

MINUTES OF SPECIAL CONVOCATION

Thursday, 24th March, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), R. Cass, Copeland, Curtis, Elliott, Epstein, Farquharson, Feinstein, Goudge, Hill, Lamont, McKinnon, Moliner, S. O'Connor, Palmer, Peters, Richardson, Thom, Topp, Weaver and Yachetti.

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IN PUBLIC

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The reporter was sworn.

DISCIPLINE COMMITTEE

Re: GEORGE CLEGG, Orillia

The Secretary placed the matter before Convocation.

Messrs. Topp and Thom did not participate.

Mr. Stephen Foster appeared for the Law Society and Mr. Patrick Wymes appeared for the solicitor. The solicitor was not present.

An adjournment was granted on consent to the Special Convocation in April.

Counsel retired.

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ADMISSIONS COMMITTEE

Application for Readmission

Re: MICHAEL ANGELO SPENSIERI, Toronto

The Secretary placed the matter before Convocation.

Mr. Michael Brown appeared for the Society and Mr. Spensieri appeared on his own behalf.

Mr. Spensieri made submissions and filed an Undertaking regarding his Rule 20 activities.

The Application for Readmission was adjourned on consent to the September Special Convocation.

Counsel and applicant retired.

24th March, 1994

DISCIPLINE COMMITTEE

Re: WAYNE DOUGLAS BERTHIN, Midland

The Secretary placed the matter before Convocation.

Ms. Palmer did not participate.

Mr. Neil Perrier appeared for the Society and the solicitor appeared on his own behalf.

An adjournment was requested on consent. The Society's Counsel advised that the solicitor had filed a Notice of Disagreement but was awaiting the transcripts and required time to prepare.

Counsel for the Society requested an adjournment to the May Special Convocation.

Convocation granted an adjournment to the May Special Convocation.

Counsel and solicitor retired.

Re: THOMAS HOLYOAKE BOX, Markham

The Secretary placed the matter before Convocation.

Mr. Yachetti did not participate.

Ms. Christina Budweth appeared for the Society and Mr. Walter Fox appeared on behalf of the solicitor. The solicitor was not present.

Ms. Budweth advised that there was another outstanding Complaint and requested an adjournment on consent so that both matters could be dealt with at the same time. Convocation was further advised the solicitor had given an Undertaking not to practice.

The matter was adjourned to be brought back and heard with the other Complaint.

Counsel retired.

Re: JOHN ALLEN ZINSZER, Kitchener

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. Peters did not participate.

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

Mr. Perrier advised Convocation that Mr. Madorin, the solicitor's counsel was out of the country and an adjournment was requested on consent to the next Special Convocation.

An adjournment was granted to the next Special Convocation in April.

Counsel retired.

24th March, 1994

Re: JOHN LOUIS ROSSI, Windsor

The Secretary placed the matter before Convocation.

Ms. Peters did not participate.

Mr. Stephen Foster appeared for the Society and the solicitor appeared on his own behalf.

An adjournment was requested on consent to the May Special Convocation so that another Complaint could be heard at the same time.

Convocation granted the adjournment to the May Special Convocation.

Counsel and solicitor retired.

Re: PAUL HUBERT WATSON, Carleton-Ottawa

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. Elliott withdrew for this matter.

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

Counsel for the Society advised that the Society was unable to effect service and was seeking an order for substitutional service by leaving the Report with the adult male at 825 Fleming Avenue.

It was moved by Mr. McKinnon, seconded by Mr. Hill that proper service had been effected, that the matter proceed and the Report and Recommendation as to Penalty be adopted.

Carried

Convocation had before it the Report of the Discipline Committee dated 21st January, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 1st February, 1994 (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

Michael G. Hickey, Q.C.

Lloyd Brennan, Q.C.

Susan E. Elliott

24th March, 1994

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

Christina Budweth
for the Society

PAUL HUBERT WATSON
of the Regional Municipality
of Carleton-Ottawa
a barrister and solicitor

Not represented
for the solicitor

Heard: October 2, 1992
February 26, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 23rd, 1992, Complaint D73/92 was issued against Paul Hubert Watson alleging that he was guilty of professional misconduct.

The matter was heard in public on October 2, 1992 and February 26, 1993 before this Committee composed of Michael G. Hickey, Q.C., Lloyd Brennan, Q.C. and Susan E. Elliott. Mr. Watson was not present at the hearing nor was he represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D73/92

2. (a) he has failed to cooperate fully and expeditiously with the Law Society's adjustors in the investigation of a claim against him by his former client, Bentley Hicks;
- (b) he has breached an undertaking given to the Law Society on March 6, 1991 to reply to written communications within two weeks of the date of receipt of same and telephone calls by the end of the second working day on which he is back in the office after receipt of same.

Evidence

There was no Agreed Statement of Facts and the Solicitor did not attend and was not represented at the hearing of this complaint, although served with notice of the hearing.

With respect to particular 2(a), there was filed as Exhibit 5 an affidavit sworn on October 1st, 1992 of Thomas J. O'Brien, an adjuster retained by the Law Society to investigate the circumstances of a claim against the Solicitor by a former client, Bentley Hicks, deposing that the Solicitor had not responded to numerous letters, messages and telephone calls regarding the claim or complied with the adjuster's request to sign a non-waiver agreement.

24th March, 1994

With respect to particular 2(b), in addition to the affidavit of Thomas J. O'Brien there was filed as Exhibit 4 an affidavit sworn on the 2nd October, 1992 of Jean-Marc Lafreniere that he had delivered to the Solicitor's residence a letter from Discipline Counsel confirming that no response had been received from the Solicitor to written communications to the Solicitor on May 25th, 1992 and July 13th, 1992 or to six telephone messages left at the Solicitor's home and office, all in breach of his undertaking given to the Society on March 6th, 1991.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Paul Hubert Watson be permitted to resign.

REASONS FOR RECOMMENDATION

Prior to the hearing of this complaint, by letter dated March 7th, 1992 filed as Exhibit 8, the Solicitor requested the Society for permission to resign, citing mental illness and physical exhaustion as the reasons for his professional misconduct and his inability to attend to such routine matters as answering correspondence and telephone calls. In his letter he sets out a number of tragic circumstances which befell him in the previous months including, inter alia;

- (a) One of his six children's consistent involvement in criminal activities requiring extensive and burdensome legal and financial assistance;
- (b) The suicidal tendencies and threats of a second child resulting in interference with his practice and excessive medical costs;
- (c) Separation from his spouse of thirty-two years due to his mental illness, involving divorce, sale of his matrimonial home and division of his assets;
- (d) Repeated break-ins and vandalism of his office and ultimately destruction of his office by fire and loss of many of his files and records.

In his letter the Solicitor states, in part,

"In particular, my good reputation as counsel over 25 years has suffered and this alone has brought on great mental anguish. The justifiable involvement of the Society has caused insomnia which has contributed to physical illness. The latter consists of loss of memory and short span loss of vision.

My mental illness was one from which I had believed myself to be immune but which has, in fact, destroyed my life. I am presently 57 years of age and my future, as of the date of this letter to you, seems bleak and without direction.

I would appreciate, under the circumstances, that consideration be given to permit my resignation as a member of The Law Society of Upper Canada. This request is made in the hopeful expectation that I be left with some measure of honour and dignity.

24th March, 1994

Over the years I have attempted to live up to the oath taken on the day of my admission to the Bar of Ontario, being in the year 1964. I have extended free legal services to those in need, which accounted for 20% of my practice. I did also conduct seminars at the Bar Admission Course in Ottawa. Over an eleven year period I was involved as president of the Common Law Alumni Association of the University of Ottawa and thereafter a governor of that University. As founder of the Ottawa Branch of the Community Service Order Programme and a member of the Committee on Child Representation I acted as liaison with the members of the judiciary.

As indicated, I do not intend to resume the practice of law as my recovery from illness is expected to be a lengthy one. I have been under psychiatric care.

For the above reasons I would be grateful that my request be received with compassion."

The Solicitor's request for permission to resign was before Convocation on the 26th day of March, 1992 in the disposition of a prior complaint at which time Convocation was disinclined to accept the request for resignation, considering it was a drastic step and one which they did not wish to impose on a member of the bar with the Solicitor's length of tenure without being satisfied that he completely understood the ramifications of his request. By letter dated December 1st, 1992 filed as Exhibit 9, the Solicitor confirmed that he had not engaged in the practice of law since submitting his letter of March 7th, 1992 and did not intend to do so in the foreseeable future. He confirmed that his personal problems as previously outlined prevented him from properly carrying out his professional duties and that he would not seek permission from the Society to resume practice until these problems were behind him.

Counsel for the Society indicated that but for the Solicitor's request for permission to resign she would have recommended a lengthy suspension and that the Solicitor not be permitted to resume practice until such time as he satisfied a Section 35. However, counsel for the Society asked the Committee to accept the Solicitor's request and in all of the circumstances the Committee was unanimously of the view that permission to resign is the appropriate disposition of this matter.

Paul Hubert Watson was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1964.

ALL OF WHICH is respectfully submitted

DATED this 21st day of January, 1994

Michael G. Hickey, Q.C.
Chair

The solicitor was permitted to resign.

Counsel retired.

Re: JEFFREY MARK LEVY, Toronto

The Secretary placed the matter before Convocation.

Ms. Christina Budweth appeared for the Society and Mr. Levy appeared on his own behalf.

24th March, 1994

Ms. Budweth advised Convocation that the solicitor requested an adjournment to the June Special Convocation. His counsel Mr. Douglas Crane had withdrawn as counsel and the solicitor needed time to retain new counsel and obtain the transcripts. Ms. Budweth further advised that an additional Complaint against the solicitor was to be heard in May. An Undertaking not to practice had been given by the solicitor.

The Society was neither consenting or opposing the adjournment.

An adjournment was granted to the Special Convocation in June.

Counsel and solicitor retired.

Re: GABRIELE MONIKA HAUSER, Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Lamont did not participate.

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

Ms. Budweth advised that she had served a Notice of Acceptance. She said the solicitor had been properly served but was on vacation.

It was moved by Mr. Yachetti, seconded by Mr. Hill that the matter proceed.

Lost

It was moved by Mr. Copeland, seconded by Ms. Elliott that the matter be adjourned to the Special Convocation in April peremptory to the solicitor.

Carried

Counsel retired.

Re: MARIO ZAMMIT, Mississauga

The Secretary placed the matter before Convocation.

Messrs. Copeland, Hill and Lamont withdrew for this matter.

Mr. Stephen Foster appeared for the Society and the solicitor appeared on his own behalf.

Counsel for the Society requested an adjournment to conclude an investigation to determine whether the solicitor had fulfilled his obligations to entitle him to resign rather than be disbarred.

The solicitor opposed the adjournment and advised that he had given an Undertaking not to practice.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Mr. McKinnon, seconded by Ms. Weaver that the matter be adjourned for 1 month.

Lost

24th March, 1994

Counsel, the solicitor, the reporter and the public were recalled and advised that Convocation would proceed with the matter.

The matter was stood down.

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The Treasurer withdrew from Convocation as one of the ineligible Benchers listed on the Calum Graham Discipline matter. Mr. Yachetti took the Chair as Acting Treasurer.

Re: CALUM DONALD GRAHAM, Mississauga

The Secretary placed the matter before Convocation.

Messrs. Topp and Mr. McKinnon and Ms. Peters withdrew for this matter.

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

Mr. Perrier requested an adjournment to the May Special Convocation to determine what course of action should be taken because of errors raised by a complainant in the Agreed Statement of Fact. He advised that the solicitor had given an Undertaking not to practise.

It was moved by Mr. Copeland, seconded by Ms. Elliott that the matter be adjourned to the May Special Convocation.

Carried

Counsel retired.

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The Treasurer returned to Convocation.

Re: DAVE ALLEN KLAIMAN, Thornhill

The Secretary placed the matter before Convocation.

Ms. Christina Budweth appeared for the Society and the solicitor appeared on his own behalf.

The solicitor made submissions that Convocation should proceed with the matter and accept the Committee's recommendation. He advised Convocation that he had not been given enough time to respond to the Law Society's Factum in support of an increased penalty nor had he received the transcripts. The solicitor further submitted that if Convocation rejected his argument he requested a 1 month adjournment to prepare a response.

Society's counsel asked Convocation to proceed with the matter.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Mr. Yachetti, seconded by Ms. Moliner that the materials be received and the matter be adjourned to not later than June to allow the solicitor to prepare a response.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be adjourned to the June Special Convocation peremptory to the solicitor.

Counsel and solicitor retired.

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Convocation took a brief recess at 11:05 a.m. and resumed at 11:20 a.m.

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ADMISSIONS COMMITTEE

Application for Readmission

Re: TIMOTHY JOHN LUTES, Orillia

The Secretary placed the matter before Convocation.

Mr. Neil Perrier appeared for the Society and the applicant appeared on his own behalf.

The Report of the Application for Readmission was filed as Exhibit 1 together with Mr. Lutes' Affidavit.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF TIMOTHY JOHN LUTES
of the City of Orillia

AND IN THE MATTER OF an Application for Readmission
to the Law Society of Upper Canada

REASONS FOR DECISION

PANEL:

Mr. Earl J. Levy, Q.c. - Chair
Ms. Joan Lax
Ms. Netty Graham

APPEARANCES:

Mr. Neil J. Perrier - for the Law Society
Mr. Richard T. Crothers - for the Applicant

DATE:

November 24, 1993

24th March, 1994

IN THE MATTER OF THE LAW SOCIETY ACT
1990, SEC. 46

and

IN THE MATTER OF AN APPLICATION
FOR RE-ADMISSION BY TIMOTHY JOHN LUTES

RECOMMENDATION

This Committee recommends that the Applicant be re-admitted as a member fo the Law Society on the following conditions:

1. That he bring into good standing all of his outstanding filings and accounts owing to the Law Society.
2. That he take a course from the Law Society with respect to opening a small practice of law.
3. That his first two years of practice be under the supervision and in association with a criminal lawyer with at least ten years experience.
4. That the Applicant restrict his practice to criminal law and quasi-criminal law for the first two years of his practice after re-admission.
5. That the Applicant continue his present therapy until the Law Society is provided with satisfactory evidence that such therapy is no longer required and that in any event at the end of the solicitor's first two years of practice he provide the Law Society with an up-to-date report from his therapist that he is fit to continue practicing law.

REASONS FOR RECOMMENDATION

The Applicant was called to the Bar on April 6th, 1982 and was 38 years of age the week following this hearing.

He testified that he was a sole practitioner before officially resigning from the Law Society in September, 1991. He had in fact ceased practicing in November, 1990.

The Applicant had a varied practice until some time in 1987 when the bulk of his practice was criminal law.

The Applicant's prior history with the Law Society before he resigned was:

1. In 1987 he was reprimanded in Convocation for failing to maintain books and records; avoidance of co-signing controls and breach of undertaking; failure to account; and failure to file forms 2/3. All funds in question were eventually disbursed and no discrepancies were discovered. Co-signing controls were eventually removed by the Society's Audit Department by the time of his hearing as they were no longer considered necessary.
2. In 1990 the Applicant was suspended for two months and thereafter until his reports for the years endings February 28th, 1988 and February 28th, 1989, which he failed to file, were filed.

3. In 1991 the Applicant was permitted to resign after he was found to have;
- a) Failed to meet the financial obligations arising from his practice, incurred to Dr. Lowry and Star Business Machines Ltd. (Ron Thompson, complainant);
 - b) Misled the Law Society by falsely advising the Society that he had made the payments necessary to satisfy the financial obligations of Dr. Lowry and Star Business Machines, when in fact he had not done so;
 - c) Failed to reply to the Law Society in respect of a complaint from C. Hewson Bourne, solicitor;
 - d) Breached his undertaking to the Law Society dated June 20, 1990, as follows:
 - i) he failed to file his Forms 2/3 for the fiscal years ending in 1988 and 1989 by June 29, 1990 (or two weeks following that date);
 - ii) he failed to meet with a representative of the Society's Audit department by June 28, 1990;
 - iii) he failed to reply to correspondence from the Law Society within two weeks of his receipt thereof (Bourne, Tsubouchi and Hubbard complaints);
 - iv) he failed to reply to telephone communications from the Society's audit examiner and audit counsel within two business days following receipt of the messages;
 - v) he failed to communicate with a representative of the Discipline, Complaints or Audit department each Monday until Convocation dealt with his pending discipline matter;
 - vi) he failed to ensure that telephone answering machines were connected to his office and residence telephone lines and that the machines were operational;
 - e) In the course of representing his clients, Falcon and Sykes, he:
 - i) breached his Undertaking given to the opposing solicitors (Mr. Tsubouchi and Mr. Hubbard respectively) to obtain, register and provide proof of registration of properly executed mortgage discharges and, in the case of the Undertaking given to Mr. Hubbard, to pay all outstanding realty taxes as set out in the Statement of Adjustments;
 - ii) failed to reply to correspondence from Mr. Tsubouchi and Mr. Hubbard regarding these matters, thereby failing to conduct himself towards these solicitors in a manner characterized by courtesy and good faith;
 - iii) failed to reply to correspondence from the Law Society regarding complaints made by Mr. Tsubouchi and Mr. Hubbard;
 - f) He failed to serve his clients, Dennis Hodgson, Judy Cromwell, Helen Phillips, Falcon and Sykes, in a conscientious, diligent and efficient manner.

24th March, 1994

The Committee hearing the complaints in 1991 recommended disbarment. The Applicant had not appeared before the Committee either in person or by representative. He did appear before Convocation with counsel and was permitted to resign. In his affidavit sworn September 24th, 1991 (Exhibit 4) the Applicant states, with respect to complaint 2b), that at the time he faxed the letter to the Law Society relating to payments to Mr. Thompson and Dr. Lowry he believed there were sufficient funds in his account to honour the cheques issued. Following the fax and prior to posting the cheques he received notification that his bank had received a direction from Revenue Canada which depleted his account so that the two cheques would not be honoured. As a result he did not send the cheques and failed to advise the Law Society of the change of circumstance. He at no time intended to mislead the Law Society in its investigation of his practice. He acknowledged his inability to deal with persons in authority and as a result failed to communicate with the Law Society.

The Applicant's growing problems with alcohol escalated in 1987. He was convicted in late 1988 of a drinking and driving offence. It became well-known in the Orillia area where he practiced that he had been charged and as a result he lost the majority of his real estate practice.

In early 1987 there was a break-up of his relationship with a lady friend and his mother was diagnosed with cancer.

The Applicant stated that his lack of self-confidence and self-esteem had been a long-standing problem. His increased alcohol consumption was a coping strategy allowing him the confidence to deal with people. He would find himself at the bar every afternoon until the early evenings. He would not drink on the weekends but was a recluse in his own residence. In 1988 he began to wander more and more away from his practice. In 1990 his landlord seized everything on the premises and he effectively ceased practicing after serving a two month suspension imposed by the Law Society in 1990.

On February 28th, 1991 the Applicant began his rehabilitation by contacting the Mental Health Department of Soldier Memorial Hospital in Orillia. He began counselling sessions on July 3rd, 1991 with Mr. George Harvey, psychologist. Mr. Harvey's letter is part of Exhibit 1. That letter notes that the Applicant's significant history of alcohol abuse is a result of his low self-esteem and lack of personal confidence. The Applicant, up to the date of the letter, had attended thirty sessions of individual therapy for a total of approximately 29 hours in treatment time. Mr. Harvey notes that the Applicant "has achieved substantial gains in the areas of self-esteem and interpersonal confidence. At this point and time, he is able to identify and manage stressful situations well and express his feelings in an open, direct manner. A clear example of this has been Mr. Lutes' ability to maintain a positive, hopeful attitude in the presence of the very significant stress produced by his unemployed status." Mr. Harvey goes on to state that "Currently, he presents as a self-assured individual with good interpersonal skills and a variety of positive and appropriate coping strategies for managing stressors in his life. Along with these significant changes and emotional status, Mr. Lutes has maintained abstinence from alcohol and a commitment to a healthy life style. This indicates a positive prognosis for future gains. As the primary goals for therapy have essentially been achieved, it is likely that Mr. Lutes and the writer will begin to discuss his discharge from therapy in the near future."

Dr. Orest Sochaniwsky, in his letter dated March 2nd, 1993, (part of Exhibit 1), confirms that Mr. Lutes has his alcohol problem under control, an opinion based on lab work and physical examinations.

The Applicant was granted a pardon by the National Parole Board on November 27th, 1992 with respect to his aforementioned driving record.

24th March, 1994

The Applicant sought employment since his resignation from the Law Society in a number of different law-related areas referred to in his materials filed before us but has generally been unsuccessful. He has sought other employment as well but as a result of the economic climate has been unsuccessful except for working at a gas bar for five months. He is presently unemployed. He has been an active member of the Canadian Red Cross Society and has been a regular contributor since February 28th, 1991. He maintains a strong interest in the Special Olympics.

The Applicant is in the course of selling his home to relieve his financial burden. He has been living off his RRSPs and substantial receivables which he has spent time in collecting.

If the Applicant is readmitted to the Law Society he wishes to restrict his practice to criminal law and quasi-criminal law. His plan would be to start out with Duty Counsel work and put his name forward to the Legal Aid referral service.

The Applicant's present support group would be his mother and father, three sisters and one brother who all live in the Orillia area as well as other family members. He has also maintained a circle of friends as a result of his active involvement in organized sporting activities such as hockey, baseball and golf, as well as involvement in non-organized activities such as hiking.

Character references in the form of letters were received from several lawyers in the area who have dealt with the Applicant over the years as well as others who have known him in a business and social capacity over the years. They all opine that Mr. Lutes is presently fit to practice law.

The Applicant testified before this Committee and was a very impressive witness. He was articulate and sincere. Mr. Lutes seemed to have a real understanding of his past problems and from all the evidence before us he has taken the necessary steps to conquer them and indeed appears to have done so. Only time will tell of course but this is so with everyone who has come from battling his or her demons. It is the Committee's view that the Applicant's future augurs well given the progress that he has made and the support group around him.

The Solicitor for the Law Society, Mr. Perrier has taken a neutral position with respect to the readmission of the Applicant. The fact that Mr. Perrier has not argued against Mr. Lutes' readmission is of some significance to this Committee. It is our view that the Applicant has satisfied the onus cast upon him and that he should be readmitted as a member of the Law Society of Upper Canada.

DATED at Toronto this 30th day of December, 1993

Earl J. Levy, Q.C.

Society's counsel made submissions in support of the Report with the conditions imposed. Mr. Perrier advised Convocation that there were still outstanding accounts with the Society but that they would be paid by July 1994.

The applicant concurred with the submissions of Society's counsel.

It was moved by Mr. Topp, seconded by Mr. Goudge that the Report be approved.

Carried

Counsel and Mr. Lutes retired.

24th March, 1994

DISCIPLINE COMMITTEE

Re: PAUL MAGNUS FELDMAN, Toronto

The Secretary placed the matter before Convocation.

Ms. Weaver and Mr. Hill withdrew for this matter.

Mr. Stephen Foster appeared for the Society and Mr. Stephen Waisberg appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 7th February, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th February, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 1st March, 1994 (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

Mary P. Weaver, Q.C., Chair
S. Casey Hill
Netty Graham

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

Stephen Foster
for the Society

PAUL MAGNUS FELDMAN
of the City
of Toronto
a barrister and solicitor

Stephen Waisberg
for the solicitor

Heard: November 2, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 15, 1993, Complaint D161/93 was issued against Paul Magnus Feldman alleging that he was guilty of professional misconduct.

The matter was heard in public on November 2, 1993 before this Committee comprised of Mary P. Weaver, Q.C., Chair, S. Casey Hill and Netty Graham. Mr. Feldman attended the hearing and was represented by Stephen Waisberg. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D161/93

2. (a) He failed to serve his clients Eugenia Werynski, Kyzysztof Dragunowski and Elizabeth Dragunowski with regard to their landlord and tenant matter commencing in August, 1991;
- (b) He failed to serve his clients Donna Clark and Roger Clark with regard to a claim against them by the Town of Innisfil in 1988;
- (c) He failed to serve his client Edna A. Rollauer with regard to an application for committeeship commencing in July, 1992; and
- (d) He failed to serve his client Wendy Wallace with respect to her matrimonial matter commencing in October, 1990.

Evidence

The evidence before the Committee contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of complaint D161/93 and is prepared to proceed with a hearing of this matter on October 13 and 14, 1993.

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 D161/93 and admits the particulars contained therein. The Solicitor also admits that the particulars together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 20, 1975. He practices as a sole practitioner.

Particular 2(a) - Failure to serve his clients Eugenia Werynski, Kyzysztof Dragunowski and Elizabeth Dragunowski

5. Ms. Eugenia Werynski, Mr. Krysztof Dragunowski and his wife Elizabeth Dragunowski (herein referred to as the "landlords") are landlords of a residential real estate property at 53 Riverwood Parkway in Etobicoke. In late 1990, one of their tenants, Mr. Kevin Kobelsky had applied to the Rent Review Hearings Board for an Order declaring the maximum rent allowable on the unit. The tenant alleged that the landlords were charging an amount in excess of the legal maximum. The tenant's application was heard on January 3, 1991, and an Order was made that excess rent had been charged by the landlords.

24th March, 1994

6. The landlords retained the Solicitor to bring an appeal of the Order made on January 3, 1991. At the time of their discussions regarding this appeal, the Solicitor suggested that the better course of action would be to consider commencing an action for misrepresentation of the lawful rents on the part of the vendor selling the property in question to the Dragunowskis. The Solicitor requested that the Dragunowskis provide him with the documentation respecting this transaction with a view to proceeding in this fashion. The Solicitor inquired as to the date of the Dragunowskis' purchase to satisfy himself that he was within the limitation period for such an action. The Dragunowskis declined to proceed in this fashion. The appeal was heard on August 28, 1991. The Solicitor failed to attend at the hearing and the appeal was dismissed. The Reasons issued by the Board for the dismissal of the appeal were that no one appeared for the landlords, and that Notices of Hearing had been mailed to all parties by the Board (Tab I - Document Book). The Solicitor's failure to attend was as a result of discoveries in an unrelated file running overly long that day.

7. As a result of the dismissal of the appeal, on October 1, 1991, two Statements of Claim were issued against the landlords by the above-noted tenant as well as by two other tenants in another unit (Tab 2 - Document Book). The total amount being claimed was approximately \$12,000.00.

8. The landlords retained the Solicitor to defend these actions. On October 17, 1991, the Solicitor served and filed Notices of Intent to Defend the actions and a Statement of Defense. (Tab 3 - Document Book).

9. Mrs. Dragunowski made numerous attempts to contact the Solicitor by telephone. By letter dated November 15, 1991, the Solicitor provided his clients with copies of the Statements of Defense as filed with the court on their behalf. (Tab 3a - Document Book)

10. On February 11, 1992, Judgment was awarded against Mr. and Mrs. Dragunowski and Ms. Eugenia Werynski on Mr. Kobelsky's claim (Tab 4 - Document Book). The Solicitor failed to attend at the Hearing. The Solicitor did not receive sufficient notice regarding the return date of this motion so as to re-arrange his schedule and as a result of a previous commitment, the Solicitor did not arrange in advance for an adjournment of the motion, and did not attend on the return date of the motion.

