

26th June, 1997

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 26th June 1997
9:00 a.m.

PRESENT:

Treasurer (Susan E. Elliott), Adams, Angeles, Armstrong, Arnup, Bobesich, Carey, Carpenter-Gunn, Chahbar, Cole, Cronk, Crowe, Curtis, Gottlieb, Farquharson, MacKenzie, Marrocco, Millar, O'Connor, Ortved, Puccini, Sealy, Stomp, Swaye, Thom, Topp, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

DISCIPLINE COMMITTEE

Ms. Lesley Cameron, Senior Counsel-Discipline introduced Mr. Paul Le Vay who acted as Duty Counsel.

Re: Richard Alexander SUTTON - Toronto

The Secretary placed the matter before Convocation.

Ms. Elizabeth Cowie appeared on behalf of the Society and Mr. Simon Van Duffelen appeared on behalf of the solicitor. The solicitor was not present.

Ms. Cowie advised that the solicitor requested an adjournment to the September Discipline Convocation. The solicitor was not practising and the Society was not opposing the adjournment.

It was moved by Mr. MacKenzie, seconded by Mr. Millar that the adjournment be granted.

Carried

Re: Bruce Benjamin KRAMER - London

The Secretary placed the matter before Convocation.

Ms. Stomp, Ms. Carpenter-Gunn and Ms. Angeles withdrew for this matter.

Ms. Christina Budweth appeared for the Society and Mr. Luigi Circelli appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 16th May, 1997, together with an Affidavit of Service sworn 28th May, 1997 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 21st May, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th June, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Tamara Stomp, Chair
Kim Carpenter-Gunn
Nora Angeles

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

Christina Budweth
for the Society

BRUCE BENJAMIN KRAMER
of the City
of London
a barrister and solicitor

Luigi Circelli
for the solicitor

Heard: September 17, 1996 & May 8, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 21, 1995 Complaint D397/95 was issued against Bruce Benjamin Kramer alleging that he was guilty of professional misconduct.

The matter was heard *in camera* on September 17, 1996 and May 8, 1997 before this Committee composed of Tamara Stomp, Chair, Nora Angeles and Kim Carpenter-Gunn. The Solicitor attended the hearing and was represented by Luigi Circelli. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D397/95

2. a) the Solicitor misappropriated \$16,300.00;
- b) the Solicitor fraudulently altered a previously cashed trust cheque including altering the amount from \$20,000.00 to \$7,017.46 in order to cover up the misappropriation in particular (a) above; and
- c) the Solicitor breached an Order of Convocation by practising under suspension during the period May 9, 1994 to June 3, 1994.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D397/95 and is prepared to proceed with a hearing at a date and time convenient to all parties.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D397/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 12, 1979 and practised thereafter as a sole practitioner in London, Ontario.

Particular 2(a) - Misappropriation - \$16,300.00; and
2(b) - Fraudulently altering cheque.

5. In the fall of 1993, the Solicitor was retained by Claudette Lafleur (then Stafford) to act for her with respect to matrimonial and real estate matters.

6. The matrimonial home was sold and, on October 25, 1993, the proceeds of the sale, \$72,511.41, were deposited to the Solicitor's trust account, as shown by the client ledger card attached hereto as Exhibit 1.

7. From the proceeds, \$47,417.46 was to be disbursed to Claudette Lafleur, as shown by the Equalization and Distribution Statement attached hereto as Exhibit 2.

8. Between October 1993 and June 1994 the Solicitor misappropriated a total of \$16,300.00 from the Lafleur funds held in trust, as shown by the following table:

Date	Amount	Disbursed to	Exhibit
October 29, 1993	\$3,000.00	Bruce B. Kramer	3
December 8, 1993	600.00	Bruce B. Kramer	4
February 22, 1994	700.00	Bruce B. Kramer	5
May 3, 1994	2,000.00	Bruce B. Kramer	6
May 12, 1994	5,500.00	Bruce B. Kramer	7
June 2, 1994	3,500.00	Bruce B. Kramer	8

9. While each of these transactions appears in the general ledger, none are allocated to the client ledger card for Ms. Lafleur.

10. On September 4, 1994, the Solicitor disbursed funds in the amount of \$45,417.46 to Claudette Lafleur from his trust account. This cheque was returned by reason of insufficient funds. The Solicitor will testify that at the time, the Solicitor had been relying on the services of a Chartered Accountant from a major international firm to reconcile both his general and trust accounts. The balances shown in both accounts bore little relationship to the actual amounts in the accounts. The Society will lead evidence to the contrary.

11. On September 10, 1994, the Solicitor issued trust cheque #1198 to Claudette Lafleur in the amount of \$20,000.00.

12. This cheque was cleared at Canada Trust on September 13, 1994 for \$20,000.00, with a transaction identification number of 0400174684 printed on the reverse of the cheque. A printout received from Canada Trust of cheques cashed in September, 1994, confirms the cheque number, amount and transaction identification number. A copy of the printout is attached hereto as Exhibit 9.

13. On November 9, 1994, the Solicitor disbursed a further \$15,000.00 to the client from trust, leaving a balance owing to her of \$12,417.46.

14. In March, 1995, Ms. Lafleur retained new counsel, William J. Galloway, who wrote to the Solicitor on March 9, 1995, requiring the remainder of the funds forthwith. A copy of this letter is attached hereto as Exhibit 10.

15. The Solicitor wrote back to Mr. Galloway on March 10, 1995, enclosing a cheque for \$5,400.00 and stating he had sent a cheque for \$7,600.00 to Ms. Lafleur on December 2, 1994. A copy of this letter is attached hereto as Exhibit 11.

16. The same day, Mr. Galloway wrote to the Solicitor requesting proof of the \$7,600.00 payment and a full accounting. A copy of this letter is attached hereto as Exhibit 12.

17. On March 14, 1995, the Solicitor wrote Mr. Galloway enclosing a copy of a cheque dated December 2, 1994 in the amount of \$7,017.46. A copy of this letter and cheque are attached hereto as Exhibit 13.

18. Ms. Lafleur took the cheque to Canada Trust. Canada Trust determined the cheque had been altered, and was originally cheque #1198 drawn on the Solicitor's trust account on September 10, 1994 and cleared by Canada Trust on September 13, 1994 for \$20,000.00 with a transaction identification number of 0400174684.

19. The Solicitor's trust bank statement for December 1994 shows no cheque in the amount of \$7,017.46 was cashed that month. A copy of this bank statement is attached hereto as Exhibit 14. It is also clear from this statement that cheque #1298 would be completely out of sequence with all other cheques negotiated that month.

20. The Solicitor also indicated to the Law Society that the altered cheque was genuine in his letter to the Society of March 23, 1995, a copy of which is attached hereto as Exhibit 15.

21. In fact, the Solicitor had altered the cheque by changing the number from 1198 to 1298, the date from September 10, 1994 to December 2, 1994 and the amount from \$20,000.00 to \$7,017.46 on the face of the cheque, and by altering the bank date stamp on the reverse. However, he did not alter the coding on the face of the cheque, which identifies it as number 1198 in the amount of \$20,000.00, or the transaction identification number of 0400174684 on the reverse.

22. When questioned, the Solicitor stated he had possession of his bank statements and cashed cheques. He was unable to produce the original of cheque 1198, stating it had been destroyed in the photocopier.

Particular 2(c) - Practising under Suspension

23. On or about December 1, 1993, the Law Society sent the Solicitor a first notice that his annual fees were due on January 1, 1994. This notice contained a warning that the Solicitor may be suspended if the fees were not received. The Solicitor did not pay his fees. A sample notice is attached hereto as Exhibit 16. A review of the history of the Solicitor's payment of fees and E & O premiums will reveal that the Solicitor normally paid such fees and premiums 3½ months after due, but within the prescribed time limit.

24. On or about December 12, 1993, the Law Society sent the Solicitor a first notice that the Errors and Omissions Insurance levy was due January 1, 1994. This notice contained a warning that, should the levy not be received by May 2, 1994, the Solicitor would be suspended as of that date. The Solicitor did not pay the levy. A sample of this notice is attached hereto as Exhibit 17.

25. On or about March 21, 1994, the Solicitor was sent a second notice that his annual fees were due. This notice contained a similar warning with respect to suspension. The Solicitor did not pay his annual fees. A copy of this notice is attached hereto as Exhibit 18.

26. On or about March 28, 1994, the Solicitor was sent a second notice for payment of the Errors and Omissions Insurance levy. This notice also contained a warning with respect to suspension for non-payment. The Solicitor did not pay the levy. A copy of this notice is attached hereto as Exhibit 19.

27. On May 9, 1994, the Solicitor was suspended for non-payment of his annual fees. Notice of the suspension was sent to the Solicitor by registered mail on May 9, 1994 and, according to the acknowledgement of receipt card, was signed for by the Solicitor on May 13, 1994. A copy of the letter and acknowledgement of receipt card are attached hereto as Exhibit 20.

28. The Solicitor was re-instated June 3, 1994 when both his annual fees and Errors and Omissions Insurance levy were received by the Law Society.

29. The Solicitor states he was on vacation from May 16, 1994 to June 1, 1994. However, before leaving, he instructed another Solicitor, Perry Ambrogio, to attend to three real estate transactions on his behalf a practice the Solicitor had engaged in for several years.

30. The Solicitor, by memorandum dated May 9, 1994, instructed Ambrogio to act as his agent on the Koyounian sale, to close May 27, 1994. He also provided Ambrogio with various cheques and documentation dated May 27, 1994. A copy of this material is attached hereto as Exhibit 21.

31. On May 26, 1994, Mr. Ambrogio became aware that the Solicitor's rights and privileges had been suspended, and Mr. Ambrogio was forced to assume full carriage of the matter, obtaining instructions, giving an undertaking and disbursing funds through his own trust account. A full account of the matter is contained in correspondence from Mr. Ambrogio of June 6, 1994, a copy of which is attached hereto as Exhibit 22.

32. The Solicitor, by memorandum dated May 10, 1994, also instructed Mr. Ambrogio to act as his agent with respect to his clients, Mr. and Mrs. Findlater on a sale and a purchase, both scheduled to close May 27, 1994. He provided Mr. Ambrogio with various documentation dated May 27, 1994. A copy of this material is attached hereto as Exhibit 23.

33. When Mr. Ambrogio became aware of the Solicitor's suspension, he was forced to assume carriage of the files and conclude the transaction. A complete account of the matter is contained in correspondence from Mr. Ambrogio dated June 16, 1994, a copy of which is attached hereto as Exhibit 24.

V. DISCIPLINE HISTORY

34. The Solicitor does not have a discipline history.

DATED at London this 17th day of September, 1996."

