing before the Committee was adjourned and during the interval the Barrister sought and received psychiatric counselling. There was no allegation in that case of ungovernability nor did the record support such a finding. The Committee recommended a continuation of his counselling and a reprimand in Convocation, which was duly administered.

3rd April, 1997

The facts in Mr. Publow's case are far more serious. It is most unfortunate that this matter could not have been resolved much earlier by an apology or during the process of an Invitation to Attend. He obviously has some grievances with the Law Society or with the practice of law in general, but failed to appear or even write to the Committee to explain his actions. His evasion of service is but one example of the apparent contempt in which he holds the Law Society and its attempts to govern the profession.

Lawyers have a positive obligation to be courteous to each other and deal in good faith. Lawyers may not be abusive to fellow members of the bar, and must ensure that their communications with each other maintain the proper tone of a communication from a member of the Law Society.

Whatever other stresses face lawyers in daily life or in practice cannot be allowed to interfere with these positive and important obligations. Lawyers who show contempt for each other, and for the Law Society which governs them, in the way Mr. Publow has in this case, cannot be allowed to remain members of the Society. The Law Society must clearly and unequivocally state that lawyers must be civil and courteous to each other, and that a breach of the Rules in this regard invites a disciplinary response.

The conduct in this case needs to be dealt with severely. The Barrister is not prepared to govern himself under the authority of the Society. He refused to apologize or attend at the Invitation to Attend. He did not attend before this Committee.

A severe sanction is clearly required. The Society must assure the public that it can govern its members and we are unable to do that in this case. The Barrister has shown a clear and persistent refusal to abide by the authority of the Society.

There was no evidence before us that if a reprimand or even a suspension were administered in this complaint, Mr. Publow would be moved to alter his behaviour. He is currently under administrative suspension.

Charles Publow is ungovernable, and is guilty of professional misconduct. We are compelled and have no realistic alternative but to recommend disbarment.

Charles Jellett Publow was called to the Bar on the 19th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 16th day of January, 1997

Robert B. Aaron
Chair

Mr. Stuart made a preliminary point relating to the service of the Report.

There were questions from the Bench.

It was moved by Mr. MacKenzie, seconded by Mr. Strosberg that the finding of particular 2(a)(i) be established but that particular 2(a)(ii) be not found established.

Carried

3rd April, 1997

It was moved by Mr. Swaye but failed for want of a seconder that the matter be referred back to the Committee for further reasons.

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Mr. Stuart made submissions in support of the recommended penalty.

It was moved by Mr. Manes, seconded by Mr. DelZotto that the solicitor be reprimanded in Convocation at the next Discipline Convocation and failing his attendance that he be suspended until he appears and pay costs in the amount of \$2,500.

It was moved by Ms. Sealy, seconded by Mr. Strosberg that the solicitor be suspended for a period of 3 months following any administrative suspension.

It was moved by Mr. Epstein, seconded by Ms. Backhouse that the solicitor be suspended for a period of 30 days following the administrative suspension.

Counsel, the reporter and the public withdrew.

The Manes/DelZotto and Sealy/Strosberg motions were voted on and lost.

The Epstein/Backhouse motion was voted on and adopted.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 30 days following the administrative suspension.

Re: Timothy Michael KINNAIRD - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp, Crowe and Wright and Ms. Angeles withdrew for this matter.

Ms. Georgette Gagnon appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 16th January, 1997, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 29th January, 1997 (marked Exhibit 1), together with the Report and Affidavit of Attempted Service sworn 15th March, 1997 by Michael Mitchell that he had attempted to serve the solicitor personally on 10th and 11th March, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

3rd April, 1997

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert B. Aaron, Chair
Marshall Crowe
Nora Angeles

In the matter of
The Law Society Act
and in the matter of

Georgette Gagnon
for the Society

TIMOTHY MICHAEL KINNAIRD
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 5, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 15, 1995 Complaint D380/95 was issued, and on January 4, 1996 Complaint D382/95 was issued against Timothy Michael Kinnaird alleging that he was guilty of professional misconduct.

The matter was heard in public on June 5, 1996 before this Committee comprising Robert B. Aaron, Chair, Marshall Crowe and Nora Angeles. The Solicitor attended the hearing and represented himself. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D380/95

2. a) He failed to serve his client, C. Hall, in a conscientious, diligent and efficient manner by:
 - i) failing to provide a final report upon the completion of a mortgage transaction; and
 - ii) failing to respond to reasonable requests for information regarding the status of the matter.
- b) He failed to serve his client, Avril Jaffar, in a conscientious, diligent and efficient manner by:
 - i) failing to account for monies entrusted to him by the client;
 - ii) failing to respond to reasonable requests for information regarding the status of the matter; and

3rd April, 1997

- iii) failing to take steps to pursue the claim on behalf of the client.
- c) He failed to fulfil an obligation to another solicitor, Darla Ann Wilson, to attend to payment of outstanding experts' accounts upon assumption of the subject file from Darla Ann Wilson;
- d) He failed to honour a financial obligation incurred in connection with his practice in favour of Barry Brown in the amount of \$2,744.12;
- e) He failed to serve his client, Lilian Borysenko of Scotiabank, in a conscientious, diligent and efficient manner by:
 - i) failing to provide a final report upon the completion of a mortgage transaction; and
 - ii) failing to respond to reasonable requests for information regarding the status of the matter.
- f) He failed to fulfil a financial obligation to R.S. Miller incurred in connection with his practice in favour of R.S. Miller in the amount of \$1608.86;
- g) He failed to honour a financial obligation incurred in connection with his practice in favour of Louis Libman in the amount of \$125.00;
- h) He failed to serve his client, Kamal Jain, in a conscientious, diligent and efficient manner by:
 - i) failing to account for monies entrusted to him by the client;
 - ii) failing to respond to reasonable requests for information regarding the status of the matter; and
 - iii) failing to follow his client's instructions to proceed with a claim against Colour Your World.
- i) He failed to serve his client, Brian A. Hill, in a conscientious, diligent and efficient manner by failing to respond to reasonable requests for information regarding the status of the matter;
- j) He failed to serve his client, Mary Colli of Montreal Trust, in a conscientious, diligent and efficient manner by failing to provide a final report upon the completion of a mortgage transaction;
- k) He failed to honour a financial obligation incurred in connection with his practice in favour of Search Law in the amount of \$531.69;
- l) He failed to fulfil his agreement with Gluckstein, Neinstein to pay experts' accounts and account for professional services rendered by Gluckstein, Neinstein, former solicitors for his client, Paul D. Brown;
- m) He failed to answer with reasonable promptness professional letters and communications from the following solicitors:
 - i) Brian M. Jenkins;
 - ii) Stanley Lieberman; and
 - iii) Donald Fiske.
- n) He failed to serve his client, Ken Mitchell, in a conscientious, diligent and efficient manner by:

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- i) failing to account for monies entrusted to him by the client;
 - ii) failing to deliver the file to his client despite instructions to do so; and
 - iii) failing to ensure that a Statement of Defence was prepared and filed on behalf of the client.
- o) He failed to serve his client, Wilfred (Bud) Walters, in a conscientious, diligent and efficient manner, by failing to provide a proper and complete accounting;
- p) He failed to fulfil an undertaking dated September 1, 1994 to another solicitor, Stanley Lieberman, to deliver certified funds to the Town of Ajax in payment of taxes and to provide mortgage discharge registration particulars;
- q) He failed to honour a financial obligation, incurred in connection with his practice, to Price Waterhouse, which was reduced to judgment, in the amount of \$8,566.05, plus costs of \$625.00;
- r) He failed to reply to the Law Society regarding complaints by:
- i) Michael Koltun, despite letters to him April 6, 1994, July 19, 1994 and November 3, 1994 and a telephone request on July 6, 1994;
 - ii) C. Hall (Bank of Montreal), despite letters to him dated October 6, 1993, February 14, 1994, May 17, 1994 and September 21, 1994 and telephone requests on April 15, 1994, April 29, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
 - iii) Avril Jaffar, despite letters to him dated March 28, 1994, June 2, 1994 and September 21, 1994 and telephone requests on May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
 - iv) Darla Ann Wilson, despite letters to him dated February 24, 1994, May 9, 1994 and September 21, 1994 and telephone requests on April 15, 1994, April 29, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
 - v) Barry Brown, despite letters to him dated January 24, 1994, May 9, 1994 and September 21, 1994 and telephone requests on April 15, 1994, April 29, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
 - vi) Lilian Borysenko (Scotiabank), despite letters to him dated January 24, 1994, May 4, 1994 and September 21, 1994 and telephone requests on May 27, 1994, June 2, 1994 and June 15, 1994;
 - vii) R.S. Miller, despite letters to him dated October 7, 1994 and February 28, 1995 and a telephone message left on January 31, 1995;
 - viii) Beverly Pringle, despite letters to him dated November 16, 1993, February 18, 1994 and September 21, 1994 and telephone requests on January 17, 1994, February 4, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;

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- ix) Louis Libman, despite letters to him dated December 16, 1993, April 7, 1994 and September 21, 1994 and telephone requests on March 18, 1994, March 25, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
- x) Kamal Jain, despite letters to him dated March 28, 1994, May 9, 1994 and September 21, 1994 and telephone requests on April 12, 1994, May 3, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
- xi) Brian A. Hill, despite letters to him dated March 25, 1994, May 5, 1994 and September 21, 1994 and telephone requests on April 12, 1994, May 3, 1994, May 13, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
- xii) Mary Colli (Montreal Trust), despite letters to him dated April 27, 1994, June 6, 1994 and September 21, 1994 and telephone requests on May 18, 1994, May 26, 1994, May 27, 1994, June 2, 1994 and June 15, 1994;
- xiii) Mary E. Pigott (Search Law), despite letters to him dated May 11, 1994, June 22, 1994 and September 21, 1994 and telephone requests on June 1, 1994, June 10, 1994, July 4, 1994, July 13, 1994 and August 4, 1994;
- xiv) Thomas J. Davis, despite letters to him dated May 20, 1994, October 3, 1994 and November 3, 1994 and telephone requests on July 25, 1994 and September 9, 1994;
- xv) William Fanjoy, despite letters to him dated June 16, 1994, October 3, 1994 and November 3, 1994 and telephone requests on July 25, 1994, August 24, 1994 and September 9, 1994;
- xvi) Paul D. Brown, despite letters dated October 27, 1994 and February 28, 1995 and a telephone message left on January 31, 1995;
- xvii) Anne C. Briscoe (Century 21), despite letters to him dated November 2, 1994, December 14, 1994 and January 26, 1995 and telephone requests on December 9, 1994, December 12, 1994 and January 16, 1995;
- xviii) Brian M. Jenkins, despite letters to him dated November 11, 1994, December 5, 1994 and January 26, 1995 and telephone requests on December 1, 1994, December 2, 1994 and January 16, 1995;
- xix) Barry Rubinoff, despite letters to him dated January 26, 1995 and February 27, 1995 and telephone messages left on February 22 and 23, 1995;
- xx) Stanley Lieberman, LL.B., despite letters to him dated December 20, 1994 and January 26, 1995 and a telephone request on January 16, 1995;
- xxi) Donald Fiske, despite letters to him dated December 20, 1994 and January 26, 1995 and a telephone request on January 16, 1995;
- xxii) Deborah John (Beatty), despite letters to him dated January 6, 1995, January 26, 1995 and September 21, 1994 and a telephone request on January 16, 1995; and

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xxiii) Paul Scarponi, despite letters to him dated May 16, 1995 and July 4, 1995 and telephone messages on June 28, 1995 and June 30, 1995,

- s) He breached his Undertaking to the Law Society dated October 5, 1994 to reply to written correspondence within two weeks of receipt of such correspondence and to respond to telephone calls from the Law Society by the end of the next working day by failing to reply promptly to communications from the Law Society with respect to the foregoing complaints.

Complaint D382/95

2. a) He breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees, by continuing to practise during the period December 1, 1992 to December 29, 1992;
- b) He used his trust account for personal transactions contrary to Section 14 of Regulation 708 of the Law Society Act;
- c) He issued trust cheques payable to "cash" contrary to subsection 10(a) of Section 14 of the Regulation;
- d) He failed to co-operate with the Law Society's Examiner with respect to an audit of books and records by cancelling, rescheduling and not showing up for appointments;
- e) He failed to reply to the Law Society's requests that he provide a response to inadequacies discovered during an examination of his books and records on September 16, 1993, despite letters dated August 15, 1994, September 26, 1994, November 17, 1994 and December 19, 1994;
- f) He failed to reply to the Law Society despite messages left October 25, 1994, November 3, 1994, November 7, 1994, November 24, 1994, January 3, 1995, January 12, 1995 and January 17, 1995 and a letter dated January 25, 1995;
- g) He failed to comply with his Undertaking to the Law Society dated October 5, 1994 by failing to:
- i) enrol and participate in the Practice Review Program of the Professional Standards Department and to cooperate with the Practice Reviewer and the Law Society staff in the implementation of any recommendations arising out of that review; and
 - ii) reply to written correspondence from the Law Society within two weeks of receipt of such correspondence and to respond to telephone calls from the Law Society by the end of the next working day.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

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" AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D380/95 and D382/95 and is prepared to proceed with a hearing of these matters on June 4 and 5, 1996.