11. The landlords were not aware that a motion for summary judgment was to be held and that the Solicitor had failed to attend same.

12. In March, 1992, Mr. and Mrs. Dragunowski were served with a Writ of Seizure and Sale. Mr. and Mrs. Dragunowski immediately attended at the Solicitor's office to discuss this matter with him. The Solicitor recommended that negotiations commence to attempt to settle the claim. The Solicitor advised Mr. and Mrs. Dragunowski that he would require a few days to contact the Plaintiffs and that he would be in contact with them shortly.

13. The week following receipt of the Writ of Seizure and Sale, Mr. and Mrs. Dragunowski attempted to contact the Solicitor, by telephone, and left messages on his voice mail machine for him to contact them, on a number of occasions. Within this time frame, the Solicitor attempted to speak with the Dragunowskis on at least 2 occasions. On a Friday evening, he left a telephone message with a child at the home, expecting to speak with the client that evening or the following Saturday. No call was received from the client. The Solicitor also called the Dragunowski residence the next day, Saturday, anticipating that his message had not been conveyed to the clients. In the course of communicating with the clients, a meeting was scheduled for March 26, 1992 in the early evening hours. The Solicitor had been on discoveries on an unrelated matter that afternoon. Those discoveries ran late and the Solicitor arrived at his office for the scheduled meeting, late and tired. He spoke briefly with Mrs. Dragunowski and the meeting was re-scheduled for April 1, 1992, again in the

24th March, 1994

early evening hours. On April 1, 1992 the Solicitor had a 5:00pm 'out of office' appointment which ran longer than expected and when he returned to the office, he had another brief conversation with the Dragunowskis and rescheduled the meeting for April 7, 1992 at 7:00pm. The Solicitor has no recollection or record of that meeting actually taking place.

14. On April 6, 1992, a Notice of Seizure of Rent was issued against the landlords on the action brought against them by the tenants of the other unit. (Tab 5 - Document Book).

15. By letter dated May 25, 1992, Mrs. Elizabeth Dragunowski filed a complaint against the Solicitor with the Law Society (Tab 6 - Document Book).

16. In response to a letter from Susan Carlyle, staff lawyer with the Law Society, the Solicitor wrote to the Dragunowskis on August 12, 1992, and confirmed his previous verbal advice to the Dragunowskis that he believed that the more appropriate course of action was to commence a proceeding against the vendors of the property subject to the Rent Review proceedings, based on misrepresentation of rental information stipulated in the Agreement of Purchase and sale governing their purchase of the subject property. The Solicitor offered to act on their behalf in this regard (Tab 6a - Document Book).

17. By registered letter dated September 4, 1992, Mrs. Dragunowski advised the Solicitor that all future dealings with respect to this file were to be handled by Mr. S. Wiseman, Q.C. (Tab 6b - Document Book).

18. In his letter of response to the Law Society dated October 2, 1992, (Tab 7 - Document Book) the Solicitor advised that he was unable to attend at the Rent Review hearing due to a scheduling conflict which placed him in Discoveries for another client at the time. The Solicitor stated that "this unfortunate scheduling conflict precipitated a chain of events which has led to the present difficulties that Mr. and Mrs. Dragunowski have been presented with".

19. The Solicitor also advised that he was unable to attend on the return date for the summary judgment motion, as he had been in court on another matter.

20. The Solicitor wrote that "my efforts at communicating the state of the file to Mr. and Mrs. Dragunowski were sadly lacking. I was distressed by the futility of the matter, but I did not adequately convey this situation to the clients". The Solicitor made efforts to contact his clients as set out in paragraph 13 above.

21. In his letter to the Law Society of January 18, 1993 (Tab 8 - Document Book), the Solicitor advised that he failed to report in writing to Mr. and Mrs. Dragunowski that a judgment had been obtained against them. In the Solicitor's view, he "believed that their position was untenable. However, the Solicitor acknowledged that it would surely have been more appropriate to clearly specify this to them in writing".

22. The Solicitor also admitted that he did not advise Mr. and Mrs. Dragunowski that he did not attend on the return date for the appeal of the Order. The Solicitor stated that "I felt that there was little that I could do; however, a higher level of communication would have benefitted all concerned".

Particular 2(b) - Failure to serve his clients Donna and Roger Clark with regard to a claim against them by the Town of Innisfil in 1988

24th March, 1994

23. Donna and Roger Clark retained the Solicitor to defend them against a Claim issued against them by the Town of Innisfil. The Solicitor failed to issue a Statement of Defense and a Judgment was obtained against Mr. and Mrs. Clark. On October 17, 1988, a Writ of Execution was filed against the Clarks. As of November 8, 1989, the amount of the Default Judgment plus costs and interest totalled \$5,767.07.

24. Following the initial meeting with Mr. & Mrs. Clark, the file was misplaced. Shortly thereafter, the Solicitor moved his office and the file was lost in the course of the move or in preparing for same. The Solicitor failed to properly diarize this matter so as to ensure that the appropriate follow-up procedure would be observed.

25. By letter dated July 5, 1989, Mr. and Mrs. Clark filed a complaint against the Solicitor with the Law Society (Tab 9 - Document Book).

26. By letter to the Law Society dated August 30, 1989 (Tab 10 - Document Book), the Solicitor admitted that he failed to file a defense on behalf of Mr. and Mrs. Clark to the Innisfil claim. The Solicitor assumed responsibility for any cost incurred by the Clarks and advised that he was attempting to have the default judgment set aside at his own cost.

27. The Solicitor did not take steps to set aside the Judgement. Instead, in January, 1991, he paid the amount outstanding on the judgment from his own personal funds, thereby saving the Clarks harmless from the judgement in question.

28. By letter to the Sheriff of the County of Simcoe dated January 31, 1991 (Tab 11 Document Book), the Solicitor for the Town of Innisfil, Mr. Marshall Green confirmed that the execution against Mr. Roger Clark had been paid in full and instructions were given to lift the execution.

29. By letter dated February 21, 1991 Ms Lori Goodfield, Staff Lawyer advised the Solicitor that the Society's investigation of the Clark complaint had been completed and the file closed, subject to the complainant's right to have the matter reviewed by a Complaint's Commissioner (Tab 11a - Document Book).

Particular 2(c) - Failure to serve his client Edna A. Rollauer with regard to an application for committeeship

30. In late July 1992, Ms. Rollauer and her sister retained the Solicitor to make an Application for Committeeship for their father. Ms. Rollauer was advised by the Solicitor that it might take two to three months to complete the matter.

31. By letter dated August 30, 1992, the Solicitor provided to the complainants copies of correspondence forwarded to the Montreal solicitor acting for the estate (to which the complainant's father was a beneficiary but as a result of his deteriorated medical condition it was necessary to obtain the appointment of a committee), along with a copy of a letter to the physician at the nursing home where complainant's father resided, confirming that the Solicitor had in fact requested a medical report and that he was also seeking a second report through this physician's assistance (Tab 11b - Document Book).

32. By letter dated September 15, 1992, the Solicitor forwarded additional correspondence to the complainants enclosing a letter of the same date reminding the physician who provided the first medical report that a second medical report was required (Tab 11c - Document Book).

24th March, 1994

33. By letter dated September 17, 1992, the Solicitor advised Ms Rollauer that he had now received the second medical assessment on her fathre's condition and enclosed same for her review (Tab 12 - Document Book). The Solicitor advised that he would now draft the necessary documents for the Committeeship Application and will keep her advised of any further developments.

34. The Solicitor was scheduled to have gall bladder surgery performed by Dr. Lloyd Smith as of the third week of September, 1992. The Solicitor had consulted with Dr. Smith in July of 1992 about abdominal pains (on the basis of a referral from his family physician). The Solicitor was apprehensive about the surgical procedure and by mid-September he cancelled the operation since there appeared to be a marked improvement in his condition. By mid-October, however, the medical condition deteriorated resulting in several severe attacks, one of which culminated in the Solicitor being hospitalized. This lead to Dr. Smith and the Solicitor agreeing to proceed with surgery (as originally planned), as of November 30, 1992.

35. Having not heard from the Solicitor by December, 1992, Ms. Rollauer telephoned him to inquire about the status of the Application. Ms. Rollauer was advised that the Application would be submitted by year's end. At the time of this conversation, the Solicitor explained that there had been a death in his family (his mother died on November 18, 1993), and that the Solicitor had been hospitalized at the end of October for a gall bladder attack culminating in gall bladder surgery on November 30, 1993. The Solicitor indicated that he would do his best to file the documentation by the end of the year, although he advised Ms. Rollauer that it was taking a long time to get back "into the swing of things".

36. During the second week of January, 1993, Ms. Rollauer and her sister placed four to five telephone calls to the Solicitor's office leaving messages for the Solicitor to return their calls. No reply was received.

37. In late January 1993, after not having heard back from the Solicitor, Ms. Rollauer retained another solicitor to act on her behalf. By letter dated January 29, 1993, Ms. Rollauer filed a complaint against the Solicitor with the Law Society (Tab 13 - Document Book).

38. By letter dated March 2, 1993, the Solicitor responded to Ms. Rollauer's complaint to the Society (Tab 14 - Document Book). The Solicitor claimed that as a result of personal difficulties during the fall and winter of 1992, he found it difficult to meet all of his professional obligations. The Solicitor enclosed a copy of his file disclosing that no action was taken by the Solicitor on the Committeeship Application subsequent to his September 17, 1992 letter to Ms Rollauer.

39. The Solicitor also attached a copy of his letter dated February 3, 1993 to Ms. Rollauer and her sister in which he apologized for his failure to return their telephone calls and to conclude the matter in December 1992 (Tab 15 - Document Book).

40. By letter dated March 29, 1993 Ms Catherine J. Riches, Complaints Officer for the Law Society, advised the Solicitor that she would now be closing the Rollauer Complaint file (Tab 15a - Document Book).

Particular 2(d) - Failure to serve his client Wendy Wallace with respect to her matrimonial matter

41. On October 20, 1990, Ms. Wendy Wallace consulted with the Solicitor about a divorce and custody matter.

24th March, 1994

42. Ms. Wallace obtained a legal aid certificate in January, 1991.

43. The Solicitor prepared a Petition for Divorce on December 5, 1990 (Tab 16 - Document Book). The Petition was issued on January 25, 1991 and served on the Respondent on June 1, 1991.

44. On July 26, 1991, Ms. Wallace, without prior advice or knowledge by the solicitor, sold her matrimonial home and instructed the Solicitor to freeze her husband's share of the proceeds from the sale to settle the support issues. The Solicitor was not involved with the legal work relating to the sale of this property. Ms. Wallace was represented by Mark J. Shiner in connection with this conveyancing matter. The Solicitor informed his client that he would do his best to try and freeze the sale proceeds but was concerned that the shortness of time would not allow him to do so.

45. By letter dated December 17, 1991, Wallace complained to the Society that the Solicitor failed to do so (Tab 17 - Document Book).

46. By letter dated February 2, 1993, the Solicitor responded to Mrs. Wallace's complaint to the Law Society (Tab 18 - Document Book). He advised the Law Society that he had not been retained to handle the sale of Ms. Wallace's home. The Solicitor admitted that he had not brought an Application to freeze the sale proceeds, and stated:

"I did not have an opportunity to bring an application to freeze sale proceeds due to the relatively short time period between being advised of the sale and the actual closing. Furthermore, I had a significant number of court conflicts at that time.

47. The Solicitor also advised that on October 31, 1991, he had met with Ms. Wallace to complete an Affidavit in support of an Application for interim support. The Solicitor did not complete the Notice of Motion "due, once again to the fact that I have been in court on an almost daily basis...". The Solicitor advised that he intended to file the Notice of Motion and supporting documentation that week and would confirm the return date with the Society once he had done so.

48. By letter dated April 13, 1992, the Solicitor advised the Society that on February 14, 1992, he obtained an interim order for support and would be proceeding to complete the divorce (Tab 19 - Document Book).

49. The Law Society wrote to the Solicitor on October 20, 1992 and requested an update on the status of Ms. Wallace's divorce. After not hearing back from the Solicitor, a Law Society staff employee telephoned the Solicitor on February 26, 1993. The Solicitor returned the Society's call and advised that Ms. Wallace's divorce had been granted. Ms. Wallace was provided with the Certificate of Divorce on March 25, 1993.

DISCIPLINE HISTORY

50. On July 21, 1987, the Solicitor was found guilty of professional misconduct for breaching an undertaking given to the Law Society in 1984 to have no further dealings with a certain paralegal corporation or one of its members. The Solicitor was reprimanded in Committee.

DATED at Toronto this 2nd day of November, 1993."

24th March, 1994

RECOMMENDATION AS TO PENALTY

The Committee recommends that Paul Magnus Feldman be reprimanded in Convocation and pay costs in the amount of \$1,000.00.

REASONS FOR RECOMMENDATION

The Agreed Statement of Facts is a narrative of events in which a client or clients of the Solicitor suffered a substantial loss of money and also suffered frustration and resentment because of the lost time and the inconvenience to which they were subjected. The Solicitor failed in his duty to be competent to perform the legal services which he undertook and he totally failed to serve the clients in a conscientious, diligent, and efficient manner. The failure of a solicitor to maintain the required level of competence and to serve each of his or her clients with the quality of service set out in the Rules of Professional Conduct brings discredit to the profession and brings the administration of justice into disrepute. Commentary 9 to Rule 2 states:

"Where both negligence and incompetence are established, while damages may be awarded for the former the latter can give rise to the additional sanction of disciplinary action."

It was amply demonstrated that the Solicitor's conduct in the matters before the Committee fell far below the level of competence required by the Society. The clients received an abysmal level of service. Counsel for the Solicitor pointed out in mitigation that the Solicitor had voluntarily undertaken to participate in the peer review process of the Professional Standards Program and that the Solicitor had cooperated in the investigation of the Law Society. He asked that the Solicitor be reprimanded in Committee.

The Committee takes a very serious view of the Solicitor's conduct. In considering the appropriate penalty, the Committee took into consideration the fact that the Solicitor had been found guilty of professional misconduct for breaching an undertaking given to the Law Society in 1984. In the absence of mitigating circumstances, the Committee would have recommended a period of suspension. On balance, however, the Committee was satisfied that the Solicitor has taken and is continuing to take positive steps to remedy his difficulty in the area of competence and professional standards. The Solicitor demonstrated that he was truly remorseful and that it was his firm intention to manage his practice so that there would be no further breaches of professional misconduct. The Committee recommends that the Solicitor be reprimanded in Convocation and pay the costs of the Society in the amount of \$1,000.00.

Paul Magnus Feldman was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of March, 1975.

ALL OF WHICH is respectfully submitted

DATED this 7th day of February, 1994

Mary P. Weaver, Q.C.
Chair

24th March, 1994

Counsel for the solicitor asked that amendments be made to paragraph 35 of the Report by changing the date of November 18, 1993 to November 18, 1992 and changing the date of November 30, 1993 to November 30, 1992 so that the sentence would then read:

"At the time of this conversation, the Solicitor explained that there had been a death in his family (his mother died on November 18, 1992), and that the Solicitor had been hospitalized at the end of October for a gall bladder attack culminating in gall bladder surgery on November 30, 1992."

It was moved by Mr. Yachetti, seconded by Mr. Goudge that the Report as amended be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Yachetti, seconded by Mr. Topp that the Recommendation as to Penalty that is that the solicitor be reprimanded and pay costs in the amount of \$1,000, be adopted.

There were submissions by both counsel in support of the Recommendation.

The Recommendation as to Penalty was adopted.

Counsel and solicitor retired.

Re: WILLIAM EDWARD HORMAN, Waterloo

The Secretary placed the matter before Convocation.

Messrs. Yachetti, Copeland and Thom and Ms. Peters withdrew for this matter.

Mr. Neil Perrier appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 31st January, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 10th February, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 20th March, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Roger Yachetti, Chair
Paul Copeland
Stuart Thom

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

WILLIAM EDWARD HORMAN
of the City
of Waterloo
a barrister and solicitor

Neil Perrier
for the Society

John Brownlie
for the solicitor

Heard: November 14, 1993

24th March, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 16th day of April, 1992 complaint D63/92 was issued against William Edward Horman alleging he was guilty of professional misconduct.

On the 8th day of September, 1992 complaint D143/92 was issued against William Edward Horman alleging that he was guilty of professional misconduct.

On the 2nd day of May, 1993 complaint D138/93 was issued against William Edward Horman alleging that he was guilty of professional misconduct.

The matter was heard in public on the 14th day of November, 1993 before this Committee composed of Roger Yachetti, Chair, Paul Copeland and Stuart Thom. Neil Perrier appeared on behalf of the Society. The Solicitor was present and represented by John Brownlie.

DECISION

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

Complaint D63/92

He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1991, a statutory declaration 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 the regulation made pursuant to the *Law Society Act*.

Complaint D143/92

- (a) In December, 1991, he misappropriated \$1,200.00 from his clients' mixed trust account.
- (b) In June, 1990, he misappropriated \$2,000.00 from his clients' mixed trust account;
- (c) Not established - an allegation that in August 1991 the Solicitor misappropriated \$2,000.00 from \$4,000.00 cash advanced to him by his clients, Ron Speechly and Carol Toushan, in connection with a real estate transaction which closed August 30, 1991.
- (d) In relation to the transaction referred to in paragraph (c), the Solicitor failed to deposit \$4,000.00 in cash he received from his clients, Ron Speechley and Carol Toushan, into a trust account as required by ss.14(1) of Regulation 573 under the *Law Society Act*;

24th March, 1994

- (e) In relation to the transaction referred to in paragraphs (c) and (d), he failed to record the receipt of \$4,000.00 in cash which he received from his clients, Ron Speechley and Carol Toushan, on his trust account records as required by ss.15(1) of Regulation 573 under the *Law Society Act*;
- (f) Having declared bankruptcy in October, 1991, he accepted monies from or on behalf of clients while he was still an undischarged bankrupt contrary to s.7(2) of Regulation 573 under the *Law Society Act* and s.3 of the *Trustee Act*. He did so in connection with one real estate transaction, namely: the MacKinnon purchase;
- (g) Withdrawn on consent.
- (h) He opened a new trust account at Canada Trust in February, 1991, and, contrary to section 14(9) of Regulation 573 under the Law Society Act he withdrew monies from that trust account prior to his bankruptcy in October, 1991.

Complaint D138/93

He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1992, a statutory declaration 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*.

REASONS FOR DECISION

The case complaint D138/93 proceeded on the basis of an Agreed Statement of Facts signed by the Solicitor on the 9th day of June, 1993.

In regard to complaints D63/92 and D143/92 the Solicitor signed an Agreed Statement of Facts on the 16th day of November, 1993. At the outset of the hearing, an issue arose in regard to particular 2(c) in Complaint D143/92. The Agreed Statement of Facts was amended on consent and the amended Agreed Statement of Facts were as follows:

COMPLAINTS D63/92 AND D143/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D63/92 and D143/92 and is prepared to proceed with a hearing of these matters on November 16, 1993.

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 D63/92 and D143/92 and admits the particulars contained therein. The Solicitor admits that the particulars save and except the particulars contained in paragraph 2(c) of Complaint D143/92, together with the facts as hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1981. He practised law as a sole practitioner from 1988 in Waterloo. His practice consisted mainly of real estate as well as some corporate matters.

Complaint D143/92

5. An examination of the Solicitor's books and records was conducted under Section 18 of Regulation 573 under the Law Society Act.

6. The Solicitor has been advised that the following items in his books and records are not in compliance with the Regulation and Rules of Professional Conduct.

- a) Certified cheques not being returned by the bank;
 - b) Earned fees in trust;
 - c) Accounts sent to clients after fees drawn from trust;
 - d) Acting for more than one party without obtaining written acknowledgements and consents;
 - e) Inactive client balances in the trust account;
 - f) Cheque numbers not detailed on journal entries;
 - g) Differences in the trust comparisons.
7. (a) Certified cheques have since been returned by the bank. Copies of the bank's debit memo outlining who the cheques were made payable to and the amount of the cheques were included in with the statements.
- (b) Earned fees did remain in the trust account for a period of one month between the time the Toronto-Dominion Bank closed the Solicitor's account until new banking arrangements could be made at Canada Trust.
- (c) There were some occasions where accounts were not sent out until after fees were transferred. This has not occurred since Ms. Frances Tessaro would not sign a cheque and the Solicitor would not ask her to without first showing her the projected account and Trust Statement.
- (d) When there was a potential conflict arising from acting for both parties, both were fully aware that the Solicitor was acting for both parties. The Solicitor cannot think of an occasion where he acted for both parties when one of them had not referred the other to him.

24th March, 1994

- (e) It has taken the Solicitor as long as four years to obtain discharges from some of the lending institutions. Subdivision releases sometimes take several years.
- (f) Sometimes this was overlooked when making the entries.
- (g) Other than those outlined in the Statement of Facts, any differences have now been corrected.

Particular 2(a)

Misappropriation of Trust Funds

Sherwood Audio Corporation -\$1,200

Sherwood Audio Corporation

8. The owner of Sherwood Audio Corporation, Larry Warzecha, has been the Solicitor's client for about six years. In December 1990, Mr. Warzecha was obtaining mortgage financing from the Canadian Imperial Bank of Commerce in the amount of \$96,500. The Solicitor was retained on this matter.

9. At the same time, the Solicitor was acting for Mr. Warzecha on the incorporation of a business called "Sherwood Audio Corporation", as well as on the purchase of the "Sherwood Music" store by "Sherwood Audio".

10. The Solicitor billed a total of \$2,323.50 for work done on these three files as shown on the accounts in Document Book, Tab 1. The bills are dated December 4, 1990. The client ledger cards in Document Book, Tab 2 indicate that no funds were being held in trust on behalf of Mr. Warzecha.

11. The Solicitor advised Julianna Foster, a Senior Examiner in the Law Society's Audit & Investigation Department, that he has had substantial experience with billing Mr. Warzecha. Normally, the Solicitor receives payment from Mr. Warzecha within two or three days. The Solicitor stated that he needed money and he expected Mr. Warzecha to be paying his bills within a couple of days. Hence, he took \$1,000 from the trust account on December 6, 1990 with the expectation that he would be financially able to repay it when Mr. Warzecha paid his account. He took a further \$200 on December 18, 1990.

12. Mr. Warzecha contacted the Solicitor and requested an extension on payment his account until January, 1991. When the Solicitor found this out he attempted to replace the money but was financially unable to. He made one deposit to trust for \$260 on December 31, 1990 in an attempt to satisfy this debt. At the end of December, 1990, there was thus a shortage in the trust account of \$940. The Solicitor replaced the remainder of the shortage in January, 1991. Mr. Warzecha did not pay his bill until February, 1991. The Audit investigator requested that the Solicitor provide the Law Society with evidence of the accounts he rendered to provide funds to replace the trust shortage. The Solicitor takes the position that these were mailed to the Law Society. The Law Society states it never received such evidence. Mr. Warzecha paid a substantial portion of the accounts in January with the balance being paid in February.

13. The Solicitor advised Ms. Foster that in order to repay the Warzecha funds to the trust account, he had to borrow a small amount of money from a friend. The remainder of the funds he obtained from billing other clients he was working for at the time. The Solicitor has been asked to produce fee bills to support this explanation. To date the Society has not been provided with the said fee bills.

14. The Solicitor informed Ms. Foster that numerous trips to Mr. Warzecha's shop were required to complete work on Mr. Warzecha's behalf. In order to travel to Mr. Warzecha's shop, the Solicitor found it necessary to purchase a car. The Solicitor advised Ms. Foster that the funds itemized above were directed through the general account to assist in payment for a car.

15. The bank statement (Document Book, Tab 3) for the Solicitor's general account for December, 1990 indicates that a deposit of \$1,000 was made on December 6, 1990; however, it does not evidence a deposit of \$200 on December 18, 1990.

16. The Solicitor was not entitled to take money from the trust account in this manner since Mr. Warzecha did not have any money in trust. The Solicitor misappropriated money from the trust funds held on behalf of other clients to bridge his own financial difficulties.

Particular 2(b)

Young Misappropriation - \$2,000

17. In June, 1990, the Solicitor misappropriated the sum of \$2,000 from his clients' mixed trust account.

18. The Solicitor was retained to act on behalf of Elsie and Ron Young in their purchase of 305 Clyde Road in Cambridge. The closing date was set for June 29, 1990. The Youngs were to obtain financing in the amount of \$111,792 from Mutual Life Company.

19. The Solicitor did not ever meet the Youngs. Mr. Young contacted Mutual Life about a week before closing to advise that they did not want to go through with the deal. Mutual Life contacted the Solicitor the next day.

20. The Solicitor drew \$1,000 from the trust account on June 7, 1990 and a further \$1,000 on June 11, 1990. The Solicitor advised Ms. Foster that he was short of funds and figured that he could "bury this when the deal closed" and fees were owing to him. The transaction was aborted on or about June 21, 1990, a week before closing.

21. The Solicitor stated that he needed these funds to pay the Law Society Errors & Omissions Insurance levy. Ms. Salma Andani of the Law Society Finance Department advises that the Solicitor paid his Insurance levy May 9, 1990 and again November 16, 1990, much before and after the respective dates of the misappropriation.

22. Ms. Foster advised the Solicitor of what she had learned from the Law Society Finance Department. She again inquired of the Solicitor as to the disposition of the funds drawn inappropriately from the trust account in June, 1990. The Solicitor advised Ms. Foster that he was being pressured for funds by both Revenue Canada and Bell Canada. He stated that he thus directed funds through the general account to be paid to these two creditors.

23. The Solicitor's June, 1990 bank statements for the general account (Document Book, Tab 4) verify a deposit of \$1,000 to the general account June 7, 1990 and again June 11, 1990.

24. The Solicitor's unauthorized draw of funds from the trust account in June, 1990 was not "buried" because the transaction did not close. These funds were not billed to the client as they were not owing to the Solicitor. The trust account was short of funds by a total amount of \$2,042.36 at June 30, 1990.

25. The Solicitor replaced \$500 of the funds in July, 1990 and the remainder in September, 1990. There was a trust account shortage for three months because of the Solicitor's misappropriation of client trust funds.

26. The Solicitor has advised Ms. Foster that he was able to replace the funds he had taken from the trust account from amounts earned and billed in relation to other clients he was working for. The Solicitor has been asked to produce fee bills to support this explanation. To date, he has failed to produce the said fee bills.

Particulars 2(c) (d) & (e)

Speechley and Toushan Misappropriation - \$2,000

27. Upon reviewing the bank drafts issued on the Solicitor's trust account in September, 1991, Ms. Foster noted a bank draft payable to Doug and Dolores Geisler for \$16,398.68. The draft was dated September 12, 1991. The journal entry for this bank draft was entered on September 4, 1991, as the sum of \$14,398.68. Therefore, there was a difference of \$2,000 (Document Book, Tab 5). She questioned the Solicitor about this issue.