RECOMMENDATION AS TO PENALTY

The Committee unanimously recommends the following penalty:

1. The Member be suspended from practice for a period of two years. This period is in addition to the period that the Member has voluntarily undertaken not to practise.
2. The Member may return to practice at the completion of this two year period only after a report of a psychiatrist or psychologist has been provided, which is satisfactory to the Secretary of the Law Society, evidencing that the Member has attended for a course of counselling and been amenable to any treatment or therapy recommended by the said psychiatrist or psychologist.
3. All required filings to the Law Society must be up-to-date prior to the Member resuming practice.
4. Upon returning to practice, the Member shall have no authority with respect to trust accounts for a period of three years after returning to practice.
5. Upon resumption of practice, the Member will enrol in and cooperate with the Law Society Practice Review Programme.
6. There shall be no costs payable.

REASONS FOR RECOMMENDATION

Findings of professional misconduct were made on all three particulars in Complaint D397/95 on the basis of the admissions in the Agreed Statement of Facts.

The Member acted for Claudette Lafleur in matrimonial matters. As a result of the sale of the matrimonial home, she became entitled to \$47,417.46. Between October, 1993 and June 1994, the Member misappropriated to himself on six different occasions, various sums of Ms. Lafleur's money totalling \$15,300.00. Subsequently, Ms. Lafleur was paid her money. An amount of \$20,000.00 was paid by way of cheque on September 10, 1994 and \$15,000.00 on November 9, 1994. Ms. Lafleur retained other counsel who requested the balance of the monies and \$5,400.00 was sent on March 10, 1995. The final balance owing was ultimately paid on August 24, 1995, but not until after further demands for it and after the Member altered a copy of the original \$20,000.00 cheque to try to make it look like a cheque for \$7,017.46.

The Member engaged in practice between May 9, 1994 and June, 1994 when suspended for failure to pay annual dues. For some of the time of the suspension, the Member was on vacation and had instructed other counsel to act as his agent in real estate transactions. Once the suspension was discovered by the agent, he assumed full carriage of the matters. The Member paid up on June 3, 1994 and was reinstated.

We are advised that the Member had pleaded guilty to Uttering a Forged Document, Theft and Criminal Breach of Trust, contrary to the Criminal Code of Canada and on April 18, 1997 was sentenced to twelve months incarceration. He has appealed that sentence and appears before us having been granted bail pending appeal on conditions. The three charges relate to the incident referred to in particulars a) and (b) of the Complaint.

The issue before us was the appropriate penalty. Counsel for the Society submits disbarment and counsel for the Member submits suspension with conditions. We were provided with some case authorities and spoken to regarding others.

Both parties agree that the guiding principle in misappropriation cases is disbarment absent extenuating circumstances. Generally, extenuating circumstances have been found in three categories, being alcoholism, drug addiction and psychiatric disorder. We received in evidence a medical report dated May 5, 1997 from Dr. Kuch, psychiatrist, who examined the Member by consultations and administering tests. Dr. Kuch concluded there was no particular psychiatric diagnosis, in particular, not of depression, anxiety disorder, alcohol abuse or addiction to gambling.

The question for us to determine is whether extenuating circumstances may be found in other than the three enumerated categories above. After careful consideration we find that the overwhelming stress occasioned upon the Member at the relevant time constitutes extenuating circumstances in this particular case.

The overwhelming stress was of such a nature that it caused the Member to exercise the error in judgment resulting in the misappropriation and altering of the cheque. We are not overly impressed by the fact that the various amounts were misappropriated on different dates and that the alteration occurred on a different occasion as we are of the view that the events as a whole represent an isolated incident. The Member has no prior discipline history. There were six letters of reference from lawyers, one letter from a Minister and one from a client, all positive, and most spoke of the honesty and integrity of his dealings in the profession. These references are representative of individuals the Member came into contact with in his life and practice.

The misappropriated money was needed for essential expenses. The Member had exhausted his savings. He experienced a decline in his practice income, the major reason for which can be attributed to the care and attention he expended towards his wife who was subjected to workplace harassment in 1993 and 1994. The wife was extremely distressed and the matter ultimately evolved into litigation for wrongful dismissal in which the Member originally acted for the wife, but has since passed over the file to other counsel.

The psychiatric report previously referred to details the Member's response to his wife's crisis and we quote therefrom:

26th June, 1997

"He listened to her problems from the onset and became increasingly involved, having three-hour long discussions with her after work fairly frequently and also getting her up and out of the house in the morning, when she began to find it increasingly difficult to confront this difficult situation. Disruption caused by her situation began to intrude into time normally reserved for relaxation and sleep and his work... He would stay up with his wife when she could not sleep, something that might happen several times a week... He used to pick her up after work and drive her home from a work situation that caused her considerable anguish. He does not report having any intimate friends or any close collaboration with fellow lawyers. He has always found it difficult to relax... As her problems with her work situation intensified during 1993 and 1994, he focused on her problems more and more exclusively and at the expense of his own work. He indicates that he has fairly good recall of what happened to her, while recalling far fewer memories about his own practice during these months... Prior to the 1994 winter holidays he felt that he could not 'let her down' and tell her about his own crisis, just as she was beginning to feel better... as he felt unable to discuss his own crisis situation with his wife he could not borrow against their matrimonial home... From a psychiatric perspective, the facts of this case are best understood not in terms of psychiatric illness but in terms of Mr. Kramer's habitual approach to adversity, his inclination to 'grin and bear it' without complaint, also by his perception of his wife's condition and by his isolation. As a sole practitioner and a habitual loner, he lacked the benefit of discussing his crisis with a trusted fellow member of the bar or any other confidante. His actions reflect the tunnel vision of a desperate and isolated man... He was over-confident in his ability to help his spouse while earning enough money to put matters right... When he began to lose control, he found it difficult to put his concerns into words and to seek assistance."

Given the fact that the Member's office was located in his home, we find that he was completely subsumed by the situation.

We had the opportunity of observing the Member on the two separate days of his hearing. His wife was in attendance on the second day. During this time, we observed first hand the interaction between them. We observed how the Member had to attend to his wife as he struggled to remain focussed on the proceedings. (At one point he actually had to go to the back of the room to speak with his wife, who had by this time already approached the Member numerous times while he was at the counsel table.) That, and other of her actions were distracting even to the Committee members. Observing this actually helped the Panel fully understand the extent of the Member's involvement in his wife's situation, as quoted from the medical report. In this particular case, "seeing was believing".

Counsel for the Society acknowledged that commencing in 1991 and in the Biderman case, Convocation recognized that extenuating circumstances allowed for a penalty short of disbarment. There, Mr. Biderman was suspended for eighteen months with conditions upon his return to practice for misappropriation of approximately \$32,000.00 plus maintaining false ledger cards and failing to maintain books and records that would have disclosed the misappropriation. Mr. Biderman did not attribute the defalcations to problems with alcohol, depression or any psychiatric illness but candidly admitted he got caught in a credit squeeze.

In the case at hand, we find there were extenuating circumstances of overwhelming stress. Following the Biderman case and the others which have followed, we do not find it necessary to require disbarment. Instead, we recommend the period of suspension with conditions upon return to practice as set out above.

26th June, 1997

Bruce Benjamin Kramer was called to the Bar on April 12, 1979.

ALL OF WHICH is respectively submitted

DATED this 16th day of May, 1997

Tamara Stomp, Chair

The following corrections were made to the Report:

- page 2, paragraph 4 in the heading Particular 2(b) - Misappropriation - "\$16,300" should read "\$15,300"
- page 3, paragraph 8 - "\$16,300" should read "\$15,300"

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

Counsel for the solicitor waived service of an amended Report.

Convocation was advised that the Report was no longer in camera on consent of both counsel.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 2 years and is in addition to the period that the Member has voluntarily undertaken not to practise. Before returning to practice the solicitor must submit a report from a psychiatrist or psychologist which is satisfactory to the Secretary. As well the solicitor is to complete his filings, have no authority with respect to trust accounts for a period of 3 years and enrol in and cooperate with the Law Society Practice Review Programme.

Both counsel made submissions in support of the recommended penalty.

There were questions from the Bench.

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

It was moved by Ms. Cronk, seconded by Mr. Cole that the recommended penalty be adopted.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 2 years immediately together with the conditions set out in the Report.

Re: Joel Sydney MISKIN - Toronto

The Secretary placed the matter before Convocation.

Messrs. Gottlieb, Crowe, Bobesich, Ortved and Topp, Ms. Cronk, Ms. Curtis and Ms. Angeles withdrew for this matter.

Mr. Glenn Stuart appeared on behalf of the Society and the solicitor appeared on his own behalf assisted by Mr. Le Vay, Duty Counsel.

26th June, 1997

Convocation had before it the Report of the Discipline Committee dated 16th January, 1997, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 29th January, 1997 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 5th March, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 20th February, 1997 (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th June, 1997 (marked Exhibit 3). 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

Robert B. Aaron, Chair
Nora Angeles
Marshall A. Crowe

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

Allan Maclure
for the Society

JOEL SYDNEY MISKIN
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 5, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 27, 1996, Complaint D84/96 was issued against Joel Sydney Miskin alleging that he was guilty of professional misconduct.

The matter was heard in public on June 5, 1996, before this Committee composed of Robert B. Aaron, Chair, Nora Angeles and Marshall A. Crowe. The Solicitor was present at the hearing and represented himself. Allan Maclure appeared on behalf of the Law Society.

DECISION

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

- 2.a) He breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees by practising law from May 9, 1994 to December 21, 1994; and

26th June, 1997

- b) He failed to produce his books and records for the purposes of an investigation by the Law Society contrary to Regulation 708, Section 18.

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 D84/96 and is prepared to proceed with a hearing of this matter on June 4 and 5, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

2. The Solicitor has reviewed Complaint D84/96 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.

3. IV. THE FACTS

4. The Solicitor was called to the Bar on March 22, 1974. He practiced as a sole practitioner until he was administratively suspended on May 9, 1994 for failure to pay his annual fees.

- Particular 2 (a): he breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees by practicing law from May 9, 1994 to December 21, 1994.

5. On November 26, 1993 the Law Society mailed to the Solicitor a Notice of Annual Membership Fee, due January 1, 1994. This Notice was not returned to the Law Society. (Document Book, Tab 1)

6. On March 21, 1994 the Law Society mailed to the Solicitor a second and final Notice of Annual Membership Fee, due January 1, 1994. This Notice was not returned to the Law Society. (Document Book, Tab 2)

7. On May 9, 1994 the Law Society sent by registered mail a letter to the Solicitor advising him, inter alia, that his:

"...rights and privileges have been suspended from May 9, 1994 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer."

Enclosed with the letter was a memorandum setting out the restrictions and obligations imposed on suspended members. The registered letter of May 9, 1994 was received by someone who signed on the Solicitor's behalf on June 1, 1994, as evidenced by their signature acknowledging receipt of a registered item. (Document Book, Tab 3)

8. The Solicitor states that he does not recall receiving the letter of May 9, 1994 but that he was aware as of May 9, 1994 that he had been suspended by the Law Society.