II. IN PUBLIC/IN CAMERA

2. The parties agree that these matters should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D380/95 and D382/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars together with the facts as stated herein constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 30, 1990. He practised as a sole practitioner in the Toronto area. The Solicitor has been suspended since November 1, 1994 for non-payment of his annual fee.

Complaint D380/95
Michael Koltun

Particular 2(r) i. The Solicitor failed to reply to the Law Society regarding a complaint by Michael Koltun.

5. By letter dated March 15, 1993 (Tab 1, Vol. I, Document Book), Mr. Koltun made a complaint to the Law Society regarding the Solicitor's services. Mr. Koltun stated that on or about August 13, 1992, he retained the Solicitor respecting a matrimonial and family matter. On or about December 29, 1992 Mr. Koltun terminated the Solicitor's services and retained another Solicitor to act on his behalf. The Solicitor did not deliver Mr. Koltun's file to the new solicitor until February 3, 1993.

6. Mr. Koltun alleged that the Solicitor had verbally promised him the return of his furniture, access to his daughter, reduction in child support, continued residence in the matrimonial home and consultation and advice on every significant undertaking regarding the litigation. Mr. Koltun further alleged that the Solicitor did not keep him advised of the various steps in the litigation taken by both parties and misrepresented him at a motion to settle alimony payments. Mr. Koltun also alleged that the Solicitor's account was incorrect.

7. By letter dated March 26, 1993 (Tab 2, Vol. I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Koltun's letter dated March 15, 1993 and requested his comments within two weeks. The Solicitor did not respond.

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8. By registered mail dated June 7, 1993 (Tab 3, Vol I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on June 10, 1993.

9. On June 18, 1993, the Solicitor called the Law Society to advise that he would respond by the following Monday. A copy of the transcribed and handwritten notes of the Law Society's staff person's telephone conversation with the Solicitor are contained at Tab 4, Vol. I of the Document Book.

10. On June 24, 1993, the Solicitor called the Law Society and left a message advising that he would respond by June 28, 1993. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone message are contained at Tab 5, Vol. I of the Document Book.

11. By letter dated June 27, 1993 (Tab 6, Vol. I, Document Book), the Solicitor advised the Law Society that:

- i. he was retained on August 13, 1992 with respect to Mr. Koltun's matrimonial matter;
- ii. he denied promising Mr. Koltun the return of furniture or any specific level of support;
- iii. Mr. Koltun was kept advised of the status of his action upon an almost daily basis by telephone;
- iv. Mr. Koltun received all correspondence addressed to his ex-wife's lawyer;
- v. the Solicitor signed the consent to sever the divorce from the other issues upon Mr. Koltun's instructions;
- vi. the motion heard on September 22, 1992 was for submissions regarding an appropriate moving date, being October 17, 1992;
- vii. with respect to interim support, Mr. Koltun authorized the Solicitor to consent to \$800.00 per month. The court ordered \$1,200.00;
- viii. he intends to assess his outstanding account; and
- ix. he admitted there were some delays in the matter.

12. By letter dated July 22, 1993 (Tab 7, Vol I, Document Book), the Law Society asked the Solicitor to clarify the following:

- i. an offer of \$900.00 per month regarding interim support was made and confirmed in Ms. Mossip's letter to the Solicitor dated November 9, 1992. Was Mr. Koltun aware of this offer?
- ii. according to the endorsement on the September 22, 1992 motion, Mr. Koltun was to leave the matrimonial home by October 3, 1992 and later extended to October 17, 1992. When did the Solicitor advise Mr. Koltun of the October 3, 1992 date.
- iii. the date of the assessment hearing.

13. On August 5, 1993, the Solicitor called the Law Society in response to its letter dated July 22, 1993 advising that:

- i. Mr. Koltun was made aware of the offer regarding interim support;
- ii. Mr. Koltun was aware of the telephone conference with the judge but discovered the October 3, 1992 date through a third party; and
- iii. the assessment was scheduled for July 1994.

A copy of the transcribed and handwritten notes of the Law Society staff person's telephone conversation with the Solicitor are contained at Tab 8, Vol I of the Document Book.

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14. By letter dated September 7, 1993 (Tab 9, Vol I, Document Book), Mr. Koltun wrote to the Law Society outlining his concerns about the Solicitor's actions and the Solicitor's responses to the Law Society.

15. By letter dated October 18, 1993 (Tab 10, Vol I, Document Book), the Law Society advised the Solicitor that it had concerns about the level of service he had provided to Mr. Koltun. The Solicitor was asked to address the Law Society's specific inquiries.

16. On October 21, 1993, the Solicitor called the Law Society in response to its letter dated October 18, 1993 advising that:

- i. he was given authorization by Mr. Koltun to sign the consent which was done at the time of Mr. Koltun's examination of his financial affidavit;
- ii. an offer was received for \$900.00. Mr. Koltun would not exceed this amount;
- iii. the exclusive possession order was done by telephone and not reduced to writing. The Solicitor did not tell Mr. Koltun about the October 3, 1992 date as he intended to extend the date the following week by another telephone conference; and
- iv. the balance of the complaint would be dealt with at the assessment.

A copy of the transcribed and handwritten notes of the Law Society staff person's telephone conversation with the Solicitor are contained at Tab 11, Vol I of the Document Book.

17. By registered mail dated January 24, 1994 (Tab 12, Vol I, Document Book), the Law Society confirmed the Solicitor's verbal reply of October 21, 1993 and reminded him that he was to respond fully to the complaint in writing. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. He was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

18. By letter dated February 8, 1994 (Tab 13, Vol I, Document Book), the Solicitor advised the Law Society that:

- i. the consent was signed in Mr. Koltun's presence at his examination and he did not object to severing the divorce from the corollary issues;
- ii. he did not advise Mr. Koltun when the divorce became effective as it was a routine matter after the consent was signed;
- iii. he made the \$900.00 offer on behalf of Mr. Koltun but Mr. Koltun would not go to \$1,000.00;
- iv. laying criminal charges against Mr. Koltun's ex-wife was a primary concern for Mr. Koltun. He attended before a Justice of the Peace on his own several times;
- v. the initial order to vacate was made subject to further submissions and the Solicitor knew that the date would not be the final date for vacating the home; and
- vi. the assessment was scheduled for July 4, 1994.

19. By letter dated April 6, 1994 (Tab 14, Vol I, Document Book), the Law Society wrote to the Solicitor asking him to provide a copy of his client trust ledger for Mr. Koltun's file.

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20. On May 16, 1994, the Solicitor called the Law Society and left a message advising that he would provide the client trust ledger by the middle of the following week. A copy of the transcribed and handwritten notes of the telephone message is contained at Tab 15, Vol I of the Document Book.

21. On June 2, 1994, the Solicitor called the Law Society and advised that he had recently moved offices and that he would attend to all outstanding matters before the Law Society commencing the following week. The Solicitor provided his new address to the Law Society. A copy of the transcribed and handwritten notes of the Law Society's staff person's telephone conversation with the Solicitor are contained at Tab 16, Vol. I of the Document Book.

22. On July 6, 1994, the Law Society called the Solicitor and left a message for him. The Solicitor did not return the call. A copy of the transcribed and handwritten notes of the message are contained at Tab 15, Vol. I of the Document Book.

23. By registered mail dated July 19, 1994 (Tab 17, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

24. By registered mail dated November 3, 1994 (Tab 18, Vol. I, Document Book), the Solicitor was reminded that he had provided the Law Society with an undertaking dated October 5, 1994 to reply promptly to Law Society communications. The Solicitor was asked to respond within two weeks. The Solicitor did not respond.

25. To date, the Solicitor has not responded to the Law Society's requests for a copy of his client trust ledger respecting Michael Koltun.

C. Hall - Bank of Montreal

Particular 2(a) The Solicitor failed to serve his client, C. Hall, in a conscientious, diligent and efficient manner.

26. The Solicitor was retained by the Bank of Montreal with respect to a mortgage transaction. The funds were advanced in or about December 1992. By letter dated February 2, 1993 (Tab 19, Vol. I, Document Book), the Bank of Montreal asked the Solicitor to provide it with a final Report on Title and the registered mortgage by February 16, 1993. The Solicitor did not respond.

27. By letter dated February 18, 1993 (Tab 20, Vol. I, Document Book), the Bank of Montreal again asked the Solicitor to provide his final Report on Title and the mortgage documents by February 25, 1993. The Bank of Montreal also called the Solicitor's office several times commencing February 26, 1993 and left messages for him. The Solicitor did not respond.

28. By letter dated April 22, 1993 (Tab 21, Vol. I, Document Book), the Bank of Montreal wrote to the Solicitor advising him that if the documentation was not received by May 6, 1993, the matter would be referred to the Law Society. Several calls were also made to the Solicitor's office during the month of May but the Solicitor did not respond.

29. By letter dated May 14, 1993 (Tab 22, Vol. I, Document Book), C. Hall of the Bank of Montreal made a complaint to the Law Society regarding the Solicitor's failure to provide the documentation requested.

30. To date, the Solicitor has failed to provide the Bank of Montreal with the requested documentation being a final report upon completion of a mortgage transaction and failed to respond to his client's reasonable requests for information.

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Particular 2(r) ii The Solicitor failed to reply to the Law Society regarding a complaint by C. Hall - Bank of Montreal.

31. By letter dated June 24, 1993 (Tab 23, Vol. I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Hall's letter dated May 14, 1993 and requested his comments within two weeks. The Solicitor did not respond.

32. On July 30, 1993, the Law Society called the Solicitor and left a message for him to return the call. On August 5, 1993, the Solicitor returned the Law Society's call and advised that he would report to the bank by the following day and provide the Society with a copy of the report. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone communications are contained at Tab 24, Vol. I of the Document Book.

33. By registered mail dated August 26, 1993 (Tab 25, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

34. By letter dated September 1, 1993 (Tab 26, Vol. I, Document Book), the Solicitor advised the Law Society that a final report had been prepared by him but it would appear the Bank of Montreal did not receive it. The Solicitor further advised that he would requisition the file from storage and deliver a true copy of the report to the bank within one week.

35. By letter dated October 6, 1993 (Tab 27, Vol. I, Document Book), the Law Society asked the Solicitor if he had delivered the final report to the Bank of Montreal. The Solicitor did not respond.

36. By letter dated February 14, 1994 (Tab 28, Vol. I, Document Book), the Law Society again asked the Solicitor if he had delivered the final report to the Bank of Montreal. The Solicitor was asked to respond within two weeks. The Solicitor did not respond.

37. On April 15, 1994, the Law Society called the Solicitor who advised that he had sent the report to the Bank of Montreal through inter-office mail. He advised that he would deliver another copy of the report to the bank and provide the Law Society with a copy by April 27, 1994. On April 29, 1994, the Law Society called the Solicitor and left a message asking for his outstanding response. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone communications are contained at Tab 29, Vol. I of the Document Book.

38. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

39. By registered mail dated May 17, 1994 (Tab 31, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 19, 1994. The Solicitor did not respond.

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40. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

41. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

42. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

43. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

44. On September 27, 1994, the Solicitor called the Law Society and left a message requesting that the call be returned. On September 28, 1994, the Law Society returned the Solicitor's call and left a message for him. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 35, Vol. I of the Document Book.

45. To date, the Solicitor has not responded to the Law Society regarding the complaint by the Bank of Montreal.
Avril Jaffar

Particular 2(b) The Solicitor failed to serve his client, Avril Jaffar, in a conscientious, diligent and efficient manner.

46. The Solicitor was retained on or about October 25, 1992 by Avril Jaffar to commence a wrongful dismissal action against her employer, Grafton-Fraser Inc. The Solicitor was provided with a retainer in the sum of \$500.00. A copy of the receipt for the retainer is contained at Tab 36, Vol. I of the Document Book. By letter dated October 26, 1992 (Tab 37, Vol. I, Document Book), the Solicitor advised Ms. Jaffar that the initial retainer would cover costs of a demand letter, the drafting, issuance and service of the claim and the receipt and review of the statement of defence. He advised Ms. Jaffar that any other steps would require a further retainer.

47. The Solicitor sent a demand letter dated October 28, 1992 to Grafton-Fraser Inc. and when he did not receive a response, the Solicitor issued a statement of claim (Tab 38, Vol. I, Document Book). By letter dated November 9, 1992 (Tab 38, Vol. I, Document Book), the Solicitor provided Ms. Jaffar with a copy of the statement of claim. He advised her that he would serve the claim on Grafton-Fraser Inc. at which time the defendant would have twenty days to reply with a statement of defence. Ms. Jaffar heard nothing more from the Solicitor about her case.

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48. By letter dated May 12, 1993 (Tab 39, Vol. I, Document Book), Ms. Jaffar's husband wrote to the Solicitor complaining about his failure to return their calls or provide a status report about the action. The Solicitor was asked to provide a written status report or, if the Solicitor did not intend to take any further steps he was asked to schedule a meeting to settle the account. The Solicitor did not respond.