28. The Solicitor acted for both the vendors and the purchasers in the transfer of a condominium unit in Kitchener. The transaction was completed August 30, 1991. The purchasers, Ron Speechley and Carol Toushan, had given the Solicitor \$4,000 in cash to be used towards the balance due on closing for their purchase. The balance due on closing was \$95,717.82. The purchasers were obtaining \$91,800 in financing from the Waterloo Regional Credit Union.

29. The Solicitor states that the sum of \$4,000 in cash was left with him by his clients, in his office on August 28, 1991. He advised Ms. Foster that he counted the funds deposited with him by Mr. Speechley and Ms. Toushan to verify that they amounted to \$4,000 and issued a receipt to Mr. Speechley and Ms. Toushan. The Solicitor has advised that he did not retain a copy of the receipt in his files.

30. The Solicitor failed to deposit the funds into the trust account as required by Section 14 of the Regulation. The Solicitor did not record the receipt of the \$4,000 on his trust accounting records as required by Section 15 of the Regulation.

31. The Solicitor advised Ms. Foster that he spoke with the vendor and advised him that he had made an error and, as a result, \$2,000 of the proceeds of his sale would be late in coming to him. The Solicitor paid the remaining \$2,000 October 3, 1991 from his personal account as shown in Document Book, Tab 6.

32. Ms. Foster asked the Solicitor how he was able to replace the funds owing to the vendor in this transaction. He advised her that he paid the money out of fees earned and billed in relation to other clients. The Solicitor has been asked to produce fee bills in support of this explanation. To date, the Solicitor has failed to produce the said fee bills. The Solicitor takes the position that these were mailed to the Law Society.

33. The Solicitor is required under Section 14(1) of the Regulation to deposit money coming into his care into an account at an acceptable financial institution for safekeeping until required to be paid to the client or on his behalf. The Solicitor has not acted in accordance with the Regulation.

Particular 2(f)

34. The Solicitor declared bankruptcy in October, 1991. The following files evidence that the Solicitor received monies in his trust account while an undischarged bankrupt in breach of provisions of the Law Society Act and the Trustee Act. The Solicitor was advised by the audit investigator just prior to making an assignment in bankruptcy that he could not operate a trust account while in bankruptcy.

MacKinnon Purchase

35. The Solicitor was retained by Dean and Andrea MacKinnon to represent them in their purchase of a property at 56-32 Mowat Boulevard in Kitchener. The purchase was closed December 31, 1991 at 4:15 p.m. The bank had closed at 3:00 p.m.

36. The MacKinnons obtained financing in the amount of \$78,346.52 to purchase the property from FirstLine Trust. According to the Solicitor, on the day of closing FirstLine Trust would not advance the funds to Frances Tessaro, the solicitor who has agreed to manage the Solicitor's trust account until his bankruptcy has been discharged.

37. The Solicitor saw the MacKinnon file for the first time on December 30, 1991 at approximately 11:00 a.m. The file contained a full search, a tax certificate, building certificate and mortgage instructions. A draft mortgage and draft direction for funds directing funds be made payable to Frances Tessaro in trust was faxed to Firstline Trust that afternoon. The Solicitor made several attempts to contact the person who was handling the file and was only able to leave messages on her voice mail.

38. At approximately 11:30 on December 31, 1991, the Solicitor was finally able to contact the mortgage receptionist to explain what the problem was and he was advised that the contact person in the mortgage department had already gone for lunch. The Solicitor was not able to speak with her until sometime after 1:30 p.m. After a long discussion with her she said she would transfer funds to a branch of the Bank of Commerce. She again contacted the Solicitor at about 2:45 to advise that the Bank of Commerce had refused to wire the funds because they were closing at 3 p.m. for the holiday.

39. Mr. and Mrs. MacKinnon had given notice at their apartment and had planned to move on January 1st. They were quite anxious to close as was the vendor's solicitor who needed funds from the sale to complete another transaction.

40. In order to complete the transaction on the scheduled closing date the only option appeared to be accept the funds into the Solicitor's trust account which had not yet been closed off and transfer same to Frances Tessaro's account.

41. The Solicitor went to Canada Trust and waited until funds from Firstline arrived and then immediately transferred the exact amount into the second account. This happened at about 3:10 or ten minutes after the chartered banks had closed.

42. The transaction was completed at 4:15 on December 31.

43. The Solicitor claims that Firstline Trust stated they would advance funds only to the solicitor certifying title, Mr. Horman. The Solicitor did not attempt to contact the staff trustee at the Law Society to resolve this issue. Instead, he decided to accept the funds in trust and then transfer them to the trust account of Frances Tessaro (Document Book, Tab 7). His acceptance of the funds in trust while an undischarged bankrupt is in breach of section 7(2) of Regulation 573 and Section 3 of the Trustee Act.

Leitch Purchase (Particular Withdrawn)

44. The Solicitor acted for Mr. and Mrs. Leitch in the purchase of property known as 76 Old Huron Court in Kitchener. The transaction was to close December 16, 1991. The Leitchs were obtaining financing from FirstLine Trust in the amount of \$117,911.24.

45. The Solicitor apparently accepted the cheque from FirstLine Trust which was made payable to the Solicitor, in Trust. He advised Ms. Foster that he endorsed the cheque over to Frances Tessaro and deposited it in Frances Tessaro's account.

46. Document Book, Tab 8 shows a copy of Frances Tessaro's December, 1991 bank statement indicating that the sum of \$117,611.24 was deposited on December 13, 1991. The \$300 difference between the amount of the advance and the amount deposited appears to have been a bank error as a \$300 deposit is shown on the bank statement on December 16, 1991.

Damm Purchase (Particular Withdrawn)

47. The Solicitor advised Ms. Foster that since his assignment in bankruptcy, occasionally clients have provided funds payable to him in trust and, in a similar fashion, he deposited them into Frances Tessaro's account. For example, on January 15, 1992, Mr. Beverley Damm provided the Solicitor with a cheque for \$20,200 to close a purchase transaction. The cheque was drawn payable to the Solicitor. Rather than ensuring that the client draw a new cheque payable to Frances Tessaro, in Trust, the Solicitor simply endorsed the cheque over to Ms. Tessaro and deposited it in her trust account.

Particular 2(g) (Particular Withdrawn)

48. The Solicitor had difficulty with the Toronto Dominion Bank ("TD Bank") in late 1990 and early 1991 because he owed money to Revenue Canada. The TD Bank drew the balance of his trust account out by debit memo on February 4, 1991 and remitted it in partial payment of the Solicitor's debt to Revenue Canada.

49. On February 4, 1991 when the TD Bank drew the balance of trust funds out of the Solicitor's account, there was a total of \$2,207.17 on deposit. According to the Solicitor's January 31, 1991 trust comparison, \$1,662.19 of these funds belonged to clients (see January, 1991 trust list in Document Book, Tab 9). The remainder, \$1,044.98, belonged to the Solicitor for fees billed but not taken from trust. The Solicitor incurred a trust deficit of \$1,662.19.

50. The Solicitor has repaid an amount of \$375 to a client named Stebbings, the second largest sum comprising the total \$1,662.19. A number of the smaller sums held in trust were being held to pay registration fees for mortgages and discharges. The Solicitor has further reduced the shortage by paying many of these registration fees from his personal funds. As a result, a shortage of \$1,197.19 currently exists in relation to this trust account.

51. At the request of the Law Society, the Solicitor sent a letter to the TD Bank on June 25, 1991 demanding the return of \$1,662.19 in trust funds taken by the bank from the trust account (Document Book, Tab 10). The bank apparently did not respond to the Solicitor's request and the Solicitor did not follow up with the bank on this issue.

52. The Law Society contacted the assistant manager of the Solicitor's branch of the TD Bank on February 7, 1992 to request replacement of the \$1,662.19 in trust funds. The assistant manager engaged in researching the problem but ultimately informed the Law Society that their legal department confirmed that they were within their legal rights to withdraw the funds from the Solicitor's account.

24th March, 1994

53. A follow-up letter from the Society has been sent to the legal department of the TD Bank in an attempt to resolve this issue.

Particular 2(h)

54. The Solicitor started a new trust account at Canada Trust in February, 1991. The Solicitor advised Ms. Foster that when he started the new account at Canada Trust, they issued a book of 20 cheques to use on the account while his business cheques were being printed. A further one hundred cheques were initially ordered but were not received until April. When the supply of initially printed (20) cheques had been depleted, the Solicitor began to draw funds from the trust account using bank withdrawal slips. He advised Ms. Foster that he did not think about the possibility of attending at Canada Trust and obtaining further non-personalized cheques.

55. Shown in Document Book, Tab 11, are bank statements evidencing the Solicitor's use of withdrawal slips to pay himself and others from the trust account in late February or early March, 1991, not long after the Solicitor opened the account. By May 1991, the Solicitor's use of withdrawal slips ceased.

56. In September, 1991, the Solicitor began to use withdrawal slips again to draw funds from the trust account. Ms. Foster asked for the Solicitor's explanation. He advised her that he ran out of trust cheques again. Since his bankruptcy was imminent and he was trying to orchestrate the transfer of funds to Frances Tessaro's trust account (a fellow solicitor), he did not order more cheques for his trust account.

57. Document Book, Tab 12 shows bank statements for September and October, 1991 indicating the use of withdrawal slips. The Solicitor declared bankruptcy in October, 1991 and was using Frances Tessaro's trust account by November, 1991.

58. There is no evidence that the Solicitor improperly dealt with any of the funds.

59. Subsection 9 of Section 14 of the Regulation states that the member must not draw funds from the trust account on his own behalf other than by a cheque drawn in his favour or by a transfer to a bank account in his name. The Solicitor has breached this section of the Regulation. The Solicitor did not know at the time of these transactions this was contrary to the Regulations.

Complaint D63/92

60. The Solicitor's fiscal year end is January 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, 1991, as required by S.16(2) of Regulation 573 under The Law Society Act.

61. A Notice of Default in Annual Filing, dated August 9, 1991 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

62. By registered letter dated September 19, 1991, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that when this levy amounted to \$1,500.00 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 may be brought before the Discipline Committee for failure to file. A copy of the Society's September 19, 1991 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

63. The late filing fee began to accrue on October 4, 1991.

64. By registered letter dated January 17, 1992, the Law Society advised the Solicitor that his name would go before Convocation on February 28, 1992 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on February 27, 1992. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. A copy of the Society's January 17, 1992 letter is attached as Exhibit "C" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

65. By letter dated February 14, 1992 the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation on February 28, 1992 should payment not be received by February 27, 1992. A copy of the Society's February 14, 1992 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

66. By letter dated February 25, 1992 the Solicitor forwarded to the Society a certified cheque in the amount of \$1,500.00. A copy of the Solicitor's February 25, 1992 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

67. 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.

68. The Solicitor did the requisite filings in December, 1992.

V. DISCIPLINE HISTORY

69. The Solicitor was found guilty of professional misconduct and received a reprimand in committee on April 16, 1992 with respect to his failure to reply to the Society and his failure to honour a financial obligation.

DATED at Toronto, this 16th day of November, 1993."

COMPLAINT D138/93

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D138/93 and is prepared to proceed with a hearing of this matter on June 9, 1993.

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 D138/93 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called the Bar on April 9, 1981. He practised as a sole practitioner until his suspension on April 23, 1993 as a result of non-payment of his filing levy.

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, 1992, as required by S.16(2) of Regulation 573 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated August 8, 1992 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered letter dated September 11, 1992, the Law Society advised the Solicitor 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 September 11, 1992 letter 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 October 9, 1992.

9. By registered letter dated January 19, 1993, the Law Society advised the Solicitor that his name would go before Convocation on February 26, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on February 25, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. A copy of the Society's January 19, 1993 registered letter is attached as Exhibit "C" to this Agreed Statement of Facts. The Society's January 19, 1993 letter was returned by the post office. The Society re-sent the January 11, 1993 letter by registered mail on February 4, 1993 to 100 Bluevale Drive, Unit 27, Waterloo, N2J 2M9. The Society's January 19, 1993 letter was signed for and delivered on February 22, 1993. A copy of the Acknowledgement of Receipt of a Registered Item card is attached as Exhibit "D" to this Agreed Statement of Facts.

10. A Law Society staff employee spoke with the Solicitor by telephone on February 24, 1990. The Solicitor advised that he would pay \$180.00 of his late filing fee the next day and the balance by post-dated cheques.

11. By letter dated February 24, 1993, the Solicitor forwarded to the Society his cheque in the amount of \$180.00. The Solicitor further confirmed the Society's advise that upon receipt of the same, his name would be removed for the list to be presented to Convocation for suspension provided he also forward post-dated cheques and the annual filings in due course. A copy of the Solicitor's February 24, 1993 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

12. By letter dated March 15, 1993 the Law Society advised the Solicitor that his annual filing and late filing fee had not been received. The Solicitor was advised that his name would go before Convocation on March 26, 1993 should payment not be received by March 25, 1993. A copy of the Society's March 15, 1993 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

24th March, 1994

13. A Law Society staff employee spoke with the Solicitor by telephone on March 26, 1993. The Solicitor advised that he had not prepared his filings as his landlord had locked him out of his office and for a while, he was unable to obtain his books and records. The Solicitor was advised that he was required to pay \$490.00 to prevent himself from being suspended. The Solicitor advised that he would forward the funds that afternoon.

14. On March 26, 1993, the Solicitor provided the Law Society with his cheque in the amount of \$490.00.

15. By registered mail dated March 30, 1993, the Law Society advised the Solicitor that his cheque, in the amount of \$180.00 had been returned by the bank marked "N.S.F." The Solicitor was requested to provide a certified cheque in the amount of \$195.00 prior to April 23, 1993, the date on which his name would go before Convocation for suspension. The Solicitor was advised that this amount included the bank's \$15.00 service charge for the "N.S.F." cheque. A copy of the Law Society's March 30, 1993 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

16. By letter dated April 13, 1993 the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was advised that his name would go before Convocation on April 23, 1993 should payment not be received by April 22, 1993. A copy of the Society's April 13, 1993 letter is attached as Exhibit "H" to this Agreed Statement of Facts.

17. By registered mail dated April 20, 1993, the Law Society advised the Solicitor that his cheque, in the amount of \$490.00, had been returned by the bank marked "N.S.F." The Solicitor was requested to provide a certified cheque in the amount of \$505.00 prior to May 28, 1993, the date of which his name would go before Convocation for suspension. The Solicitor was advised that this amount included the bank's \$15.00 service charge for the "N.S.F." cheque. A copy of the Law Society's April 20, 1993 letter is attached as Exhibit "I" to this Agreed Statement of Facts.

18. The Solicitor was suspended by Convocation on April 23, 1993 as he failed to provide the Society with a certified cheque in the amount of \$195.00.

19. By registered mail dated April 27, 1993, the Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended as of April 23, 1993 by an order of Convocation made that day as a result of his failure to pay his late filing fee. The Solicitor was advised that the suspension was for one year and from year to year thereafter or, until the fee had been paid together with any other fee or levy owing to the Society which had been payable for four months at the time the late filing fee is paid. A copy of the Law Society's April 27, 1993 letter is attached as Exhibit "J" to this Agreed Statement of Facts.

20. By letter dated May 13, 1993, the Society advised the Solicitor that it had received his certified cheque in the amount of \$1,530.00. The Solicitor was advised that his membership had been reinstated effective May 13, 1993. A copy of the Society's May 13, 1993 letter is attached as Exhibit "K" to this Agreed Statement of Facts.

21. 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.

22. To date, the Solicitor has not filed the required forms.

V. DISCIPLINE HISTORY

23. The Solicitor was found guilty of professional misconduct and received a reprimand in committee on April 16, 1992 with respect to his failure to reply to the Society and his failure to honour a financial obligation.

DATED at Toronto this 9th day of June, 1993."

In addition to the Agreed Statement of Facts, the Committee heard evidence from the Solicitor concerning particular 2(c) as well as evidence of the background circumstances concerning facts relating to particulars 2(a) and (b).

Based on the admissions contained in the Agreed Statement of Facts concerning particular 2(c) and based on the evidence that we heard from Mr. Horman, the Committee was of the view that the Law Society had not established to the appropriate standard of proof that Mr. Horman had misappropriated the sum of \$2,000.00 from cash advanced to him by Ron Speechley and Carol Toushan. There is no question that the money went missing from the Solicitor's office but it was not established that the Solicitor had misappropriated those funds.

RECOMMENDATIONS AS TO PENALTY

It is this Committee's recommendation that Mr. Horman be suspended from the practice of law for a period of six months from the date of his Convocation hearing, and that such suspension continue until his filings for the years ending January 31, 1991 and January 31, 1992 have been properly completed. It is further recommended that the Solicitor be prohibited from operating a trust account for three years and if after the three year period the Solicitor has a trust account, we recommend that he be subject to co-signing controls for a further two year period.

REASONS FOR RECOMMENDATION

On the penalty phase of the hearing we heard evidence from Irwin Duncan, a solicitor who practices in Waterloo. He had acted for the Solicitor in regard to problems the Solicitor had had with his former partnership with David Zimmer. Mr. Duncan indicated that the Solicitor, as a result of his involvement with Mr. Zimmer, was financially struggling during June to September of 1990.

Mr. Perrier, on behalf of the Society, urged a suspension in the three to six month range. Mr. Perrier provided the Committee with a Case Book making reference to the discipline decisions concerning Mark Arron Lapedus, Stephen Lawrence Cappe, Scott Thomas Milloy and Michael Barry Biderman.

In the first two of those cases the solicitor was granted permission to resign. In the Biderman case, there was a suspension for one and one-half years. We found the facts concerning Mr. Horman more akin to the Milloy decision than any of the other decisions presented to us. Milloy was suspended from practice for a period of three months. We were also influenced by the decision of Convocation in the case of Elyahu Benaiah who was suspended for three months for misappropriation of \$5,600.00 from his firm.

In reaching our decision in Mr. Horman's case, we noted that there was a relatively small amount of money involved, and that it was misappropriated for a short period of time. The money has been repaid and there was no loss to the client. We regard the prior discipline record of Mr. Horman as an aggravating factor.

24th March, 1994

It goes without saying that the Solicitor should not be allowed to practice until his financial filings are in order. The terms concerning operation of a trust account in our view will go some way towards ensuring the protection of the public.

William Edward Horman was called to the Bar and admitted as a Solicitor to the Supreme Court of Ontario on the 9th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 31st day of January, 1994

Paul D. Copeland

It was moved by Mr. McKinnon, seconded by Ms. Palmer that the Report be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. McKinnon, seconded by Mr. Feinstein that the Recommendation as to Penalty that is, that the solicitor be suspended for 6 months with conditions, be adopted.

There were submissions by both counsel and solicitor in support of the recommended penalty.

The Recommendation as to Penalty was adopted.

Counsel and solicitor retired.

Re: TED ROLAND LAAN, Toronto

The Secretary placed the matter before Convocation.

Ms. Richardson withdrew for this matter.

Mr. Stephen Foster appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 13th December, 1993, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 1st February, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th March, 1994 (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

J. James Wardlaw, Q.C., Chair
Lloyd Brennan, Q.C.
Nora Richardson

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

Stephen Foster
for the Society

TED ROLAND LAAN
of the City
of Toronto
a barrister and solicitor

Bill Andrews
for the solicitor

Heard: October 13, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 7, 1993, Complaint D120/93 was issued and on June 22, 1993, Complaint D172/93 was issued against Ted Roland Laan alleging that he was guilty of professional misconduct.

The matter was heard in public on October 13, 1993 before this Committee composed of J. James Wardlaw, Q.C., Chair, Lloyd Brennan, Q.C. and Nora Richardson. Mr. Laan attended the hearing and was represented by Bill Andrews. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D120/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1992, a statutory declaration 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.

Complaint D172/93

2. a) He practised law from December 1, 1992 to January 22, 1993 in contravention of an order of Convocation on December 1, 1992 that he suspend his practice of law.

24th March, 1994

- b) He practised law from March 26, 1993 to May 4, 1993 in contravention of an order of Convocation on March 26, 1993 that he suspend his practice of law.

Evidence

The evidence before the Committee contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D120/93 and D172/93 and is prepared to proceed with a hearing of this matter on October 13, 1993.

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 except for the testimony of the Solicitor which should be heard in camera.

III. ADMISSIONS

3. The Solicitor has reviewed this Agreed Statement of Facts and admits the facts herein and admits that he is guilty of professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 5, 1979. He presently practices as a sole practitioner. During the periods of suspension set out below, he was practising in association with Tom Hicks. At other times, he has practised in association with other solicitors.

Complaint D120/93 - Failure to file

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, 1992, as required by S.16(2) of Regulation 573 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated August 8, 1992 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered letter dated September 11, 1992, the Law Society advised the Solicitor 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 \$1500.00 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 September 11, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts.

8. On May 7, 1993 the present Complaint was issued.

9. On May 13, 1993, the Law Society received the Solicitor's Annual Filings for the year ended January 31, 1992.

10. On June 7, 1993 the Law Society received an Affidavit from the Solicitor's accountant. It appears that the Solicitor's Filing was sent to the Society on about January 4, 1993 but never received. A copy of the Affidavit is attached as Exhibit "C" to this Agreed Statement of Facts.

Complaint D172/93 - Practising Under Suspension
Particular a) December 1, 1992 to January 22, 1993

10. The Solicitor's annual fees for 1992/93 were due August 1, 1992.

11. The Solicitor acknowledges that after August 1, 1992 he received 3 notices from the Law Society that his annual fees were in arrears and that if they remained in arrears for four months he would be subject to suspension.

12. By an Order of Convocation on November 27, 1992 pursuant to Section 36 of The Law Society Act, the Solicitor's rights and privileges were suspended effective December 1, 1992, for failing to pay his Annual Fees.

13. The Solicitor acknowledges that he personally signed for a registered letter dated December 2, 1992, the Law Society notifying him that his rights and privileges as a member of the Society have been suspended effective December 1, 1992 for failure to pay his Annual Fees. The letter was received and signed for on December 4, 1992. A copy of the Society's December 2, 1992 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

14. The Solicitor was experiencing personal problems at the time, including financial problems, marital problems and alcohol abuse. Because of his emotional state at the time, the Solicitor did not appreciate the significance or consequence of continuing to practise law.

15. A Notice of the Solicitor's suspension was published in the January 15, 1993 edition of The Ontario Reports. A copy of the Notice is attached as Exhibit "E" to this Agreed Statement of Facts.

16. By letter dated January 27, 1993, the Law Society acknowledged receipt of the Solicitor's payment for the first instalment of the Solicitor's 1992-93 Annual Fee. The Society advised that the Solicitor's suspension was terminated effective January 22, 1993. A copy of the Society's January 27, 1993 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

Particular b) March 26, 1993 to May 4, 1993

17. By an Order of Convocation on March 26, 1993 pursuant to Section 36 of The Law Society Act the Solicitor's rights and privileges were suspended for failure to pay his Late Filing Fee.

18. By registered letter dated March 29, 1993, the Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended effective that day for failure to pay the late filing fee. The Society reminded the Solicitor that several notices had been sent to him advising of the amount owing and that failure to pay the fee would result in a suspension of his rights to practice law. A copy of the Society's March 29, 1993 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

19. Again, because of his personal problems, the Solicitor did not appreciate the significance or consequences of continuing to practise law.

20. A Notice of the Solicitor's suspension was published in The Ontario Reports April 30, 1993 edition. A copy of the Notice is attached as Exhibit "H" to this Agreed Statement of Facts.

21. The Solicitor's membership was re-instated on May 4, 1993.

22. An audit was conducted by the Law Society's Audit Branch. The Examiner found from a review of the Solicitor's books and records that he had been practising law during the period of his suspension from December 1, 1992 to January 22, 1993 and March 26, 1993 to May 4, 1993.

23. The Law Society's Examiner obtained copies of the Solicitor's trust receipt journals for the periods December 3, 1992 to January 28, 1993 and March 1, 1993 to April 30, 1993 which reflect that the Solicitor had been practising during his suspension. A review of the Solicitor's trust disbursements journals for the periods December 3, 1992 to December 23, 1992 and January 4, 1993 to January 29, 1993 also reflect that the Solicitor had been practising.

Copies of the trust receipts and trust disbursements journals are attached as Exhibit "I" to this Agreed Statement of Facts.

24. The Solicitor has previously been suspended from the Law Society for non-payment of fees and insurance premiums.

DATE OF SUSPENSION	REASON FOR SUSPENSION	RE-INSTATEMENT DATE
November 2, 1992	E&O levy	November 11, 1992
June 5, 1992	E&O levy	June 5, 1992
November 29, 1991	E&O levy	December 29, 1991
May 24, 1991	E&O levy	Not available
March 28, 1991	Annual fees	April 15, 1991
November 24, 1989	E&O levy	Not available
May 26, 1989	E&O levy	Not available
February 23, 1989	Annual fees	Not available
November 25, 1988	E&O levy	December 6, 1988
February 27, 1987	Annual fees	March 9, 1987
November 28, 1986	E&O levy	Not Available

V. DISCIPLINE HISTORY

25. The Solicitor does not have a discipline history.

VI. JOINT SUBMISSION

26. The Solicitor and the Law Society jointly submit that the Solicitor should be suspended for a period of one month commencing immediately after Convocation's disposition of this matter.

DATED at Toronto this 13th day of October, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Ted Roland Laan be suspended for a period of one month.

REASONS FOR RECOMMENDATION

The recommendation is made on the basis of a joint submission by counsel for the solicitor and for the Society.

The MacGregor case for similar complaints gave a suspension to the Solicitor for five months calculated at the rate of the time while he was practising but suspended, plus one month. If that rationale were followed in this case, there would be a greater suspension, probably a total of four months. Nevertheless, the Committee is of the view that the circumstances in this case do differ from the MacGregor case. In the MacGregor case, there was almost a defiance of the Society. In this particular situation, the Solicitor was out of personal control due to marital problems, alcohol abuse and other problems that he was having related to alcohol abuse and the marital problems, primarily financial problems. He has now ceased the use of alcohol and is putting his life together. In these circumstances, the Committee accepts the joint recommendation.

Ted Roland Laan was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 5th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 13th day of December, 1993

J. James Wardlaw, Q.C.
Chair

It was moved by Mr. Yachetti, seconded by Mr. Hill that the Report be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Yachetti, seconded by Mr. Feinstein that the Recommendation as to Penalty that is, that the solicitor be suspended for one month, be adopted.

Counsel and the solicitor made submissions in support of the Recommendation.

24th March, 1994

The solicitor requested that the suspension take effect June 1, 1994 because of court commitments.

Mr. Yachetti amended his motion that the solicitor be suspended for one month, commencing June 1, 1994.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Mr. Yachetti, seconded by Mr. Feinstein that the solicitor be suspended for 1 month commencing June 1, 1994.