Known Incidents of Practising While Under Suspension

• Texaco Canada Inc. v. Alan Chow:

9. On May 10, 1994 the law firm of Sidney S. Poon, Q.C. wrote to the Solicitor requesting confirmation that their client, Alan Kit Lun Chow, was not one and the same person as a judgment debtor, named Alan Chow, against whom the Solicitor had registered an execution on behalf of his client, Texaco Canada Inc. (Document Book, Tab 4)

10. On or about May 12, 1994, the Solicitor responded to the enquiry and he also submitted to the law firm of Sidney S. Poon, Q.C. his undated Bill of Account in the sum of \$50.00. (Document Book, Tab 5)

11. On June 22, 1994 the law firm of Sidney S. Poon wrote to the Solicitor, thanking him for his letter of May 12, 1994 and enclosing their trust cheque in the sum of \$50.00 in settlement of the Solicitor's account. (Document Book, Tab 6)

• Antonio Bonanni, et al v. Maria Christiana Conforto, et al:

12. On June 6, 1994, Larry R. Plener, Barrister & Solicitor, wrote to the Solicitor requesting confirmation that his client, Maria Conforto, was not one and the same person as a judgment debtor, named Maria Conforto, against whom the Solicitor had registered an execution on behalf of his clients Antonio and Rosanna Bonanni. (Document Book, Tab 8)

13. On June 8, 1994 the Solicitor responded to the enquiry and he also submitted to Mr. Plener his Bill of Account in the sum of \$50.00. (Document Book, Tab 9)

• Rachar sale to McComb/Williams:

14. On June 2, 1994 and June 7, 1994 the law firm of Burgar, Rowe wrote to the Solicitor requesting confirmation that their clients, Herbert and Lillian Rachar, were not one and the same people as a judgment debtor, named Rachar, against whom the Solicitor had registered an execution. (Document Book, Tab 10)

15. On June 8, 1994 the Solicitor responded to the enquiry and he also submitted to Burgar, Rowe his Bill of Account in the sum of \$50.00. (Document Book, Tab 11)

• Paul Garfield Anderson:

16. On June 23, 1994 the Solicitor responded to the request of Martin Wintraub, Barrister & Solicitor, for confirmation that Paul Garfield Anderson was not one and the same person as a judgment debtor, named Paul G. Anderson, against whom the Solicitor had registered an execution. The Solicitor also submitted his Bill of Account in the sum of \$53.50. (Document Book, Tab 12)

Samantha Manne:

17. On June 24, 1994 the Solicitor wrote to Brian Rivest, an employee of the Canadian Imperial Bank of Commerce. He enclosed the affidavit of Samantha Manne, sworn before the Solicitor on June 23, 1994. He also submitted his Bill of Account in the sum of \$64.20. (Document Book, Tab 13)

• Wilson Sale to Morcos:

18. On December 7, 1994 Joseph Lewis, Barrister & Solicitor wrote to the Solicitor requesting confirmation that the deceased spouse of his client, Phyllis Wilson, was not one and the same person as a judgment debtor, named James Wilson, against whom the Solicitor had registered an execution. (Document Book, Tab 14)

19. On December 14, 1994 the Solicitor responded to the enquiry. He submitted his Bill of Account in the sum of \$53.50. He also advised Mr. Lewis, in writing, *"that I am not presently permitted to practice law in Ontario, as my insurance has lapsed for non-payment of premiums"* He had also crossed out "Barrister & Solicitor" from his letterhead. (Document Book, Tab 15)

Fraser purchase from Smith:

20. On December 12, 1994 the law firm, Grant, Willcox, Whetung, wrote to the Solicitor requesting confirmation that Robert James Smith was not one and the same person as a judgment debtor, named Robert Smith, against whom the Solicitor had registered an execution. (Document Book, Tab 16)

21. On December 21, 1994 the Solicitor responded to the enquiry. He submitted his Bill of Account in the sum of \$53.50. He also advised Grant, Wilcox, Whetung, in writing, that he was *"not presently permitted to practice due to non-payment of insurance premiums."* He had also crossed out "Barrister & Solicitor" from his letterhead. (Document Book, Tab 17)

22. On October 26, 1994 the Solicitor responded to a Law Society questionnaire pertaining to his May 9, 1994 administrative suspension for the non-payment of annual fees. (Document Book, Tab 18)

- Particular 2 (b): he failed to produce his books and records for the purposes of an investigation by the Law Society contrary to Regulation 708, Section 18.

23. On October 7, 1994 and October 11, 1994 a Law Society examiner attended at the offices of the Solicitor. On both occasions she left a Law Society of Upper Canada calling card with the Solicitor's receptionist, asking the Solicitor to telephone the Law Society.

24. On October 17, 1994 the Law Society examiner sent a letter to the Solicitor at both his business and home addresses. She also attended at the Solicitor's home and left a Law Society calling card in the mailbox. (Document Book, Tab 19)

25. On October 17, 1994 the Solicitor telephoned the Law Society and made an appointment to meet with the Law Society examiner.

26. On October 26, 1994 the Solicitor attended his appointment with the Law Society examiner and he brought with him portions of his books and records. At the conclusion of the meeting the examiner requested and the Solicitor agreed to bring in his statements or a letter from his bank, a file on which he had worked in February, 1994, and his billings and/or the names of clients he did work for. (Document Book, Tab 20)

27. On December 5, 1994 the Solicitor telephoned the Law Society examiner and he indicated that he needed further time to secure information. (Document Book, Tab 21)

28. On January 5, 1995 the Law Society examiner telephoned the Solicitor and left a message asking the Solicitor: (i) when he would produce the requested documentation; (ii) his home address; and (iii) to telephone the Law Society examiner. (Document Book, Tab 22)

26th June, 1997

29. On January 13, 1995 the Law Society examiner sent by registered mail a letter addressed to the Solicitor at his known office and home addresses. The letter confirmed that the books and records requested by the examiner on October 26, 1994 had not yet been produced by the Solicitor. The Solicitor was advised that the matter would be referred to Discipline if it was not resolved within two weeks of the date of the letter. Both letters were received by the Solicitor or his authorized representative as evidenced by the signatures acknowledging receipt of a registered item. (Document Book, Tab 23)

30. On January 25, 1995 the Solicitor telephoned the Law Society and advised that he would send by facsimile to the examiner a copy of his latest trust account statement. He also indicated that he needed certain information from records then in the possession of the Law Society and stated that he would call again the next day. (Document Book, Tab 24)

31. On January 26, 1995 the Solicitor telephoned the Law Society examiner and advised, inter alia, that he needed information from his books before he could send in trust reconciliations. He asked to meet with the examiner on February 3, 1995. (Document Book, Tab 25)

32. On January 27, 1995 the Solicitor agreed that he would provide his books and records to the Law Society examiner on February 17, 1995. (Document Book, Tab 25)

33. On February 17, 1995 the Solicitor left a letter, but no books and records, for the Law Society examiner with the Law Society receptionist. (Document Book, Tab 26)

34. On March 31, 1995 the Law Society examiner obtained from the Law Foundation of Ontario copies of bank advices pertaining to the Solicitor's mixed trust account for the period August, 1993 through January, 1995. (Document Book, Tab 27)

35. On March 31, 1995 the Solicitor attended at Osgoode Hall and he provided the examiner with some fee billings. The examiner advised the Solicitor to complete his trust comparison for February, 1994. The Solicitor was also advised of the Law Society's recommendation that he bill his fees and bring these fee billings and his files to the Law Society where, in the presence of the examiner, he could sign trust cheques so as to clear out his account. (Document Book, Tab 27)

36. On May 10, 1995 the Law Society examiner sent by ordinary and registered mail a letter addressed to the Solicitor at his home address. This letter requested the production of the Solicitor's books and records necessary for the completion of the examination. The Solicitor was advised that the matter would be referred to Discipline if it was not resolved within three weeks of the date of the letter. Both letters were returned to the Law Society by Canada Post, unclaimed. (Document Book, Tab 28)

37. On June 21, 1995 the Law Society examiner sent by ordinary and registered mail a letter addressed to the Solicitor at his home address. The letter confirmed that the Solicitor's books and records had not been produced and reminded the Solicitor of his March 31, 1995 agreement with the examiner to produce his books and records. The Solicitor was also advised that the matter would be referred to Discipline if it was not resolved within three weeks of the date of the letter. The letter was received by the Solicitor or his authorized agent as evidenced by the signature acknowledging receipt of a registered item. (Document Book, Tab 29)

38. On July 10, 1995 and July 19, 1995, the Solicitor telephoned the Law Society to schedule an appointment with the examiner. On July 19th the Law Society examiner left a message on the Solicitor's answering machine confirming the Solicitor's suggested meeting date of July 26, 1995 and advising the Solicitor of the books and records required by the examiner. (Document Book, Tab 30)

39. On July 25, 1995 the Solicitor telephoned the Law Society examiner and he cancelled the meeting that had been scheduled for July 26, 1995. He also advised that he needed more time to produce his books and records. (Document Book, Tab 31)

40. On July 26, 1995 the Law Society examiner left a letter and a portion of the Solicitor's books and records that had earlier been produced with the Law Society's receptionist for the Solicitor to pick up, which he did. The letter confirmed that the Solicitor's books and records had not been produced and reminded the Solicitor of his March 31, 1995 agreement with the examiner to produce his books and records. The Solicitor was also advised that the matter would be referred to Discipline if it was not resolved expeditiously. (Document Book, Tab 32)

41. On July 26, 1995 the Law Society examiner and the Solicitor spoke to one another and they agreed to meet on August 1, 1995. (Document Book, Tab 33)

42. On July 31, 1995 the Solicitor telephoned the Law Society examiner and he cancelled the meeting of August 1, 1995. He advised that he would telephone later in the week and schedule another appointment. (Document Book, Tab 34)

43. On August 4, 1995 the Solicitor telephoned the Law Society examiner and left a message suggesting a meeting date. The Law Society examiner responded by leaving a message with the Solicitor's wife advising that the suggested date was not convenient. (Document Book, Tab, 35)

44. On August 31, 1995 the Solicitor telephoned the Law Society examiner and left a message that he was unable to meet with her that week and that he would call the following week. (Document Book, Tab 36)

45. On September 6, 1995 the Solicitor telephoned the Law Society examiner and left a message that he wanted to set up a meeting date for the following week. The Solicitor also stated that he would call again later in the day. He did not do so. (Document Book, Tab 37)

46. To date the Solicitor has not produced all of his books and records.

V. DISCIPLINE HISTORY

47. The Solicitor does not have a discipline history.

DATED at Toronto, this 5th day of June, 1996"

RECOMMENDATION AS TO PENALTY

The Committee recommends that Joel Sydney Miskin be suspended for one month and from month to month thereafter until he complies with the following undertaking:

1. produces for inspection by Law Society examiners his books and records pertaining to his practice of law;

2. responds satisfactorily to all questions or requests for further particulars which may be made by Law Society examiners in reviewing his books and records; and
3. enrolls in the Practice Review Programme in the event he resumes the practice of law.
4. co-operates with the office of the Staff Trustee and the Law Society examiners in ensuring that his files receive the appropriate supervision during the period of this undertaking.