49. By letter dated May 27, 1993 (Tab 40, Vol. I, Document Book), Ms. Jaffar wrote to the Solicitor enclosing a copy of her husband's letter to him dated May 12, 1993. The Solicitor was again asked to provide a status report and was reminded of the numerous messages left for him regarding this matter. The Solicitor did not respond.

50. To date, the Solicitor has failed to provide a status report to Avril Jaffar regarding her wrongful dismissal action. The Solicitor took no further steps after the issuance of the statement of claim to advance Ms. Jaffar's matter and failed to take steps to pursue Ms. Jaffar's claim. To date, the Solicitor has failed to provide Ms. Jaffar with a statement of account for monies she entrusted to him, reporting letter or any information about her claim after November 9, 1993.

51. By letter dated July 8, 1993 (Tab 41, Vol. I, Document Book), Ms. Jaffar made a complaint to the Law Society regarding the Solicitor's actions.
Particular 2(r) iii The Solicitor failed to reply to the Law Society regarding a complaint by Avril Jaffar.

52. By letter dated July 22, 1993 (Tab 42, Vol. I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Jaffar's letter dated July 8, 1993 and requested his comments within two weeks. The Solicitor did not respond.

53. By letter dated July 26, 1993 (Tab 43, Vol. I, Document Book), Ms. Jaffar wrote to the Solicitor terminating his services and requesting a refund for the retainer provided. The Solicitor did not respond.

54. By letter dated September 16, 1993 (Tab 44, Vol. I, Document Book), the Solicitor wrote to Ms. Jaffar and apologized for not responding to her inquiries. The Solicitor offered to pursue the claim without charge to Ms. Jaffar and to refund the retainer less \$125.00 for the court fees, if the complaint to the Law Society was withdrawn.

55. By letter dated October 4, 1993 (Tab 45, Vol. I, Document Book), Ms. Jaffar wrote to the Law Society enclosing a copy of the Solicitor's letter dated September 16, 1993. Ms. Jaffar advised that she was agreeable to the Solicitor's proposal and withdrew her complaint.

56. By letter dated October 8, 1993 (Tab 46, Vol. I, Document Book), the Law Society wrote to the Solicitor asking that he prepare a final account and a report to his client and provide the Law Society with a copy of these documents together with a response to the Law Society's letter dated July 22, 1993. The Solicitor did not respond.

57. By letter received February 24, 1994 (Tab 47, Vol. I, Document Book), Ms. Jaffar wrote to the Law Society advising that she had met with the Solicitor on December 3, 1993 and that he had agreed to continue working on her case. The Solicitor further agreed that he would deliver a cheque to Ms. Jaffar in the amount of \$375.00. Ms. Jaffar advised that since that time, she had received no communication from the Solicitor.

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58. By letter dated March 28, 1994 (Tab 48, Vol. I, Document Book), the Law Society wrote to the Solicitor asking him to forward a cheque in the sum of \$375.00 to Ms. Jaffar and to advise of the status of the matter within two weeks. The Solicitor did not respond.

59. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

60. On May 27 and June 2, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 49, Vol I of the Document Book.

61. By registered mail dated June 2, 1994 (Tab 50, Vol. I, Document Book), sent to the Solicitor's new office, the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

62. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

63. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

64. To date, the Solicitor has not responded to the Law Society regarding the complaint by Avril Jaffar.

Darla A. Wilson

Particular 2(c) The Solicitor failed to fulfil an obligation to another solicitor, Darla Ann Wilson, to attend to payment of outstanding experts' accounts upon assumption of the subject file from Darla Ann Wilson.

65. Darla Ann Wilson had represented Paul D. Brown in a personal injury action. She had obtained various medical legal reports and assessment reports on behalf of Paul D. Brown. Paul D. Brown subsequently retained the Solicitor to continue his action. Ms. Wilson rendered her account which included disbursements for above mentioned accounts. By letter dated February 15, 1993 (Tab 51, Vol. I, Document Book), the Solicitor confirmed to Ms. Wilson that Paul D. Brown had agreed to pay Ms. Wilson's outstanding account in the amount of \$15,000.00 plus disbursements in full. The file was delivered to the Solicitor on February 16, 1993 (Tab 52, Vol. I, Document Book). The Solicitor received settlement funds in the Brown matter in May.

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66. By letter dated June 10, 1993 to Ms. Wilson (Tab 53, Vol. I, Document Book), the Solicitor personally undertook to pay Ms. Wilson's firm, Gluckstein, Neinstein \$980.00 for the G.S.T. from the settlement proceeds of \$14,000.00 on her fees account. The Solicitor further personally undertook and confirmed that he would attend to paying all the outstanding experts' accounts listed in Ms. Wilson's account. Ms. Wilson received payment for her fees on or about June 11, 1993.

67. By letter dated August 20, 1993 (Tab 54, Vol. I, Document Book), Ms. Wilson wrote to the Solicitor advising that she had received a telephone message from Barry Brown, a family mediator, who had not been paid for his services. Ms. Wilson reminded the Solicitor that he had undertaken to pay the outstanding experts' accounts which included Barry Brown's account. The Solicitor did not respond to Ms. Wilson's correspondence.

68. By letter dated September 2, 1993 (Tab 55, Vol. I, Document Book), Ms. Wilson again wrote to the Solicitor regarding payment of Barry Brown's account. The Solicitor was advised that if Barry Brown did not receive payment, the matter would be brought to the attention of the Law Society. The Solicitor did not respond to Ms. Wilson's correspondence.

69. By letters dated September 20 and 30, 1993 (Tabs 56 & 57, Vol I, Document Book), Ms. Wilson wrote to the Law Society about the Solicitor's failure to fulfill his obligations and included a list of the outstanding experts' accounts that had not been paid by the Solicitor in the full amount of \$19,938.94. Ms. Wilson expressed concern with the Solicitor's non-payment as she confirmed that settlement funds were forwarded in May by defence counsel to cover the outstanding experts' accounts.

70. To date, the Solicitor has failed to fulfil his obligation to another solicitor, Darla A. Wilson, and pay outstanding experts' accounts.

Particular 2(r) iv. The Solicitor failed to reply to the Law Society regarding a complaint by Darla Ann Wilson.

71. By letter dated October 8, 1993 (Tab 58, Vol. I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Wilson's letters dated September 20 and 30, 1993 and requested his comments within two weeks. The Solicitor did not respond.

72. On October 27 and November 2, 1993, the Law Society called the Solicitor and left him messages to return the calls. On November 2, 1993, the Solicitor returned the calls and advised that he would respond by November 5, 1993. A copy of the handwritten notes of the telephone communications are contained at Tabs 59 and 60, Vol. I of the Document Book.

73. On November 8, 1993, the Law Society called the Solicitor who advised that he would fax his response that day. A copy of the handwritten notes of the Law Society staff person's telephone conversation with the Solicitor are contained at Tab 61, Vol. I of the Document Book.

74. By letter dated November 9, 1993 (Tab 62, Vol. I, Document Book), the Solicitor advised the Law Society that in his letter dated June 10, 1993 to Ms. Wilson (Tab 53, Vol. I, Document Book) he did not undertake to pay the outstanding experts' accounts. The Solicitor further advised that he was attempting to negotiate a reduction in the accounts and had received a discharge of the order (charging order) from Ms. Wilson's firm. The Solicitor further advised that negotiations were continuing.

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76. By letter dated December 21, 1993 (Tab 63, Vol I, Document Book), Ms. Wilson advised the Law Society that her firm had obtained a charging order that included Ms. Wilson's fees together with the experts' fees. Ms. Wilson advised that she agreed with the Solicitor to settle her account at a reduced amount. The Solicitor had indicated that he would take care of payment of all the outstanding experts' accounts. Ms. Wilson stated that the Solicitor's suggestion that he had not undertaken to pay the outstanding experts' accounts was incorrect and ridiculous. Ms. Wilson further stated that she was not advised that the Solicitor would be attempting to negotiate a reduction in the accounts. Ms. Wilson advised that the Solicitor received the settlement funds on June 10, 1993 and had been in possession of the funds for six months.

75. By letter dated February 24, 1994 (Tab 64, Vol. I, Document Book), the Law Society wrote to the Solicitor advising him that his June 10, 1993 letter to Ms. Wilson stated that he had agreed and personally undertaken to look after the payment of the experts' account. The Solicitor was asked to confirm whether the outstanding accounts had been paid. The Solicitor did not respond.

76. By letter dated February 25, 1994 (Tab 65, Vol. I, Document Book), Ms. Wilson again wrote to the Law Society setting out her complaint about the Solicitor.

77. On April 15, 1994, the Law Society called the Solicitor who advised that he did not personally undertake to pay the accounts of the expert witnesses. The Solicitor further advised that he had billed his client and disbursed the funds to his client. The Solicitor indicated that he would respond in writing by April 27, 1994. A copy of the transcribed and handwritten notes of the Law Society staff person's telephone conversation with the Solicitor are contained at Tab 66, Vol. I of the Document Book.

78. On April 29, 1994, the Law Society called the Solicitor and left a message for him asking for his response. A copy of the transcribed and handwritten notes of the message is contained at Tab 67, Vol. I of the Document Book.

79. By registered mail dated May 9, 1994 (Tab 68, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 11, 1994. The Solicitor did not respond.

80. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

81. By registered mail dated May 17, 1994 (Tab 31, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 19, 1994. The Solicitor did not respond.

82. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

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83. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

84. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

85. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

86. To date, the Solicitor has not responded to the Law Society regarding a complaint by Darla Ann Wilson.
Barry Brown

Particular 2(d) The Solicitor failed to honour a financial obligation incurred in connection with his practice in favour of Barry Brown in the amount of \$2,744.12.

87. This complaint relates to the Darla Ann Wilson matter. Ms. Wilson had represented Paul D. Brown in a personal injury action. Ms. Wilson retained Barry Brown as an expert to conduct an assessment of the client's family. The Solicitor assumed carriage of Paul Brown's file from Ms. Wilson and undertook to pay the experts' accounts. The Solicitor called Barry Brown and asked if he would consider accepting a reduced amount to cover his account. Subsequently, Barry Brown's office could not reach the Solicitor in spite of several attempts and messages.

88. By letter dated September 8, 1993 (Tab 69, Vol. I, Document Book), Barry Brown made a complaint to the Law Society about the Solicitor's failure to pay his outstanding account.

89. To date, the Solicitor has failed to pay Barry Brown's account and honour this financial obligation incurred in connection with his law practice.
Particular 2(r) v The Solicitor failed to reply to the Law Society regarding a complaint by Barry Brown.

90. By letter dated September 27, 1993 (Tab 70, Vol. I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Barry Brown's letter dated September 8, 1993 and requested his comments within two weeks. The Solicitor did not respond.

91. On December 1, 1993, the Law Society called the Solicitor and left a message for him to return the call. On December 2, 1993, the Solicitor returned the call and advised that he was not responsible for payment of Barry Brown's account. The Solicitor further advised that he would respond by the following week. A copy of the handwritten notes of the Law Society staff person's telephone conversation with the Solicitor are contained at Tab 71, Vol. I of the Document Book.

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92. By registered mail dated December 9, 1993 (Tab 72, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on December 10, 1993.

93. By letter dated December 23, 1993 (Tab 73, Vol. I, Document Book), the Solicitor advised the Law Society that he had not retained the services of Barry Brown and that he did not agree to personally pay Barry Brown's account. The Solicitor advised further that Barry Brown should contact Darla Ann Wilson and Gluckstein, Neinstein for payment.

94. By letter dated January 24, 1994 (Tab 74, Vol. I, Document Book), the Law Society wrote to the Solicitor asking him to elaborate on his position regarding his personal undertaking set out in other correspondence. The Solicitor did not respond.

95. On April 15, 1994, the Law Society called the Solicitor who advised that he did not personally undertake to pay the expert witnesses. The Solicitor further advised that he had billed his client and disbursed the funds to his client. The Solicitor indicated that he would respond by April 27, 1994. A copy of the transcribed and handwritten notes of the telephone conversation with the Solicitor are contained at Tab 66, Vol. I of the Document Book.

96. On April 29, 1994, the Law Society called the Solicitor and left a message for him asking for his response. A copy of the transcribed and handwritten notes of the message is contained at Tab 67, Vol. I of the Document Book.

97. By registered mail dated May 9, 1994 (Tab 68, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 11, 1994. The Solicitor did not respond.

98. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

99. By registered mail dated May 17, 1994 (Tab 31, Vol. I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 19, 1994. The Solicitor did not respond.

100. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

101. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

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102. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

103. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

104. To date, the Solicitor has not responded to the Law Society regarding a complaint by Barry Brown.
Lilian Borysenko - Scotiabank

Particular 2(e) The Solicitor failed to serve his client, Lilian Borysenko of Scotiabank, in a conscientious, diligent and efficient manner.

105. The Solicitor was retained by the Scotiabank with respect to a mortgage transaction. The funds were advanced on January 22, 1993. By letter of the same date, Scotiabank wrote to the Solicitor enclosing a standard form reporting letter and asked the Solicitor to complete and return the same to them (Tab 1, Vol. II, Document Book). The Solicitor did not respond.