It was moved by Mr. McKinnon, seconded by Ms. Curtis that the suspension be for 2 months commencing June 1, 1994.

It was moved by Ms. Palmer, seconded by Mr. Hill that the suspension be for 4 months commencing June 1, 1994.

Counsel, the solicitor, the reporter and the public were recalled and advised of the motions for a higher penalty.

The matter was stood down.

Re: RONALD DOUGLAS BRIDGEWATER, Toronto

The Secretary placed the matter before Convocation.

Ms. Richardson and Mr. Thom withdrew for this matter.

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

An earlier Report dated June 7, 1993 was filed at the Special Convocation in September 1993 and was adjourned to be brought back for penalty following the completion of other outstanding complaints.

Convocation had before it the Report of the Discipline Committee dated 20th December, 1993, together with an Affidavit of Service sworn 22nd February, 1994 by Michael Mitchell that he effected service on the solicitor personally on 18th February, 1994 (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

J. James Wardlaw, Q.C., Chair
Stuart Thom, Q.C.
Nora Richardson

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

RONALD DOUGLAS BRIDGEWATER
of the City
of Toronto
a barrister and solicitor

Neil Perrier
for the Society

Not Represented
for the solicitor

Heard November 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 19, 1993, Complaint D132/93 was issued and on October 20, 1993, Complaint D297/93 was issued against Ronald Douglas Bridgewater alleging that he was guilty of professional misconduct.

The matter was heard in public before this Committee composed of J. James Wardlaw, Q.C., Chair, Stuart Thom, Q.C. and Nora Richardson. Mr. Bridgewater attended the hearing and was not represented. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D132/93

2. a) He failed to deliver to his client, Carol Cleverdon, all papers and property to which she was entitled.
- b) He failed to provide a reply to the Law Society regarding a complaint by Carol Cleverdon despite letters dated August 19, 1992 and February 3, 1993, and telephone requests on December 15, 1992, January 6, 1993 and January 20, 1993.
- c) He failed to deliver to his client, Hesse Henning, all papers and property to which she was entitled.
- d) He failed to provide a reply to the Law Society regarding a complaint by Hesse Henning despite letters dated August 19, 1992 and February 3, 1992 and telephone requests on December 15, 1992, January 6, 1993 and January 20, 1993.
- e) He failed to comply with a personal undertaking to Grant Moore a fellow solicitor, on October 14, 1988 by failing to actively pursue an amendment of By-law 4270/72, registration of the amendment deleting the reference to a property municipally known as 1760 Ninth Concession, Town of Pickering and to registration of the quit-claim deed on subject lands.
- f) He failed to provide a reply to the Law Society regarding a complaint by Grant Moore despite letters dated August 19, 1992 and February 3, 1993, and telephone requests on January 2, 1992, January 10, 1992, December 15, 1992, January 6, 1993 and January 20, 1993.
- g) He failed to co-operate with the Law Society's insurer regarding a claim made by his client, Marilyn Bourque.
- h) He failed to provide a reply to the Law Society regarding a complaint by Marilyn Bourque despite letters dated July 14, 1992, September 1, 1992 and September 17, 1992.

24th March, 1994

- i) He failed to satisfy his undertaking to the Law Society dated July 30, 1991 by failing to reply to correspondence from the Law Society within one week of receipt; and by failing to respond to the Law Society's telephone communications within three days regarding complaint by Carol Cleverdon, Hesse Henning, Grant Moore and Marilyn Borque.
- j) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1992, a statutory declaration 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.

Complaint D297/93

2. a) He failed to release the file and corporate records of Sanscott Enterprises Inc. upon termination of his retainer.
- b) He failed to provide a reply to the Law Society regarding a complaint by Sanscott Enterprises Inc., despite letters dated March 22, 1993 and May 18, 1993 and telephone messages left on May 4, 1993 and May 14, 1993.
- c) He failed to comply with his undertaking to the Law Society dated July 30, 1991 by failing to provide a response to a letter from the Law Society dated March 22, 1993 within one week of receipt and by failing to respond to telephone messages left by the Law Society on May 4, 1993 and May 14, 1993 within three days of receipt.

Evidence

Part of the evidence before the Committee contained the following Agreed Statements of Fact:

Agreed Statement of Facts - D132/93

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D132/93 and is prepared to proceed with a hearing of this matter on November 10, 1993.

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 D132/93 and admits the particulars contained therein. The Solicitor also admits that the particulars together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on February 15, 1980. The Solicitor abandoned his practice prior to March 2, 1993. The whereabouts of many of his files has not been ascertained.

Particular 2(a)

5. By letter dated January 6, 1992 (Document Book, Tab 1), Raymond Doupe and Carol Cleverdon advised the Law Society that the Solicitor had prepared and retained their original, executed Last Wills and Testaments. As they could not locate the Solicitor, Mr. Doupe and Ms. Cleverdon requested the Law Society assist them in obtaining the return of their Wills.

Particular 2(c)

6. By letter dated March 5, 1991 (Document Book, Tab 2), Margaret and Henning Hesse advised the Law Society that they had retained the Solicitor to present them regarding the purchase of real property. The Hesses advised that while acting on their behalf, the Solicitor filed an incorrect Charge and then failed to co-operate with the Hesses in their attempts to correct the same. As a result of the Solicitor's alleged failure to assist the Hesses in the correction of the Charge, the Bank commenced an action against them. The Hesses further alleged that the Solicitor failed to provide them with an account and he had failed to release their file to them.

7. On July 18, 1991 Complaint D93/91 (Document Book, Tab 3) was issued against the Solicitor by the Law Society regarding the Solicitor's failure to reply to the Society regarding the complaint by Henning and Margaret Hesse.

8. By letter dated July 22, 1991 (Document Book, Tab 4), the Solicitor advised the Law Society that he had been retained by the Hesses regarding the purchase of real property. He registered a good and valid title to the property on February 2, 1989. The Solicitor was instructed to register a mortgage on the property in favour of the Bank of Montreal. The mortgage was registered on March 23, 1989. Due to a typographical error, the name of the Mortgagee, the Bank of Montreal, was omitted from the document. The Solicitor advised that he had prepared and executed documentation to rectify the error. The Solicitor further advised that upon receiving Mrs. Hesse's request for the file, the same was immediately placed in his reception area for pick-up. The Solicitor advises that Mrs. Hesse did not attend to pick up the file. The Solicitor enclosed with his July 22nd letter, a copy of his accounts to the Hesses dated January 31, 1989 and March 28, 1989; a copy of a letter from John J. Crook, solicitor, requesting the Solicitor advise him regarding a planning act problem; and a copy of the Solicitor's letter to Mr. Crook responding to Mr. Crook's request.

9. As a result of the Solicitor's July 22, 1991 letter, the Law Society withdrew Complaint D93/91 in Committee on September 11, 1991.

10. By letter dated September 19, 1991 (Document Book, Tab 5), the Law Society advised the Solicitor that it had provided Mr. and Mrs. Hesse with a copy of his July 22nd letter and that they had been requested to they provide their comments to the same.

11. By letter dated September 23, 1991 (Document Book, Tab 6), Mr. and Mrs. Hesse advised the Law Society that they picked up a cheque from the Solicitor in or about June, 1989, however they did not receive an account. They stated that the Solicitor advised them that once the "title" problem was rectify, an account would be forwarded to them. The Hesses advised that the first time they received an account was through the Society. The Hesses advised that in January of 1991 they requested their file. Upon attending at the Solicitor's office they state that they were provided with photocopies of the mortgage and a photocopy of the survey. Subsequent to picking up the photocopies, the Hesses attended at the Solicitor's office another two or three times to pick up the file, however, on all occasions the file was not available. To date the Solicitor has not delivered the file to his clients.

24th March, 1994

Particular 2(e)

12. The Solicitor acted on behalf of the Redshaw's regarding the sale of property municipally known as 1760 Ninth Concession, Pickering, to the Grubers. Grant Moore was the solicitor who acted on behalf of the Grubers.

13. On October 14, 1988 in order to facilitate the closing the transaction, the Solicitor provided Mr. Moore with the following undertaking, which stated, in part:

2. To actively pursue the obtaining of amendment to By-law 4270/72 and registration of amendment deleting reference to subject lands and obtaining quit-claim deed from Town of Pickering and registration of same.

A copy of the "Undertaking" is contained at Tab 7 of the Document Book.

14. By letter dated November 1, 1988 (Document Book, Tab 8), Mr. Moore forwarded to the Solicitor a copy of his Undertaking. The Solicitor was requested to advise as to the status of the amendment to By-law 4270/72 and the quit claim deed from the Town of Pickering. No reply was received.

15. By letter dated March 1, 1989 (Document Book, Tab 9), Mr. Moore requested the Solicitor advise as to the status of the amendment to By-law 4270/72 by the Town of Pickering. The Solicitor was requested to give this matter his earliest attention. No reply was received.

16. By letter dated March 17, 1990 (Document Book, Tab 10), Mr. Moore forwarded to the Solicitor a copy of his Undertaking. The Solicitor was requested to advise of the status of the matter forthwith. No reply was received.

17. By letter dated October 1, 1990 (Document Book, Tab 11), Mr. Moore forwarded to the Solicitor a copy of his March 17, 1990 letter and requested he reply to the same. No reply was received.

18. By letter dated January 30, 1991 (Document Book, Tab 12), Mr. Moore forwarded to the Solicitor a copy of his March 17, 1990 and October 1, 1990 letter and a copy of his Undertaking. The Solicitor was requested to provide his reply to the enclosed forthwith. No reply was received.

19. By letter dated October 15, 1991 (Document Book, Tab 13), Mr. Moore advised the Solicitor of his failure to reply to his correspondence and numerous telephone calls. Mr. Moore forwarded to the Solicitor a copy of his undertaking. The Solicitor was requested to give this matter his early attention. No reply was received.

20. By letter dated December 2, 1991 (Document Book, Tab 14), Mr. Moore advised the Law Society that he had been unsuccessful in having the Solicitor comply with his Undertaking.

21. By letter dated September 24, 1993 (Document Book, Tab 15), Mr. Moore advised the Law Society that as the Solicitor had not fulfilled his Undertaking, his office has been attempting to resolve the matter directly. To date, they have not been successful.

Particular 2(g) and 2(h)

22. By letter, received by the Law Society on February 10, 1992 (Document Book, Tab 16), Marlene Bourque advised the Society that her husband, John, retained the Solicitor to obtain and register a second mortgage in the amount of \$35,000 to be placed on the matrimonial home. Mr. Bourque was to use the \$35,000 to purchase a 25% interest in Butler Marine. Mrs. Bourque alleges that the Solicitor was retained to ensure that Mr. Bourque's interests were protected. Mr. Bourque provided Mr. Butler, the current owner of Butler Marine, with the cheque, however, an agreement was not executed to protect Mr. Bourque's interests. Mr. Butler used the \$35,000 to make a payment on another Marine.

23. By letter dated February 27, 1992 (Document Book, Tab 17), the Law Society forwarded to the Solicitor a copy of Ms. Bourque's February 10, 1992 letter. The Solicitor was advised that the Society's Complaints Department did not intend to conduct an investigation of the allegations raised in Mrs. Bourque's letter however, a copy of her letter had been forwarded to the Society's insurer.

24. By letter dated March 12, 1992 (Document Book, Tab 18), the Society's insurer forwarded to the Solicitor a copy of Mrs. Bourque's February 10th letter. The Solicitor was advised that Gary Johnston had been appointed to investigate the matter. The Solicitor was requested to give this matter his immediate attention. The Solicitor was requested that should Mr. Johnston not contact him within the next two weeks, to contact the Society's insurer.

25. By letter dated March 12, 1992 (Document Book, Tab 19), the Society's insurer forwarded to Gary Johnston of Spencer & Smyth, Insurance Adjusters Inc., a copy of its file and a copy of its March 12th letter to the Solicitor. The Society's insurer requested that Spencer & Smyth act on its behalf with respect to Mrs. Bourque's claim.

26. By letter dated April 10, 1992 (Document Book, Tab 20), Mr. Ivers advised the Solicitor that he had assumed carriage of this matter for investigation. The Solicitor was requested to contact his office, within seven days, to arrange delivery of his file. Mr. Ivers advised the Solicitor that he would arrange to photocopy the relevant documents and return the same to him as quickly as possible. No reply was received.

27. By letter dated May 20, 1992 (Document Book, Tab 21), James Ivers, an adjuster with Spencer & Smyth, Mr. Ivers advised the Society that his firm had experienced difficulty in locating the Solicitor who, it appeared, was no longer practising law. Mr. Ivers' requested the Society's assistance in locating the Solicitor.

28. By letter dated July 14, 1992 (Document Book, Tab 22), Mr. Ivers forwarded to the Solicitor a copy of his April 10th letter. The Solicitor was advised that should he fail to contact Mr. Ivers within ten days from the date of this letter, in order that a proper investigation may be conducted into Mrs. Bourque's claim, the matter would be referred to the examiner at the Society's insurer with a request that the matter be brought to the attention of the Discipline Committee. No reply was received.

29. By letter dated July 24, 1992 (Document Book, Tab 23), Mr. Ivers requested the Society's Staff Trustee's assistance in obtaining the Solicitor's co-operation.

30. By memorandum dated August 25, 1992 (Document Book, Tab 24), the Society's insurer referred Mrs. Bourque's claim back to the Complaints Department as their investigation had been stalemated by the Solicitor's failure to co-operate.

24th March, 1994

31. By registered and ordinary mail, dated August 31, 1992 (Document Book, Tab 25), the Society's Complaints Department forwarded to the Solicitor a copy of Mrs. Bourque's February 10th letter, Mr. Ivers' March 12th, May 20th, July 12th and July 24th letters, and page 2 of Mr. Iver's August 20, 1992 letter. The Solicitor was advised that the matter would be referred to the Discipline Committee should his inattention to this matter continue any longer. The Solicitor was requested to contact Mr. Ivers or Ms. Rolph immediately, in order that this matter could be properly investigated. The Solicitor was advised that the Society would review this matter again in two weeks. No reply was received. The Society's August 31, 1992 letter was signed for and delivered on September 3, 1992.

32. By letter dated February 4, 1993 (Document Book, Tab 26), Mr. Ivers advised the Society that the Solicitor still had not co-operated with this office and had failed to deliver the file to him.

Particulars 2(b), (d), and (f)

33. A Law Society staff employee left telephone messages regarding the complaint by Mr. Moore, for the Solicitor on January 2, 1992 and January 10, 1992 requesting he return the calls. Notes of the telephone messages are contained at Tab 27 of the Document Book. The calls were not returned.

34. By letter dated January 29, 1992 (Document Book, Tab 28), a Law Society Staff Trustee confirmed her telephone conversation with the Solicitor in which she advised that should he fail to deal with all outstanding complaints from the Staff Trustee's office and the Complaints Department immediately, that the Society may obtain a Trusteeship Order over his practice. No reply was received.

35. By registered mail dated August 19, 1992 (Document Book, Tab 29), the Law Society forwarded to the Solicitor a copy of Mr. Doupe and Ms. Cleverdon's January 6, 1992 letter and Grant Moore's letter. The Solicitor was requested to provide his written response to the complaint of Mr. Doupe and Ms. Cleverdon as well as, to advise whether he was in possession of their Wills; to advise as to what arrangements had been made to ensure that the Hesses could pick up their files; and to provide a reply to Mr. Moore's December 2, 1991 letter. The Solicitor was reminded of his undertaking to the Law Society dated July 30, 1991 (Document Book, Tab 33) and requested to provide his reply as soon as possible. No reply was received.

36. A Law Society staff employee met with the Solicitor on November 11, 1992. The Society provided the Solicitor with a copy of its August 19, 1992 letter and the Solicitor was advised that his response was expected within fourteen days. The staff employees notes of the meeting are contained at Tab 30 of the Document Book. No reply was received.

37. A Law Society staff employee left a telephone message on the Solicitor's answering machine on December 15, 1992 requesting he provide a respond to the Society's correspondence. A copy of the staff employees notes of the telephone message are contained at Tab 31 of the Document Book. No reply was received.

38. A Law Society staff employee left a telephone message for the Solicitor on the his answering machine on January 6, 1993. The Solicitor was requested to either provide a response or return the call by January 8, 1993. A copy of the staff employees notes of the telephone message are contained at Tab 31 of the Document Book. The Solicitor did not respond or return the call.

39. A Law Society staff employee left a telephone message for the Solicitor at his home on January 20, 1993 requesting he return the call. A copy of the staff employees notes of the telephone message are contained at Tab 31 of the Document Book. The call was not returned.

40. By registered mail dated February 3, 1993 (Document Book, Tab 32), the Law Society forwarded to the Solicitor a copy of the letters of complaints. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should he fail to provide a reply within seven days, the matter would be referred to the Discipline Committee. No reply was received.

41. The Solicitor has not requested an extension to reply nor has he provided the Law Society with an explanation for his failure to reply.

Particular 2(i)

42. The Solicitor provided the Law Society with an undertaking, dated July 31, 1991 (Document Book, Tab 33), in which he undertook to:

To respond promptly to all communications from the Law Society; in respect of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three days of receipt thereof;

43. The Solicitor failed to comply with his undertaking by failing to reply to correspondence from the Law Society within one week of receipt as evidenced in paragraphs 31, 34, 35, and 40 of this Agreed Statement of Facts.

44. The Solicitor failed to comply with his undertaking to the Law Society by failing to respond to the Society telephone communications within three days as evidenced in paragraphs 33, 37, 38 and 39 of this Agreed Statement of Facts.

Particular 2(j)

45. 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, 1992, as required by S.16(2) of Regulation 573 under The Law Society Act.

46. A Notice of Default in Annual Filing, dated August 8, 1992 (Document Book, Tab 34) was forwarded to the Solicitor by the Law Society.

47. By registered letter dated September 11, 1992 (Document Book, Tab 35), the Law Society advised the Solicitor 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. The Solicitor did not respond to this correspondence.

48. The late filing fee began to accrue on October 9, 1992.

11. 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.

12. To date, the Solicitor has not yet filed the required forms.

V. DISCIPLINE HISTORY

49. On May 15, 1989, the Solicitor was found guilty of professional misconduct and reprimanded in committee regarding his failure to file for the fiscal years ended January 31, 1986, January 31, 1987, January 31, 1988 and January 31, 1989.

50. On March 3, 1993, the Solicitor was found guilty of professional misconduct regarding his failure to co-operate in an examination of his books and records, failure to reply to the Law Society, failure to comply with his undertaking to the Law Society dated July 30, 1991, failure to satisfy a personal undertaking to a fellow solicitor, and failure to file for the fiscal year ended January 31, 1991. The Solicitor did attend the hearing. The matter was heard by Convocation September 23, 1993. Convocation adjourned the matter until the hearing of Complaint D132/93 is completed.

DATED at Toronto this 10th day of November, 1993."

Agreed Statement of Facts - D297/93

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D297/93 and is prepared to proceed with a hearing of this matter on November 10, 1993.

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 D297/93 and admits the particulars contained therein. The Solicitor also admits that the particulars together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on February 15, 1980. The Solicitor abandoned his practice prior to March 2, 1993. The whereabouts of many of his files has not been ascertained.

Particulars 2(a) and 2(b)

5. By letter dated February 23, 1993, Sanscott Enterprises Inc., hereinafter referred to as "Sanscott", requested the Law Society's assistance in obtaining their partnership agreement and documents relating to the purchase of a lease at 143 Perry Street, Port Perry. Sanscott had terminated their retainer with the Solicitor in 1990, when the Solicitor closed his law offices without informing them. Since that time, Sanscott has been unsuccessful in obtaining their documents. A copy of Sanscott's February 23, 1993 is attached as Exhibit "A" to this Agreed Statement of Facts.

6. By letter dated March 22, 1993, the Law Society forwarded to the Solicitor a copy of Sanscott's February 23, 1993 letter. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received. A copy of the Law Society's March 22, 1993 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor is unsure whether he received a copy of the March 22, 1993 letter.

24th March, 1994

7. A Law Society staff employee left telephone messages for the Solicitor at his office on May 4, 1993 and May 14, 1993 requesting he return the calls. The calls were not returned. A copy of the Society's verbal transaction forms dated May 4, 1993 and May 14, 1993 are attached as Exhibit "C" to this Agreed Statement of Facts.

8. By registered mail dated May 18, 1993, the Law Society forwarded to the Solicitor a copy of its March 22, 1993 letter. The Solicitor was reminded of his obligation to reply to the Law Society. The Solicitor was advised that should he fail to provide a reply to the Law Society within seven days, the matter would be referred to the Discipline Committee. The Society's May 18, 1993 letter was returned by the post office marked "unclaimed". A copy of the Society's May 18, 1993 letter and envelope are attached as Exhibit "D" to this Agreed Statement of Facts.

9. The Solicitor has not, to date, provided Sanscott with its file.

10. The Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

Particular 2(c)

11. The Solicitor provided the Law Society with an undertaking, dated July 31, 1991, in which he undertook to:

To respond promptly to all communications from the Law Society; in respect of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three days of receipt thereof;

A copy of the Solicitor's undertaking is attached as Exhibit "E" to this Agreed Statement of Facts.

12. The Solicitor failed to comply with his undertaking by failing to reply to correspondence from the Law Society within one week of receipt as evidenced in paragraph 6 of this Agreed Statement of Facts.

13. The Solicitor failed to comply with his undertaking to the Law Society by failing to respond to the Society telephone communications within three days as evidenced in paragraph 7 of this Agreed Statement of Facts.

V. DISCIPLINE HISTORY

14. On May 15, 1989, the Solicitor was found guilty of professional misconduct and reprimanded in committee regarding his failure to file for the fiscal years ended January 31, 1986, January 31, 1987, January 31, 1988 and January 31, 1989.

15. On March 3, 1993, the Solicitor was found guilty of professional misconduct regarding his failure to co-operate in an examination of his books and records, failure to reply to the Law Society, failure to comply with his undertaking to the Law Society dated July 30, 1991, failure to satisfy a personal undertaking to a fellow solicitor, and failure to file for the fiscal year ended January 31, 1991. The Solicitor did attend the hearing. The matter was heard by Convocation September 23, 1993. Convocation adjourned the matter until the hearing of Complaint D132/93 is completed.

DATED at Toronto this 10 day of November, 1993."

REASONS FOR FINDING PROFESSIONAL MISCONDUCT

The facts speak so loudly that written reasons are almost irrelevant. The Solicitor, in abandoning his practice, failing to deliver documents to clients, failing to honour an undertaking to a fellow solicitor, failing to cooperate with the Law Society insurer with respect to a claim made against him, failing to respond to enquiries made by the Society with respect to complaints made against him, and failing to honour an undertaking given to the Society, and failing to file forms required by the Society, show a blatant disregard for the duties owed to both his clients, fellow lawyers and the Society.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Ronald Douglas Bridgewater be disbarred.

REASONS FOR RECOMMENDATION

The reasons given for the finding of professional misconduct apply with equal force to the recommendation for penalty.

Counsel for the Society advised the Committee that the audit department and staff trustee had been unable to obtain the Solicitor's files. The Solicitor advised that the files were at his home. Some might be in the basement of Forder Insurance in Port Perry. Some may be lost. As a "carrot" he suggested that if the solicitor turned the files over to the staff trustee prior to Convocation considering this matter, delivered requested documents to clients, and answered the complaints made, he be allowed to resign. Absent compliance with those conditions, he should be disbarred.

Your Committee rejects this submission. The Solicitor has had ample opportunity to cooperate with the Society and has refused to do so. He should not be rewarded for his misconduct.

Ronald Douglas Bridgewater was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 15th day of February, 1980.

ALL OF WHICH is respectfully submitted

DATED this 20th day of December, 1993.

J. James Wardlaw, Q.C.
Chair

It was moved by Mr. Yachetti, seconded by Mr. Topp that the Report dated December 20, 1993 be adopted.

Carried

It was moved by Mr. Yachetti, seconded by Mr. Topp that the Recommendation as to Penalty in the December 20, 1993 Report, that is that the solicitor be disbarred, be adopted.

24th March, 1994

Counsel for the Society made submissions in support of the recommended penalty.

The Recommendation as to Penalty was adopted.

The solicitor was disbarred.

Counsel retired.

Re: NORMAN EDWARD JOSEPH ROY, Oakville

The Secretary placed the matter before Convocation.

Mr. Thom and Ms. Weaver withdrew for this matter.

Ms. Christina Budweth 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 January, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by James Gooding that he had effected service on the solicitor personally on 28th February, 1994 (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

Mary P. Weaver, Q.C., Chair
Stuart Thom, Q.C.
Fatima Mohideen

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

Christina Budweth
for the Society

NORMAN EDWARD JOSEPH ROY
of the City
of Oakville
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 29, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 6, 1993, Complaint D102/93 was issued against Norman Edward Joseph Roy alleging that he was guilty of professional misconduct.

The matter was heard in public on June 29, 1993 before this Committee composed of Mary P. Weaver, Q.C., Chair, Stuart Thom, Q.C. and Fatima Mohideen. Mr. Roy attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D102/93

2. (a) He practised law from November 3, 1992 to December 7, 1992 while his rights and privileges to practice law had been suspended by an order of Convocation due to non-payment of his Errors & Omissions Levy; and
- (b) He failed to comply with sections 14 and 15 of Regulation 573 from March 11, 1991 to November 26, 1992 by failing to maintain proper books and records in connection with his practice.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D102/93 and is prepared to proceed with a hearing of this matter on June 29 and 30, 1993.

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 D102/93 and this agreed statement of facts 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 was called to the bar on April 7, 1982. He practices as a sole practitioner in Oakville, Ontario.

Particular 2(a) - Practice While Under Suspension

5. The Solicitor's right to practice law was suspended during the period November 2, 1992 to December 7, 1992 as a result of his non-payment of his errors and omissions levy.

6. During the period of his suspension the Solicitor continued to practice law. Examples of the Solicitor's continuing to practice during his period of suspension are as follows:

NAME & TRANSACTION	DOCUMENT	DATE COMPLETED
COLUCCI, Richard - mortgage	Client Card - Colucci	November 3-16, 1992
		November 6, 1992
	Registered mortgage	November 6, 1992
	Reporting letter	November 6, 1992
	Fee Billing	November 6, 1992
	Trust cheque #164 - Colucci	
GAY, Dennis matrimonial	Client Card - Gay	November 3-24, 1992
		November 6, 1992
	Fee billing	November 6, 1992
	Fee billing	November 20, 1992
	Letter of proposed settlement - Thompson	November 24, 1992
	Trust cheque #165 - Roy - fees	November 24, 1992
	Trust cheque #179 - Roy - fees	
KAMBEITZ, Judith purchase	Client Card - Kambeitz	November 16 - 17, 1992
	Direction for title	
	Registered Mortgage	November 13, 1992
	Registered transfer	November 16, 1992
	Fee billing	November 16, 1992 November 16, 1992
PECK, Mark - purchase	Client Card - Peck	November 24-25, 1992
	Statement of adjustments	
	Registered mortgage	November 25, 1992
	Fee billing	November 26, 1992
	Reporting letter-reporting closing on Nov. 25, 1992	December 2, 1992 December 31, 1992
CHIRICO, Joe mortgage	Client Card - Chirico	November 25-30, 1992
	Fee billing	November 27, 1992
	Registered mortgage	November 27, 1992
	Trust cheque #190 - Town of Milton	November 30, 1992
	Trust cheque #191 - Joan Sergeant	November 30, 1992
	Trust cheque #193 - Joan Sergeant	November 30, 1992
	Fee billing - reporting closing on Nov. 27, 1992	December 31, 1992
	Reporting letter-reporting closing on Nov. 27, 1992	January 26, 1992
RAINFORD CORPORATION	Client Card - Rainford	November 24 - 27, 1992
	Search request	
	Fee billing	November 25, 1992 November 27, 1992

Particular 2(b) - Fail to Maintain Books and Records

7. A society examiner attended at the Solicitor's on June 8, 1992. At that date the Solicitor's books were in arrears from March 1991 to June 8, 1992. The Solicitor's existing trust account was frozen and a new account opened with co-signing.