REASONS FOR RECOMMENDATION

Counsel for the Society recommended that the Barrister be suspended for a period of nine months and monthly thereafter until his books and records are produced.

We were referred to a number of authorities on point.

The cornerstone decision of practising under suspension was said to be the Report and Decision of the Discipline Committee in the case of *Roderick Grant MacGregor* dated January 29, 1993 and the Order of Convocation dated April 22, 1993.

It was that Committee's view that the Barrister "should not be put in a better position by the disposition of this case than he would have been in had he complied with his obligations." The Barrister was suspended for the four months during which he practised while under suspension plus an additional month as both a specific and general deterrent, for a total of 5 months. In the case of *Marvin Larry Ellison* (Committee - October 22, 1993; Convocation - January 27, 1994) the majority of the Committee stated, following the *MacGregor* principle, "Members must recognize that they are not permitted to practise while suspended. By practising while suspended this Solicitor has breached his obligations both to the profession and to the public. ... Only by Solicitors maintaining contemporaneous, adequate financial records, within the dictates of the Regulations, can we be assured that the public's money is protected. ... This Law Society is only able to carry on regulating this profession as long as we have the confidence of the public that we are capable of discharging our obligation. Only if our members adhere to the regulations which govern us all, can the public have that assurance."

The Committee's Report and Decision in the case of *Ted Roland Laan* (Committee - December 13, 1993; Convocation - March 24, 1994) was also referred to us. The guiding principle in penalty was stated in the Reasons of Convocation to be:

"In cases of solicitors (*sic*) practi[s]ing while under suspension, the penalty shall reflect a further suspension of one month for each month that the solicitor has practised while under suspension plus an additional one month as specific and general deterrence."

Convocation also stated:

"Convocation generally views practi[s]ing while suspended as a flouting of the Law Society and is therefore deserving of a penalty that reflects such serious misconduct."

and then ameliorating the harshness of the rule:

"Convocation recognizes that in each case the facts may mitigate or aggravate the penalty and therefore it is not possible to set a standard penalty in each case."

In Laan, if the formula had been applied, the suspension would have been four months. In that case, however, based on a joint submission and factors of marital problems, financial problems and alcohol abuse, the suspension imposed was one month.

We were also referred to the case of Hugh Gordon O'Leary (December 15 1994 and January 26 1995) which reiterates and summarizes the principles in MacGregor and Ellison.

An important exception to the standard penalty was enunciated in Botond Gabor Fejes (May 9, 1994 Committee; June 23, 1994 Convocation):

"The Committee recognizes that the principle espoused by Convocation is sound in terms of the need to effect deterrence and to impose a proportional penalty. However, the principle should not become an inflexible, irreducible tariff. Otherwise, the imposition of penalty is reduced to slavery to a mathematical formula without consideration of individual circumstances or the principle of the totality of the penalty. ... As a general rule, a period of suspension, especially in circumstances divorced from dishonest misconduct, ought not to become the functional equivalent of a resignation from practice or disbarment."

Based on the governing principle, this would ordinarily be a case which would call for a suspension of at least 9 months. Producing books and records is essential to the Law Society's ability to govern itself and control its members. There is a positive obligation on Barristers to obey the orders of Convocation. The Barrister asked for a reprimand in Committee, subject to agreed-upon undertakings. The publicity resulting from this case and the damage to his reputation were of far more concern than the length of any suspension imposed.

Publicity, he said, will be "devastating." He has been cooperative with the Society, and forthright in acknowledging that he practised under suspension. There were problems in producing books and records, possibly - it was suggested to us by counsel for the Society - because they were never maintained in the first place.

No misappropriation was suggested. No allegation of improper accounting was made. The Barrister understands he has done something wrong. Nevertheless, there was a failure to produce books and records and this in itself warrants a suspension. A suspension is necessary for individual deterrence as well as for general deterrence. The Committee must reinforce to members that this type of conduct will not be sanctioned.

In his submissions, Mr. Miskin asked for a reprimand in Committee. He stated that he has no intention of practising law again, and would have resigned if he could have done so without a stigma. He acknowledged his wrongdoing. Mr. Miskin basically ran a collection practice. He was the solicitor of record in hundreds of judgments/writs of execution on file with the Sheriff. It is essential for the smooth functioning of conveyancing in this province that real estate solicitors are able to obtain confirmation from solicitors for judgment creditors whether the party they represent is one and the same as the judgment debtor against whom a writ has been filed. Lawyers for the creditors are in the best position to give this sort of reply. Inability to obtain responses in a timely fashion places real estate transactions in jeopardy and places the public at risk.

This Committee does not condone practising under suspension. However, bearing in mind the principles in Laan and Fejes, one must examine the quality of law being practised during the suspension, the motivation of the lawyer in so practising, and whether the lawyer received any benefit from breaching the rules. What Mr. Miskin should have done with respect to particular (a) was to have said, "Sorry, I cannot answer. Please call my client."

26th June, 1997

The difficulty of course is that Mr. Miskin may have been the only person in a position to answer the inquiry in a timely fashion or at all. This is not an excuse by any means, but it does affect the penalty imposed.

This Committee feels very strongly that it is important to look at the quality of law being practised while under suspension, and that the Barrister may well have been responding passively to inquiries made of him. We feel that the breach in this case was minimal and the penalty should reflect it.

Had particulars (a) and (b) in the complaint been the subject of two separate complaints, we would have imposed a Reprimand in Committee on particular (a). In other words, had it not been for particular 2(b) regarding books and records, we would only have administered a Reprimand in Committee and this matter would not have been placed before Convocation. We cannot imagine a case in which a deviation from Convocation's "standard" penalty is more deserving and justified.

We are unable, however, to impose separate penalties for two particulars of the same complaint.

On the complaint of failure to produce books and records, it is not questioned that a suspension is appropriate and therefore the same penalty will apply to both particulars in the single complaint.

Joel Sydney Miskin was called to the Bar on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 16th day of January , 1997

Robert Aaron, chair

The following corrections were made to the Report:

- page 14, line 9 - the word "that" should be "than" so that the sentence reads "...reputation were of far more concern than the length of any suspension imposed."
- page 14, last line, second word should be "done" not "dome".

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

The solicitor waived service of an amended Report.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and from month to month thereafter until he complies with the undertaking concerning his books and records as set out in the Report.

Mr. Stuart made submissions in support of an increased penalty of 8 1/2 months to reflect the period that the solicitor was practising while under suspension.

There were questions from the Bench.

The solicitor and Duty Counsel made submissions in support of the recommended penalty.

26th June, 1997

Convocation took a brief recess at 10:40 a.m.

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

It was moved by Mr. MacKenzie, seconded by Mr. Swaye that the recommended penalty be amended so that the solicitor be suspended for a period of 1 month until he complies with the conditions set out in the Report and that in condition #4, the last word "undertaking" be deleted and changed to "suspension".

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month and month to month thereafter until he complies with the conditions set out in the Report and further that the Report be amended under the heading Recommendation as to Penalty as follows:

- page 11 under the heading Recommendation as to Penalty, first paragraph should read "...until he complies with the following conditions"
- page 11, condition #4 should read "...during the period of this suspension".

Re: Anthony Chris BAZOS - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Adams and Ms. O'Connor withdrew.

Ms. Lesley Cameron appeared on behalf of the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 27th February, 1997, together with an Affidavit of Service sworn 19th March, 1997 by Ron Hopple that he had effected service on the solicitor by registered mail on 6th March, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Jane Harvey, Chair
W. Michael Adams
Shirley O'Connor

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

ANTHONY CHRIS BAZOS
of the City
of Toronto
a barrister and solicitor

Lesley Cameron
for the Society

Not Represented
for the solicitor

Heard: December 11, 1996

26th June, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 23, 1996 Complaint D276/95 was issued against Anthony Chris Bazos alleging that he was guilty of professional misconduct.

The matter was heard in public on December 11, 1996 before this Committee composed of Jane Harvey, Chair, W. Michael Adams and Shirley O'Connor. The Solicitor attended the hearing unrepresented. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D276/95

2. a) he failed to reply to the Law Society regarding a complaint by Anthony Moustacalis despite letters dated April 3, 1995 and April 26, 1995 and telephone messages left for him on April 21, 1995 and April 24, 1995; and
- b) he failed to account to his client, Christopher Taylor for monies paid to him on the client's behalf.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D276/95 and is prepared to proceed with a hearing of this matter on December 10 and 11, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed and admits the particulars of Complaint D276/95. The Solicitor also admits that these particulars supported by the facts set out below constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on June 19, 1952. From November 1, 1993 to the present the Solicitor has been administratively suspended for non-payment of his Annual Fees.

5. On January 25, 1996, the Solicitor gave the Law Society an Undertaking not to practice pending the satisfaction of certain conditions, which conditions have not been satisfied (Tab 1, Document Book).

6. By letter dated September 21, 1992, Anthony Moustacalis wrote to the Solicitor advising that he had been retained by the Solicitor's former client, Christopher Taylor. Mr. Moustacalis enclosed a Direction authorizing the release of Mr. Taylor's file to Mr. Moustacalis and asked the Solicitor to account to Mr. Taylor for monies that Mr. Taylor had paid to the Solicitor (Tab 2, Document Book). The Solicitor gave the file to Mr. Moustacalis but did not provide an account.

7. By letter dated April 22, 1993, Mr. Moustacalis again wrote to the Solicitor requesting the file (Tab 3, Document Book). The Solicitor had previously refused to provide the file without a release from Mr. Taylor.

8. In the afternoon of April 22, 1993, the Solicitor provided the file to Mr. Moustacalis. The Solicitor requested that Mr. Moustacalis provide a written acknowledgement of receipt of the file contents (Tab 4, Document Book).

9. By letter dated February 7, 1994, Mr. Moustacalis wrote to the Solicitor advising that Mr. Taylor had forwarded \$5,500 to the Solicitor, that the Solicitor had told Mr. Taylor that he would charge Mr. Taylor \$2,000 for the bail hearing and that as the Solicitor did not complete the case, requested that the Solicitor forward the balance of monies held on behalf of Mr. Taylor (Tab 5, Document Book). The Solicitor disputes that Mr. Taylor provided him with \$5,500. Enclosed with this letter was a Direction authorizing release of the funds (Tab 5, Document Book).

10. In May of 1994, the Solicitor telephoned Mr. Moustacalis and advised that he had been ill, unable to reply sooner and would render an account.

11. By letter dated March 22, 1995, Mr. Moustacalis advised the Law Society that Mr. Taylor had asked him to complain about the Solicitor's failure to render an account and failure to release the balance of funds held on his behalf (Tab 6, Document Book). The letter indicates that Mr. Taylor discharged the Solicitor following a bail hearing for which the agreed fee was \$2,000.00 and that the balance owing to Mr. Taylor by the Solicitor is \$3,500. The Solicitor disputes that these monies are owing and intends to lead evidence on this point.