106. By letters dated May 13 and July 26, 1993 (Tab 2 and 3, Vol. II, Document Book), the Solicitor was asked to provide Scotiabank with a final reporting letter. The Solicitor did not respond.

107. By letter dated September 7, 1993 (Tab 4, Vol. II, Document Book), Ms. Borysenko of the Scotiabank made a complaint to the Law Society regarding the Solicitor's failure to provide a final reporting letter.

108. To date, the Solicitor has failed to provide Scotiabank with the requested final reporting letter, and failed to respond to Scotiabank's reasonable requests for information.

Particular 2(r) vi The Solicitor failed to reply to the Law Society regarding a complaint by Lilian Borysenko.

109. By letter dated October 7, 1993 (Tab 5, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Borysenko's letter dated September 7, 1993 and requested his comments within two weeks. The Solicitor did not respond.

110. On December 1, 1993, the Law Society called the Solicitor and left a message for him. On December 2, 1993, the Solicitor returned the call and advised that he would respond by the following Monday. A copy of the handwritten notes of the telephone communications are contained at Tab 6, Vol. II of the Document Book.

111. By registered mail dated December 9, 1993 (Tab 7, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on December 10, 1993.

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112. By letter dated December 23, 1993 (Tab 8, Vol. II, Document Book), the Solicitor advised the Law Society that he had delivered the final reporting letter to the Bank of Nova Scotia.

113. By letter dated January 24, 1994 (Tab 9, Vol. II, Document Book), the Law Society advised the Solicitor that the bank did not receive the reporting letter. The Solicitor was asked to provide another copy within two weeks. The Solicitor did not respond.

114. By letter dated May 4, 1994 (Tab 10, Vol. II, Document Book), the Law Society again advised the Solicitor that the bank did not receive the reporting letter. The Solicitor was asked to provide a copy of the mortgagee report of title within two weeks. The Solicitor did not respond.

115. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message are contained at Tab 30, Vol. I of the Document Book.

116. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

117. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol I of the Document Book.

118. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

119. To date, the Solicitor has not responded to the Law Society's requests for a final reporting letter respecting Scotiabank.

R.S. Miller

Particular 2f) He failed to fulfil a financial obligation to R.S. Miller incurred in connection with his practice in favour of R.S. Miller in the amount of \$1,608.86.

120. This matter relates to the Paul D. Brown and Darla Ann Wilson matter referred to earlier in this document. Dr. R.S. Miller was initially asked by Darla Ann Wilson to conduct an assessment of her client, Paul D. Brown. Dr. Miller complied with the request and sent the assessment report and his invoice for services rendered to Ms. Wilson on September 24, 1991. Dr. Miller's account remained outstanding and interest continued to accumulate.

121. By letter dated February 24, 1993 (Tab 11, Vol. II, Document Book), the Solicitor advised Dr. Miller that he was representing Paul D. Brown and asked Dr. Miller to prepare a psychological assessment of Paul D. Brown. The Solicitor advised Dr. Miller that he would undertake to pay Dr. Miller's professional fees for preparation, meetings and appearance at trial. Dr. Miller conducted the assessment of the Solicitor's client, Paul D. Brown on April 6, 1993.

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122. On May 14, 1993, the Solicitor called Dr. Miller and asked if he would reduce his fees by 50 percent. Dr. Miller indicated that he consider the matter and get back to him. Since that time and after numerous telephone calls, Dr. Miller has been unable to reach the Solicitor.

123. On October 1, 1993, Dr. Miller sent the Solicitor two invoices for payment (Tab 12, Vol. II, Document Book). The Solicitor did not pay the invoices or respond to Dr. Miller.

124. By letter dated October 1, 1993 (Tab 13, Vol. II, Document Book), Dr. R.S. Miller made a complaint to the Law Society regarding the Solicitor's failure to pay her outstanding accounts.

125. To date, the solicitor has failed to pay the invoices of Dr. Miller or respond to her requests.

Particular 2(r) vii The Solicitor failed to reply to the Law Society regarding a complaint by R.S. Miller.

126. By letter dated October 19, 1993 (Tab 14, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Dr. Miller's letter dated October 1, 1993 and requested his comments within two weeks. The Solicitor did not respond.

127. By registered mail dated March 21, 1994 (Tab 15, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on March 23, 1994.

128. On March 23, 1994, the Solicitor called the Law Society advising that he had been at trial. He further advised that a file with a similar complaint involving Gluckstein, Neinstein had already been opened. The Solicitor advised that he would send a letter to confirm this information. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 16, Vol. II of the Document Book.

129. On April 14, 1994, a complaint was authorized against the Solicitor for his failure to reply to the Law Society.

130. On May 12, 1994, the Solicitor called a Law Society complaints lawyer, James Varro and advised that he received a formal complaint in the mail. He was referred by the Law Society staff person to the discipline department. The Solicitor advised Mr. Varro that he had been evicted from his office but that he could still be reached at the same telephone number. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 17, Vol. II of the Document Book.

131. On June 2, 1994, the Solicitor called the Law Society and advised that he moved to a new office in Ajax. He further advised that he would respond to all outstanding complaints with the Society commencing the following Monday. The Solicitor provided the Law Society with his new address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 18, Vol. II of the Document Book.

132. By letter dated September 30, 1994 (Tab 19, Vol. II, Document Book), the Solicitor advised the Law Society that he did not give Gluckstein, Neinstein his personal undertaking to pay Dr. Miller's account. He further advised that he would be willing to pay any charges that arose after February 24, 1993.

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133. By letter dated October 7, 1994 (Tab 20, Vol. II, Document Book), the Law Society referred the Solicitor to his letter to Darla A. Wilson of Gluckstein, Neinstein dated June 10, 1993 (Tab , Vol. I, Document Book) wherein the Solicitor advised Ms. Wilson that he was responsible for Dr. Miller's account. The Law Society asked when the Solicitor intended to pay the outstanding accounts. The Solicitor did not respond.

134. On January 31, 1995, the Law Society called the Solicitor and left a message for him. The Solicitor did not return the call. A copy of the handwritten notes of the message are contained at Tab 21, Vol. II of the Document Book.

135. By registered mail dated February 28, 1995 (Tab 22, Vol II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

136. To date, the Solicitor has not responded to the Law Society regarding the complaint by Dr. R.S. Miller.
Beverly Pringle

Particular 2(r) viii The Solicitor failed to reply to the Law Society regarding a complaint by Beverly Pringle.

137. In or about June 1993, the Solicitor retained Hotline Express to deliver material by courier. In spite of reminder letters and invoices, the Solicitor did not pay the outstanding account of Hotline Express.

138. By letter dated October 27, 1993 (Tab 23, Vol. II, Document Book), Beverly Pringle of Hotline Express made a complaint to the Law Society regarding the Solicitor's failure to pay the outstanding accounts.

139. By letter dated November 16, 1993 (Tab 24, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Pringle's letter dated October 27, 1993 and requested his comments within two weeks. The Solicitor did not respond.

140. On January 17, 1994, the Law Society called the Solicitor and left a message for him. The Solicitor returned the call that day and advised that he would pay all outstanding accounts the following day and that he would respond by January 21, 1994. On February 4, 1993, the Law Society called the Solicitor and left a message for him. The Solicitor did not return the call. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 25, Vol. II of the Document Book.

141. By registered mail dated February 18, 1994 (Tab 26, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on February 23, 1994. The Solicitor did not respond.

142. By letter dated February 17, 1994 (Tab 27, Vol. II, Document Book), which was received by the Law Society on April 13, 1994, Ms. Pringle advised the Law Society that the Solicitor had paid the account in full.

3rd April, 1997

143. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

144. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

145. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

146. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

147. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

148. To date, the Solicitor has not responded to the Law Society regarding a complaint by Beverly Pringle.
Louis Libman

Particular 2(g) The Solicitor failed to honour a financial obligation incurred in connection with his practice in favour of Louis Libman in the amount of \$125.00.

149. On July 22, 1993, the Solicitor retained Louis Libman to serve a subpoena. The same day, Mr. Libman served the subpoena and sent the Solicitor an invoice in the amount of \$125.00 (Tab 28, Vol. II, Document Book). The Solicitor paid Mr. Libman's account by cheque dated October 1, 1993 which was returned NSF (Tab 29, Vol. II, Document Book). The Solicitor's replacement cheque dated October 25, 1993 was also returned NSF (Tab 30, Vol. II, Document Book).

150. By letter dated November 17, 1993 (Tab 31, Vol. II, Document Book), Mr. Libman made a complaint to the Law Society regarding the Solicitor's failure to pay his outstanding account.

151. To date, the Solicitor has failed to pay Mr. Libman's account for services rendered.

Particular 2(r) ix The Solicitor failed to reply to the Law Society regarding a complaint by Louis Libman.

152. By letter dated December 16, 1993 (Tab 32, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Libman's letter dated November 17, 1993 and requested his comments within two weeks. The Solicitor did not respond.

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153. On March 18 and 25, 1994, the Law Society called the Solicitor and left messages for him. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 33, Vol. II of the Document Book.

154. By registered mail dated April 7, 1994 (Tab 34, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on April 11, 1994. The Solicitor did not respond.

155. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

156. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

157. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

158. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

159. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

160. The Solicitor provided a further cheque to Mr. Libman in the amount of \$150.00 dated September 28, 1994. This cheque was returned NSF (Tab 35, Vol. II, Document Book).

161. To date, the Solicitor has not responded to the Law Society regarding a complaint by Louis Libman nor has he paid Mr. Libman's account.

Kamal Jain

Particular 2(h) The Solicitor failed to serve his client, Kamal Jain, in a conscientious, diligent and efficient manner.

3rd April, 1997

162. The Solicitor was retained by Kamal Jain in or about June 1993 to commence a law suit against Color Your World Corp., with which Mr. Jain had a franchise operation. Mr. Jain signed a Retainer Agreement with the Solicitor (Tab 36, Vol. II, Document Book) and provided him with a retainer in the amount of \$3,000.00 by way of three cheques of \$1,000.00 dated July 2, July 15 and July 31, 1993. A copy of the cheques are contained at Tab 37, Vol. II of the Document Book.

163. The Solicitor gave Mr. Jain a copy of a draft statement of claim. Mr. Jain subsequently asked for a final copy of the statement of claim and proof of service. Mr. Jain did not receive these documents. Mr. Jain telephoned the Solicitor several times between September 1993 and January 1994 to inquire about the status of his case. When the Solicitor returned the calls, Mr. Jain was advised by the Solicitor that sufficient time must pass before the statement of defence could be filed.

164. The cheques provided to the Solicitor by Mr. Jain were deposited to the Solicitor's bank account but there is no indication on the cheques that they were deposited to the Solicitor's trust account.

165. Mr. Jain had an appointment to meet with the Solicitor on January 24, 1994 to discuss his case. The Solicitor did not attend the appointment and since that date, Mr. Jain has been unable to contact the Solicitor. Mr. Jain was not advised by the Solicitor about what steps had been taken in the litigation on his behalf nor has he received an account for the services provided by the Solicitor.

166. Mr. Jain had since been sued by the company he had instructed the Solicitor to make a claim against. Mr. Jain retained a new solicitor to counterclaim as he found no evidence that the statement of claim had been issued or served by the Solicitor.

167. By letter dated February 11, 1994 (Tab 38, Vol. II, Document Book), Kamal Jain made a complaint to the Law Society regarding the Solicitor's failure to serve him.

168. To date, the Solicitor has failed to account to his client, Kamal Jain, for monies entrusted to him, failed to respond to Mr. Jain's reasonable requests for information regarding his matter and failed to follow Mr. Jain's instructions to proceed with a claim against Colour Your World Corp. Particular 2(r) x The Solicitor failed to reply to the Law Society regarding a complaint by Kamal Jain.

169. By letter dated March 28, 1994 (Tab 39, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Jain's letter dated February 11, 1994 and requested his comments within two weeks. The Solicitor did not respond.

170. On April 12 and May 3, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 40, Vol. II of the Document Book.

171. By registered mail dated May 9, 1994 (Tab 41, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 11, 1994. The Solicitor did not respond.

3rd April, 1997

172. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

173. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

174. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

175. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

176. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

177. To date, the Solicitor has not responded to the Law Society regarding the complaint by Kamal Jain.

Brian A. Hill

Particular 2(i) The Solicitor failed to serve his client, Brian A. Hill, in a conscientious, diligent and efficient manner.

178. By letter dated March 7, 1994 (Tab 43, Vol. II, Document Book), Mr. Hill made a complaint to the Law Society regarding the Solicitor. Mr. Hill stated that he had retained the Solicitor in or about December 1992 to assist him in negotiating with the Paul Revere Life Insurance Company regarding the cancellation of his insurance policy. Mr. Hill had a Legal Aid Certificate. The Solicitor advised Mr. Hill that he communicated with the insurance company and that it would be at least one year before the matter would be settled. Mr. Hill left many telephone messages for the Solicitor during the months of January, February and March 1993 but the Solicitor did not return the calls. By letter dated March 7, 1994 (Tab 42, Vol. II, Document Book), Mr. Hill wrote to the Solicitor setting out his concerns with the Solicitor's conduct and did not receive a response.