8. During a telephone conversation between the same Society examiner and the Solicitor on October 8, 1992 the Solicitor advised he would have his books up to date by the end of October, 1992.

9. The Society examiner attended at the Solicitor's office on November 26, 1992 at which time his books and records were up to date.

10. Co-signing controls were removed on December 4, 1992.

DISCIPLINE HISTORY

11. The Solicitor was found guilty of professional misconduct on March 17, 1992 for failing to reply to the Society; failing to file forms 2/3 within six months of the end of his fiscal year ending April 30, 1990; and breaching an undertaking to the Society. The Solicitor was reprimanded in committee as a result of his misconduct. A copy of complaint D163/91 is attached as Exhibit 1 to this agreed statement of facts.

12. The Solicitor was found guilty of professional misconduct for failing to file his forms 2/3 for the fiscal year end April 30, 1991, failing to reply to the Society and failing to comply with his undertaking to the Society. The Solicitor was reprimanded in Convocation as a result of his misconduct on October 22, 1992. A copy of these complaints, D38/92 and D93/92, are attached as Exhibit 2 to this agreed statement of facts.

13. The Solicitor was found guilty of professional misconduct on March 10, 1993 for failing to reply to correspondence from the Society, failing to comply with an undertaking to the Society and failing to honour a financial obligation incurred in connection with his practice. The Solicitor was reprimanded in committee and ordered to pay the Society's costs of \$400.

14. The Solicitor has a history of suspension with the Society for failing to make various payments as follows:

Suspension Date	Reason	Resinstatement Date
May 23rd 1986	Annual Fees	May 29th 1986
February 27th 1987	Annual Fees	March 6th 1987
March 6th 1992	Annual Fees	March 19th 1992
June 5th 1992	Errors & Omissions	June 25th 1992
November 2nd 1992	Errors & Omissions Levy	December 7th 1992
December 2nd 1992	Annual Fees	December 7th 1992

DATED at Toronto this 28th day of June, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Norman Edward Joseph Roy be suspended for a period of one month and pay the costs of the Law Society in the amount of \$1,200.00. In addition, he is to file his trust comparisons for a period of eighteen months.

REASONS FOR RECOMMENDATION

The facts set out in the Agreed Statement of Facts and admitted by the Solicitor to be acts of professional misconduct may be categorized as misconduct of an administrative nature in that there is no evidence that his conduct resulted in any loss or great inconvenience to his clients. Nonetheless, we are of the view that his conduct of continuing to practice while under suspension is of a serious nature, carrying with it a degree of culpability that requires a penalty more serious than a reprimand. In addition, the Solicitor has a prior discipline history in which he was found guilty of professional misconduct on two prior occasions. On each occasion he had failed to file his forms 2/3 for the year ending April 30th, 1990 and for the year ending April 30th, 1991. On the one occasion he was reprimanded in Committee and on the second occasion he was reprimanded in Convocation. Consequently, it is obvious that for a third occasion on which the Solicitor is guilty of professional misconduct, the penalty must include a period of suspension. Counsel for the Law Society recommended a penalty of suspension in a range from one month to three months. It was the joint submission of counsel that the Solicitor pay the Society's costs in the amount of \$1,200.00 and in addition that he file monthly trust comparisons for a period of eighteen months. It is our recommendation to Convocation that the Solicitor pay the Society's costs in the amount of \$1,200.00 and file his trust comparisons for a period of eighteen months and that the Solicitor be suspended for a period of one month.

Norman Edward Joseph Roy was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 7th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 12th day of January, 1993

Mary P. Weaver, Q.C.
Chair

It was moved by Mr. Yachetti, seconded by Ms. Palmer that the Report be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Yachetti, seconded by Mr. McKinnon that the Recommendation to Penalty that is, that the solicitor be suspended for 1 month, pay costs in the amount of \$1,200 and file trust comparisons for 18 months commencing the date of termination of the suspension, be adopted.

Carried

Counsel retired.

Re: Ted Roland Laan (cont'd)

The solicitor asked Convocation to proceed with the matter.

The Treasurer advised that Convocation would adjourn and continue with the Laan matter after luncheon.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

.....

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Copeland, Cullity, Curtis, Elliott, Feinstein, Hill, Lamont, McKinnon, Moliner, S. O'Connor, Palmer, Peters, Thom and Topp.

.....

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IN PUBLIC

.....

DISCIPLINE COMMITTEE

Re: Ted Roland Laan (cont'd)

The solicitor made further submissions in support of a 1 month suspension commencing June 1. A letter from Mr. John Benjamin was distributed to Convocation.

There were questions from the Bench.

Counsel, the solicitor, the reporter and the public withdrew.

The main motion that the solicitor be suspended for 1 month commencing June 1 was voted on and lost.

The motion for a 2 month suspension commencing June 1 was voted on and adopted.

The motion for a 4 month suspension commencing June 1 was not put.

Reasons are to be prepared by Mr. Topp.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 2 months effective June 1, 1994.

Counsel and solicitor retired.

.....

Re: Mario Zammit (cont'd)

Convocation had before it the Report of the Discipline Committee dated 12th January, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th February, 1994 (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:

24th March, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Paul Copeland
S. Casey Hill
Donald Lamont

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

Stephen Foster
for the Society

MARIO ZAMMIT
of the City
of Mississauga
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 14, 1993
November 23, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 8th day of April, 1993, Complaint D94/93 was issued against Mario Zammit alleging that he was guilty of professional misconduct.

The matter was heard in public on the 14th day of September, 1993 and November 23, 1993 before this Committee composed of Paul Copeland, Chair, on September 14, Casey Hill, Chair on November 23, and Don Lamont. The Solicitor did not attend the hearing on September 14, but attended on November 23, 1993. The Solicitor was unrepresented. Stephen Foster appeared on behalf of the Society.

DECISION

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

Complaint D94/93

- 2.a) He abandoned his practice in August, 1992, without making adequate arrangements for the protection of his clients.
- b) He failed to co-operate with the Law Society in its attempts to make adequate arrangements for the protection of his clients' files after he abandoned his practice in August, 1992.
- c) He practised law while his rights and privileges as a member were suspended for non-payment of his errors and omissions levy from June 5, 1992 until he abandoned his practice in August, 1992.

- d) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1992, a statutory declaration 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 the regulation made pursuant to the Law Society Act.

REASONS FOR DECISION

The Solicitor was not present at the hearing, although he had been properly served. The Solicitor had signed an undertaking not to practice. Mr. Foster, on behalf of the Society, indicated that the Solicitor had called today and indicated that he would not be appearing. The Committee agreed to proceed in the Solicitor's absence. The Complaint was marked as Exhibit "1" and the Agreed Statement of Facts is marked as Exhibit "2". The case proceeded on the Agreed Statement of Facts signed by the Solicitor on the 9th day of September, 1993.

Part of the Evidence before the Committee contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D94/93 and is prepared to proceed with a hearing of this matter on September 14 and 15, 1993.

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 this Agreed Statement of Facts and admits that the particulars contained therein constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1981. He practised as a sole practitioner prior to his suspension on June 5, 1992 as a result of non-payment of his errors and omissions levy.

PARTICULAR 2(c)
Practising under Suspension

5. By registered mail dated June 1, 1992, the Law Society advised the Solicitor that his rights and privileges as a member has been suspended effective June 5, 1992 as a result of his non-payment of Errors and Omissions insurance levy.

6. The Solicitor continued to practice law as appears from the following:

- a) With respect to the Ko sale to Frants of property municipally known as 7440 Bathurst St., #910, Vaughan:

24th March, 1994

- By letter dated June 9, 1992, the Solicitor forwarded to Bernard Baum, a solicitor, a copy of the draft Transfer, Statement of Adjustments, Funds Direction, Undertaking, Warranty, Bill of Sale and Declaration. Mr. Baum was requested to advise as to how his clients wished to take title, etc.
 - By letter dated June 19, 1992, the Solicitor advised Royal LePage that he was the solicitor acting on behalf of the vendors. The Solicitor forwarded to Re-Max his trust cheque in the amount of \$2,133.80 representing the balance of commission owing.
 - By letter dated June 25, 1992, the Solicitor prepared a reporting letter to Judi and Janet Ko in which he advised that the closing took place on June 16, 1992.
- b) Palacio purchase from Cosbild Investment Corporation of property municipally known as 152 Evelyn Avenue, Toronto:
- By letter dated June 25, 1992, the Solicitor provided Daniel Zadorozny, a solicitor, with information regarding the purchase of property.
 - By letter dated June 29, 1992, the Solicitor advised Daniel Zadorozny, a solicitor, that his clients had attended at his office that afternoon and had advised how they wished to take title.
 - By letter dated July 3, 1992, the Solicitor advised the City of Toronto that he acted on behalf of the Palacios regarding their purchase on June 30, 1992.
 - The Solicitor disbursed funds from his trust account, in the form of bank drafts to:
 - Treasurer - City of Toronto, \$ 4,446.92
 - White & Co. Bailiff's Ltd., \$ 4,315.06
 - Daniel Zadorozny, in trust, \$11,351.63
- c) Raul Dominguez and Aida Dominguez's purchase of property municipally known as 20 Acadian Heights, Brampton, Mortgage No. 2440-5-00281
- Solicitor advised the Bank of Montreal by letter dated June 22, 1992, that he was the solicitor acting on behalf of the Dominguezs. The Solicitor forwarded draft documents to the bank and request the funds be available for pick-up on June 26, 1992.
 - The Solicitor met with the Dominguezs on June 25, 1992 regarding the execution of the Charge.
 - Solicitor prepared his report to the Bank of Montreal, dated June 26, 1992.
 - By letter dated June 26, 1992, the Solicitor advised the City of Brampton, Tax Department that he was acting on behalf of the purchasers.

24th March, 1994

- By letter dated June 26, 1992, the Solicitor prepared a reporting letter for the Dominguezs in which he provided them with his opinion that they had a good and marketable title.
- d) Carmela Muscat purchase of property municipally known as 489 Clendenan Avenue, Toronto:
 - By letter dated June 12, 1992, the Solicitor advised the Canadian Imperial Bank of Commerce that he was the Solicitor for the purchaser.
 - The Solicitor met with Carmela Muscat and Carmen Parnis regarding the execution of the Charge on June 15, 1992.
 - By letter dated July 3, 1992, the Solicitor provided the Canadian Imperial Bank of Commerce with a reporting letter in which he advised that the mortgage as registered on June 17, 1992.
 - By letter dated July 3, 1992, the Solicitor advised Carmen Parnis that he had registered a Transfer from Beatrice Barbara to Carmen Parnis.

PARTICULAR 2(b)
Failure to Co-operate

7. In August of 1992, the Law Society's staff trustee began to receive telephone calls from clients of the Solicitor informing him that the Solicitor's office telephone was not being answered or that they had attended at the Solicitor's office and found the premises locked with a bailiff's notice posted. The bailiff's notice indicated that the landlord had retaken possession of the office for non-payment of rent.

8. On August 28, 1992, a Law Society staff employee spoke with the Solicitor by telephone. The Solicitor advised that he was in the process of winding down his practice and was attempting to get in touch with the landlord in order to obtain his client files and put them into storage. The Solicitor agreed to provide the Law Society with a letter setting out his intentions. The Solicitor did not provide the letter.

9. The Law Society continued to receive more letters and telephone calls from clients of the Solicitor. On September 3, 1992, a staff trustee spoke with the Solicitor by telephone at his home. The Solicitor again confirmed with the Law Society that his landlord had locked him out of his office for non-payment of rent and that he was dealing with his landlord's counsel in an attempt to obtain access to his files. The Solicitor advised that he had a few files which required follow-up work such as reporting letters or registered discharges. The Solicitor acknowledge that getting to his client's files and cleaning up the outstanding work was his responsibility. The Solicitor requested the staff trustee allow him the day to deal with his landlord's counsel. Should he be unsuccessful, he would contact the staff trustee the following day.

10. On September 4, 1992, the Solicitor contacted the staff trustee and advised that he had been unsuccessful in convincing the landlord's solicitor to allow him access to his files. The Solicitor requested that the Law Society assist him in retrieving his files.

24th March, 1994

11. On September 4, 1992, the staff trustee spoke with the landlord's counsel. The landlord's counsel agreed to allow the Solicitor to remove all of his client files. The landlord's counsel requested the Solicitor contact him to make appropriate arrangements.

12. On September 4, 1992, the staff trustee again spoke with the Solicitor. The staff trustee advised the Solicitor of the arrangements he had made with the landlord's solicitor. The Solicitor advised that he would contact the landlord's solicitor to make the arrangements as quickly as possible.

13. The Law Society continued to receive more letters and telephone calls from clients of the Solicitor. By letter dated September 25, 1992, the staff trustee requested the Solicitor to contact him, upon receipt of this letter, to make an appointment to discuss the problems associated with his practice.

14. In response to the Society's September 25th letter, the staff trustee and the Solicitor met on October 13, 1992. The Solicitor advised the staff trustee that it was always his intention to get around to dealing with all the client matters but that being locked out of his office made this extremely difficult. The staff trustee reviewed the following files with the Solicitor:

Martin Jurgeit	On an April real estate deal Mr. Zammit undertook to discharge three mortgages. Mr. Zammit said he had spoken with Martin Jurgeit and was in the process of arranging for the discharges.
Joyce Watt	Mr. Zammit acted for the estate of Mrs. Watt's mother. Mrs. Watt wanted a status report on the estate and its overdue completion. Mr. Zammit said he had spoken with Mrs. Watt and that the estate was now completely wrapped up. All beneficiaries have received their monies. Nothing further needs to be done on this matter.
Joseph Gibson	(See Particular 2(a), Chart #36) Solicitor advised that the report had been completed and sent out.
Alfred Micallef	(See Particular 2(a), Chart #53 and 54) Solicitor advised that the report remained outstanding but that it should go out in the next few days.
Bank of Montreal	(See Particular 2(a), Chart #7) Solicitor advised that four of the reports went out the previous week and that he was still working on the remaining two.
John Kuhar	(See Particular 2(a), Chart #44 & 45) Solicitor took notes of the details and advised that he would take care of it.
Ann Stevenson	Ms. Stevenson had complained that some administration bonds needed to be returned to her office. Mr. Zammit said the bonds had been waived and that this complaint had been fully dealt with.
Christopher Moore	(See Particular 2(a), Chart #57) Solicitor advised that he would take care of it.

24th March, 1994

- Debra Stephens (See Particular 2(a), Chart #51)
Solicitor advised that he had spoken to Ms. Stephen's client, Mr. McIntosh, about this matter. The Solicitor stated that the report had been completed but under Mr. McIntosh's instructions it had always been kept in his files. All of the files and corporate records were now located in the Solicitor's Office. The Solicitor stated that once he gained access to his office, he will turn everything over to Ms. Stephens. The Law Society requested the Solicitor contact Ms. Stephens to update her and he promised to do so.
- Danny Liberatore (See Particular 2(a), Chart #48)
Solicitor advised that the reporting letters had not been completed but that they should be sent out that week.
- Shibley, Righton (See Particular 2(a), Chart #81)
Solicitor advised that his matter was still outstanding but that the file was locked in his office. The Solicitor promised to take care of it.
- Charles Zammit (See Particular 2(a), Chart #91)
Solicitor advised that the report was not completed however he did not recall whether or not he had the file. The Solicitor advised that he would look into the matter.
- Furlong, Collins (See Particular 2(a), Chart #70)
The Solicitor admitted that the matter was still outstanding and that the discharges should still be in his office.
- Joseph Cassar Mr. Cassar wants his Will, prepared by Mr. Zammit, returned to him. Mr. Zammit said he would take care of it.
- Vivien Borg (See Particular 2(a), Chart #10)
Solicitor advised that he started but did not complete the Wills. The Solicitor advised that he would return the documents in his possession to the Borgs.
- Monique Leblanc (See Particular 2(a), Chart #47)
Solicitor advised that he did not have the file in his possession but that he would contact Ms. Leblanc and make arrangements for the return of her materials.
- Harold Bocknek In 1987 Gerald Vella, represented by Mr. Bocknek, loaned \$15,000.00 to Eddy Barbosa, represented by Mr. Zammit. One of Mr. Barbosa's monthly cheques was returned NSF and it was forwarded to the solicitor by Mr. Bocknek in July or August of 1992 with a request that he follow this matter up with his client. Mr. Bocknek never heard anything back from Mr. Zammit.

24th March, 1994

- Mr. Zammit recalled that he received 12 monthly payments from Mr. Barbosa and forwarded them to Mr. Bocknek. He remembers the bounced cheque and sending a letter to his client about it. He was unable to recall what happened after that but promised to check into it.
- David Carbonaro Mr. Zammit was retained by Mr. Carbonaro's grandmother to prepare a Will for her. The client does not know whether a Will was ever prepared. Mr. Zammit could not recall whether a Will was ever prepared but said he would check into the matter and advise the client.
- Elio Palermo (See Particular 2(a), Chart #69)
Solicitor recalled having prepared a Will for Mr. Palermo's wife but could not recall the issue of the transfer of property. The Solicitor advised that he would check into the matter and advise the client.
- Margaret McNeil (See Particular 2(a), Chart #78)
The Solicitor could not recall the discharge matter but said he would check into it and advise the client. He further stated that he would also arrange for Ms. McNeil's file to be returned to her.
- Gus Palacio (See Particular 2(a), Chart #68)
Solicitor advised that the reporting letters had not been completed and that file was locked in his office. The Solicitor promised to look after the matter.
- Canada Trust (See Particular 2(a), Chart #14)
The Solicitor could not recall for sure but believed one of the letters had been sent and the remaining two were still outstanding. The Solicitor advised that he would ensure that all three were completed.
- Carmen Johnson (See Particular 2(a), Chart #41)
The Solicitor confirmed receipt of Ms. Johnson's complaint but advised that the report had not been completed and the file was locked in his office.
- Mirella Mossanen (See Particular 2(a), Chart #62)
The Solicitor did not recall whether he had received Ms. Mossanen's complaint but promised to send the copy as he had earlier agreed to.
- Rita Muscat (See Particular 2(a), Chart #64)
The Solicitor confirmed that the matter remained outstanding and he would report to her as soon as he was able to obtain possession of the file.
- Sheriff's Office Complaint concerning outstanding financial obligation. Mr. Zammit promised to take care of it.

24th March, 1994

- Jemond Pullicno (See Particular 2(a), Chart #76)
Solicitor advised that the file was in his possession and the report would be completed shortly.
- James Forrester (See Particular 2(a), Chart #1)
Solicitor advised that his undertaking to discharge a Consumers Gas and Royal Bank mortgage had been taken care of. The third undertaking to register a Statutory Declaration, remained outstanding. The Solicitor advised that he would take of it and also mentioned that he had responded to complaints in this matter.
- Richard Derosher Letter received in the Complaints Department from solicitor Derosher about an outstanding undertaking to discharge a mortgage. Mr. Zammit confirmed receipt of this complaint and said that the discharge should be in his office. He promised to look after the matter.

15. The Solicitor further advised at the meeting on October 13, 1992, that he had still not taken the bulk of the files from his office but that he had made arrangements to move everything out of his office that coming weekend. The files would then be sent to off-site storage. The Solicitor further agreed to have Canada Post forward his mail to his home and Bell Canada forward his calls to his home. The Solicitor requested that should the Society become aware of any other complaints, to refer the calls to him at his home telephone number and he would deal with them.

16. By letter dated November 16, 1992, the Law Society confirmed with the Solicitor its telephone calls and meetings with the Solicitor since August, 1992. The Society also provided the Solicitor with a list of the matters discussed at their October 13, 1993 meeting all of which were still outstanding. The Society further advised the Solicitor that five new complaints had been received against him since that meeting, being complaints by Gerard Lepine, Mrs. S. Petruccelli, solicitor Richard Bogoroch, solicitor Debra Stephens and solicitor Eduardo Marcos. The Solicitor was reminded that regardless of what he may tell the Society about these complaints, he was still required to respond to them in writing. The Solicitor was further advised that an unacceptable level of telephone complaints continued to be received by the Society. The Solicitor was provided with a brief description of the following new complaints:

- Larry Ross' office (See Particular 2(a), Chart #38)
- Catherine Rogers (See Particular 2(a), Chart #34)
- Lori Davis Mrs. Davis was calling on behalf of her in-laws Carmen and Giovanni Farrugia. The Farrugias would like their wills returned.
- Greg Dimitriou (See Particular 2(a), Chart #45)
- Ronald Allegretto (See Particular 2(a), Chart #2)
- Sam Azzopardi (See Particular 2(a), Chart #4)
- Bram Zinman's (See Particular 2(a), Chart #60)
- David Brannan (See Particular 2(a), Chart #84)

Raymond Frendo	(See Particular 2(a), Chart #33)
Rocco Coluccio	(See Particular 2(a), Chart #19)
Lorne Samuel	(See Particular 2(a), Chart #17)
Josephine Vella	(See Particular 2(a), Chart #28 & 90)
Mariann Farrugia	same as above
Maria Farrugia	same as above
Val Perovic	Solicitor acted on a sale for this client some three years ago. Due to a month delay in closing through the fault of the purchaser, it was agreed that an additional \$2,000. be paid to the vendors. They claim they never received this money and despite promises from the Solicitor, it remains outstanding. The client has been referred to Errors and Omissions.
Elizabeth Pablos	The client has nothing outstanding with the Solicitor, she simply wanted the return of an old file.
Sam Moskowitz	(See Particular 2(a), Chart #6)
Bank/Nova Scotia	(See Particular 2(a), Chart # 8 & 9)

17. The Law Society further expressed its concern in that at the October 13th meeting the Solicitor advised he would contact the complainants and advise them that he was working on the matters, however, from the number of repeat telephone calls the Society had received, the same had not been done. The Law Society further advised that Solicitor had not provided him with an update of the matters discussed on October 13th. The Solicitor was requested to provide the Society with an update of the complaints on November 18, 1992, when he attended at the Society with his books and records. Should they be unable to review the complaints matters on November 18, 1992, the Solicitor was advised that the Society would like the updates by November 20, 1992 and thereafter at least once a week with similar updates until all the outstanding issues had been dealt with. The Law Society did not hear again from the Solicitor.

18. On January 20, 1993, the Law Society attended at the Solicitor's office and picked-up all the client files and his accounting books and records.

Particular 2(a)
Abandonment of Practice

Despite numerous attempts by the Law Society to make arrangement with the Solicitor for the protection of his clients interest, as stated in paragraphs 8 to 13, the Society attended at the Solicitor's office on January 20, 1993 to pick-up all client files and accounting books and records. The Law Society took possession of 102 boxes of files and books and records. The following chart indicates some of the files obtained and in which the Society's intervention was required.

Solicitor's Client	Complainant	Complaint	Resolution as of April 30/93
1. Aguis/Sawatzky, vendors of property municipally known as 134 Centre Street North, Brampton	James Forrester, solicitor for the purchasers.	Solicitor had not complied with his undertaking on closing to discharge a Royal Bank of Canada Mortgage (#701342), a Consumer's Gas lien (#734160), register a Deposit on title correcting the descriptions contained in Instruments No. 301258VS and 301285VS, and to remove the right of entry on title.	Law Society forwarded to Mr. Forrester by facsimile transmission on February 11/93 a copy of the Solicitor's June 5, 1992 letter containing the particulars of the discharges of the Royal Bank mortgage and Consumers Gas lien. The remainder of the undertaking was not complied with.
2. Ronald Allegretto, purchase of property municipally known as 4075 Greycedar Court, Mississuga on March 3, 1992	Ronald Allegretto	no reporting letter received. Mr. Allegretto paid hydro arrears of \$82.00.	Law Society discovered in Solicitor's file unsigned reporting letter to Mr. Allegretto. Law Society's review of file further disclosed that hydro charge appears to have arisen from the final meter reading from the sale property and payment would have been the client's responsibility in the ordinary course. Law Society forwarded the reporting letter with a note of explantation regarding the hydro account to Mr. Allegretto.