12. By letter dated April 3, 1995, the Law Society requested the Solicitor's response to Mr. Moustacalis' letter of complaint. This letter referred the Solicitor to Rule 13, Commentary 3 and his duty to reply promptly to communications from the Law Society (Tab 7, Document Book). The Solicitor did not reply.

13. On each of April 21 and April 24, 1995, the Law Society left telephone messages for the Solicitor (Tab 8, Document Book). The Solicitor did not reply.

14. By registered mail dated April 26, 1995, the Law Society advised the Solicitor that if no response was received within seven days, it would refer the matter to the Chair of Discipline for further instructions. This letter was signed for and delivered on April 27, 1995 (Tab 9, Document Book). The Solicitor did not reply.

15. By letter dated August 10, 1995, Mr. Moustacalis advised the Law Society of his telephone call with the Solicitor in May of 1994, referred to in paragraph 10 of this Agreed Statement of Facts. (Tab 10, Document Book).

16. To date the Solicitor has not rendered an account to Mr. Taylor, nor has he forwarded any funds.

V. DISCIPLINE HISTORY

17. On January 20, 1983, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$2,500.00 for contravention of Rule 16, assault and conduct unbecoming a barrister and solicitor.

DATED at Toronto this 10th day of December, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Anthony Chris Bazos be reprimanded in Convocation and pay Law Society costs in the amount of \$250 with twelve months to pay.

REASONS FOR RECOMMENDATION

Professional misconduct on both subparagraphs of the complaint was established. No satisfactory explanation was given for the delay in accounting to Mr. Taylor, his client.

The Solicitor accounted to the client at the discipline hearing for monies Mr. Taylor has been able to prove he paid to Mr. Bazos directly or indirectly. The complainant, a client on a criminal matter, was not able to corroborate his assertion that he gave the Solicitor \$1,000 in cash. The Solicitor denied receiving this amount.

The penalty we recommend is a reprimand in Convocation. Mr. Bazos has practised law for 40 years and is no longer practising law. He is not in good health and has a very low income. Accordingly, although the actual costs to the Law Society for the hearing were estimated at \$1,000, we awarded costs of \$250 and gave the Solicitor twelve months to pay.

Anthony Chris Bazos was called to the Bar on June 19, 1952.

ALL OF WHICH is respectfully submitted

DATED this 27th day of February, 1997

Jane Harvey, Chair

Ms. Cameron advised that the solicitor took issue with the finding of the Discipline Committee.

The solicitor made submissions as to the finding of misconduct and advised that he did account to his client Christopher Taylor at the Committee hearing.

Counsel for the Society referred Convocation to the Agreed Statement of Facts and advised that the solicitor admitted he did not provide an account and only accounted at the time of the hearing.

The solicitor made submissions in reply.

Two medical reports were distributed to Convocation.

26th June, 1997

There were questions from the Bench.

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

It was moved by Mr. Swaye, seconded by Mr. Bobesich that the Complaint be set aside because of the differences in paragraphs 6 and 7 of the Report and because of the solicitor's ill health.

Lost

It was moved by Mr. Wilson, seconded by Mr. Cole that particular 2(b) be amended by adding "until the date of the hearing he failed to account to his client".

Withdrawn

It was moved by Ms. Puccini, seconded by Mr. Ortved that the Report be adopted.

Carried

Counsel, the solicitor, the reporter and the public were recalled and advised that the finding was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay the Society's costs of \$250 with twelve months to pay.

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

The solicitor indicated that it would be difficult for him to pay the Society's costs.

There were questions from the Bench.

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

It was moved by Ms. Cronk, seconded by Mr. Carey that the solicitor pay no costs.

Carried

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the solicitor be reprimanded in Committee.

Lost

It was moved by Ms. Cronk, seconded by Mr. Carey that the solicitor be reprimanded in Convocation.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded in Convocation with no costs.

The Treasurer administered the reprimand after the solicitor had signed and filed a waiver of his right to appeal.

Re: Michael John SEMPLE - Willowdale

The matter of Michael John Semple was stood down.

26th June, 1997

Re: Raymond Vincent DONOHUE - Sarnia

The Secretary placed the matter before Convocation.

Ms. Curtis and Messrs. Millar, Wilson and Topp withdrew for this matter.

Ms. Rhonda Cohen appeared for the Society. The solicitor was present by way of telephone.

Ms. Cohen advised that the solicitor was requesting an adjournment because of health problems and that the Society was opposing the adjournment.

The solicitor requested an adjournment to the next discipline Convocation because he was unable to travel due to ill health and that he had not yet had time to review the material.

Ms. Cohen made submissions opposing the adjournment.

There were questions from the Bench.

The solicitor was advised that Convocation would deliberate and would contact him again when they had reached a decision.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Sealy, seconded by Ms. Cronk that the adjournment be denied.

Carried

It was moved by Mr. Bobesich, seconded by Mr. Armstrong that the adjournment be granted.

Not Put

Counsel, the reporter and the public were recalled and the solicitor contacted by telephone.

The Treasurer advised that Convocation had denied the adjournment and that the matter would proceed at 2:00 p.m. and that the solicitor should contact Duty Counsel.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

CONVOCATION RECONVENED AT 1:30 P.M.

Present:

The Treasurer, Adams, Angeles, Arnup, Backhouse, Bobesich, Carey, Carpenter-Gunn, Carter, Chahbar, Cole, Crowe, Curtis, Gottlieb, MacKenzie, Millar, O'Connor, Ortved, Puccini, Ross, Sealy, Stomp, Swaye, Thom, Topp, Wilson and Wright.

.....

26th June, 1997

.....

IN PUBLIC

.....

Re: Moshe TELLER - Scarborough

The Secretary placed the matter before Convocation.

Ms. Curtis, Ms. Sealy and Messrs. Millar, Wilson and Adams withdrew.

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

Convocation had before it the Report of the Discipline Committee dated 21st May, 1997 together with an Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd May, 1997 (marked Exhibit 1) together with a letter from Mr. Franklin Q. Woo, Parole Officer to the Society's counsel dated 25th June, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Ronald D. Manes, Chair

W. Michael Adams

Hope Sealy

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

Christina Budweth
for the Society

MOSHE TELLER
of the City
of Scarborough
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 18, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 3, 1996 Complaint D233/96 was issued against Moshe Teller alleging that he was guilty of conduct unbecoming a barrister and solicitor.

26th June, 1997

The matter was heard in public on February 18, 1997 before this Committee composed of Ronald D. Manes, Chair, W. Michael Adams and Hope Sealy. The Solicitor did not attend the hearing, nor was he represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D233/96

2. a) On June 24, 1996, the Solicitor was convicted of the offence that between January 1992 and December 22, 1995, being the trustee of funds held in whole or in part for the use or benefit of other persons, did with intent to defraud and in violation of trust, convert funds of a value exceeding five thousand dollars, to a use not authorized by the trust, contrary to Section 336 of the Criminal Code of Canada.

EVIDENCE

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

"AGREED STATEMENT OF FACTS"

I JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D233/96 and is prepared to proceed with a hearing of this matter on November 19 and 20, 1996.

II IN PUBLIC/IN CAMERA

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

III ADMISSIONS

3. The Solicitor has reviewed Complaint D233/96 and admits the particular contained therein. The Solicitor further admits that the said particular constitutes professional misconduct.

IV FACTS

4. The Solicitor was called to the Bar on April 9, 1984. He practised in Toronto as a sole practitioner with an emphasis on real estate. The Solicitor was suspended indefinitely on March 21, 1996 for failure to make his annual filing.

GENERAL BACKGROUND

5. On December 22, 1995 at a meeting with an investigation auditor of the Society, initiated at the request of the Solicitor, the Solicitor admitted to misappropriating approximately \$686,000 of client funds, as follows:

Name of client/investor	Amount
Paula Mordzynski	\$70,000
Phillip and Laura Martin	\$124,000
Linda Martin	\$15,000
Po-Lam Tong & Ng-Fong Yeung	\$25,000
Salvatore and Maria Cucci	\$130,000
Sansiveria Investments	\$207,000
Harry Wasserman	\$75,000
Sophia & Konstantinos Georgacopoulos	\$40,000
TOTAL	\$686,000

6. In approximately 1992, the Solicitor began taking small amounts of money from his mixed trust accounts for his personal use. When the Solicitor began this course of conduct he was able to repay the amounts taken. As time went on, the amounts the Solicitor removed from trust increased and he was required to resort to increasingly sophisticated means of covering up the thefts. The nature of the Solicitor's practice, which was comprised in large part of the investment of funds for clients in first, second and third mortgages, facilitated the Solicitor's thefts. Generally speaking, in certain cases the Solicitor caused his clients to believe they had legitimate mortgages when in fact mortgages were not registered or even invested in. In certain other cases, the Solicitor chose properties at random and registered mortgages on those properties, without advancing funds to the registered owners, by forging the signatures of the registered owners. In other cases, the Solicitor did not return money to lenders after mortgages had been paid out by mortgagees.

7. In order to facilitate the scheme, the Solicitor made payments to the lenders from his personal account causing them to believe that their monies were invested in valid mortgages.

8. On December 22, 1995, the Solicitor realized that the enormity of the scheme was beyond his control and that he could no longer cope with the juggling of funds required to hide his misappropriations from third parties. The Solicitor came forward to both the Law Society and the police in the company of his counsel and revealed the thefts.

9. Paragraphs 10 to 17 below, contain a description of the synopsis of the Solicitor's conduct in regard to the misappropriations set out in paragraph 5 above.

10. Particulars of the fraudulent mortgages which facilitated the Solicitor's misappropriating \$207,000 from his client, Sansiveria Investments Limited, are as follows:

MORTGAGOR	MUNICIPAL ADDRESS	AMOUNT	PARTICULARS
Hayden Norris Babulal	25 Euclid Ave., Scarborough	\$68,000	Solicitor forged Babulal's signature on the Mortgage/Charge, which he then registered on February 8, 1995 (Tab 1 Document Book). The Solicitor informed Sansiveria the funds were for loan to Babulal. He obtained the funds and proceeded with the transaction even though Babulal had changed his mind. The Solicitor deposited the funds into his trust account February 1, 1995 (Tab 2, Document Book) and used the monies to fund his lifestyle and make the monthly mortgage payments.
Carol & Josef Sapiano	43 Genela Sq., Scarborough	\$69,000	The Solicitor forged the Sapiano's signature on the Mortgage/Charge for the principal sum of \$138,000, which he then registered on this property on September 27, 1995 (Tab 3, Document Book). Each of Sansiveria and Philip & Laura Martin provided a one-half interest in the loan (\$69,000 each). The Solicitor deposited the total proceeds into his own CIBC account #7771460 on September 19, 1995 (Tab 4, Document Book) and used the monies to fund his lifestyle and make monthly payments.