179. To date, the Solicitor has failed to respond to reasonable requests for information from his client about the status of his matter.

Particular 2(r) xi The Solicitor failed to reply to the Law Society regarding a complaint by Brian A. Hill.

3rd April, 1997

180. By letter dated March 25, 1994 (Tab 44, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Hill's letter dated March 7, 1994 and requested his comments within two weeks. The Solicitor did not respond.

181. On April 12 and May 3, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 40, Vol. II of the Document Book.

182. By registered mail dated May 5, 1994 (Tab 45, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on May 6, 1994. The Solicitor did not respond.

183. On May 12, 1994, the Solicitor called the Law Society and left a message advising that he had been evicted from his office and that he would be setting up for his new office in Ajax the following week. On May 13, 1994, the Law Society called the Solicitor and left a message to return the calls and to provide his new office address. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 30, Vol. I of the Document Book.

184. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

185. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

186. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

187. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

188. To date, the Solicitor has not responded to the Law Society regarding the complaint by Brian A. Hill.

Mary Colli - Montreal Trust

Particular 2(j) The Solicitor failed to serve his client, Mary Colli of Montreal Trust, in a conscientious, diligent and efficient manner.

189. By letter dated March 21, 1994 (Tab 48, Vol. II, Document Book), Ms. Colli made a complaint to the Law Society regarding the Solicitor's failure to provide final mortgage documentation regarding a mortgage transaction.

3rd April, 1997

190. Ms. Colli stated that the Solicitor was retained by Montreal Trust regarding a mortgage transaction. The funds were advanced on July 26, 1993. By letters dated March 9 and 15, 1994 (Tabs 46 and 47, Vol. II, Document Book), Mary Colli of Montreal Trust wrote to the Solicitor asking that he confirm that the mortgage had been registered and to provide the final mortgage documents. The Solicitor did not respond. In spite of numerous telephone calls to the Solicitor asking for the documentation, Montreal Trust never received these documents from the Solicitor.

191. To date, the Solicitor has failed to respond to his client's request to provide it with a final report on completion of a mortgage transaction.

Particular 2(r) xii The Solicitor failed to reply to the Law Society regarding a complaint by Mary Colli (Montreal Trust).

192. By letter dated April 27, 1994 (Tab 49, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Colli's letter dated March 21, 1994 and requested his comments within two weeks. The Solicitor did not respond.

193. On May 18 and 26, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the messages are contained at Tab 50, Vol. II of the Document Book.

194. On May 27, 1994, the Law Society called the Solicitor and left a message to return the call. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the message is contained at Tab 30, Vol. I of the Document Book.

195. On June 2, 1994, the Law Society called the Solicitor and left a message for him to return the call. On June 3, 1994, the Solicitor returned the call and advised that he would respond by the following week. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 32, Vol. I of the Document Book.

196. By registered mail dated June 6, 1994 (Tab 51, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed" and the envelope contained a notation that the door was locked.

197. On June 8, 1994, the Law Society called the Solicitor who advised that he wanted to respond to all outstanding matters with the Law Society. On June 15, 1994, the Law Society spoke with the Solicitor who advised that he was available on June 21, 1994 to meet with the Law Society. On June 20, 1994, the Solicitor called the Law Society and cancelled the appointment. A copy of the transcribed and handwritten notes of the telephone communications with the Solicitor are contained at Tab 33, Vol. I of the Document Book.

198. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee.

199. To date, the Solicitor has not responded to the Law Society regarding the complaint by Mary Colli (Montreal Trust).

3rd April, 1997

Mary Pigott - Search Law

Particular 2(k) The Solicitor failed to honour a financial obligation incurred in connection with his practice in favour of Search Law in the amount of \$531.69.

200. In or about July 1993, the Solicitor requested that a computer search be done by Search Law. Search Law conducted the search and sent the Solicitor an invoice on July 12, 1993 in the amount of \$531.69 (Tab 52, Vol. II, Document Book). By letters dated October 4, November 2, 1993 and February 16, 1994 (Tabs 53-55, Vol. II, Document Book), Mary Pigott of Search Law wrote to the Solicitor requesting payment of the outstanding invoice. The Solicitor did not respond. A copy of Ms. Pigott's letter to the Solicitor dated February 16, 1994 was sent to the Law Society's complaints department.

201. To date, the Solicitor has failed to pay Search Law's account dated July 12, 1993.

Particular 2(r) xiii The Solicitor failed to reply to the Law Society regarding a complaint by Mary E. Pigott - Search Law.

202. By letter dated May 11, 1994 (Tab 56, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Pigott's letter dated February 16, 1994 and requested his comments within two weeks. The Solicitor did not respond.

203. On June 1 and 10, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 57, Vol. II of the Document Book.

204. By registered mail dated June 22, 1994 (Tab 58, Vol. II of the Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

205. On July 4, 13 and August 4, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 59, Vol. II of the Document Book.

206. By registered mail dated September 21, 1994 (Tab 34, Vol. I, Document Book), the Solicitor was asked for his written response within seven days, failing which the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

207. To date, the Solicitor has not responded to the Law Society regarding the complaint by Mary E. Pigott (Search Law).
Thomas J. Davis

Particular 2(r) xiv The Solicitor failed to reply to the Law Society regarding a complaint by Thomas J. Davis.

3rd April, 1997

208. By letter dated May 12, 1994 (Tab 60, Vol. II, Document Book), Mr. Davis made a complaint to the Law Society regarding the Solicitor's conduct. Mr. Davis stated that in or about October 1992, he had retained the Solicitor regarding his matrimonial matter. Discoveries were held in February 1993. Afterward Mr. Davis called the Solicitor several times to ask about the status of his case. The Solicitor, on occasion, would return Mr. Davis' call but had no new information to report. The Solicitor advised Mr. Davis that he would contact him if any progress was made.

209. In January 1994, Mr. Davis stated that he received a garnishee notice and called the Solicitor for assistance. In spite of leaving urgent messages for the following four weeks, the Solicitor did not return his calls. Mr. Davis then retained William Bucci and called the Solicitor leaving a message asking for his file. The Solicitor returned his call and asked Mr. Davis for another chance to represent him. Mr. Davis agreed and met with the Solicitor on April 2, 1994. The Solicitor advised that he would arrange a court date for April 12, 1994. Mr. Davis attended at the Newmarket Court on April 12, 1994 and was advised that the Solicitor did not schedule a court appearance. Since that time, the Solicitor has not returned Mr. Davis' calls.

210. By letter dated May 20, 1994 (Tab 61, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Davis' letter and requested his comments within two weeks. The Solicitor did not respond.

211. On June 2, 1994, the Solicitor advised the Law Society that he had moved to his new office in Ajax and that he would respond to Mr. Davis' complaint by the following week. He further advised that the file would be ready for Mr. Davis to pick up on that date. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 62, Vol. II of the Document Book.

212. On July 25 and September 9, 1994, the Law Society called the Solicitor and left messages for him asking for his response. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 63, Vol. II of the Document Book.

213. By registered mail dated October 3, 1994 (Tab 64, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on October 4, 1994. The Solicitor did not respond.

214. To date, the Solicitor has not responded to the Law Society regarding a complaint by Thomas J. Davis.

William C. Fanjoy

Particular 2(r) xv The Solicitor failed to reply to the Law Society regarding a complaint by William C. Fanjoy.

215. By letter dated May 31, 1994 (Tab 65, Vol. II, Document Book), William C. Fanjoy wrote to the Law Society asking that the Solicitor's conduct be investigated. Mr. Fanjoy stated that the Solicitor had rented space from the offices of Daley, Byers & Phillips in 1993 and 1994. The receptionist had received a number of complaints about the Solicitor's failure to answer calls and correspondence. Mr. Fanjoy advised the Law Society that he had concerns that the Solicitor had abandoned his practice.

3rd April, 1997

216. By letter dated June 16, 1994 (Tab 66, Vol. II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Fanjoy's letter dated May 31, 1994 and requested his comments within two weeks. The Solicitor did not respond.

217. On July 25, August 24 and September 9, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 67, Vol. II of the Document Book.

218. By registered mail dated October 3, 1994 (Tab 68, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on October 4, 1994. The Solicitor did not respond.

219. To date, the Solicitor has not responded to the Law Society regarding the complaint by William C. Fanjoy.

Paul D. Brown

Particular 2(1) The Solicitor failed to fulfil his agreement with Gluckstein, Neinstein to pay experts' accounts and accounts for professional services rendered by Gluckstein, Neinstein, former solicitors for his client, Paul D. Brown.

220. By letter dated October 18, 1994 (Tab 1, Vol. III, Document Book), Paul D. Brown made a complaint to the Law Society regarding the Solicitor. He asked for the Law Society's assistance in determining whether or not other expert witnesses in a litigation matter had been paid.

221. Paul D. Brown further stated that he had initially retained Darla Ann Wilson of Gluckstein, Neinstein and then the Solicitor with respect to his case. The Solicitor agreed to pay Gluckstein, Neinstein a reduced amount of the fees charged and to pay all experts involved in this matter. When the case settled, Paul D. Brown received a cheque in the amount of \$29,001.00 from the Solicitor. In or about October 1, 1994, Paul D. Brown was served with a statement of claim naming Gluckstein, Neinstein and Barry Brown as the plaintiffs.

222. To date, the Solicitor has failed to fulfil his agreement with Gluckstein, Neinstein to pay experts' accounts and accounts for professional services rendered by Gluckstein, Neinstein.

Particular 2(r) xvi The Solicitor failed to reply to the Law Society regarding a complaint by Paul D. Brown.

223. By letter dated October 27, 1994 (Tab 2, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Paul D. Brown's letter dated October 18, 1994 and requested his comments within two weeks. The Solicitor did not respond.

224. On January 31, 1995, the Law Society called the Solicitor and left a message for him. The Solicitor did not return the call. A copy of the handwritten notes of the telephone message are contained at Tab 21, Vol. II of the Document Book.

3rd April, 1997

225. By registered mail dated February 28, 1995, to the last known address of the Solicitor on the Law Society's records (Tab 22, Vol. II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

226. To date, the Solicitor has not responded to the Law Society regarding the complaint by Paul D. Brown.

Anne C. Briscoe - Century 21

Particular 2(r) xvii. The Solicitor failed to reply to the Law Society regarding a complaint by Anne C. Briscoe - Century 21.

227. By letters dated October 21 and 25, 1994 (Tabs 4 & 5, Vol. III, Document Book), Anne Briscoe of Century 21 made a complaint to the Law Society regarding the Solicitor. Ms. Briscoe stated that the Solicitor's client owed Century 21 a commission cheque on the sale of property. The Solicitor provided a trust cheque dated September 21, 1994 in the amount of \$8,226.30 to Century 21 which was returned NSF (Tab 3, Vol. III, Document Book). Century 21 disbursed funds to another broker and salesperson involved in the transaction before they were notified that the cheque did not clear the account.

228. By letter dated November 2, 1994 (Tab 6, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Briscoe's letter and requested his comments within two weeks. The Solicitor did not respond.

229. On December 9 and 12, 1994, the Law Society called the Solicitor and left messages for him on his answering machine. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at (Tab 7, Vol. III, Document Book).

230. By registered mail dated December 14, 1994 (Tab 8, Vol. III, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

231. On December 29, 1994, the Solicitor called the Law Society and left a message advising that he would be out of the office until January 7, 1995 and to call at that time. A copy of the handwritten notes of the telephone message are contained at (Tab 9, Vol. III, Document Book).

232. On January 16, 1995, the Law Society called the Solicitor who advised that he intended to leave the legal profession. The Solicitor asked that the Society send all correspondence to the Huntley Street address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 10, Vol. III of the Document Book.

233. By letter dated January 26, 1995 (Tab 11, Vol. III, Document Book), which was sent by registered and by regular mail, the Solicitor was asked to respond to the Law Society within seven days. The Law Society's registered letter was picked up by the Solicitor on January 30, 1995 (Tab 12, Vol. III, Document Book).

234. To date, the Solicitor has not responded to the Law Society regarding the complaint by Anne C. Briscoe.

3rd April, 1997

Brian M. Jenkins - Ken Mitchell

Particular 2(m) i The Solicitor failed to answer with reasonable promptness professional letters and communications from Brian M. Jenkins, a solicitor.

Particular 2(n) The Solicitor failed to serve his client, Ken Mitchell, in a conscientious, diligent and efficient manner.

235. By letter dated October 25, 1994 (Tab 15, Vol. III, Document Book), Mr. Jenkins made a complaint to the Law Society regarding the Solicitor. Mr. Jenkins advised that his client, Ken Mitchell had initially retained the Solicitor regarding a lawsuit filed against Ken Mitchell's company by Castor Holdings Ltd. Mr. Mitchell provided the Solicitor with a retainer in the amount of \$1,000.00. The Solicitor failed to file a statement of defence and, as a result, default judgment was obtained by Castor Holdings Ltd.