3. Mr. and Mrs. Walid Almawi (retained Solicitor respecting mortgages to Canada Trustco and Herman)	Mr. and Mrs. Walid Almawi	no reporting letter received.	Law Society discovered reporting letter in file. Reporting letter forwarded to Mr. and Mrs. Almawi
4. Sam Azzopardi	Sam Azzopardi	return of papers from a builder	Law Society forwarded to Mr. Azzopardi's new solicitor the Agreement of Purchase and Sale
5. George Baldacchino	Lorenza Baldacchino (now deceased)	return of original Will	Law Society forwarded file to executor
6. Balzon (sale of property municipally known as 27 Hilldale Road in November of 1989	Sam Moskowitz, Barrister and Solicitor	Solicitor provided undertaking to Mr. Moskowitz to discharge or have a mortgage removed from title by court order	Law Society registered discharge

<p>7. Bank of Montreal</p>	<p>Bank of Montreal</p>	<p>Solicitor had failed to submit four final reports on the following:</p> <p>(IAD = Interest Adjustment Date</p> <p>(a) Caruana 45 Carton St., Toronto IAD:Feb/92</p> <p>(b) Zammit 101 Subway Cres, #1508 , Etobicoke IAD:April/92</p> <p>(c) Cutajar 36 Nectarine Cres. Bramp ton IAD: March/92</p> <p>(d) Pullicino 17 Mancroft Cres., Etobicoke IAD: March/92</p>	<p>Law Society discovered unsigned reporting letters in the Solicitor's file. Reporting letters forwarded to the Bank.</p>
<p>8. Bank of Nova Scotia (advanced funds to Mr. Allegretto for the purchase of 4075 Greycedar Court, Mississauga)</p>	<p>Bank of Nova Scotia</p>	<p>no reporting letter received.</p>	<p>Law Society discovered unsigned reporting letter in file. Reporting letter forwarded to the Bank.</p>

<p>9. Bank of Nova Scotia (mortgage to Catherine Webb)</p>	<p>Bank of Nova Scotia</p>	<p>This complaint relates to #82 which came in from Catherine Webb. The Bank of Nova Scotia is looking for a reporting letter for the first mortgage that was to be placed on Ms. Webb's home at 158 Kingsview Boulevard, Etobicoke, in April of 1992.</p>	<p>Law Society left a message for Mr. Bendaley, the new manager to call me so that can obtain a discharge of the second mortgage on 158 Kingsview, which has been paid in full by the mortgagors. In addition, will forward him the report and documents in the file.</p>
<p>10. Vivien and George Borg</p>	<p>Vivien and George Borg</p>	<p>Paid Solicitor \$100.00 and provided original documents to prepare Wills. The Borgs would like the return of their documents and monetary retainer.</p>	<p>Law Society discovered Mrs. Borg's Will in file and same was picked up by her. No Will in the file relating to Mr. Borg</p>
<p>11. Mr. and Mrs. Joseph Briffa (sale of property municipally known as Unit 225, 3455 Morningstar Drive.</p>		<p>no reporting letter received.</p>	<p>Law Society forwarded reporting letter to the Biffas</p>
<p>12. Estate of Carmel Brincat</p>	<p>Fogler Rubinoff, Barristers and Solicitors</p>	<p>requested file</p>	<p>Law Society forwarded Solicitor's file to Fogler Rubinoff. Law Society's review of the file shows that a great deal of money needs to be accounted for. The estate filed a compensation claim on June 6, 1993 in the amount of \$114,933.</p>

<p>13. Anna-Lisa Bunker and John David Bunker</p>	<p>Mr. and Mrs. Bunker</p>	<p>met with Solicitor in the summer of 1992 to prepare their Wills. No funds were given to the Solicitor. Mr. and Bunker would like to know whether Wills were prepared</p>	<p>Law Society discovered a file under the names of John and Annalisa Bunker but it contained no Wills. Appears Solicitor did not prepare the Wills. Law Society advised the Bunkers.</p>
<p>14. Canada Trust</p>	<p>Canada Trust</p>	<p>no reporting letters received regarding the following:</p> <ul style="list-style-type: none"> (a) Gauci mortg age on 37 Castleton Ave., Toron to (b) Brophy/ Moore mortg age on 70 Woodside Ave., Toron to (c) Camilleri mortgage on 27 Major Oak Terrace, Scarborough 	<p>The Law Society review of the Gauci and Brophy/Moore files disclosed no reporting letter but the files did contain the duplicate registered copy of the mortgage and other documentation. These documents were forwarded to Canada Trust. The Solicitor forwarded to Canada Trust the reporting documents regarding the Camilleri mortgage shortly after the complaint was filed.</p>
<p>15. Canadian Imperial Bank of Commerce (mortgage to Carmen Parnis)</p>		<p>no reporting letter</p>	<p>Law Society discovered in the file the reporting letter. Forwarded reporting letter and documents to C.I.B.C.</p>
<p>16. Walter Caruana (discharge of mortgage on property municipally known as 45 Carlton Street, Toronto</p>	<p>Bank of Montreal</p>	<p>no reporting letter</p>	<p>Law Society located file and forwarded to Mr. Caruana same with enclosures.</p>

<p>17. Mrs. Chianelli (vendor of property municipally known as 68 McTague Drive, Cambridge</p>	<p>Lorne Samuel's office, Barrister and Solicitor (represented purchaser of property)</p>	<p>Solicitor provided personal undertaking to Mr. Smith to discharge a mortgage.</p>	<p>Law Society obtained discharge of mortgage and registered the same. Both Mrs. Chianelli and Mr. Samuel's office notified</p>
<p>18. Mr. and Mrs. Sebastian Cini (sale of property municipally known as 107 St. John's Road</p>		<p>no reporting letter received</p>	<p>Law Society discovered reporting letter in Solicitor's file. Forwarded same with enclosures to Mr. and Mrs. Cini</p>
<p>19. Rocco Coluccio (purchase of property municipally known as 2055 Walkers Line, Unit 16, Burlington</p>	<p>Rocco Coluccio</p>	<p>no reporting letter or closing documents. Requires same to apply for his land transfer tax rebate</p>	<p>Law Society located file and Mr. Coluccio picked it up.</p>
<p>20. Community Trust</p>	<p>Community Trust</p>	<p>Mr. Zammit represented his client John Samut on his purchase of 161 Varsity Road in Toronto on June 15th 1992. Community Trust has never received a reporting letter on this transaction and would be surprised if Mr. Samut has received one as well.</p>	<p>Law Society returned the file contents (mostly prior documentation of client) to client c/o his business: Sweet Home Realty Limited, 3101 Dundas Street West, Toronto M6P 1Z9. (file #4480). Forwarded preliminary report in file to Community Trust together with the duplicate registered mortgage.</p>

<p>21. Tony Cunha (purchaser of property municipally known as 387 Delaware</p>	<p>Eric Feige, Barrister and Solicitor</p>	<p>Solicitor represented Mr. Cunha on the purchase of 387 Delaware. Solicitor accepted the personal undertaking from another solicitor to discharged a mortgage. 387 Delaware was now being sold again and the mortgage was still on titled. Appeared Solicitor never followed up on the undertaking.</p>	<p>Law Society unable to assist. Mr. Feige was going to attempt to contact the solicitor who gave the undertaking.</p>
<p>22. Curkovic (purchase of property)</p>	<p>Joe Agueci, Barrister and Solicitor</p>	<p>Solicitor did not ensure that a previous mortgage was discharge. Curkovic was selling the property</p>	<p>By the time the Law Society received and reviewed the Solicitor's file, Mr. Agueci had already obtained and registered a replacement discharge.</p>
<p>23. Mr. and Mrs. Curmi (discharge of a private mortgage)</p>	<p>Richard Derosher, Barrister and Solicitor</p>	<p>Mr. and Mrs. Curmi had retained the Solicitor to discharge a private mortgage which they had paid off. Mr. Derosher had been advised by the Solicitor's office that the discharge was prepared and would be registered by Sept 25/92. Mr. Derosher had been retained by Mr. and Mrs. Curmi to arrange a new mortgage and required the discharge of the private mortgage</p>	<p>By the time the Law Society had received and reviewed the file, Mr. Derosher had obtained and registered a replacement discharge.</p>

<p>24. Mary Debattista</p>	<p>David Carbonaro, grandson of Mrs. Debattista</p>	<p>Mrs. Debattista had approached the Solicitor with respect to the preparation of her Will. Wished to confirm whether same had been done</p>	<p>Law Society discovered Will in the file. Picked up.</p>
<p>25. Fernard Doucet</p>	<p>Cassels Brock, Barristers and Solicitors</p>	<p>Solicitor represented Mr. Doucet, one partner in a syndicated investment. Mr. Widner suspected all kinds of dirty dealings.</p>	<p>Law Society reviewed the file. Cassels, Brock advised that due to the fact that 14 investors participated in this syndicate, the file would not be released but could be reviewed at the Society's offices.</p>
<p>26. Carmen Ellul and Charles Bonello</p>	<p>Sidney Solnik, Barrister and Solicitor</p>	<p>Wills requested and that Solicitor provide "an accounting with respect to \$400.00 paid to him in connection with two mortgages registered in Barrie. He was to act on behalf of Michael Grech.</p>	<p>Law Society located Solicitor's files. Files picked-up</p>
<p>27. Unknown</p>	<p>Michael Farace</p>	<p>Mr. Farace called the Law Society on December 1st to say some clients of his (formerly represented by Zammit) were having lease problems and required the return of some old files. Mr. Farace did not have the details at hand and said he would get back. He never has.</p>	

<p>28. Maria Farrugia</p>	<p>Maria Farrugia</p>	<p>Requested Solicitor prepare her Willand provided Solicitor with an extensive inventory of all her personal possessions as well as the Solicitor was to have prepared her daughter and son-in-law, Josephine and Louis Vella, Wills.</p>	<p>Files picked-up</p>
<p>29. Mary Feldman</p>	<p>Sidney Solnik</p>	<p>Request return of file.</p>	<p>Law Society located filed and it was picked-up</p>
<p>30. Mr. and Mrs. Jaoa Ferreira and Mr. and Mrs. Helder Ferreira</p>	<p>Fernando Costa, Barrister and Solicitor</p>	<p>In September of 1991 Jaoa Fernandes went to Mr. Zammit to arrange for the discharge of a mortgage against his property at 208 St. Mark's Road in Toronto. It was a second mortgage to Doris Bardeau in the amount of \$26,000. At the time Doris Bardeau was represented by a lawyer named Palitsky. According to Mr. Fernandes, Doris Bardeau has been paid off. As of December 15th 1992, the mortgage remained on title.</p>	<p>The executed discharge of mortgage was in the file and Mr. Costa picked it up by courier. (File #4351)</p> <p>Reporting letter to Fernards re p/o 1480 Davenport found in File #4217 (Berardes) & forwarded to client with cover letter</p>

<p>31. Arlene and Douglas Flegg (sale of property municipally known as 1208 Seagull Drive, Unit 3, Mississauga)</p>	<p>Abraham Davis, Barrister and Solicitor (represented purchaser, Periera)</p>	<p>Solicitor represented Mr. and Mrs. Flegg on the sale. Solicitor gave his undertaking to Mr. Davis to discharge a Canada Trust mortgage. Undertaking not honoured. Property scheduled to be sold again</p>	<p>Mr. Davis' office obtained and registered replacement discharge.</p>
<p>32. Anne and James Ford (sale of property municipally known as 2579 Lundene Court, Mississauga)</p>	<p>Anne Ford</p>	<p>Anne and James Ford separated in 1991. Solicitor acted on the sale of their home. At conclusion of the same, solicitor held back a sum of money to cover outstanding utilities. Funds have not been accounted for.</p>	<p>Law Society unable to account for all the funds. Claim to be made to compensation fund.</p>
<p>33. Raymond Frendo (purchase of property municipally known as 40 Eileen Avenue, Toronto)</p>	<p>Raymond Frendo</p>	<p>The solicitor acted for Mr. Frendo on his June 3rd 1992 purchase of 40 Eileen Avenue in Toronto. Mr. Frendo has never been given a reporting letter and has now received an overdue tax notice. He needs to know the status of the tax account to sort this issue out.</p>	<p>Mr. Frendo intends to pick up his file. I spoke with the lending manager at the CGT branch who asked that the reporting letter and duplicate mortgage be forwarded on to them.</p>

<p>34. Albert and Gaetana Gauci (purchase of property in Loretto, Ontario in 1989)</p>	<p>Catherine Rogers, Barrister and Solicitor</p>	<p>Ms. Rogers was calling on behalf of Albert and Gaetana Gauci. The solicitor represented the Gaucis on their purchase of a property in Loretto, Ontario in 1989. At that time the solicitor registered a mortgage in favour of Central-Guaranty Trust. In May of 1992 the Gaucis refinanced with Canada Trust and were once again represented by the solicitor. Ms. Rogers has conducted a search of the property and has discovered that the Canada Trust mortgage has never been registered and the Central-Guaranty Trust mortgage never discharged. In addition, the solicitor has never reported to the Gaucis.</p>	<p>Prior to Law Society receiving and reviewing the file, Ms. Rogers had straightened everything out.</p>
<p>35. Eddie Gerardi, Sergio and Sylvia Gerardi (purchase of property municipally known as Unit 12, vel 2, MCC No. 983</p>	<p>Gambin Associates, Barristers and Solicitors</p>	<p>In November 1991 Mr. Zammit acted for Eddie Gerardi and his parents, Sergio and Sylvia Gerardi, in their purchase of Unit 12, Level 2, MCC No. 983. The purchasers never received a reporting letter and have approached Mr. Belluz to assist them in obtaining one.</p>	<p>Law Society located filed and forwarded the reporting letter and documents to the Gerardis</p>

<p>36.</p> <p>Josephine Gibson (mortgage refinancing in July, 1991 on property municipally known as 7112 Chigwel Court, Mississauga</p>	<p>Josephine Gibson</p>	<p>The solicitor acted for Ms. Gibson on a mortgage refinancing in July 1992 on her home at 7112 Chigwel Court in Mississauga. Ms. Gibson has yet to receive a reporting letter on the transaction and also requests the return of her file.</p>	<p>A review of the file disclosed no copies of the mortgage to TD Bank bearing a registration number in order to provide even a summary report. Law Society spoke with Ms. Gibson who will pick up both of her files (#3936-p/o 7112 Chigwell Ct. & #4482-mtg. to TD)</p>
<p>37.</p> <p>Christian Goetz (transfer of interest of 3206/3206A Lakeshore blvd., Etobicoke</p>		<p>no reporting letter</p>	<p>Law Society reviewed file and located reporting letter. Reporting letter along with documentation forwarded to Mr. Goetz</p>
<p>38.</p> <p>Emanuelle Grech (held mortgage on property owned by Francisco Bernardes, municipally known as 98 Mulock Avenue, Toronto)</p>	<p>Larry Ross' office (Solicitor for Mr. Bernardes)</p>	<p>Mr. Bernardes wished to payout a mortgage held by Mr. Grech, a resident of Malta. It was Mr. Ross' information that the Solicitor had the necessary discharge statement and discharge in his possession.</p>	<p>Prior to the Law Society obtaining and reviewing the file, Mr. Ross resolved the matter.</p>
<p>39.</p> <p>Mr. and Mrs. James Gregory (sale of property municipally known as 516 Winfield Terrace and purchase of 1557 Willoe Way)</p>		<p>no reporting letter</p>	<p>Law Society reviewed filed and located reporting letter. Reporting letter along with documentation forwarded to Mr. and Mrs. Gregory.</p>

<p>40. Halloran (sale of property municipally known as 933 Maramis Court, Missisauga</p>	<p>McBride, Wallace, Barrister and Solicitors</p>	<p>This information also came in via a telephone message and is lacking in detail. Mr. Zammit's client appears to have been Halloran and he acted on the sale of 933 Maramis Court in Missisauga. The closing date was July 30th 1991. Assume they are following up on a discharge but its only a guess.</p>	<p>Spoke with Kelly of McBride, Wallace. They obtained and registered a replacement discharge of the RBC mortgage.</p>
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<p>41. Carmen Johnson</p>	<p>Carmen Johnson</p>	<p>Mrs. Johnson wrote to the Society in September complaining about Mr. Zammit's handling of her and her husband's purchase of 94 East Drive in Toronto. The transaction closed on April 30th 1992. The Johnson's did receive a reporting letter dated May 12th 1992 but no accounting for the funds they paid him and they believe they are entitled to a refund of approximately \$634.00.</p> <p>The complainant also alleges that the solicitor was negligent as he did not provide the tax department with the proper mailing address for the complainants. As a result, tax notices went to the wrong party which resulted in the Johnson's owing interest and penalties. Errors and Omissions has been advised of this matter.</p>	<p>As there is no account statement in the file and no ledger card for this client, it is impossible to account for the \$634.00. A portion may have gone to pay for Mr. Zammit's disbursements which, according to file cover notes, amount to around \$455.00.</p> <p>As for the tax department matter, there is a copy of a letter in the file dated May 12, 1992 to the City of York Tax Department containing the <u>correct</u> information suggesting that it was the City of York that was in error.</p>
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24th March, 1994

42. Mr. and Mrs. Jason Kondo (purchase of property municipally known as 38 Jacobs Square, Brampton)		no reporting letter	Law Society located file and discovered reporting letter. Forwarded reporting letter and documents to Mr and Mrs. Kondo
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<p>43.</p> <p>Anthony Kropa (purchase of property municipally known as 10 Lockheed Blvd and sale of property municipally known as 40 Eiuleen Avenue)</p>	<p>Anthony Kropa</p>	<p>Mr. Kropa has only requested the return of files but doubt if he has ever received reporting letters. The property was purchased by Mr. Frendo who was also represented by Mr. Zammit.</p> <p>On May 8th 1992 Mr. Zammit acted for Mr. Kropa on his purchase of 10 Lockheed. There is a mortgage on that property to Rose Holloway. Mr. Kropa supplied Mr. Zammit with postdated cheques for Rose Holloway but doesn't remember how many and does not know where to reach Holloway.</p>	<p>Law Society found a discharge of mortgage re:40 Eileen Ave. and registered same. There is a reporting letter in this file (#4473)</p> <p>Law Society called Mr. Kropa and left a voice mail message for him to call me. It is unclear from the file what, if anything, is outstanding. There is no address or phone number for Rose Holloway in the file.</p> <p>Law Society spoke with Mr. Kropa who wants to pick up his file. He explained that Rose Holloway was given his mortgage by Mr. Saliba at Sweet Home Realty and that he has no information about her. The mortgagee address for service on the mortgage is listed as Zammit's office and as he provided post-dated cheques that still have not run out he has not heard from her. He is looking to refinance and needs the information to obtain a discharge statement.</p>
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<p>44.</p> <p>John Kuhar (sale of property municipally known as 16 Meadowlark Drive)</p>	<p>John Kuhar</p>	<p>He had not received a reporting letter on the transaction and was also concerned about the status of a \$1,000.00 hold back.</p>	<p>There is no reporting letter in the file nor enough information upon which to provide a summary but Law Society sent Mr. Kuhar a letter together with relevant closing documents found in the file.</p>
<p>45.</p> <p>John Kuhar (sale of property municipally known as 16 Meadowlark Drive)</p>	<p>Greg Dimitriou, Barrister and Solicitor (acted for purchasers)</p>	<p>This complaint relates to No.6 above. On the closing of 16 Meadowlark Drive in July of 1992 for the Kuhars, the solicitor personally undertook to discharge a Bank of Montreal mortgage (Instrument No. 938260). Mr. Dimitriou is waiting for the solicitor to honour his undertaking.</p>	<p>Law Society called Chris Hall at the Bank of Montreal asking for a replacement discharge (which was received on 25Feb93 and registered by Law Society.</p>
<p>46.</p> <p>Laciak (sale of property municipally known as 7315 Darcel Avenue, Mississauga)</p>	<p>Cengarle & Counter, Barrister and Solicitors (acted for purchasers)</p>	<p>On closing Mr. Zammit gave his undertaking to discharge a mortgage on title. Do not have the details on this mortgage. Cengarle & Counter's client was Tavares. This undertaking remains outstanding.</p>	<p>This was a private mortgage to clients of Mr. Zammit and the executed discharge is in the file. Correspondence in the file seems to indicate that the funds have been paid in satisfaction of the mortgage loan. Will contact Mr. Cengarle's office and advise them to pick up the discharge.</p>

<p>47. Monique LeBlanc</p>	<p>Monique LeBlanc</p>	<p>The Solicitor acted for Ms. Leblanc on the interim closing of a condominium located at 107 Bristol Road East, Unit 90, in Mississauga. Final closing was scheduled for November 1992 and Ms. Leblanc required her file to take to another lawyer. It is not known whether Mr. Zammit returned Ms. Leblanc's file or whether her new lawyer had to re-create it in preparation for final closing. There may be nothing to do here but if you locate the file, the client may wish it returned in any event.</p>	<p>Ms. Leblanc does not want to pick up the contents of her file as they have already been replaced.</p>
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<p>48.</p> <p>Danny Liberatore (sale of property municipally known as 108 Taysham Crescent Etobicoke and purchase of property municipally known as 79 Vita Road, Woodbridge and refinancing of 12 Benrubin Drive, North York</p>	<p>Danny Liberatore</p>	<p>Mr. Liberatore has never received reporting letters on these transactions.</p>	<p>p/o 79 Vita Road, Woodbridge - File #4433: All of the reporting letters were unsigned in the file. Law Society prepared and sent letters to the client and mortgagees with reg'd duplicates and incidentals.</p> <p>Spoke with Mr. Liberatore and told him that Law Society would follow up on unregistered application to delete restrictive covenants in file. As the registration fee for this was paid by vendor and some markings on the instrument suggest that it was reviewed by a deputy land registrar, Assume that the documents were unsuitable for registration. Law Society registered mortgage.</p>
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24th March, 1994

			<p>In addition, the file discloses an undertaking to discharge the vendor's mortgages but no evidence of particulars. Law Society will contact the vendor's lawyers for this information.</p> <p>m/o 12 Benrubin Drive, N.Y. - #4453: This property is owned by Quirina Volpe, mother-in-law of Danny Liberatore.</p>
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<p>49. Elaine and Terence Lindsay (refinancing of property municipally known as 564 Birdale Avenue, Oshawa)</p>	<p>Mary Sabourin, mother of Elaine Lindsay</p>	<p>The mortgagee (an Unknown trust company) did not get a reporting letter from Mr. Zammit so the two men recently received a letter from said trust company to the effect that they are retaining their own lawyer to do the reporting.</p> <p>Mrs. Sabourin was advised to contact the trust company and explain the situation in that we would report out on the deal.</p>	<p>Law Society spoke with the Debbie Hosmer, Manager of Mortgage Administration at AGF Trust (865-4220) and told her that we were prepared to send her the duplicate mortgage and accompanying documents, but that the preliminary report on title already provided by Zammit would have to suffice as an opinion. She seemed happy to receive anything to complete her file and will look to the mortgagors to furnish any additional materials.</p> <p>Law Society forwarded a copy of its letter to AGF Trust to the Lindsays', together with documentation owed to them by Zammit and a summary of the transaction.</p>
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<p>50. Malinovic (sale of property municipally known as 28 Gallery Avenue, Toronto)</p>	<p>Morris Goldstein, Barrister and Solicitor</p>	<p>Mr. Goldstein now represents Malinovic. 3 years ago Mr. Zammit acted for Malinovic and another partner (Sember) on the sale of 28 Galley Avenue, Toronto. The clients never received a reporting letter or an accounting. According to Malinovic, between \$2000 and \$3000 was held back by Mr. Zammit for adjustments. The clients have no idea what the money was used for, if anything. Mailovic has been after Zammit about this for years and has heard nothing but excuses.</p>	<p>A review of the file (#3349) discloses a copy of a reporting letter and account dating back to September, 1988. Law Society will contact Mr. Goldstein to determine what he wants and suggest that he obtain a direction from his client to us to release the file to him.</p>
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<p>51. Michael and Marion McIntosh (purchase of property municipally known as 243 Burray Street, Brampton, purchase of property municipally known as 24 Ravenscroft Circle, Brampton, lease for business premises of 915546 Ontario Limited)</p>	<p>Debra Stephens, Barrister and Solicitor</p>	<p>Ms. Stephens was calling on behalf of her clients Michael and Marion McIntosh who were formerly represented by the solicitor. Ms. Stephens reported that there were several matters outstanding for her clients. She said they never received reporting letters for their 1989 purchase of 243 Murray Street in Brampton and 1990 purchase of 24 Ravenscroft Circle in Brampton. The solicitor reported to me that the reports had been completed but were kept in the respective files at the clients' request. These should now be given to the McIntoshes or Deborah Stephens.</p> <p>Ms. Stephens also reported that her clients were having problems concerning the lease for the business premises of 915546 Ontario Limited carrying on business as Mike Roots Fashions. The return of all files, minute books, etc. connected with this corporation is extremely important.</p> <p>The McIntoshes have also</p>	<p>Law Society spoke with Debra Stephens and informed her that the reporting letters were indeed in their respective files and that the following files were ready to be picked up upon the receipt of a direction from her clients:</p> <p>#3833 - 243 Murray St. p/f Canada Homes</p> <p>#4063 - Incorporation - 915546 Ontario Limited</p> <p>#4064 - Wills - Mike & Marion McIntosh</p> <p>#4245 - 24 Ravenscroft Circle p/f Cooper/Small</p>
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<p>52.</p> <p>Joe Mercieca (purchase of 3124 Lednier Place, Mississauga, approximately 11 years ago. Joe Mercieca and Manuel Azzopardi purchase of a property on Creditview Road in Mississauga approximately 1 year ago)</p>	<p>Joe Mercieca</p>	<p>Mr. Mercieca has called requesting the return of files and Wills of Joe Mercieca and Manuela Mercieca.</p>	<p>All of the files are ready for pick up. The Creditview purchase was reported by Mr. Zammit.</p> <p>He will have to provide authorization to pick up his wife's will and the Creditview Rd. purchase file from his joint tenants, Emanuel and Margaret Azzopardi.</p>
<p>53.</p> <p>Alfred Micallef (mortgage refinancing of property municipally known as 110A Campbell Avenue, Toronto)</p>	<p>Alfred Micallef</p>	<p>Mr. Micallef never received a reporting letter on this transaction.</p>	<p>There is a copy of a reporting letter in the file and sent it has been sent along to Mr. Micallef.</p>
<p>54.</p> <p>Micallef (vendor of property municipally known as 600 Constellation Drive, Mississauga, which closed on November 29, 1991</p>	<p>Janoscik & Janoscik, Barristers and Solicitors for the purchaser, Bhakraj</p>	<p>Solicitor provided a personal undertaking to Janoscik & Janoscik to discharge mortgages, obtain release and executions and report the particulars</p>	<p>Law Society located the missing documents and forwarded the same to the firm of Janoscik & Janoscik</p>