Dorothy & Roy Hare	759 Huntingwood Dr., Scarborough	\$45,000	The Solicitor forged the Hare's signature on the Mortgage/Charge for the principal sum of \$90,000, which he then registered on this property on March 15, 1995 without the Hare's knowledge (Tab 5, Document Book). Each of Sansiveria, and Linda & Laura Martin held a one-half interest in the loan; The Solicitor deposited the proceeds into his trust account on March 10 and March 13, 1995. He used the funds for his own personal use, and to make monthly payments.
Linda & O'Brian Fealing	664 Weyburn Sq., Pickering	\$25,000	The Solicitor forged the Fealing's signature on the Mortgage /Charge, for the principal sum of \$50,000, which he then registered on this property on May 17, 1995 without the Fealing's knowledge (Tabs 6 and 7, Document Book). Each of Sansiveria, and Philip & Laura Martin held a one-half interest; The Solicitor deposited the proceeds into his trust account (Tab 8, Document Book) on May 29, 1995; He used the monies to fund his lifestyle and make monthly payments on this and other mortgages.
TOTAL		\$207,000	

11. Particulars of the fraudulent mortgages with which the Solicitor misappropriated the total sum of \$124,000 from his clients, Phillip and Laura Martin, are as follows:

26th June, 1997

MORTGAGOR	MUNICIPAL ADDRESS	AMOUNT	PARTICULARS
Carol & Josef Sapiano	43 Genela Square Scarborough	\$69,000	The Solicitor forged the Sapiano's signature on the Mortgage/Charge for the principal sum of \$138,000, which he then registered on this property on September 27, 1995 (Tab 3, Document Book). Each of Philip & Laura Martin, and Sansiveria Investments provided a one-half interest in the loan (\$69,000 each). The Solicitor deposited the total proceeds into his own CIBC account #7771460 on September 19, 1995 (Tab 4, Document Book) and used the monies to fund his lifestyle and make monthly payments.

Dorothy & Roy Hare	759 Huntingwood Dr. Scarborough	\$30,000	Without the Hare's knowledge, the Solicitor registered a mortgage for the principal sum of \$90,000 on this property on March 15, 1995 (Tab 5, Document Book). He informed the Martins that Laura Martin and a Linda Martin together held a one-half interest (Laura Martin invested \$30,000 and Linda Martin invested \$15,000), and Sansiveria held a one-half interest. The Solicitor deposited the proceeds into his trust account on March 10 and 13, 1995. He used the funds for his own personal use, and to make monthly payments.
Linda & O'Brian Fealing	664 Weyburn Sq. Pickering	\$25,000	The Solicitor registered a mortgage for total principal amount of \$50,000 on this property on May 17, 1995 without the Fealing's knowledge. He informed the Martins that each of Sansiveria, and Philip & Laura Martin held a one-half interest. The Solicitor deposited the proceeds into his trust account (Tab 8, Document Book) on May 29, 1995. He used the monies to fund his lifestyle and make monthly payments on this and other mortgages.
TOTAL		\$124,000	

12. On February 1, 1993, the Solicitor registered for his clients, Sophia and Konstantinos Georgacopoulos, a legitimate mortgage on the title of their property known municipally as 936 Broadview Avenue in the City of Toronto, for the principal sum of \$80,000, with each of his clients Sansiveria Investments Limited, and Philip & Laura Martin having a one-half interest (Tabs 9 and 10, Document Book). In August, 1994 Mr. and Mrs. Georgacopoulos sold other property and instructed the solicitor to discharge this mortgage with the proceeds. Unknown to Mr. and Mrs. Georgacopoulos, on August 28, 1994, the Solicitor only paid down half of that mortgage, by way of payments of \$20,000 to each of the Martins and Sansiveria, and he kept \$40,000 for himself. The Solicitor used this money to fund his lifestyle and to make the monthly mortgage payments.

13. The fraudulent mortgage with which the Solicitor misappropriated the sum of \$15,000 from his client, Linda Martin is a mortgage for the principal sum of \$90,000, which the Solicitor registered on property known municipally as 759 Huntingwood Drive and owned by Dorothy and Ray Hare on March 15, 1995 (Tab 5, Document Book). The Solicitor informed Linda Martin that, with her \$15,000 investment, she and a Laura Martin held a one-half interest (Laura Martin invested \$30,000) and Sansiveria held a one-half interest in this mortgage. The Solicitor deposited the proceeds from these investors into his trust account on March 10, and 13, 1995. He used some of the monies to make the monthly mortgage payments to the investors, and the balance for his personal use.

14. The Solicitor arranged a loan from Po-Lam Tong and Yeung Ng-Fong in the sum of \$25,000 to Thornridge Downs Construction Co. Ltd. The loan was to be repaid on the sale of the property known municipally as 159 Fife Road, in Guelph, Ontario. Although the property was sold on June 29, 1993, and \$25,000 of the proceeds were paid to the Solicitor (Tab 11, Document Book), Tong and Yeung were not paid their loan. Instead, the Solicitor used these funds for his own use, and to make the monthly payments on this and other mortgages.

15. The Solicitor registered a mortgage in favour of Salvatore and Maria Cucci, for the principal sum of \$130,000 on November 6, 1995 on property known municipally as 52 Westchester Blvd., in Bolton, Ontario owned by Nathan and Jozie Eisner (Tab 12, Document Book). This mortgage was arranged and registered without the Eisner's knowledge or consent. The Solicitor received the funds on November 2, 1995 as part of the proceeds from the sale of property owned by the Cuccis. The Solicitor used the funds for his own use, and to make the monthly mortgage payments to the Cuccis. The mortgage was discharged on December 28, 1995 (Tab 13, Document Book).

16. The Solicitor received proceeds on behalf of Paula Mordzynski from a previous mortgage transaction on November 24, 1993 (Tab 14, Document Book). Instead of paying Mr.[sic] Mordzynski her share of the funds, the Solicitor misappropriated the funds by adding Ms. Mordzynski's name to a legitimate mortgage to Carmen Lewis on the property known municipally as 19 Dunraven Drive (Tab 15, Document Book), and informing Ms. Mordzynski she had a 70/135 share in this \$135,000 mortgage. The Solicitor then used the funds for his own use, and to make the monthly payments to Ms. Mordzynski.

17. The Solicitor was to arrange a mortgage with principal sum of \$100,000 on the property known municipally as 1612 Bayview Avenue, Toronto for the owners, Konstantinos and Sophia Georgacopoulos. After the Solicitor arranged the financing from Sansiveria in late May, 1995, he was informed by a mortgage broker than an investor by the name of Harry Wasserman was willing to invest \$75,000 for this mortgage. The Solicitor deposited the \$75,000 from Harry Wasserman into his own account, and on June 28, 1995 registered the Wasserman mortgage as a first mortgage on the property. (Tabs 16 and 17, Document Book). He then registered the Sansiveria mortgage as second mortgage on the property (Tab 16, Document Book). The Solicitor forged the mortgage documentation given to Mr. Wasserman, and used the funds for his own use and to make the monthly mortgage payments.

18. The Solicitor was charged with seventeen criminal charges, arising out of the above described transactions. At a hearing held on June 24, 1996 before the Honourable Judge T. Ormston of the Ontario Court (Provincial Division) the Solicitor plead guilty to the charge that he, "being the trustee of the funds held in whole or in part for the benefit of other persons, did with intent to defraud and in violation of trust, convert funds of a value of exceeding five thousand dollars, to a use not authorized by the trust", contrary to section 336 of the Criminal Code of Canada. He was convicted and sentenced to two and a half years imprisonment on the basis of a joint submission. The other counts were withdrawn. A copy of the certificate of conviction and the transcript from the hearing are found at Tab 18, Document Book.

19. On July 3, 1996, ten Compensation Orders were granted by the Honourable Judge Ormston, ordering the Solicitor to pay compensation pursuant to section 725(1) of the Criminal Code, as follows (copies of the Orders are found at Tab 19, Document Book):

Clients	Amount
Laura Martin	\$42,500
Astonia Pei, Po-Lam Tong, and Ng-Fong Lung	\$25,000
Linda Martin	\$15,000
Paula Mordzynski	\$70,000
Konstantinos and Sophia Georgacopoulos	\$40,000
Harry Wasserman	\$75,000
Salvatore and Marie Cucci	\$130,000
Sansiveria Investments Limited	\$207,000
Philip Martin	\$81,500
Peter and Vange Petrou	\$30,000
TOTAL	\$716,000.00

V. PRIOR DISCIPLINE

20. On March 21, 1996, the Solicitor was found guilty of failure to file his annual filings for his year ended January 31, 1996. He was given a one month suspension from practice, and thereafter indefinitely until his filings were made.

Dated at Toronto, this 17th day of December, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Moshe Teller be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor, Moshe Teller, is charged in Complaint D233/96 with conduct unbecoming, having been convicted of fraud exceeding five thousand dollars, (\$5,000) between January 1992 and December 22, 1995 with respect to clients' funds, contrary to Section 336 of the Criminal Code of Canada. The court sentenced Mr. Teller to two and a half years in a federal penitentiary on an agreed plea and made a compensation order in the amount of \$716,000 which, after netting some monies in his trust account, comprised a net fraud on his clients of \$686,000.

Mr. Teller is approximately forty years of age. He is married and has three young children. He was called to the Bar in 1984 and practised in Scarborough as a sole practitioner.

According to the Agreed Statement of Facts which Mr. Teller executed for this proceeding, and in particular paragraph 6, Mr. Teller ran into financial difficulties in or around 1992 and commenced taking small amounts of money from his mixed trust account for his personal use. He would repay that money but after awhile, he could not afford to cover the increasing amounts of his frauds. He invented a phoney mortgage scheme and other schemes which essentially led to him forging his clients' names on mortgages and other documents, as set out in paragraphs 10 and 11 and thereon, which included discharging mortgages and not paying them over to his clients.

In December 1995, he self-reported to both the Law Society and to the police, with the assistance of counsel, who assisted him throughout the criminal proceedings, and entered a plea of guilty before Judge Ormston in June of 1996.

We had before us, and marked as exhibit 4, a document book containing, *inter alia*, the information alleging seventeen counts of fraud wherein the Solicitor pleaded to one omnibus count of fraud, and the transcript of his breach of trust plea before Judge Ormston in June of 1996. The Solicitor, through his counsel, made representations to the court as to mitigating circumstances, including the fact that he co-operated completely in every respect, including self-reporting. He met voluntarily with the police and the Law Society. He had a gambling addiction, the presence of which was apparently supported by letters exhibited at trial, including letters from the Donwoods, and from the addiction group sessions which he had been attending and apparently intended to continue attending while incarcerated. The addiction to gambling is described as, "impulse control disorder" and was equated by his counsel at trial to alcoholism or drug addiction. It starts from a problem, breaking from ordinary life, and becomes excessive to the extent of absorption.

These mitigating factors were fairly advanced by Ms. Budweth in the Solicitor's absence.