236. Ken Mitchell then retained Brian M. Jenkins to set aside the default judgment which was successful. Ken Mitchell instructed Mr. Jenkins to obtain his file from the Solicitor's office. Mr. Jenkins called the Solicitor several times requesting the file, but the Solicitor did not return his calls. By letter dated September 7, 1994 (Tab 13, Vol. III, Document Book), Mr. Jenkins wrote to the Solicitor enclosing an executed Direction dated July 28, 1994 (Tab 14, Vol. III, Document Book), to forward Mr. Mitchell's file to him. Mr. Jenkins further asked the Solicitor to account for the \$1,000.00 retainer given to him by Mr. Mitchell, or in the alternative, to return the funds.

The Solicitor did not respond to Mr. Jenkins and has not responded to date. The Solicitor failed to provide Ken Mitchell with a statement of account, reporting letter or any other information regarding his lawsuit and failed to serve and file a statement of defence on behalf of Mr. Mitchell.

Particular 2(r) xviii The Solicitor failed to reply to the Law Society regarding a complaint by Brian M. Jenkins.

237. By letter dated November 11, 1994 (Tab 16, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Jenkins' letter dated October 25, 1994 and requested his comments within two weeks. The Solicitor did not respond.

238. On December 1 and 2, 1994, the Law Society called the Solicitor and left messages for him on his answering machine. The Solicitor did not return the calls. A copy of the handwritten notes of the messages are contained at Tab 17, Vol. III of the Document Book.

239. By registered mail dated December 5, 1994 (Tab 18, Vol. III, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

240. On January 16, 1995, the Law Society called the Solicitor who advised that he intended to leave the legal profession. The Solicitor asked that the Society send all correspondence to the Huntley Street address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 10, Vol. III of the Document Book.

241. By letter dated January 26, 1995 (Tab 11, Vol. III, Document Book), which was sent by registered and regular mail, the Solicitor was asked to respond to the Law Society within seven days. The Law Society's letter was picked up by the Solicitor on January 30, 1995 (Tab 12, Vol. III, Document Book).

3rd April, 1997

242. To date, the Solicitor has not responded to the Law Society regarding the complaint by Brian M. Jenkins.

Barry Rubinoff - Wilfred (Bud) Walters

Particular 2(o) The Solicitor failed to serve his client, Wilfred (Bud) Walters, in a conscientious, diligent and efficient manner.

243. By letter dated June 22, 1994 (Tab 19, Vol. III, Document Book), Barry Rubinoff, counsel to Mr. Walters, made a complaint to the Law Society regarding the Solicitor. Mr. Rubinoff advised that in or about 1993, the Solicitor was retained by Wilfred (Bud) Walters with respect to several matters. One matter was the refinancing of Mr. Walters' home with the Bank of Montreal. A writ of seizure and sale was registered against the home in the amount of \$9,000.00. The Bank of Montreal asked the Solicitor to deduct \$10,000.00 from the mortgage advance and to hold the monies in trust until the judgment had been satisfied by Mr. Walters. Mr. Walters paid the Solicitor an additional \$3,075.25 to make up the \$10,000.00 as there were insufficient monies being advanced under the new mortgage to discharge the existing mortgage.

244. Following Mr. Walters payment to the Solicitor, the Solicitor advised Mr. Walters that he no longer held the amount of \$10,000.00 in trust and that he had used the monies for other purposes. The Solicitor further advised Mr. Walter that he would repay the trust monies. Mr. Walters actually paid the Solicitor approximately \$6,000.00 but Mr. Walters has not received a full and proper account for the services performed by the Solicitor in spite of numerous requests. Over time, the Solicitor finally repaid Mr. Walters.

Particular 2(r) xix The Solicitor failed to reply to the Law Society regarding a complaint by Barry Rubinoff.

245. By letter dated January 26, 1995 (Tab 20, Vol. III, Document Book), sent by registered and regular mail, the Law Society wrote to the Solicitor enclosing a copy of Mr. Rubinoff's letter dated June 22, 1994 and requested his comments within two weeks. The Law Society's registered letter was returned "moved". The Law Society's correspondence was sent to the Solicitor's address as shown on the Law Society's records. The Solicitor did not advise the Law Society of any change of address.

246. On February 22 and 23, 1995, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 21, Vol. III of the Document Book.

247. By registered mail dated February 27, 1995 (Tab 22, Vol. III, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

248. To date, the Solicitor has not responded to the Law Society regarding the complaint by Barry Rubinoff.

Stanley Lieberman - Breach of Undertaking

Particular 2(m) ii The Solicitor failed to answer with reasonable promptness professional letters and communications from Stanley Lieberman, a solicitor.

3rd April, 1997

Particular 2p) The Solicitor failed to fulfil an undertaking dated September 1, 1994 to another solicitor, Stanley Lieberman, to deliver certified funds to the Town of Ajax in payment of taxes and to provide mortgage discharge registration particulars.

249. The Solicitor acted for the vendor in a real estate transaction and Stanley Lieberman acted for the purchaser. On closing, the Solicitor provided Mr. Lieberman with an undertaking dated September 1, 1994 (Tab 23, Vol. III, Document Book) wherein the Solicitor undertook to deliver funds of \$3,836.15 in payment of taxes to the Town of Ajax, to register two discharge of mortgages, and to advise of registration particulars.

250. By letters dated November 16 and 28, 1994 (Tabs 24 & 25, Vol. III, Document Book), Mr. Lieberman wrote to the Solicitor asking for confirmation that the Solicitor's undertaking had been complied with. Mr. Lieberman had been advised by the Town of Ajax that the outstanding taxes had not been paid. The Solicitor has never responded to Mr. Lieberman's correspondence.

251. Mr. Lieberman was required to post a bond to obtain a new certified cheque from the bank for the funds payable to the Town of Ajax.

252. Mr. Lieberman also discovered that the Solicitor had not registered the two discharges of mortgages. Mr. Lieberman registered and paid for the registration of the two mortgages from his own funds.

253. By letter dated December 5, 1994 (Tab 26, Vol. III, Document Book), Mr. Lieberman made a complaint to the Law Society regarding the Solicitor's failure to remit the outstanding taxes to the Town of Aja and fulfil his undertaking.

Particular 2(r) xx The Solicitor failed to reply to the Law Society regarding a complaint by Stanley Lieberman.

254. By letter dated December 20, 1994 (Tab 27, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Lieberman's letter dated December 5, 1994 and requested his comments within two weeks. The Solicitor did not respond.

255. On January 16, 1995, the Law Society called the Solicitor who advised that he intended to leave the legal profession. The Solicitor asked that the Society send all correspondence to the Huntley Street address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 10, Vol. III of the Document Book.

256. By letter dated January 26, 1995 (Tab 28, Vol. III, Document Book), which was sent by registered and regular mail, the Solicitor was asked to respond to the complaint within seven days, failing which, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

257. To date, the Solicitor has not responded to the Law Society regarding a complaint by Stanley Lieberman.

Donald Fiske - Price Waterhouse

Particular 2(m) iii. He failed to answer with reasonable promptness, professional letters and communications from Donald Fiske, a solicitor.

3rd April, 1997

Particular 2(q) He failed to honour a financial obligation, incurred in connection with his practice, to Price Waterhouse, which was reduced to judgment, in the amount of \$8,566.05 plus costs of \$625.00.

258. By letter dated December 5, 1994 (Tab 30, Vol. III, Document Book), Mr. Fiske made a complaint to the Law Society regarding the Solicitor. This complaint also relates to the Paul D. Brown matter. Price Waterhouse rendered services with respect to this matter, sent accounts to the Solicitor and did not receive payment. Price Waterhouse retained Donald Fiske to commence an action against the Solicitor for payment of the outstanding accounts. On June 28, 1994, judgment was obtained against the Solicitor in the amount of \$8,566.05 plus costs of \$625.00. A copy of the judgment is contained at Tab 29, Vol. III of the Document Book. Mr. Fiske attempted to serve the Solicitor with a Notice of Examination without success.

259. To date, the Solicitor has failed to pay the account of Price Waterhouse and failed to comply with the judgment/court order obtained by Price Waterhouse. To date, the Solicitor has also failed to answer communications from Donald Fiske.

Particular 2(r) xxi The Solicitor failed to reply to the Law Society regarding a complaint by Donald Fiske.

260. By letter dated December 20, 1994 (Tab 31, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Fiske's letter dated December 5, 1994 and requested his comments within two weeks. The Solicitor did not respond.

261. On January 16, 1995, the Law Society called the Solicitor who advised that he intended to leave the legal profession. The Solicitor asked that the Society send all correspondence to the Huntley Street address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 10, Vol. III of the Document Book.

262. By letter dated January 26, 1995 (Tab 32, Vol. III, Document Book), which was sent by registered and regular mail, the Solicitor was asked to respond to the complaint within seven days, failing which, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

263. To date, the Solicitor has not responded to the Law Society regarding the complaint by Donald Fiske.

Deborah John (Beatty)

Particular 2(r) xxii. He failed to respond to the Law Society regarding a complaint by Deborah John (Beatty).

264. By letter received by the Law Society on December 21, 1994 (Tab 34, Vol. III, Document Book), Ms. John made a complaint regarding the Solicitor. The Solicitor had acted for Deborah John (Beatty) with respect to a matrimonial matter. Mr. Beatty was represented by Holden, Day, Wilson. The parties entered into minutes of settlement on September 28, 1992 (Tab 33, Vol. III, Document Book). A term of the minutes of settlement was that the husband would receive \$8,500.00 from the sale of a Saskatoon property. These monies were paid to Holden, Day, Wilson. Subsequently, Ms. John requested that the funds be returned to her. In spite of several assurances from the Solicitor that he would rectify the matter, Ms. John has not heard or had any communication from the Solicitor.

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265. By letter dated January 6, 1995 (Tab 35, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. John's letter and requested his comments within two weeks. The Solicitor did not respond.

266. On January 16, 1995, the Law Society called the Solicitor who advised that he intended to leave the legal profession. The Solicitor asked that the Society send all correspondence to the Huntley Street address. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 10, Vol. III of the Document Book.

267. By letter dated January 26, 1995 (Tab 36, Vol. III, Document Book), which was sent by registered and regular mail, the Solicitor was asked to respond within seven days, failing which, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

268. To date, the Solicitor has not responded to the Law Society regarding the complaint by Deborah John (Beatty).

Paul Scarponi

Particular 2(r) xxiii The Solicitor failed to reply to the Law Society regarding a complaint by Paul Scarponi.

269. Mr. Scarponi wrote to the Law Society by letters dated August 9, 1993 and February 4, 1994 (Tabs 37 & 38, Vol. III, Document Book), complaining about the Solicitor's conduct. Initially, Mr. Scarponi did not want the Law Society to contact the Solicitor about the complaint. Mr. Scarponi advised that he had retained the Solicitor with respect to a real estate litigation lawsuit. The Solicitor was instructed to settle the claim pursuant to an offer to settle. The Solicitor, however, had withdrawn Mr. Scarponi's claim for damages, in contravention of Mr. Scarponi's instructions.

270. By letter dated February 14, 1994 (Tab 39, Vol. III, Document Book), the Law Society wrote to the Solicitor enclosing copies of Mr. Scarponi's letters dated August 3, 1993 and February 4, 1994. The Solicitor was asked to comment on the complaint within two weeks. The Solicitor did not respond.

271. On February 25 and March 9, 1994, the Law Society called the Solicitor and left messages for him to call. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 40, Vol. III of the Document Book.

272. By registered mail dated March 21, 1994 (Tab 41, Vol. III, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on March 23, 1994. The Solicitor did not respond.

273. On March 23, 1994, the Solicitor called the Law Society and advised that he would respond by April 4, 1994. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 42, Vol. III of the Document Book.

274. By letter dated September 30, 1994 (Tab 43, Vol. III, Document Book), the Solicitor advised the Law Society that he had discontinued the claim for damages upon the instructions of Mr. Scarponi. The Solicitor advised the Law Society that he had told Mr. Scarponi that, in his opinion, the trial would be lost as a result of Mr. Scarponi's testimony and that Mr. Scarponi had agreed to settle on this basis.

3rd April, 1997

275. By letter dated November 30, 1994 (Tab 44, Vol. III, Document Book), Mr. Scarponi wrote to the Law Society in response to the Solicitor's letter dated September 30, 1994. Mr. Scarponi reiterated his complaint against the Solicitor.

276. By letter dated May 16, 1995 (Tab 45, Vol. III, Document Book), the Law Society wrote to the Solicitor requesting further information concerning Mr. Scarponi's complaint. The Solicitor did not respond.

277. On June 28 and 30, 1995, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 46, Vol. III of the Document Book.

278. By registered mail dated July 4, 1995 (Tab 47, Vol. III, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

279. To date, the Solicitor has not responded to the Law Society's further inquiries regarding the complaint by Paul Scarponi.

Particular 2(s) The Solicitor breached his Undertaking to the Law Society dated October 5, 1994 to reply to written correspondence within two weeks of receipt of such correspondence and to respond to telephone calls from the Law Society by the end of the next working day by failing to reply promptly to communications from the Law Society with respect to the foregoing complaints.