<p>55. Rose and Joseph Mifsud (mortgagees)</p>	<p>Bouroukis and Associates, Barrister and Solicitors</p>	<p>On February 9th 1993 Law Society received a telephone call from Marie about a matter that relates to complaint #69 (Elio Palermo). You will note from complaint #19 that Mr. Palermo is requesting the return of his file that deals with the mortgage on 84 Castlerock. Law Society was informed by Marie today that 84 Castlerock is being sold on February 26th but there remains a mortgage on title that Mr. Zammit was supposed to discharge but never did.</p> <p>The \$45,000 mortgage (Instrument #LT274085) was taken out in 1986. The mortgagees were Rose and Joseph Mifsud. Marie thinks there may already be a discharge prepared and executed by the Mifsud's failing which she believes the Mifsud's gave a power of attorney to their daughter and she could execute the discharge. Joseph Mifsud is since deceased and Rose Mifsud lives in Italy. discharge is going to send to Mrs. Mifsud Mrs.</p>	<p>Law Society reviewed the file (#2337) and found no executed discharges or powers of attorney. The file did contain an Agreement Extending Mortgage executed on behalf of the Mifsuds by Connie DePaulo (apparently she is their daughter). Law Society contacted Marie Ricard and faxed her copies of the duplicate registered mortgage and agreement.</p> <p>Law Society found an executed power of attorney from Rose and Joseph Mifsud to Connie DePaulo dated 2Sep82 and faxed a copy of same to Marie Ricard. Law Society told her that Connie DePaulo should provide us with a direction to release the file.</p>
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<p>56.</p> <p>John and Mary Milkovich (purchase of property municipally known as 607 Huron Street, Toronto</p>	<p>Mary Milkovich</p>	<p>The solicitor acted for the John and Mary Milkovich in connection with their purchase of 607 Huron Street, Toronto, which closed on December 27, 1991. She has recently received a hydro account showing that the property is in arrears for \$1,300.00 from the previous owner. She purchased the property, a multiple dwelling, from Laurentian Bank on a power of sale that closed 11 days after the offer was made.</p>	<p>After reviewing the file, Law Society contacted Mrs. Milkovich and explained as follows:</p> <p>The outstanding hydro bill was owed by the previous owner personally for the flats that were in his name. Mr. Zammit had properly made an arrears enquiry along with a request for a final meter reading. Unfortunately, Hydro did not advise Mr. Zammit of the arrears until a letter dated January 2, 1992.</p> <p>(NOTE: It does not appear that Zammit obtained a verbal confirmation of the arrears on or before closing and Mrs. Milkovich claims that he never advised her of the arrears problem.)</p> <p>Paragraph 6, Schedule "B" of the Agreement of Purchase and Sale specifies that, inter alia, all utility charges are the responsibility of the Purchaser, this being an "as is" transaction</p>
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			<p>(NOTE: Mr. Zammit did not have the opportunity, according to Mrs. Milkovich, to review the Agreement of Purchase and Sale prior to its execution by her and her husband. They had effectively accepted responsibility for the hydro arrears by signing the offer.)</p> <p>Law Society suggested she retain counsel should she decide to pursue recovery of the arrears either from Zammit or the previous owner of the property. She advised that she was making a claim to the comp fund anyway.</p> <p>She wants to pick up her file and will either do so herself or authorize and instruct her new counsel.</p>
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<p>57.</p> <p>Christopher Moore (purchase of property municipally known as 70 Woodside Avenue, Toronto)</p>	<p>Christopher Moore</p>	<p>Mr. Moore has never received a reporting letter on this transaction.</p>	<p>A review of this file (#4449) and the sale of 620 Runnymede Rd. (#4448) disclosed that Mr. Zammit had indeed failed to deliver reports to both Canada Trust as mortgagee on purchase and his client. Spoke with Mr. Moore to advise him that I would be providing a letter detailing particulars of his purchase and enclosing incidental documentation. There is an unsigned sale report in the file that Law Society will also forward to Mr. Moore with incidentals concerning that deal.</p>
<p>58.</p> <p>Christer Morgan (purchase of property municipally known as 125 Gilmour Avenue)</p>	<p>Christer Morgan</p>	<p>Mrs. Morgan is writing in saying that they would like to get their papers which the Society takes to mean Mr. Zammit never reported to them.</p>	<p>Law Society spoke with Christer Morgan. She will come to pick up her file (#4463).</p>

<p>59. Christer Morgan (purchase of property municipally known as 125 Gilmour Avenue)</p>	<p>Lloyd Rubinoff, Barrister and Solicitor</p>	<p>Again sketchy details from a telephone message. It would appear Mr. Zammit represented a client by the name of Morgan on the purchase of 125 Gilmour Avenue, Toronto, on June 15th 1992. Debbie reports a math error was made and either Mr. Zammit or Morgan owes another \$308.22</p>	<p>Law Society spoke with Debbie of Lloyd Rubinoff's office. The \$308.22 shortfall was due to a math error on Debbie's own part causing her to ask for less money than the actual balance due on closing. There is no information relating to this matter in the file. She advises that in furtherance of his undertaking, Mr. Rubinoff discharged the outstanding mortgage on title as CA210995. (File #4463)</p>
<p>60. Cynthia Morgan (sale of property municipally known as 253 Maria Street, Toronto)</p>	<p>Bram Zinman, Barrister and Solicitor (acted on behalf of purchasers, Kimble and Lenarda Maguire)</p>	<p>Ms. Morgan has not received a reporting letters. Mr. Zinman discovered a problem with the taxes on the property in that it was represented to him that the vendor had paid more in taxes prior to closing that she actually had. When Mr. Zinman was unable to locate the Solicitor he contacted Mr. Morgan who said she had never received a reporting letter form the Solicitor.</p>	<p>Law Society located file. No reporting letter and therefore, could not be of assistance.</p>

<p>61. Mr. and Mrs. Wayne Morris (mortgage to Sun Life Trust)</p>		<p>no reporting letter received</p>	<p>Law Society reviewed file and discovered reporting letter. Forwarded reporting letter and supporting documents.</p>
<p>62. Mirella Mossanen (syndicated real estate purchase)</p>	<p>Peter Tensuda, Barrister and Solicitor</p>	<p>Mr. Tensuda expressed concern about the Solicitor's handling of purchase. Solicitor acted for all members of the syndicate of which Ms. Mossanaen was one. In order to advise his client properly, Mr. Tensuda would like a copy of this file.</p>	<p>Law Society advised Mr. Tensuda that it was in possession of file however, it could not be released to him as 14 investors participated in the syndicate. Mr. Tensuda was advised that the file was available for his review at the Society's offices.</p>
<p>63. Anthony and Maria Muscat (sale of property municipally known as 125 McRoberts Avenue, Toronto)</p>	<p>Anthony and Maria Muscat</p>	<p>The clients wish the return of their file.</p>	<p>File located and returned to clients.</p>

<p>64. Rita and Mario Muscat (purchase of cottage)</p>	<p>Rita and Maria Musat</p>	<p>This is the complaint concerning the huge tax assessment made on the cottage purchased by the complainants. The deal closed on October 31st 1991. The Muscat's were informed by the tax department that the notice of assessment had been registered on the property since September of 1990. The matter has been referred to Errors and Omissions.</p>	<p>Law Society spoke with Mrs. Muscat who advised that they are going to approach a new lawyer to represent her interests. (File #4348)</p> <p>The file contained a discharge of mortgage from Laurentian Trust which Law Society registered same.</p> <p>In addition, Mrs. Muscat advises that another mortgage to Frank & Mary Cini has been paid in full. The duplicate mortgage and a signed discharge is in the file but there is no confirmation that the mortgage has been paid in full. No reason to disbelieve Mrs. Muscat when she claims to have paid off the mortgage and \$200.00 to Mr. Zammit to prepare and register the discharge but will contact the mortgagees and obtain written confirmation before proceeding to register the discharge on title.</p>
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<p>65. Stephen and Barbara Near (sale of property municipally known as 8 Sandursky Cres., Aurora)</p>	<p>Judith Wolf, Barrister and Solicitor</p>	<p>On closing the solicitor gave his personal undertaking to Ms. Wolf to discharge a General Trust mortgage. This undertaking has not been honoured.</p>	<p>The discharge from General Trust registered by Law Society. In addition, Law Society provided Ms. Wolf with the client's addresses for collection of the final hydro bill.</p>
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			<p>private collateral mortgages given by Mr. & Mrs. Vladimir Nuk and Mr. and Mrs. Franc Sehovic on their homes. Both Mr. Nuk and Mr. (Franc) Sehovic claim to have retired their mortgage debts to John Sehovic and that Zammit was supposed to have registered the discharges. Explained to both (spoke to Mr. Nuk separately on 22Feb93) that Law Society would have to contact John Sehovic personally to confirm payment prior to registering the discharges. Franc Sehovic gave me John Sehovic's telephone numbers but told me that he was in Mexico on holiday until March 8/93.</p> <p>Contact John Sehovic to confirm status of mortgage loans to Nuk and Sehovic, respectively, confirmed by letter to John Sehovic. Proceed to register each discharge and send duplicate to Messrs. Nuk or Sehovic together with a copy of the</p>
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			<p>John Sehovic - 353-4693(w)</p> <p>769-4867(h)</p> <p>Vladimir Nuk - 767-2395(w)</p> <p>Franc Sehovic- 654-9811(w)</p> <p>Telephone call to Mr. Sehovic. He confirms that all monies owing to him under the Nuk and Sehovic mortgages has been received. Discharge registered by Law Society.</p>
<p>66. Mary-Jane and Jim O'Dell (refinancing of home)</p>	<p>Mary Jane O'Dell</p>	<p>There were two mortgages on their home located at 82 Eileen Avenue. There was a first to the Toronto- Dominion bank and a second to the Workers' Compensation Board Credit union. The Solicitor was retained to consolidate the two mortgages to a first only with the WCB Credit Union. The O'Dell's are now trying to refinance again and have discovered that the original two mortgages to the T-D and WCB remain on title and need to be discharged before the refinancing can take place</p>	<p>Both discharges registered by Law Society.</p>

<p>67. John O'Flaherty</p>	<p>Joyce Watt</p>	<p>Joyce Watt is calling on behalf of her friend John O'Flaherty. Mr. O'Flaherty has not been well and would like the return of his will.</p>	<p>Law Society spoke with Mr. O'Flaherty. He wants us to mail his will to him as he is too ill to travel to pick it up.</p>
<p>68. Gus Palacio (purchase and mortgage of 152 Evelyn Avenue)</p>	<p>Gus Palacio</p>	<p>The first was a purchase and mortgage of 152 which took place in June of 1992. Mr. Palacio forwarded a cheque to the Solicitor for \$27,000. to close the deal. He has never rec'd a report letter nor an accounting of funds. The second transaction invited the placing of a second mortgage of 54 Greenlaw Avenue. Again, no reporting letter was sent.</p>	<p>Mar 9/93 Law Society have forwarded the reporting letter and documents to Mr. Palacio</p>

<p>69.</p> <p>Elio Palermo (estate of his father)</p>	<p>Elio Palermo</p>	<p>Mr. Palermo reported that his father owned 752 Gladstone Avenue in Toronto when he died in 1988 and that the Solicitor was retained to transfer title to his mother, Saletta Palermo. The clients were unable to clarify whether the Solicitor had been retained on he estate or simply to transfer title. They also claim to have the Solicitor 41,000. Again the clients did not know whether this was a retainer or probate fees. The clients have been unable to obtain status report on their file or the money they have given the solicitor.</p> <p>Elio Palermo also mentioned that the solicitor represented him when he mortgaged 84 Castlerock to Mr and Mrs. Mifsud. mr. Palermo would like the return of this file. Mr. Palermo also believes that the Solicitor may have his mother's will but he is not sure on this point.</p>	<p>Law Society have advised Ms. Richard that we will have this and that it can be picked up with the necessary authorization. This file (#2337) appears to be in the name of Mifsud but the Solicitor represented both parties to the transaction. Will require a direction from both parties to release the file and have so information Marie Ricard Feb 10/93 re 752 Gladstone, file not yet found. File picked up by Palermo</p>
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<p>70. Pappagorgio (discharge of mortgages)</p>	<p>Furlong, Collins, Barristers and Solicitors</p>	<p>Solicitor undertook to discharge two mortgages. An original mortgage to Foremost Financial had been assigned 75% to Eaton Trust and 25% to Audrey Osborne. These discharges were mailed to the Solicitor in March of 1992 and have yet to be registered.</p>	<p>Discharge registered by Law Society.</p>
<p>71. Carmen Parnis (mortgage of 489 Clendenan Avenue to Canadian Imperial Bank of Commerce</p>		<p>no reporting letter</p>	<p>Law Society discovered in the file the reporting letter. Forwarded reporting letter and documents to Ms. Parnis</p>

<p>72.</p> <p>Shelly Petruccelli (sale of 198 Caledonia Road)</p>	<p>Shelly Petruccelli</p>	<p>Mrs. Petruccelli is looking for reporting letters on both the sale of 198 Caledonia Road and their subsequent purchase of a property in Camilla, Lot 7, Concession 1, Mono Township. Mrs. Petruccelli also feels they should be getting a refund, i.e. she requires an accounting.</p>	<p>A review of the files (#4454/Caledonia sale & #4462/Orangeville purch.) disclosed prepared but unsigned reports to both CIBC and the clients. Forwarded on the report letters together with the attached cover letter to the respective addressees.</p> <p>Law Society received a call from Mrs. Petruccelli who explained that Mario's secretary said she should be getting back another \$2-3,000.00 with her reporting letter and account. Told her to contact the comp fund to enquire as to how to make a claim. My own investigation of Zammit's trust ledger, cancelled trust cheques and bank reconciliations leads me to believe that the true amount continuing to be held is \$1,554.04. Have not advised Mrs. Petruccelli of my findings.</p>
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<p>73. Shelly Petrucelli (sale of property municipally known as 198 Caledonia Road)</p>	<p>Eduardo Marcos, Barrister and Solicitor (acted for Arruda on the purchase)</p>	<p>Mr. Marcos wrote to the Society on November 9th 1992 concerning an outstanding undertaking. On June 30th 1992 Mr. Marcos acted for his clients Arruda on their purchase of 198 Caledonia Road from Petrucelli. Mr. Zammit represented Petrucelli. On closing Mr. Zammit gave an undertaking to discharge a mortgage. This has not been done. Mr. Marcos' letter failed to give details on the mortgage.</p>	<p>Law Society registered discharge.</p>
<p>74. Charlie Portelli (purchase of property municipally known as 103 Pritchard Avenue, Toronto)</p>	<p>Charlie Portelli</p>	<p>Mr. Portelli would like the file back.</p>	<p>Law Society spoke with Mr. Portelli who will pick up his file (#3080) as soon as possible.</p>
<p>75. Josephine and Peter Portelli (purchase of property municipally known as 45 Criscoe Street, Toronto)</p>	<p>Josephine Portelli</p>	<p>The clients would like the file returned.</p>	<p>Mrs. Portelli will pick up her file (#4203).</p>

<p>76. Mr. and Mrs. Jesmond Pullicino (refinancing)</p>	<p>Jesmond Pullicino</p>	<p>Mr. Zammit was to pay off a builder's mortgage by way of Mr. Pullicino's father taking a first mortgage on the property. The property in question is 37 Hammell Boulevard in Tottenham. Mr. Pullicino has no idea what the status of the matter is. As well as reporting to Mr. Pullicino, Mr. Zammit was also to draft an agreement for father and sign to sign.</p>	<p>A review of the file (part of #4418 - doesn't appear to have its own file number) does not disclose the existence of a mortgage to his father, Bart Pullicino, although there is a discharge of the prior (ie. the builders') mortgage waiting to be registered. Law Society registered discharge.</p>
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<p>77. Alfred and Diane Pulo (sale of property municipally known as 8 Althea Road, Toronto)</p>	<p>J. D. Barnett, Barrister and Solicitor</p>	<p>On January 24th 1992. Mr. Barnett represented the purchasers Gerry and Diane Dool. The Dools have received a notice that there is an outstanding hydro account in the amount of \$454.63. Mr. Pulo was contacted but claims that it was Mr. Zammit's responsibility to take care of this amount (he claims to have given Mr. Zammit \$1000 for fees and adjustments).</p> <p>Law Society has spoken with Mr. Pulo on this matter. Have advised him to pay the outstanding amount and worry later about who will ultimately bear responsibility. Mr. Pulo is not receptive to this idea. From all this confusion, there is doubt Mr. Pulo ever received a reporting letter.</p>	<p>Law Society spoke with Vanida who informed me that they provided cheques to Zammit as follows: \$188,764.45 to Alfred & Diane Pulo \$1,109.00 to Mario Zammit</p> <p>This totals \$189,873.45 which is the balance due on closing and there is no additional holdback.</p> <p>However, Mr. Pulo claims that Zammit's fee was supposed to be \$450.00, not the \$850.00 that was charged, according to the file.</p> <p>Mr. Pulo wants his file and is coming to pick it up (File #4387)</p>
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<p>78. Alfred Ronsisvalle</p>	<p>Margaret McNeil (sister of Mr. Ronsisvalle)</p>	<p>Ms. McNeil contacted the Law Society on behalf of her brother Alfred Ronsisvalle (Tel. 767-4861). In December of 1991 the solicitor was retained by Mr. Ronsisvalle to obtain the discharge of a mortgage registered against his home at 4 East Drive in Toronto. The mortgage remains on title. Also, Ms. McNeil said the solicitor acted on the purchase of her home at 37 Methuen Avenue in Toronto seven or eight years ago. Ms. McNeil would like the return of this file.</p>	<p>A review of file (#1890) disclosed the unregistered discharge of mortgage which Law Society now have sent on for registration. spoke with Mr. Ronsisvalle who advised that he would furnish his sister written permission to pick up his files.</p> <p>Law Society spoke with Mrs. McNeil who confirmed that she would pick up the files following registration of the discharge and will call first.</p> <p>File # 1890, 1892 & 3553 - Ronsisvalle</p> <p>File # 1893 - McNeil</p>
<p>79. Rouhani (sale of property municipally known as 4394 Shelby Crescent, Mississauga)</p>	<p>Sidney Zelewicz, Barrister and Solicitor (solicitor for the purchasers)</p>	<p>to facilitate the closing, Mr. Zelewicz accepted the Solicitor's undertaking to discharge mortgages</p>	<p>Law Society registered discharges.</p>
<p>80. Royal Bank of Canada (mortgage to Alice Cronshaw on property municipally known as 8233 Kipling Avenue, Woodbridge on August 31, 1991)</p>	<p>Royal Bank of Canada</p>	<p>no final report on title received</p>	<p>Law Society reviewed the Solicitor's file. Law Society advised the Royal Bank that the mortgage had been retired and discharged</p>

<p>81. Joseph Saliba (sale of property municipally known 702 Durie Street, Toronto</p>	<p>Shibley, Righton, Barristers and Solicitors</p>	<p>The solicitor represented his client Joseph Saliba on the sale of 702 Durie Street in Toronto on May 28th 1992. On closing the solicitor gave his personal undertaking to Shibley, Righton to discharge two mortgages. Shibley, Righton has obtained replacement discharges but you may just want to confirm that nothing else remains outstanding.</p>	<p>A review of the file (#4446) disclosed a reporting letter completed by Zammit but unsigned which have been forwarded to the client.</p>
<p>82. Tony Saliba (three loan transactions)</p>	<p>Thomson, Rogers Barristers and Solicitors</p>	<p>Mr. Bogoroch was retained by Tony Saliba, a former client of Mr. Zammit's. Mr. Zammit acted for Mr. Saliba in three loan transactions (with Mr. Saliba being the lender). The three transactions are:</p> <ul style="list-style-type: none">i) mortgage with Michael Mifsud, 31-33 Wellington Street East, Alliston;ii) loan to Mario Zammit's brother, Don P. Zammit, and;iii) loan to Mario Zammit in the amount of \$155,000.	<p>Law Society has not been able to locate any of these files. This is one of the more serious complaints against Mr. Zammit. Many departments are involved (Errors and Omissions, Compensation Fund, Complaints, Audit).</p>

<p>83. John Samut (loan from Community Trust)</p>	<p>Community Trust</p>	<p>Mr. Zammit represented his client John Samut on his purchase of 161 Varsity Road in Toronto on June 15th 1992. Community Trust has never received a reporting letter on this transaction and would be surprised if Mr. Samut has received one as well.</p>	<p>Law Society returned the file contents (mostly prior documentation of client) to client c/o his business: Sweet Home Realty Limited, 3101 Dundas Street West, Toronto M6P 1Z9. (file #4480).</p> <p>Forwarded preliminary report in file to Community Trust together with the duplicate registered mortgage.</p>
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<p>84. Nuk and Sehovic (sale of property municipally known as 2390 Bloor Street West)</p>	<p>David Brannan, Barrister and Solicitor</p>	<p>In September of 1991 the solicitor acted for his clients Nuk and Sehovic on their sale of 2390 Bloor Street West. Mr. Brannan acted for the purchaser Bon Holdings Limited. On closing the solicitor gave a personal undertaking to discharge a Counsel Trust (now Sun Life Trust) mortgage (Instrument No. CA12652) and a release of assignment of rents (Instrument No. CA12661). Mr. Brannan reports that this has not been done.</p>	<p>Law Society has not found the missing discharge in the files.</p> <p>David Brannan is no longer practising with Piccini, Bottos and spoke with "Carol" who will attempt to find their file and advise as to whether a replacement discharge was obtained.</p> <p>Law Society spoke with David Brannan. He has forwarded a new discharge for execution by Sun Life Trust. He will contact me only if necessary and there is no further action required on our part at this time.</p> <p>Law Society had a call from Mr. Franc Sehovic who asked to pick up the assorted files in his name. told him to bring a signed authorization from his partner, Vladimir Nuk, and that he could pick up the files at any time during office hours.</p> <p>On a related matter, one file contained discharges executed by <i>John Sehovic</i> as</p>
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85. Sun Life Trust		no reporting letter	Law Society reviewed file and discovered reporting letter. Forwarded reporting letter and supporting documents.
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<p>86.</p> <p>Murray and Miriam Teed (purchase of property municipally known as 525 Meadows, Mississauga and purchase of property municipally known as RR#5, Belleville)</p>	<p>Miriam Teed</p>	<p>They are simply requesting the return of some old real estate files.</p>	<p>Law Society spoke with Miriam Teed who advised that the sale of the Belleville property, which is set to close on March 3, 1993, is now being handled by Ray Kaufman of the law firm of Kaufman & Kaufman of Belleville (tel. 613-966-7771, fax 613-966-6415). There is no open file for this matter but found a loose requisition letter with attachments. Told Mrs. Teed that the Society would contact Mr. Kaufman and forward to him by fax all documents related to the upcoming closing to expedite matters.</p> <p>Further explained to Mrs. Teed that she could pick up her files at her convenience upon providing the Law Society with a direction. The Society is to call her back to arrange for such a pick up tomorrow. The files in our possession are:</p>
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			<p>#2082 - 525 Meadows Blvd. p/f 313908 On. Ltd.</p> <p>#3378 - 525 Meadows Blvd. mortgage to CIBC</p> <p>#3620 - RR#5, Belleville p/f Frappier</p> <p>#3669 - 525 Meadows Blvd. s/t Almeida</p> <p>#3688 - RR#5, Belleville mortgage to CIBC</p> <p>#4009 - RR#5, Belleville mortgage to Central Guaranty Trust</p> <p>Have come across two more Teed files (#4360 - mortgage to Central Guaranty Trust on RR#5, Belleville and #4244 p/o 4715 Antelope Cres.) and forwarded the enclosed reporting letters to the Teeds.</p>
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<p>87. Sam Theuma</p>	<p>Sam Theuma</p>	<p>Mr. Theuma is seeking the return of wills and a file.</p> <ul style="list-style-type: none">i) Wills of Saviour (or Sam) Theuma and Mary Theuma.ii) Real estate file concerning 84 East Drive, Toronto.	<p>Mr. Theuma will pick up his files.</p> <p style="text-align: right;">#100</p> <p>2 - p/o 84 East Drive</p> <p>#3243 - s/o 84 East Drive (aborted)</p> <p>#3794 - wills</p> <p>#3842 - s/o 84 east Drive (aborted)</p> <p>#4083 - mortgage to Royal Bank</p> <p>#4350 - mortgage to Royal Bank</p> <p>Discharge registered by Law Society.</p>
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<p>88. Tjoeng (mortgage from Royal Trust Mortgage)</p>	<p>Larry Ross, Barrister and Solicitor</p>	<p>In 1989 the solicitor acted on behalf of his client Tjoeng with respect to a Royal Trust mortgage on 16-39th Street in Etobicoke. The solicitor apparently had a survey for this property in his possession and Mr. Ross requires it.</p>	<p>Law Society sent the survey copies in the file to Mr. Ross. In addition, Mr. Ross's client Francisco Bernardes wished to pay out a mortgage held by the solicitor's client Emanuelle Grech, a resident of Malta. It was Mr. Ross' information that the solicitor had the necessary discharge statement and discharge in his possession. The address of the property was 98 Mulock Avenue in Toronto. Would check with Mr. Ross' office before doing anything on this file. Due to time constraints, they may have had to take matters into their own hands and solved this problem.</p>
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<p>89. Peter Trezzi (refinancing of house)</p>	<p>Catherine Webb</p>	<p>Mr. Zammit was to discharge a current first and second and replace it with a new first from the Bank of Nova Scotia in the amount of \$167,000. Ms. Webb would like to know if the old mortgages have been discharged and wants an accounting of the monies Mr. Zammit received, i.e. she wants a reporting letter.</p>	<p>Law Society spoke with Ms. Webb and told her that would be forwarding Zammit's report as found in the file to her and her husband. Also told her that we had the discharge for one of the old mortgages and that have contacted the Bank to obtain the other. Law Society registered both.</p>
<p>90. Josephine and Louis Vella</p>	<p>Maria Farrugia</p>	<p>Mrs. Farrugia says she retained the solicitor to prepare her will. To assist him in this process she provided the solicitor with an extensive inventory of all her personal possessions. Mrs. Farrugia does not know whether the will was ever actually prepared. At a minimum Mrs. Farrugia would like the return of her asset inventory so that she may have the will prepared elsewhere. Mrs. Farrugia also believed the solicitor had the wills of her daughter and son-in-law Josephine and Louis Vella. They also would like their wills returned to them.</p>	<p>Law Society spoke with Mrs. Farrugia who will come and pick up her file. (no file # assigned). Have appended the Vella wills to her file. They are in file #3854.</p>

<p>91. Charlie Zammit (purchase of property municipally known as 101 Subway Cres., Unit 1508, Etobicoke)</p>	<p>Charles Zammit</p>	<p>Mr. Zammit has never received a reporting letter on this transaction. The Bank of Montreal has also contacted the Law Society and they await a reporting letter on the same transaction. See complaint #5.</p>	<p>My review of this file disclosed an unsigned reporting letter which have forwarded to the client together with incidental documentation.</p>
<p>92. Joseph and Maudie Zammit (purchase of property municipally known as 50 Broadfield Drive, Etobicoke)</p>	<p>Sidney Solnik, Barrister and Solicitor</p>	<p>Mr. Solnik has now provided me with a letter and a direction from Joseph and Maudie Zammit to turn over the file concerning their purchase</p>	<p>Sent for delivery</p>

19. The following is a list of the Solicitor's client, who in addition to the above mentioned, obtained the return of their files from the Law Society:

Carmen Bain
 Carol Bazkur
 Svetlana Birfer
 Carol Bramble
 Alfred and Catherine Camilleri
 Horace Camilleri
 Joe Cassar
 John and Lucy Chircop
 Anthony and Rita Farrugia
 Joan Gatt
 Spiro and Josephine Grech
 Terrence and Elaine Lindsay
 Malinovic
 Elda Marcon
 Michael and Marion McIntosh
 Maria Muscat
 Antoinette Pulo
 Alfred Ronisisvalle
 Brian Sabourin
 Pauline Saliba
 Jack Smithson
 Sam Talarico
 Frances Trent
 Olympe Vachon

24th March, 1994

20. As of April 20, 1993, the Law Society has paid out \$17,465.62 in trusteeship costs which includes such things as registration fees for mortgages and discharges, travel expenses, account of Joseph Wener.

PARTICULAR 2(d)
FAILURE to FILE

21. 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, 1992, as required by S.16(2) of Regulation 708 under The Law Society Act.

22. A Notice of Default in Annual Filing, dated August 8, 1992 was forwarded to the Solicitor by the Law Society.

23. By registered letter dated September 11, 1992, the Law Society advised the Solicitor 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. The Law Society's September 11, 1992 letter was returned by the post office marked "office temporary closed 16/09/92".

24. The late filing fee began to accrue on October 9, 1992.

25. 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.

12. To date, the Solicitor has not filed the required forms.

DATED at Toronto this day of , 1993."