The solicitor knew of the date of these proceedings. In exhibit 1, his correspondence with Ms. Budweth dated December 2, 1996, the Solicitor states that he has attempted to sit down and prepare written submissions to be presented at this hearing, but he was unable to do so, saying, "I am finding it psychologically and emotionally difficult to complete it at this time". Presumably, the Solicitor chose not to attend the hearing for that reason and has chosen not to advance anything by way of written submissions.

In that regard, it is interesting to note that the Solicitor, through his counsel at the criminal trial, said that he did not want his family to be there to lend their support because he was so ashamed and embarrassed. That may be, to some extent, the reason that no one was at the hearing on his behalf and he was not there also. In the Criminal Trial and as a mitigating factor in his sentence, the Solicitor through his counsel, stated that he had lost his profession, he had lost his career and would never be able to practise law again.

Having regard to the fact that this professional misconduct was in the nature of a premeditated fraud on several clients for \$686,000 and the fact that the Solicitor used at his criminal trial to mitigate his sentence, the fact that he would never be able to practise law again, and in view of the clear and, in our view, binding case law upon us in matters such as this, we are all of the view that the Solicitor should be disbarred and recommend it to Convocation accordingly.

26th June, 1997

Moshe Teller was called to the Bar on April 9, 1984.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1997

Ronald D. Manes, Chair

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

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

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the solicitor be disbarred.

Carried

Re: Bernadette Kelly ROY -Little Current

The Secretary placed the matter before Convocation.

Ms. Curtis and Messrs. Marrocco, Millar, Wilson, Cole and Wright withdrew.

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

The Report of the Discipline Committee dated May 21st, 1997 together with the Affidavit of Service was filed as Exhibit 1.

Convocation had before it the Report of the Discipline Committee dated 21st May, 1997, together with an Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd May, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Ronald D. Manes, Chair
Thomas E. Cole
Bradley H. Wright

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

Lesley Cameron
for the Society

26th June, 1997

BERNADETTE KELLY ROY
of the Town
of Little Current
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 8, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 25, 1996 Complaint D93/96 was issued, and on December 16, 1996 Complaint D326/96 was issued against Bernadette Kelly Roy alleging that she was guilty of professional misconduct.

The matter was heard in public on April 8, 1997 before this Committee composed of Ronald D. Manes, Chair, Thomas E. Cole and Bradley H. Wright. The Solicitor did not attend the hearing nor was she represented. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D93/96

2. a) She failed to report to her client, Hepco Credit Union Limited, with respect to the registration of a mortgage in favour of Donald and Nancy Dent on June 2, 1994;
- b) She failed to reply to the Law Society regarding a complaint by Shari Simpson despite letters dated May 29, 1995 and August 17, 1995 and attempts by telephone;
- c) She failed to report to her client, the Bank of Montreal, regarding a mortgage transaction which was completed on July 29, 1994;
- d) She failed to reply to the Law Society regarding a complaint by Cheryl Fortune of the Bank of Montreal despite letters dated June 20, 1995 and July 17, 1995;
- e) She failed to honour a financial obligation incurred in relation to her practice in favour of Lois Chouinard-Unger in the amount of \$1,267.67; and
- f) She failed to reply to the Law Society regarding a complaint by Lois Chouinard-Unger despite a letter dated October 13, 1995.

Complaint D326/96

2. a) She failed to reply to the Law Society's letter dated July 23, 1996, which letter was returned unclaimed and sent to a new address on August 20, 1996.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Bernadette Kelly Roy be reprimanded in Convocation, and pay Law Society costs in the amount of \$900, if by the time the matter is considered by Convocation she has complied with the following:

- i) arranged for reporting letters to be sent to Hepcoe Credit Union Limited and the Bank of Montreal;
- ii) provided satisfactory replies to the Law Society concerning the client complaints by Hepcoe Credit Union Limited, Bank of Montreal and Lois Chouinard-Unger;
- iii) satisfied the financial obligation to Lois Chouinard-Unger in the amount of \$1,267.67; and
- iv) replied satisfactorily to the Law Society's letter from Doug Weber, dated July 23rd, 1996.

If she has not provided all of the above when the matter is considered by Convocation, the Solicitor to be suspended for a period of two months, consecutive to the current administrative suspension and to the suspension imposed by Convocation on May 4, 1995, and continuing indefinitely until i) - iv) above are completed, and pay Law Society costs in the amount of \$900.

REASONS FOR RECOMMENDATION

The Solicitor, Bernadette Kelly Roy, was called to the Bar on March 31, 1989. She has been under administrative suspension for non-payment since November 1, 1994. On May 4, 1995, Convocation imposed an additional one month suspension for failure to file her Forms 2 and 3 for the period ending June 30, 1994, which suspension is to continue indefinitely until such filings be made.

On the face of it, the Solicitor has not been practising since November of 1994. The circumstances giving rise to the instant complaints D93/96 and D326/96 are set out in Exhibits 4 and 5.

The Society has advanced its case in this matter by way of affidavit evidence from clients and from representatives of the Law Society. In respect to D93/96 and in respect to D326/96, the Society has advanced its case on the basis of an affidavit of Doug Weber, an Investigations Auditor for the Society.

Having reviewed Exhibit 4 and the affidavits and documents contained therein and Exhibit 5 and the affidavit and documents contained therein, we have no hesitation in accepting such evidence as proving the truth of the particulars set out in the two complaints.

Briefly, with respect to D93/96, the solicitor failed to report and failed to reply with respect to particulars 2(a), (b), (c) and (d) although the evidence does not indicate any loss to the clients.

With respect to particulars 2(e) and (f) of this Complaint, the Society has established that the Solicitor has failed to honour a financial obligation with respect to a family therapist named in the particular, and failed to reply to the Law Society regarding the complaint by the family therapist.

26th June, 1997

The particulars, (e) and (f) gave the panel some real concern in that the Society has established that the Solicitor was paid a disbursement for the services she obtained from a family therapist in a particular legal aid matter on behalf of a legally aided client, and appears to have pocketed that disbursement rather than pay the family therapist the portion of her account owed by the Solicitor and reimbursed to the Solicitor by Legal Aid.

In that regard, the material before us clearly establishes that the Solicitor received the Legal Aid cheque; that the cheque included the disbursement; that the cheque was cashed and that the solicitor failed to account for those funds and in particular failed to pay the family therapist.

Had it not been for the Society's recommendation here, we may have been inclined to a greater penalty, but having regard to all the circumstances and given the Society's position, we are inclined to impose the penalty recommended by the Society. That penalty is as follows:

If, by the time of Convocation, the Solicitor does the following, she should be reprimanded in Convocation and pay costs of \$900:

- (i) arranges for reporting letters to be sent to Hepcoe Credit Union Limited and the Bank of Montreal;.
- (ii) provides satisfactory replies to the Law Society concerning the client complaints by Hepcoe Credit Union Limited, Bank of Montreal and Lois Chouinard-Unger:
- (iii) satisfies the financial obligation to Lois Chouinard-Unger in the amount of \$1,267.67; and
- (iv) replies satisfactorily to the Law Society's letter from Doug Weber, dated July 23, 1996.

If she has not provided all of the above when the matter is considered by Convocation, the Solicitor has not provided all of the above, the Solicitor to be suspended for two months, consecutive to the suspension imposed by Convocation on May 4, 1995, and also continuing indefinitely until (i) to (iv) are completed, with costs of \$900. To be clear, the suspension should be consecutive to the current administrative suspension and the pending disciplinary suspension.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1997

Ronald D. Manes, Chair

Page 3, paragraph 3 under the heading Reasons for Recommendation was amended to read as one sentence.

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

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay the Society's costs of \$900 if she had complied with the conditions set out in the Report and if the conditions were not met the solicitor be suspended for a period of 2 months consecutive to the current administrative suspension and to the suspension imposed by Convocation on May 4th, 1995 and the suspension continue indefinitely until the conditions were met and to pay the Society's costs.

Ms. Cameron advised that the conditions had not been completed.

26th June, 1997

It was moved by Ms. Puccini, seconded by Ms. Ross that the solicitor be suspended for a period of 2 months consecutive to the prior suspension and continue until the outstanding matters were taken care of and that costs be deleted.

Carried

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

Carried

Re: Carolynne Reva GREEN - Manotick

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Ms. Cohen 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 20th May, 1997, together with an Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd May, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

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

Audrey Cado
for the Society

CAROLYNNE REVA GREEN
of the Village
of Manotick
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 12, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 11, 1996 Complaint D301/96 was issued against Carolynne Reva Green alleging that she was guilty of professional misconduct.

The matter was heard in public on March 12, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing, nor was she represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D301/96

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

Finding of the Committee

The evidence established that the Solicitor had not filed her annual filings since November 30, 1993 and continued to be in default up to and including the date of hearing, notwithstanding the fact that she was offered the use of Forms 2 and 3.

It is clear on the evidence that she has failed to file within the six months and that the complaint is made out. The evidence of the Law Society employees, Heidi Buckley and Nadine Freed, establishes those facts beyond any doubt and the complaint is made out and I so find.

RECOMMENDATION AS TO PENALTY

As to penalty, it is the position of the Society that the matter be referred to Convocation and that I recommend that if the Solicitor files the appropriate forms by the time this matter is heard in Convocation that she be reprimanded, and if the filings are not made that she be suspended for a period of thirty days and thereafter indefinitely until such time as the filings are made in full. It is suggested that the suspension should take place following her administrative suspension. I am of the view that it is the only appropriate penalty that can be imposed and I therefore recommend it to Convocation without hesitation.

Carolyn Reva Green was called to the Bar on April 6, 1984.

ALL OF WHICH is respectfully submitted

DATED this 20th day of May, 1997

Robert C. Topp

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

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if the solicitor completed her filings and if the filings were not made that she be suspended for a period of 30 days following her administrative suspension and thereafter indefinitely until such time as the filings are made.

26th June, 1997

Ms. Cohen advised that the filings had not been made.

It was moved by Ms. Puccini, seconded by Mr. Crowe that the solicitor be suspended for a period of 30 days following her administrative suspension and continue until the filings were completed.

Carried

Re: Laura Lee BOUGHNER - Windsor

The Secretary placed the matter before Convocation.

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

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

Convocation had before it the Report of the Discipline Committee dated 17th April, 1997, together with an Affidavit of Service sworn 21st April, 1997 by Ron Hopple that he had effected service on the solicitor by registered mail on 18th April, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Helene Puccini, Chair

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

Elizabeth Cowie
for the Society

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

Not Represented
for the solicitor

Heard: March 13, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 27, 1995, Complaint D359/95 was issued against Laura Lee Boughner alleging that she was guilty of professional misconduct.

The matter was heard in public on March 13, 1996 before Helene Puccini sitting as a single bencher. The Solicitor did not attend the hearing and was not represented by counsel. Elizabeth Cowie attended on behalf of the Law Society.

DECISION

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

Complaint D359/95

2. a) She failed to file with the Society within six months of the termination of her fiscal years ending November 30, 1993 and November 30, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Evidence

The Solicitor was not present and had advised Law Society counsel that she would not be able to attend. The Solicitor had signed the Agreed Statement of Facts admitting the particular contained therein and also that this particular constituted professional misconduct.