280. By failing to respond to the Law Society with respect to complaints by R.S. Miller, Paul D. Brown, Anne C. Briscoe, Brian M. Jenkins, Barry Rubinoff, Stanley Lieberman, Donald Fiske, Deborah John (Beatty) and Paul Scarponi, the Solicitor failed to comply with his undertaking to the Law Society dated October 5, 1994 to reply promptly to communications from the Law Society. A copy of the undertaking is contained at Tab 48, Vol. III of the Document Book.
Complaint D382/95

Particular 2a) The Solicitor breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees, by continuing to practise during the period December 1, 1992 to December 29, 1992.

281. On or about July 13, 1992, the Law Society forwarded to the Solicitor a Notice advising him that his Annual Fees payment was due on August 1, 1992. The Solicitor was further advised that payment must be made in order to avoid being suspended by Convocation. A copy of the Notice of Annual Membership Fees is contained at Tab 1, Vol. IV of the Document Book.

282. On or about October 12, 1992, the Law Society forwarded to the Solicitor a Second Notice advising him that his Annual Fees payment was due on August 1, 1992. The Solicitor was further advised that payment must be made in order to avoid being suspended by Convocation. A copy of the Second Notice is contained at Tab 2, Vol. IV of the Document Book.

283. On or about November 16, 1992, the Law Society forwarded to the Solicitor a Final Notice advising him that his Annual Fees payment was due on August 1, 1992. The Solicitor was further advised that payment must be made in order to avoid being suspended by Convocation. A copy of the Final Notice is contained at Tab 3, Vol. IV of the Document Book.

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284. By registered mail dated December 2, 1992 (Tab 4, Vol. IV, Document Book), the Solicitor was advised that his rights and privileges as a member of the Society had been suspended effective December 1, 1992 for failing to pay his annual fees.

285. By letter dated December 29, 1992 (Tab 5, Vol. IV, Document Book), the Solicitor was advised that his suspension had been terminated effective that day as he had provided the Law Society with payment.

286. On or about April 26, 1993, the Solicitor called the Law Society and advised that he had practised law during the month of December 1992. An audit of the Solicitor's practice was commenced by the Law Society's audit department.

287. The Solicitor completed a questionnaire in September 1993 (Tab 6, Vol. IV, Document Book), confirming that he received the Notices of Annual Fees but was unable to pay the fees as he had no funds available. In addition, the following documents were obtained during the Law Society's audit that established that the Solicitor practised from December 1 to December 29, 1992, when he was suspended for non-payment of his Annual Fees:

- i. Solicitor's trust bank statement for December 1992 showing receipts and disbursements made (Tab 7, Vol. IV, Document Book);
- ii. Solicitor's trust cheques dated December 1, 3 and 4, 1992 (Tab 8, Vol. IV, Document Book);
- iii. Solicitor's trust cheques dated December 16, 23 and 29, 1992 payable to "cash" (Tab 9, Vol. IV, Document Book);
- iv. Solicitor's trust receipts and disbursement journals showing activity in the trust account (Tab 10, Vol. IV, Document Book);
- v. Solicitor's client ledger card for H. Chan showing monies disbursed during the month of December 1992 (Tab 11, Vol. IV, Document Book);
- vi. Solicitor's letter to Societe canadienne d'hypotheques et de logement dated December 23, 1992 requesting that an execution for his client, T. Liu, be lifted temporarily for the closing on December 23, 1992 (Tab 12, Vol. IV, Document Book);
- vii. Solicitor's letter to Barry A. Smith dated December 23, 1992 re: client, T. Liu (Tab 13, Vol. IV, Document Book);
- viii. Solicitor's letter to Anderson and Wylde dated December 23, 1992 re: client, T. Liu (Tab 14, Vol. IV, Document Book);
- ix. Solicitor's letter to Laurentian Bank of Canada dated December 23, 1992 re: client, T. Liu (Tab 15, Vol. IV, Document Book);
- x. Solicitor's letter to Shoppers Trust Co. dated December 23, 1992 re: client, T. Liu (Tab 16, Vol. IV, Document Book); and
- xi. Solicitor's letter to Borlak & Bertolussi dated December 23, 1992 replying to requisitions (Tab 17, Vol. IV, Document Book).

Particular 2(b) The Solicitor used his trust account for personal transactions contrary to Section 14 of Regulation 708 of the Law Society Act;

288. On May 14, 1992, the Solicitor issued a trust cheque to himself in the amount of \$500.00 to pay for a bible study course, contrary to Law Society Act Regulation 708. A copy of the Solicitor's trust cheque is contained at Tab 18, Vol. IV of the Document Book.

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289. On June 16, 1992, the Solicitor issued a trust cheque to the Law Society of Upper Canada in the amount of \$1,321.45 to pay for his errors and omissions levy, contrary to Law Society Act Regulation 708. A copy of the Solicitor's trust cheque is contained at Tab 19, Vol. IV of the Document Book.

Particular 2(c) The Solicitor issued trust cheques payable to "cash" contrary to subsection 10(a) of Section 14 of the Regulation.

290. During the months of March through August 1993, the Solicitor issued approximately thirteen trust cheques payable to "cash", copies of which are contained at Tabs 20-43, Vol. IV of the Document Book.

Particular 2(d) The Solicitor failed to cooperate with the Law Society's examiner with respect to an audit of books and records by cancelling, rescheduling and not showing up for appointments.

291. On May 10, 1993, the Law Society's examiner called the Solicitor to schedule an audit of his books and records. The Solicitor advised that his books and records were with his accountant and that he would call the Law Society to schedule an appointment. A copy of the handwritten notes of the telephone conversation are contained at Tab 44, Vol. IV of the Document Book.

292. On May 26, 1993, the Law Society's examiner called the Solicitor and left a message on his answering machine to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the message is contained at Tab 44, Vol. IV of the Document Book.

293. By registered mail dated June 2, 1993 (Tab 45, Vol. VI, Document Book), the Solicitor was asked to produce his books and records within fifteen days. The Law Society's letter was signed for and delivered on June 7, 1993. The Solicitor did not respond.

294. By registered mail dated June 22, 1993 (Tab 46, Vol. IV, Document Book), the Law Society enclosed a copy of its letter dated June 2, 1993 and requested his response. The Law Society's letter was signed for and delivered on June 24, 1993.

295. On June 24, 1993, the Solicitor called the Law Society's examiner and left a message. Later that day, the examiner returned the Solicitor's call and left a message for him. The Solicitor did not return this call. On June 25, 1993, the Law Society's examiner called the Solicitor and scheduled an appointment to meet on July 21, 1993. A copy of the handwritten notes of the telephone communications are contained at Tab 47, Vol. IV of the Document Book.

296. On July 20, 1993, the Solicitor called the Law Society's examiner and rescheduled the July 21, 1993 appointment to July 28, 1993. A copy of the handwritten notes of the telephone conversation are contained at Tab 48, Vol. IV of the Document Book.

297. On July 26, 1993, the Solicitor's bookkeeper called the Law Society's examiner and rescheduled the July 28, 1993 appointment to August 5, 1993. The bookkeeper advised the examiner that the Solicitor's books and records were up to date. A copy of the handwritten notes of the telephone conversation are contained at Tab 49, Vol. IV of the Document Book.

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298. The Law Society's examiner attended at the Solicitor's office on August 5, 1993. The Solicitor advised that he thought the appointment was the following day. The appointment was rescheduled for the following day as the books and records were not available. A copy of the handwritten record of the examiner's attendance are contained at Tab 49, Vol. IV of the Document Book.

299. On August 6, 1993, the Solicitor called the Law Society's examiner to reschedule the appointment until August 11, 1993. The Solicitor advised that he could not find some of his books and records. A copy of the handwritten notes of the telephone conversation are contained Tab 50, Vol. IV of the Document Book.

300. By letter dated August 10, 1993 (Tab 51, Vol. IV, Document Book), the Solicitor advised the Law Society's examiner that his books and records were with his bookkeeper, Shelley Legere. The Solicitor further advised that he would have his books and records available by August 18, 1993. The Solicitor admitted that he had practised law while suspended.

301. By letter dated August 11, 1993 (Tab 52, Vol. IV, Document Book), the Law Society's examiner acknowledged receipt of the Solicitor's letter dated August 10, 1993. The Solicitor was advised of the rescheduled appointment for September 10, 1993 to review the books and records for the period from June 1992 to September 1993.

302. On September 10, 1993, the Solicitor called the Law Society's examiner and left a message advising that he would be in court that morning and to reschedule the appointment for 1:15 p.m. that day. The Solicitor then called to cancel the appointment as he was still in court. It was rescheduled for September 16, 1993. The Solicitor advised that his books and records were current to August 1993. A copy of the handwritten notes of the telephone communications are contained at Tab 53, Vol. IV of the Document Book.

303. On September 16, 1993, the Law Society's examiner reviewed the Solicitor's books and records which were found to be inadequate. On September 17, 1993 (Tab 54, Vol. IV, Document Book), the Solicitor was provided with a summary of the audit setting out the inadequacies found during the audit. The next appointment was scheduled for September 24, 1993. On September 24, 1993, the Solicitor called and left a message advising that he would be in court that day. The meeting was rescheduled for October 1, 1993. A copy of the handwritten notes of the telephone conversation are contained at Tab 55, Vol. IV of the Document Book.

304. On October 1, 1993, the Solicitor called the Law Society's examiner and left a message advising that he was cancelling that morning's appointment. A copy of the handwritten notes of the telephone message are contained at Tab 56, Vol. IV of the Document Book.

305. On October 4, 1993, the Law Society's examiner called the Solicitor and left a message asking him to call and schedule another appointment. The Solicitor did not return the call. A copy of the handwritten notes of the message are contained at Tab 57, Vol. IV of the Document Book.

306. By letter dated October 5, 1993 (Tab 58, Vol. IV, Document Book), the Law Society's examiner wrote to the Solicitor advising that an appointment was scheduled for October 7, 1993 at 10:00 a.m. The Solicitor was asked to advise the Law Society by October 6, 1993 if that date was not suitable.

307. On October 7, 1993, the Solicitor called the Law Society's examiner and left a message cancelling the appointment. The Solicitor advised that he was available on October 25, 1993. A copy of the handwritten notes of the message are contained at Tab 59, Vol. IV of the Document Book.

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308. On October 25, 1993, the Solicitor called the Law Society's examiner and left a message that he had a pre-trial that day and would like to reschedule. The examiner returned the Solicitor's call that day and left a message for him to call and make an appointment. A copy of the handwritten notes of the message are contained at Tab 60, Vol. IV of the Document Book.

309. On October 27, 1993, the Law Society's examiner left a message for the Solicitor advising that she was available on November 2 or 3, 1993. The Solicitor was asked to call to advise which date would be more convenient to him. The Solicitor did not return the call. On October 28, 1993, the Law Society's examiner called the Solicitor and set up the appointment for November 9, 1993. A copy of the handwritten notes of the telephone communications are contained at Tab 61, Vol. IV of the Document Book.

310. On November 9, 1993, the Law Society's examiner attended at the Solicitor's office to review his books and records. The Solicitor did not appear. The Solicitor called the Law Society later that day to advise that he had forgotten about the appointment and to reschedule for the following day. A copy of the handwritten notes of the conversation are contained at Tab 61, Vol. IV of the Document Book.

311. On November 10, 1993, the Solicitor called to postpone the appointment until that afternoon. The examiner attended at the Solicitor's office to continue the audit of the Solicitor's books and records. The books and records were not current and as a result co-signing controls were placed on the Solicitor's trust account that day. A copy of the handwritten notes of the communications are contained at Tab 62, Vol. IV of the Document Book.

312. On November 18, 1993, the Law Society's examiner left a message for the Solicitor about the status of his books and records. The Solicitor returned the call that day and left a message advising that the trust cards and reconciliations were almost up-to-date. A copy of the handwritten notes of the telephone messages are contained at Tab 63, Vol. IV of the Document Book.

313. On December 1, 2, 15 and 21, 1993, the Law Society's examiner left messages for the Solicitor to call and arrange another appointment. The Solicitor did not return the calls. A copy of the handwritten notes of the messages are contained at Tabs 64-66, Vol. IV of the Document Book.

314. By registered mail dated December 29, 1993 (Tab 67, Vol. IV, Document Book), the Law Society's examiner asked the Solicitor to produce trust bank reconciliations, general bank statements for October, November and December 1993 and several client files. The Solicitor was asked to respond the week of January 10, 1994. The Law Society's letter was signed for and delivered on December 31, 1993.

315. On January 10, 1994, the Solicitor left a message for the Law Society advising that he had been suspended on January 1, 1994 for non-payment of the errors and omissions levy. He further advised that he would produce his books and records once he was reinstated. A copy of the handwritten notes of the message are contained at Tab 68, Vol. IV of the Document Book.

316. On January 28, 1994, the Solicitor's accountant called the Law Society and advised that he would courier the Solicitor's records to the Law Society by the following day. The Law Society left a message for the Solicitor regarding the appointment scheduled that afternoon at 2:00 p.m. The Solicitor did not return the call. A copy of the handwritten notes of the communications are contained at Tabs 69 & 70, Vol. IV of the Document Book.