Based on the Agreed Statement of Facts the Committee found the Solicitor guilty of professional misconduct on all four particulars set out in the Complaint.

RECOMMENDATION AS TO PENALTY

It is this Committee's recommendation that the Solicitor be granted permission to resign from the Society.

REASONS FOR RECOMMENDATION

On the penalty phase of the hearing, the Society sought disbarment of the Solicitor. We were advised that the Solicitor was aware that a disbarment request would be made and had been advised of that fact in writing. Mr. Foster indicated the following reasons for seeking disbarment:

24th March, 1994

1. protection of the public from further harm as a result of the Solicitor's disregard for the interest of his clients;
2. maintaining high ethical standards by sending a message that this type of conduct was unacceptable;
3. maintaining public confidence in the profession which was jeopardized by the Solicitor's abandoning of the practice and the Solicitor practising while suspended.

Notwithstanding the apparent appropriateness of the penalty suggested by Mr. Foster, the Committee desired to hear from the Solicitor some explanation for his actions. For that reason the hearing was adjourned and the Committee requested that the Solicitor be invited to appear before the Committee to offer any explanation he might have for his behaviour.

On November 23, 1993, Mr. Zammit appeared before the Committee and outlined to us his reasons for abandoning his practice. We found his evidence very believable and his story very sad.

Mr. Zammit indicated that initially he did not want to go through an adversarial process and was content to let the matter proceed to disbarment. He indicated that he appreciated the Committee's invitation to him to appear. Mr. Zammit said that there was a series of events during a short period of time that made 1992 the worst year of his life.

Mr. Zammit was to turn 40 on the 1st day of July, 1992. As part of his new year's resolutions on January 1, 1992, he had resolved to leave his practice by July 1. Mr. Zammit was disillusioned with his practice. In 1991 he had been involved with the Professional Standards Program of the Law Society. They suggested that they bring in outside counsel to assist him with his practice. In 1991 he was depressed, his family life was a wreck, he had no time for his children and yelled at them frequently.

The Society had indicated to Mr. Zammit that they would send in a sole practitioner who did mainly real estate. The lawyer whom Professional Standards sent to meet with Mr. Zammit was from a law firm, and was not engaged in a real estate practice. That lawyer advised Mr. Zammit that he was running a real estate mill, and that he was not charging enough for his deals; rather than charging \$600.00 for a deal, he should be charging \$1,200.00. Because of the competitive nature of the real estate practice, Mr. Zammit felt that he would have no clients if he followed this advice.

Over the previous eleven years Mr. Zammit had never had a vacation further than driving distance from the office, and had taken no more than a week's vacation. He frequently would return from vacation to deal with matters at the office.

In late 1991 Mr. Zammit thought he must leave law or his practice would kill him. He felt suicidal but did not seek professional help. The Society had suggested that he speak to the Link Program, but since he was not involved in either drug or alcohol use, he thought this would not be of assistance to him. Mr. Zammit testified that in 1992 he would leave the office for hours at a time because he could not stand being in the office. As the July 1 deadline approached there were less deals coming in. He had stopped taking real estate transaction which had closings after the 1st of July.

24th March, 1994

Mr. Zammit was having money problems both at home and at the office. He had problems with the government regarding tax arrears. In February of 1992 the government seized all of his accounts including his general account. He had a secretary in his office until June. He had given her notice in January that he would be closing his practice. She left the office in June. Mr. Zammit attempted to do reporting letters on his own, and clear up his practice. He did not have sufficient funds to register discharges. At that point he was effectively working for nothing.

After June he spoke to David McKillop, a staff trustee for the law office, about cleaning up Mr. Zammit's practice. Eventually Mr. McKillop offered to register the discharges.

In the second week of August 1992 Mr. Zammit was locked out of his office for arrears of rent. He described that as the final nail in his coffin. He said he basically threw his arms in the air, and left the practice. At that time he owed \$4,000.00 his landlord for arrears of rent. He had more than that in equipment in the office, but even to the date of this hearing he has not contacted his landlord. He could not deal with the prospect of going into the office. Mr. McKillop arranged with the landlord to pick up the files.

At that time, there was a power of sale proceedings on Mr. Zammit's home. He is married and has two children, ages 8 and 4. He woke up one Saturday morning to find that his wife's car had been repossessed. His wife is a school teacher and needed the car for work. Mr. Zammit's mother had cancer and his aunt had died of cancer. The engine on his car seized and he called the bank and arranged for them to repossess it.

In January of 1993 Mr. Zammit found alternative accommodation and lost his house to the bank.

In May of 1993 he declared bankruptcy.

Mr. Zammit indicated he had basically been unemployed since June of 1992. He has taken a real estate course and joined ReMax in October 1992. He indicated that he is now starting to work as a real estate salesman.

Mr. Zammit indicated that he had not told anyone about the Law Society proceedings. He felt that his parents would be devastated if he was disbarred. He no longer wished to practice law and was quite content to resign from the Society.

Mr. Foster cross-examined Mr. Zammit. The cross-examination was not done for the purposes of discrediting Mr. Zammit's testimony, but merely to bring additional factors to the Committee's attention. Mr. Zammit admitted that his books and records were in total disarray since January of 1992. It would require \$1,500.00 for an accountant to do the reports to the Law Society and he did not have that money. He indicated that his books were up-to-date for 1991 and that he had a bookkeeper in his office until January of 1992. Mr. Zammit was unable to commit financially to doing anything in regard to his records. He indicated that the family is barely making ends meet on his wife's income. He testified that until the late 1980's his practice was financially okay. He had a high volume real estate practice with good profits. At that time he had three secretaries and a bookkeeper. He had suffered a dissatisfaction with the practice for the last five years but he found it hard to leave the practice when he was making money.

In regard to practising law under suspension, Mr. Zammit indicated that he thought his insurance would run until the end of June. He had not paid his E. & O.E. fees for the January to June 1992 period. When he received the letter indicating he was suspended as of June 5 he kept on doing the real estate files that were at his office.

24th March, 1994

Mr. Zammit acknowledged that he had not replied to recent letters from the Law Society in regard to compensation fund complaints. He indicated that one of the reasons he did not reply is that his files were at the Law Society and without the files he was unable to reply. He also indicated that it appeared that one part of the Law Society was not aware of what the other part was doing. In the summer and fall of 1993 he was still receiving notices indicating that his E. & O.E. levy would be increased.

Mr. Zammit testified that he had been meeting regularly with Law Society adjusters to discuss claims being made against him.

After hearing the evidence of Mr. Zammit, the position take by Mr. Foster was that the Solicitor's membership in the Society should be terminated. Mr. Foster left it to the Committee as to whether the Solicitor should be granted permission to resign. Mr. Foster did indicate that we had not heard from the 96 clients who were left in the lurch by Mr. Zammit.

The Committee was of the view that if the Solicitor cooperated with the Society in the winding up of his practice between November 23 and the date this matter reached Convocation, the Solicitor should be granted permission to resign from the Society. If the Solicitor did not cooperate with the Society, or if he did not resign from the Society, the Solicitor should be disbarred.

Mario Zammit was called to the Bar and admitted as a solicitor to the Supreme Court of Ontario on the 10th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 12th day of January, 1994

Paul D. Copeland

It was moved by Mr. Topp, seconded by Ms. Palmer that the Report be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Mr. McKinnon that the Recommendation as to Penalty that is, that the solicitor be permitted to resign, be adopted.

There were submissions by both counsel for the Society and the solicitor in support of the recommended penalty.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Ms. Elliott, seconded by Ms. Curtis that the solicitor be disbarred.

Lost

The Recommendation as to Penalty was adopted.

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

The solicitor was permitted to resign.

Counsel and solicitor retired.

24th March, 1994

ADMISSIONS COMMITTEE

Re: Application for Readmission

Re: RAYMOND ARTHUR NEIJADLIK, Toronto

The Secretary placed the matter before Convocation.

Mr. Lamont withdrew for this matter.

Mr. Thomas Lockwood appeared on behalf of the Society and the applicant appeared on his own behalf.

The Report of the Application for Readmission was filed as Exhibit 1.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF RAYMOND ARTHUR NEIJADLIK
of the City of Toronto

AND IN THE MATTER OF an Application for Readmission
to the Law Society of Upper Canada

REASONS FOR DECISION

PANEL:

Mr. Clayton C. Ruby - Chair
Mr. J. James Wardlaw, Q.C.
Mr. Donald H. L. Lamont, Q.C.

APPEARANCES:

Mr. Thomas J. Lockwood, Q.C. - for the Law Society
Mr. Robert B. McGee, Q.C. for the Applicant

DATE:

November 11, 1991 and February 10, 1994

RECOMMENDATION TO CONVOCATION

Mr. Niejadlik was charged with serious offences and found guilty by the Discipline Committee.

Those charges were as follows:

- a) During the period January 17, 1978 to December 16, 1981, the Solicitor while acting for Anthony Gardynik, the Executor of the Estate of the late Anna Pest, misappropriated the sum of EIGHTY-NINE THOUSAND, SEVEN HUNDRED AND EIGHTY-TWO (\$89,782.00) DOLLARS, more or less, from the Estate.

24th March, 1994

- b) He attempted to mislead the Law Society of Upper Canada as to the disposition of funds received for and on behalf of the Estate of the late Anna Pest.
- c) He failed to serve his client in a conscientious and diligent manner by not following instructions, by failing to make himself available, and by failing to account to Anthony Gardynik, Executor of the Estate of the late Anna Pest.
- d) He failed to co-operate fully with the person designated under subsection 1 of Section 18 of the Regulation made pursuant to The Law Society Act to make an investigation of his books, records and accounts as required by the aforesaid Section of the Regulation. (Reference: Rule 14, Professional Conduct Handbook)

Convocation, after careful consideration, granted permission to resign on November 26, 1982. On the same date Mr. Niejadlik resigned. He did so on the understanding, reflected in his resignation document, that he would "undertake never to reapply for admission in the future."

The facts found in respect of those offences are important. They are as follows:

STATEMENT OF AGREED FACTS

- 2(a) Deliberate Misappropriation of Eighty-Eight Thousand Two Hundred and Eighty-Two Dollars (\$88,282.00) from the Estate of the late Anna Pest
-

Anna Pest died on January 17, 1978. Anthony Gardynik was the sole executor of her estate. Mr. Gardynik retained the solicitor to wind up the estate in accordance with the will of the late Anna Pest. The estate was valued at \$91,782.40 according to the Succession duty return prepared by the solicitor. The solicitor handled the sale of real estate owned by the late Anna Pest and had control of accounts held by Anna Pest at the date of her death.

Mr. Gardynik advised the Law Society that he had been unable to obtain an accounting from the solicitor. Mr. Gardynik had only authorized payments of \$500.00, \$1,500.00 and \$1,500.00 for payment of a legacy, funeral expenses and executor's fees. Between the period January 17, 1978 and December 11, 1981, the solicitor appropriated the balance of the proceeds of the estate in the amount of \$88,252.00 to his personal bank account. Mr. Gardynik received \$25,000.00 from the solicitor on August 14, 1981 and \$65,000.00 from an unknown source on December 16, 1981.

- 2(b) Misleading the Law Society regarding the disposition of funds received for and on behalf of the Estate of the late Anna Pest.
-

In their report dated December 4, 1979 the Law Society's auditors reported that they had been advised by the solicitor that the proceeds of the estate had been paid to L.J. Smyth Real Estate Limited at the instruction of the executor Mr. Gardynik on the following dates:

<u>Date</u>	<u>Amount</u>
December 28, 1978	\$ 9,000.00
January 23, 1979	10,000.00
March 9, 1979	10,000.00
April 2, 1979	10,000.00
May 15, 1979	5,000.00
not known	<u>6,000.00</u>
	<u>\$50,000.00</u>

Mr. Gardynik had advised the Law Society that in addition to the payments he had authorized in the amount of \$3,500.00 he had received \$25,000.00 on August 14, 1981. When confronted with this information on December 11, 1981 Mr. Niejadlik stated that he did not make the payment of \$25,000.00 to Mr. Gardynik on August 14, 1981 but that he did deliver an envelope containing a cheque to Mr. Gardynik after receiving an envelope from Mr. Smyth. Mr. Niejadlik stated he had no information as to Mr. Smyth's handling of the \$50,000.00 which had been paid in 1978 and 1979.

Subsequent conversations with L.J. Smyth Real Estate Limited revealed that Mr. Niejadlik's version of the disposition of funds was untrue.

2(c) He failed to follow his client's instructions and failed to account

The solicitor failed to make himself available to Mr. Gardynik, the executor of the estate of the late Anna Pest and failed to follow instructions and did not account to his client despite being requested to do so on several occasions.

2(d) He failed to co-operate fully with the Law Society's Auditors

Since December 17, 1981, Mr. William Henderson, a member of the Law Society's audit staff has attempted on numerous occasions to meet with Mr. Niejadlik to discuss the estate of Anna Pest and other matters but has been unable to contact the solicitor who does not return telephone calls nor maintain regular business hours for his law office."

Those proceedings were reflective of the reasons of the Discipline Panel which heard his case on August 25, 1982:

"MR. WARDLAW: It is the decision of the Committee that we should allow the solicitor to resign his membership in the Society.

There are many reasons for this, but first I should indicate that our--it was very obvious to us at first blush, I should say, that the--that disbarment was almost mandatory here.

The responsibility to the members of our Society and to the public almost demanded it.

And there was the nagging problem that was referred to by Mr. Sherriff and which caused us concern that there was a question of a cover-up during prior discipline proceedings on a relatively minor matter that merely resulted in a reprimand, the solicitor knowing this and covering up.

On the other hand, there are a couple of objective facts that stand in his favour.

24th March, 1994

The first is that there is no loss of money by any member of the public. There has been complete restitution.

And fundamentally he knew throughout that if the worst came to the worst, there would be complete restitution because he knew fundamentally, that father would come forward and rescue the situation.

There is also the objective fact of a long record of public service, both to his profession and to his community, and it's one of those chips that a person can call on when he's in some difficulty.

But these facts, on the face of them, aren't enough to justify the decision of the Committee. The fundamental reason for our decision is based on the evidence of Dr. Long, who is a distinguished clinical psychologist in Toronto, who has known the solicitor in a professional capacity for a period of ten years.

I don't want to indicate that he has been under his care for ten years, but that ten years ago he was suffering a problem, and that problem has not been resolved in the ten year period.

Dr. Long's evidence was that the solicitor was--has deep feelings of inferiority and insecurity; that he was able to cope with these problems until recently; but that problems arising out of the death of a friend, problems arising out of pressures within his family, problems--these pressures being his feeling of responsibility to his family, feelings of responsibility to his parents, who are not well, resulted in his lack of ability to cope.

He appears to be a person who could never say no to anything, who is always willing to assist and who appears not to have been a good businessman and did not render his accounts, and this is what, primarily, got him into financial trouble.

The insecurity and the inferiority feelings resulted in great problems and pressures on him.

On the one side were his feelings of responsibility, other problems making him want to get away from the practice of law and just have no dealings with...in any way. Pressures tearing him in both ways.

But Dr. Long indicated that it was not something that the solicitor himself could bring to the public. It would have to be done for him, and that's what's happening in these proceedings.

In Dr. Long's view, the solicitor is in no way able to practise law. He's not capable of practising law in--certainly by himself.

He might be able to practise law if some one else would take the brunt of the responsibility.

The evidence is also that he has not practised law for over a year.

Based on all the psychiatric evidence and the fact that there is no loss to the public, your Committee is of the view that the interests of both the public and Society is best served by allowing him to resign.

24th March, 1994

He offered, voluntarily to give us an undertaking that he would not reapply for membership in this or any other Society, and the Committee has accepted that.

During the proceedings, Section 35 of the Law Society Act was drawn to the attention of counsel for the solicitor.

The evidence before the Committee is such that there is no doubt in the mind of the Committee that an alternative disposition in this proceeding would be that by reason of mental illness due to depression, an order could be made to suspend the solicitor from his rights and privileges as a member.

Counsel for the solicitor indicated that older people in the Polish community would regard this as tantamount to saying that his client was crazy, and that while his client was willing to accept any disposition of the matter and would accept this one, he didn't want to press this one.

This Committee was not constituted specifically to conduct an inquiry under Section 35, but your Committee was of the view that it has all of the evidence before it that a Section 35 Committee would have, and the proceedings could be considered an inquiry within the meaning of that section.

The Committee doesn't reject the solution if Convocation does not accept its recommendation, but the Committee is of the view that in the interests of justice to everybody concerned, allowing the solicitor to resign, coupled with his voluntary undertaking, it is the best disposition of the matter."

On January 19, 1990, Mr. Niejadlik applied for re-admission to the Law Society of Upper Canada. His application was supported by a medical report from Dr. Peter Rowsell which came to the conclusion:

"My own impression without doubt, he had a severe depressive reaction five years ago; it was of certainly two years duration, but he has certainly now recovered, so that we are left with a person who at this time is in good mental health. I can find no signs or symptoms which would indicate any problems in the practice of law. So far as I can see, he would be quite competent to resume practising at any time."

The Committee was concerned that report was not then current and so it asked for an updating by way of a complete reinvestigation from a psychiatric point of view by Dr. Rowsell. This was performed with the assistance of Dr. J. Alan Long, a psychologist. We are satisfied that none of the delay caused by this reinvestigation is in any way the fault of the solicitor. We have now received that report which indicates that so long as the solicitor does not practise independently, there is no impediment to his practising law. It notes that the solicitor does not expect to practise independently.

"In summary, I do not find with my present information, any evidence that this man by reason of psychiatric illness, is unfit to practise law."

The Committee was concerned with the undertaking not to reapply but is satisfied that in the circumstances of this case, with its important psychiatric element, the solicitor should not be held to that undertaking and should be permitted to reapply.

24th March, 1994

Because the issues before us in many ways resemble a hearing pursuant to Section 35 of the Law Society Act, we were most concerned with the issue of his present mental state. We are now satisfied and recommend to Convocation that he be readmitted on condition that he not practise law alone and that he not have sole control of any trust account. We think that both those conditions should remain in force for a period of two years and that they should then be subject to relief on application to the Secretary of the Law Society provided the Secretary is satisfied that relief is appropriate. If the Secretary is not satisfied, then the solicitor may apply to Convocation for relief. We make this provision so that the solicitor will understand that those two requirements are not intended to be permanent if the Society can be satisfied that they are no longer necessary in the public interest.

We are aware that Convocation on the 30th of January 1987, in discussing applications for readmission in general from those who have resigned, decided that they would have to comply with the requirements of Section 27 of the Law Society Act respecting good character. We have examined that question, and have looked at character evidence called by the solicitor. It was not challenged by the Society. We are satisfied that he is now of good character.

We are keenly aware that eleven years have passed since this solicitor was in active practice. Until he was laid off last Friday, he had long standing employment with West End Developments Company Limited, an enterprise which owned and managed apartment buildings and engaged in construction work. In his work there he supervised small claims court applications and landlord and tenant matters. He worked with staff lawyers in those fields. He testified before us and frankly admitted that aside from these two narrow areas, he was unable to practise law today without further education. He is simply not in a position to assert, and cautiously did not, that he had an understanding of the broader practice of law such as will be required as barrister and solicitor. He has attempted to find articling positions but has been unable to do so. That is not surprising in the present economic climate. He currently has severe economic problems.

Weighing all of these matters we think it appropriate that Convocation admit him only after he has completed either the bar admission exams, or the transfer exams (which we understand now are the same as the bar admission exams), or engage in the usual one-year period of articling. We leave it to him to determine which of these three alternatives best suits his needs. We are satisfied that any of them will meet the needs of the public in respect of the long period since he has practised law in Ontario.

DATED at Toronto, this 17th day of March, 1994

Clayton C. Ruby

It was moved by Ms. Palmer, seconded by Mr. Cullity that the Report for Readmission be adopted.

There were submissions by counsel for the Society in support of the Report.

There were no submissions by the applicant.

Counsel, the applicant, the reporter and the public withdrew.

It was moved by Mr. Topp, seconded by Mr. Copeland that the Report be amended by adding the words "and engage in the one year articling program".

Lost

24th March, 1994

It was moved by Mr. McKinnon, seconded by Mr. Hill that the supervising lawyer be subject to the approval of the Secretary.

Carried

The Report as amended was adopted.

Counsel and the applicant retired.

Re: RAYMOND VINCENT DONOHUE, Sarnia

The Secretary placed the matter before Convocation.

Mr. Thom and Ms. Moliner did not participate.

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

Mr. Foster requested an adjournment on consent to the April Special Convocation.

The adjournment was granted.

Counsel retired.

Re: GRANT EDWARD RAYNER, Hamilton

The Secretary placed the matter before Convocation.

Ms. Curtis and Ms. Moliner withdrew for this matter.

Mr. Stephen Foster appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 16th February, 1994, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 18th February, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th March, 1994 (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

Kenneth E. Howie, Q.C., Chair
Carole Curtis
Marie Moliner

24th March, 1994

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

Stephen Foster
for the Society

GRANT EDWARD RAYNER
of the City
of Hamilton
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 30, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 13, 1993 Complaint D147/93 was issued and on September 15, 1993, Complaint D231/93 was issued against Grant Edward Rayner alleging that he was guilty of professional misconduct.

The matter was heard in public on November 30, 1993 before this Committee composed of Kenneth E. Howie, Q.C., Chair, Carole Curtis and Marie Moliner. Mr. Rayner attended the hearing and was not represented. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D147/93

2. a) He has failed to maintain proper books and records in accordance with Regulation 708 under the Law Society Act in that as of January 29, 1993 his books and records were in arrears from March, 1992.

Complaint D231/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending November 30, 1992, a statutory declaration 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 contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D147/93 and D231/93 and is prepared to proceed with a hearing of this matter on November 16 and 17, 1993.

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 D147/93 and D231/93 and admits the particulars contained therein. The Solicitor also admits that the particulars in the Complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1985. He practises as a sole practitioner in Hamilton.

5. On December 1, 1992 the Solicitor was suspended for non-payment of his annual fees.

Complaint D147/93

Particular 2(a) Failure to maintain proper books and records in accordance with Regulation 708 of The Law Society Act.

6. On December 4, 1992 the Law Society's examiner, Janet G. Merkley, spoke with the Solicitor by telephone and arranged an appointment for December 22, 1992.

7. On December 22, 1992 Ms. Merkley attended at the Solicitor's home to conduct an examination of his books and records. The examination disclosed that the books were in arrears from March 1992. Ms. Merkley and the Solicitor agreed to schedule a further appointment for January 29, 1993.

8. On January 29, 1993 Ms. Merkley again attended at the Solicitor's home to examine his books and records. The Solicitor's books were still in arrears from March, 1992.

9. By letter dated March 24, 1993, Ms. Merkley requested that the Solicitor notify her as soon as possible when his books and records would be available for examination. A copy of Ms. Merkley's March 14, 1993 letter is attached as Exhibit "A" to this Agreed Statement of Facts. No response was received.

10. By letter dated April 14, 1993, Ms. Merkley again requested that the Solicitor notify her as soon as possible when his books and records would be available for examination. A copy of Ms. Merkley's April 14, 1993 letter is attached as Exhibit "B" to this Agreed Statement of Facts. No response was received.

11. By letter dated June 9, 1993, Ms. Merkley referred the Solicitor to her earlier visits and unanswered correspondence. Ms. Merkley requested that the Solicitor notify her immediately as to when she may commence an examination of his books and records. A copy of Ms. Merkley's June 9, 1993 letter is attached as Exhibit "C" to this Agreed Statement of Facts. No response was received.

12. By letter dated July 12, 1993, Ms. Merkley again requested that he Solicitor notify her immediately as to when she may commence an examination of his books and records. A copy of Ms. Merkley's July 12, 1993 letter is attached as Exhibit "D" to this Agreed Statement of Facts. No response was received.

Complaint D231/93

Particular 2(a) Failure to make annual filings for the year ended November 30, 1992

13. The Solicitor's fiscal year end is November 30. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending November 30, 1992, as required by S.16(2) of Regulation 573 under The Law Society Act.

14. A Notice of Default in Annual Filing, dated February 4, 1993 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "E" to this Agreed Statement of Facts.

15. A Second Notice of Default in Annual Filing, dated March 6, 1993 was forwarded to the Solicitor by registered mail. The Society advised the Solicitor 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 March 6, 1993 Notice is attached as Exhibit "F" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

16. A further Notice of Default in Annual Filing, dated June 2, 1993 was forwarded to the Solicitor by the Law Society. A copy of the June 2, 1993 Notice is attached as Exhibit "G" to this Agreed Statement of Facts. No response was received.

17. By registered mail dated July 7, 1993, the Law Society again notified the Solicitor 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 July 7, 1993 notice is attached as Exhibit "H" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

18. 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.

19. To date, the Solicitor has not yet mailed the required forms.

V. DISCIPLINE HISTORY

20. The Solicitor has no previous discipline record.

DATED at Toronto this 30th day of November, 1993."

The Committee finds the Solicitor guilty of professional misconduct in respect of both complaints D147/93 and D231/93.

RECOMMENDATION AS TO PENALTY

The Committee recommends that:

- (a) A reprimand in Convocation provided the problems associated with his books and records have been cleared up by the date of Convocation to the satisfaction of the Law Society.
- (b) In the event that that has not occurred by the date of Convocation, the Committee recommends that there be a one month suspension, to be followed by an indefinite suspension unless or until the issues with respect to the books and records have been cleared up to the satisfaction of the Law Society.
- (c) The Committee agrees that there should be an Order directing the payment to the Law Society by the Solicitor of costs in the amount of \$1,000.00.

REASONS FOR RECOMMENDATION

The Solicitor readily conceded his failure to complete the filing of forms. He readily conceded his failure to fulfill the legitimate requirements imposed upon him by the audit staff.

He testified under oath that he suffers from depression and paralysis with respect to deadlines. He is not practising at this time and is concerned as to whether or not he will want to continue his practice in the future.

Interestingly enough, if we accept the Solicitor's evidence, he is not in any way strapped for money.

He was suspended for non-payment of fees in 1992 but restored his membership in the spring of 1993 by payment of all appropriate fees. He has not paid his fees for the fiscal year 1993/94.

There was no evidence called to suggest any underlying problem, other than the depression and paralysis, from which the Solicitor suffers. Nevertheless, the Society requires, and the public's interest demands, that his books and records accurately reflect on an ongoing basis the state of the financial aspects of his practice, including particularly his trust reconciliations.

The problem for the Committee is simply to tailor a penalty to fit these circumstances. The matter is serious enough, particularly as it involves what amounts to a total lack of co-operation by the Solicitor (even though occasioned we believe at least in part by his mental disorder) to require a reprimand in Convocation.

The Committee is satisfied, from the evidence of the Solicitor and the case of the Society, that the Solicitor could, with relatively little effort, bring his books and records up to date and fulfill the requirements imposed by the audit department. Failure on the part of the Solicitor to accomplish this leads us to the recommendations for penalty.