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317. On January 31, 1994, the Law Society's examiner left a message for the Solicitor's bookkeeper asking whether or not the books and records had been couriered to the Law Society. No response was received. A copy of the handwritten notes of the message are contained at Tab 71, Vol. IV of the Document Book.

318. By letter dated January 31, 1994 (Tab 72, Vol. IV, Document Book), the Solicitor was asked to deliver his books, records and client files to the Law Society by February 7, 1994, failing which, the matter would be referred to the Chair of the Discipline Committee. A message was also left on January 31, 1994 for the Solicitor to call. A copy of the handwritten notes of the messages are contained at Tab 73, Vol. IV of the Document Book.

319. On February 4, 1994, the Solicitor called the Law Society and advised that he would contact his accountant and call back later that day. The Solicitor advised that he did not know why his accountant did not deliver his books and records to the Society. The Solicitor did not call back. A copy of the handwritten notes of the conversation are contained at Tab 74, Vol. IV of the Document Book.

320. By letter dated February 7, 1994 (Tab 75, Vol. IV, Document Book), the Solicitor provided the Law Society with some of his books and records. The Solicitor asked the Law Society to contact him to discuss the matter once the books and records had been reviewed.

321. On February 15, 1994, the Solicitor left a message for the Law Society advising that he would send the bank statements that day and that he would call later that week. A copy of the handwritten notes of the message are contained at Tab 76, Vol. IV of the Document Book.

322. By letter dated February 18, 1994 (Tab 77, Vol. IV, Document Book), the Solicitor sent his trust account statements from March 1992 to October 1993.

323. On February 25, 1994, the Solicitor rescheduled the appointment for that day to March 1, 1994. A copy of the handwritten notes of the conversation are contained at Tab 78, Vol. IV of the Document Book. The Solicitor did not attend the March 1, 1994 appointment.

324. On April 12, 1994, the Solicitor's accountant left a message for the Law Society regarding his books and records and indicated that he would call back later. On April 13, 1994, the Solicitor's bookkeeper called the Law Society and personally undertook to have all records delivered to the Law Society by April 18, 1994. The Solicitor's bookkeeper did not submit the records as indicated. A copy of the handwritten notes of the communications are contained at Tabs 79 & 80, Vol. IV of the Document Book.

325. To date, the Solicitor has failed to cooperate with the Law Society's examiner respecting an audit of his books and records.

Particular 2(e) The Solicitor failed to reply to the Law Society's requests that he provide a response to inadequacies discovered during an examination of his books and records on September 16, 1993, despite letters dated August 15, 1994, September 26, 1994, November 17, 1994 and December 19, 1994.

326. On September 16, 1993, the Law Society noted a number of inadequacies in the Solicitor's books and records. The Solicitor received a report from the Law Society examiner dated September 17, 1993 (Tab 54, Vol. IV, Document Book) setting out the inadequacies. By letter dated August 15, 1994 (Tab 81, Vol. IV, Document Book), the Law Society wrote to the Solicitor regarding those inadequacies and asked the Solicitor to correct them. The Solicitor did not respond.

3rd April, 1997

327. By letter dated September 26, 1994 (Tab 82, Vol. IV, Document Book), the Law Society enclosed a copy of its August 15, 1994 letter and asked the Solicitor to respond forthwith. The Solicitor did not respond.

328. By registered mail dated November 17, 1994 (Tab 83, Vol. IV, Document Book), the Solicitor was advised that if he did not respond to the Law Society within fifteen days, the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

329. By registered mail dated December 19, 1994 (Tab 84, Vol. IV, Document Book), the Solicitor was again advised that if his response was not received within fifteen days, the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

330. To date, the Solicitor has not responded to the Law Society regarding the outstanding inadequacies found in his books and records.

Particular 2(f) The Solicitor failed to reply to the Law Society despite messages left October 25, 1994, November 3, 1994, November 7, 1994, November 24, 1994, January 3, 1995, January 12, 1995 and a letter dated January 25, 1995.

331. A further audit of the Solicitor's books and records was commenced by the Law Society in or about September 1994. On October 25, 1994, the Law Society examiner attended at the Solicitor's office. The Solicitor was not in the office. The examiner's business card was left at the Solicitor's office. A copy of the handwritten record of the examiner's attendance are contained at Tab 85, Vol. IV of the Document Book.

332. On November 3, 1994, the examiner again attended at the Solicitor's office and found the outside doors locked. A clerk from the store unlocked the door at which time the examiner left her business card for the Solicitor. The Solicitor did not contact the Law Society. A copy of the handwritten record of the examiner's attendance are contained at Tab 85, Vol. IV of the Document Book.

333. On November 17, 1994, the examiner again attended at the Solicitor's office and was advised by the store clerk/tenant that the Solicitor's door was kept locked. The Solicitor was expected to return on November 22, 1994. A copy of the handwritten record of the examiner's attendance are contained at Tab 86, Vol. IV of the Document Book.

334. On November 24, 1994, the Law Society's examiner left a message for the Solicitor on his answering machine asking that he return the call. The Solicitor did not return the call. A copy of the handwritten notes of the message are contained at Tab 87, Vol. IV of the Document Book.

335. On January 3, 12 and 17, 1995, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the messages are contained at Tabs 88, 89 and 90, Vol. IV of the Document Book.

336. By letter dated January 25, 1995 (Tab 91, Vol. IV, Document Book), the Solicitor was asked to contact the Law Society to arrange an appointment to review his books and records. The Solicitor was advised that if the Law Society had not heard from him by February 10, 1995, the matter would be referred to the Discipline Committee. The Solicitor did not respond.

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337. To date, the Solicitor has not responded to the Law Society's requests to conduct a further audit of his books and records and has not produced his books and records to the Law Society.

Particular 2(g) The Solicitor failed to comply with his Undertaking to the Law Society dated October 5, 1994 by failing to enrol and participate in the Practice Review Program of the Professional Standards Department.

338. The Solicitor was referred to the professional standards department by the audit department of the Law Society. On October 5, 1994, the Solicitor provided the Law Society an undertaking (Tab 48, Vol. III, Document Book) to enrol and participate in the Practice Review Program. By letter dated September 14, 1994 (Tab 92, Vol. IV, Document Book), the Law Society wrote to the Solicitor advising him about the purpose of the Practice Review Program. The Solicitor was asked to confirm within two weeks whether or not he intended to participate in the program. The Solicitor did not respond.

339. By letter dated October 25, 1994 (Tab 93, Vol. IV, Document Book), the Solicitor was reminded of his undertaking to the Law Society dated October 5, 1994 to participate in the Practice Review Program. The Solicitor was asked to respond by November 9, 1994. The Solicitor did not respond.

340. By letter dated November 18, 1994 (Tab 94, Vol. IV, Document Book), which was sent by registered and regular mail, the Solicitor was again reminded of his undertaking to the Law Society and was asked to respond by December 6, 1994. The Law Society's registered letter was returned "unclaimed".

341. On November 29, 1994, the Solicitor left a message for the Law Society. On November 30, 1994, the Law Society returned the Solicitor's call and left him a message to call back. The Solicitor did not return the call. A copy of the message slip of the messages are contained at Tab 95, Vol. IV of the Document Book.

342. By letter dated December 7, 1994 (Tab 96, Vol. IV, Document Book), the Solicitor was asked to respond by December 19, 1994 regarding his decision to participate in the program. The Solicitor did not respond.

343. By letter dated December 19, 1994 (Tab 97, Vol. IV, Document Book), the Solicitor was asked to respond by January 12, 1995. The Solicitor was advised that if his response was not received by that date, it would recommend that the file be closed on the basis of the Solicitor's failure to cooperate. The Solicitor was further advised that the Law Society would consider disciplinary action. The Solicitor did not respond.

344. To date, the Solicitor had not responded to the Law Society regarding his participation in the Practice Review Program and has not enrolled in the Practice Review Program in violation of his undertaking dated October 5, 1994.

Particular 2(g) The Solicitor failed to comply with his Undertaking to the Law Society dated October 5, 1994 by failing to:
ii) reply to written correspondence from the Law Society within two weeks of receipt of such correspondence and to respond to telephone calls from the Law Society by the end of the next working day.

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345. By failing to respond to the Law Society's communications with respect to Particulars 2(d) to 2(f)-(i) of Complaint D382/95, by failing to cooperate with the Law Society's examiner regarding an audit of his books and records, and failing to respond to inadequacies regarding his books and records, the Solicitor failed to comply with his undertaking to the Law Society dated October 5, 1994. A copy of the Solicitor's undertaking is contained at Tab 48, Vol. III of the Document Book.

V. PRIOR DISCIPLINE

346. On September 14, 1993, the Solicitor was reprimanded in committee for failing to fulfil a financial obligation, failing to reply to the Law Society and failing to file his Form 2 declaration for the fiscal year ended November 30, 1991.

347. On October 4, 1994, the Solicitor was reprimanded in committee for failing to reply to the Law Society on three separate matters. The Solicitor provided an undertaking to the Law Society dated October 5, 1994 to participate in the Practice Review Program and to reply to written correspondence from the Law Society within two weeks and to telephone calls by the end of the next working day.

348. The Solicitor has been suspended since November 1, 1994 for non-payment of his annual fees. The Solicitor's last filing was for the fiscal year ended November 30, 1992. The Solicitor has not produced his books and records to the Law Society since September 16, 1993.

DATED at Toronto, this 4th day of June, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Timothy Michael Kinnaird be disbarred.

REASONS FOR RECOMMENDATION

The Law Society has urged the Committee to recommend disbarment of the Barrister based on ungovernability, and has stated that there is nothing to alleviate or ameliorate the penalty. The Society has stated that Mr. Kinnaird has flouted all of its rules and regulations; that his appearance and apologies before the Committee are too little too late; and that disbarment is required in the public interest.

We agree with Counsel for the Society that an invitation to resign (usually called permission to resign, which is clearly a misnomer) is not appropriate in the circumstances and that there must be extenuating circumstances present for an invitation/permission to resign.

Timothy Kinnaird testified that he found it hard to explain his actions. He said that he started to practise law in 1990 with great success, and had two reported court decisions when he was working with a law firm. He stated that he became a victim of his own success when he entered private practice in 1991. He became incompetent to handle all of the matters he undertook.

He met a woman about this time and assumed responsibility for her support and the support of her three children. She became pregnant in 1992, and Mr. Kinnaird was, by his own admission, unprepared for the support of the family. He said that he was faced with "overwhelming problems."

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Although the Barrister said that he elected not to bring in a parade of character and psychiatric witnesses, he did express his regret and apologized to the Society, to his colleagues, and to his clients whose trust he betrayed.

It should be noticed in passing that it would indeed be desirable if the simple words "I'm sorry" were heard more frequently in discipline hearings, and this Member deserves credit for recognizing his misdeeds and for publicly apologizing for them.

Aside from his apology and references to psychiatric problems, we have heard no persuasive evidence in mitigation. The conduct of the Barrister is inexcusable. A penalty lighter than disbarment is inappropriate in circumstances such as the present. The Agreed Statement of Facts is more than 70 pages long, and the Document Books themselves are almost five inches thick.

Mr. Kinnaird's discipline history is referred to above. This includes a previous breach of undertakings. There must be both general and specific deterrence in this case.

We are not, however, prevented from expressing some sympathy with the Member's family problems, his medical problems, and his complete inability to cope. We were impressed by the fact that he apologized to the Society, to his colleagues, and to his clients whose trust he betrayed.

Perhaps, after a suitable period away from the practice of law, the Member will obtain the help he needs to put his life back together. If at some time in the future, which would not be sooner than five years from the decision of Convocation, Mr. Kinnaird feels that he is again psychologically fit to practise law again, he might want to apply for readmission.

At present, however, we must discharge our obligation to the public and to the profession and we have no alternative but to recommend a penalty of disbarment.

Timothy Michael Kinnaird was called to the Bar on March 30, 1990.

ALL OF WHICH is respectfully submitted

DATED this 16th day of January, 1997

Robert B. Aaron
Chair

Ms. Gagnon addressed a preliminary matter relating to the service of the Report.

It was moved by Mr. MacKenzie, seconded by Ms. Sealy that the Report be adopted.

Carried

3rd April, 1997

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Ms. Gagnon made submissions in support of the recommended penalty.

It was moved by Mr. Epstein, seconded by Ms. Curtis that the recommended penalty be adopted but that the reasons be deleted and rewritten by Convocation.

It was moved by Ms. Curtis, seconded by Ms. Sealy that the recommended penalty be adopted but that the reference to "reapplying for readmission" be deleted.

It was moved by Mr. Carey, seconded by Mr. Gottlieb that the solicitor be permitted to resign.

Counsel, the reporter and the public withdrew.

The Epstein/Curtis was voted on and adopted.

The Curtis/Sealy and Carey/Gottlieb motions were not put.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be disbarred but that the reasons be rewritten by Convocation.

CONVOCATION ROSE AT 1:45 P.M.

Confirmed in Convocation on 25 day of April, 1997


Treasurer