The panel was advised through discipline counsel that:

1. The Solicitor was experiencing severe financial problems;
2. She had co-operated with the Law Society;
3. She appeared to be aware of her obligations to the Law Society and to the public, but was unfortunately unable to comply with her obligations because of her financial circumstances.

Based upon the evidence the panel made a finding of professional misconduct.

RECOMMENDATION AS TO PENALTY

It is recommended that if the Solicitor has completed the necessary filings with the Society by the time this matter is considered in Convocation, that the penalty be a Reprimand in Convocation. If the filings are not completed by that date, then the Solicitor shall be suspended for one month, such suspension to continue indefinitely thereafter until filings are completed.

The Solicitor has no discipline history. She was called to the Bar on March 26, 1990.

ALL OF WHICH is respectfully submitted

DATED this 17th day of April, 1997

Helene Puccini

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

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if her filings were completed failing which the solicitor be suspended for a period of 1 month to continue indefinitely thereafter until the filings are completed.

26th June, 1997

Ms. Cowie advised that the filings had not been completed.

It was moved by Ms. Ross, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 1 month to continue indefinitely until the filings are completed.

Carried

Re: Harold Chalmers FUNK - Ottawa

The Secretary placed the matter before Convocation.

Ms. Backhouse withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 6th May, 1997, together with an Affidavit of Service sworn 30th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 30th May, 1997 at 205 Gladstone Avenue (marked Exhibit 1), together with the Report and Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 21st May, 1997 at 200 Bronson Avenue (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

Nancy Backhouse

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

Janet Brooks
for the Society

HAROLD CHALMERS FUNK
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 12, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

HAROLD FUNK DECISION

On December 12, 1996, Complaint D251/96 was issued against Harold Chalmers Funk (the "Solicitor") alleging that he was guilty of professional misconduct. The matter was heard in public on February 12, 1997, before Nancy Backhouse sitting as a single bencher. The Solicitor did not attend the hearing. Janet Brooks appeared on behalf of the Law Society.

SERVICE

The Solicitor was properly served with Notice of Hearing of this Complaint. It is apparent from Exhibit 3, the Affidavit of Audrey Cado, attached hereto as Schedule "A" to this Decision, that the Solicitor has been aware of this Complaint, aware of this hearing and does not accept the Law Society as having legitimate governing authority.

DECISION

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

- a) he failed to cooperate with the Law Society by failing to produce the books and records of his practice for examination, despite letters of July 17, 1996, and August 6, 1996, and a telephone request of May 16, 1996; and
- b) he failed to file with the Society within 6 months of the termination of his fiscal year ended December 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act

Evidence

Anita McCann of the Audit Department testified on behalf of the Law Society. The Solicitor had made an assignment into bankruptcy in October, 1995.

The Law Society received information from a member of the profession that caused it to commence an audit of the Solicitor's books and records by attending at the office noted in the Law Society's records on May 14, 1996. There was no office for the Solicitor at that address. Ms.A. McCann telephoned the telephone number provided to the Law Society by the Solicitor which was out of service.

On May 16, 1996, Ms. McCann found a telephone number in the telephone book for the Solicitor and contacted the Solicitor by telephone. The Solicitor was very rude to her. He advised her that he was going to put the Law Society out of business because they have put him out of business and that he would not allow the Law Society access to his books and records nor allow the Law Society to harass him anymore.

Five letters were then sent to the Solicitor including to the address found in the telephone book, to the address in the Law Society's records and to an address provided to the Law Society by the RCMP, all requesting that the Solicitor contact the Law Society to arrange a date to have his books and records examined. No response was received.

The Solicitor last complied with his annual filing requirements for the fiscal period ending December 31, 1994. On July 9, 1996, a letter was sent to the Solicitor advising him that he was in default for the fiscal period ending December 31, 1995. A further letter was sent August 9, 1996, for which an Acknowledgment of Receipt Card was returned to the Law Society. On August 29, 1996, a fax was received by the Law Society from the Solicitor which advised that "I will be filing my annual returns in due course". On November 11, 1996, a telephone message was left on the Solicitor's voice mail with regard to his filing obligations. On September 16, 1996, a friend of the Solicitor called the Law Society and left a message that the Solicitor had had a heart attack and would get in touch as soon as possible. At the time of this hearing the Solicitor had not filed for December 31, 1995, or for December 31, 1996.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

In my view, the evidence is overwhelming that the Solicitor failed to cooperate with the Law Society by failing to produce his books and records despite numerous requests and failed to make his annual filing for the fiscal year ending December 31, 1995. Accordingly, there is a finding of professional misconduct on all particulars.

RECOMMENDATION AS TO PENALTY

I recommend that the Solicitor be disbarred provided that if the Solicitor appears in person before Convocation when this matter comes before it and provides a persuasive justification for his conduct, then suspension for a period to be determined by Convocation.

REASONS FOR RECOMMENDATION AS TO PENALTY

The Solicitor was put on notice by a letter dated January 21, 1997, that the Law Society would be seeking his disbarment on the grounds of ungovernability. Exhibit "B" to the Affidavit of Audrey Cado attached as Schedule "A" to this Decision, clearly demonstrates that the Solicitor does not accept the authority of the Law Society. The Solicitor's failure to produce his books and records and to make the requisite filings are consistent with his refusal to accept the Law Society's governing authority. The Solicitor has failed to offer any acceptable explanation for his conduct. It is not possible to protect the public where a member of the profession does not recognize and does not comply with the Law Society's regulatory authority.

The Solicitor has one prior incident of discipline unrelated in nature to the current complaints. On August 15, 1991, the Solicitor was reprimanded in committee for failing to honour his duty to the Court and fellow solicitors by failing to reveal the existence of a medical report.

On June 28, 1996, the Solicitor was suspended for failure to pay his Errors & Omissions Insurance.

DATED at TORONTO this 6th day of May, 1997.

Nancy L. Backhouse

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

The recommended penalty of the Discipline Committee was that the solicitor be disbarred unless he appeared before Convocation with a persuasive justification for his conduct at which time Convocation would determine a period of suspension.

It was moved by Mr. Cole, seconded by Mr. Wright that the solicitor be disbarred.

26th June, 1997

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the solicitor be suspended for 1 month continuing until the filings are made.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Carey, seconded by Mr. Bobesich that the matter be sent back for a section 35 hearing.

Mr. Carey withdrew his motion.

The Cole/Wright motion that the solicitor be disbarred was voted on and adopted.

The Gottlieb/Swaye motion was not put.

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

Resumption of the DONOHUE matter

The solicitor was contacted by telephone and assisted by Mr. Le Vay, Duty Counsel.

Convocation had before it the Report of the Discipline Committee dated 20th May, 1997, together with an Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 21st May, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 20th June, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

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

Rhonda Cohen
for the Society

RAYMOND VINCENT DONOHUE
of the City
of Sarnia
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 12, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 18, 1996 Complaint D299/96 was issued against Raymond Vincent Donohue alleging that he was guilty of professional misconduct.

The matter was heard in public on March 12, 1997 before Robert C. Topp sitting as a single benchman. The Solicitor did not attend the hearing nor was he represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D299/96

2. a) He breached an Order of Convocation that he suspend his practice of law for failure to pay his Errors and Omissions Insurance Levy, by practising law during the period September 22, 1995 to January 22, 1996.

Finding of the Committee

Upon the evidence of William Simpson, including the Document Book, filed as exhibit 3, I find that the Complaint is made out in its entirety. The Solicitor was clearly practising at a time when he was under suspension, albeit he had only four open files and he alleged to the auditor, that he was winding down his practice. Nonetheless, it is clear that he was practising at the time and the complaint is made out.

Mr. Donohue did not attend the hearing in this matter to give evidence and notwithstanding that he has been given every opportunity to be present, including the fact that his name was called at the hearing. There was no evidence called on his behalf and therefore the Committee has no option but to make the finding that it has and, even had Mr. Donohue been present, the evidence seems to be overwhelming that he was practising at the time.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Raymond Vincent Donohue be disbarred.

REASONS FOR RECOMMENDATION

As to penalty in this matter, filed before me, as exhibit 4, was the list of the administrative suspensions which were five in number and the discipline history of the Solicitor.

26th June, 1997

It is clear to me that this Solicitor has demonstrated, by his conduct that he is ungovernable in every sense of the expression. The fact that the Solicitor chooses to continue to practise while suspended, the fact that the Solicitor chooses not to attend this discipline hearing and a prior discipline hearing, the fact that the Solicitor seems to be not in the least concerned about the orders of Convocation or his professional responsibilities, compel me to the conclusion that his continued membership in the Law Society is no longer tenable. The fact that the Solicitor is in arrears in his annual reporting for over three years is shocking. He continues to practise. He shows no concern for his professional responsibilities and, notwithstanding the fact that he alleges to the auditor that he is winding down his practice, we know that recently he has allowed an answering machine give people his 'business telephone number'. It is clear to me that under the circumstances that it would be irresponsible in the extreme not to terminate Mr. Donohue's membership in the Society and I hereby recommend that Convocation disbar Mr. Donohue.

I believe that the evidence before me is such that it indicates that Mr. Donohue is a person who has chosen a path and will not be dissuaded by either Convocation or administrative orders. As well, Convocation is required to control solicitors in the protection of the public. We literally have no idea what he is doing. As I have said, we have no reporting from him. He doesn't cease to practise.

It seems to me that Mr. Donohue not only is a person who is ungovernable, but I specifically make the finding that his continued participation as a barrister and solicitor in Ontario is dangerous to the public and therefore recommend his disbarment.

Raymond Vincent Donohue was called to the Bar on September 20, 1956.

ALL OF WHICH is respectfully submitted

DATED this 20th day of May, 1997

Robert C. Topp

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

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

Mr. Le Vay made submissions in support of the solicitor being permitted to resign.

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

There were questions from the Bench.

The solicitor was advised that he would be contacted when Convocation had reached a decision.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Cole, seconded by Ms. O'Connor that the solicitor be disbarred.

Lost

26th June, 1997

It was moved by Ms. Backhouse, seconded by Mr. Wright that the solicitor be permitted to resign provided his filings were made within 60 days and that a medical report confirming his illness be submitted to the satisfaction of the Secretary failing which the solicitor be disbarred.

Carried

It was moved by Mr. Swaye, seconded by Mr. Bobesich that the request for a medical report be deleted from the Backhouse/Wright motion.

Not Put

Mr. Adams moved an amendment to the Backhouse/Wright motion that the filings are to be completed and in order.

Withdrawn

It was moved by Mr. MacKenzie, seconded by Mr. Gottlieb that the solicitor be permitted to resign.

Not Put

Counsel, the reporter and the public were recalled and the solicitor contacted by telephone and informed of Convocation's decision that the solicitor be permitted to resign provided his filings were made within 60 days and that a medical report satisfactory to the Secretary be submitted confirming his illness failing which the solicitor be disbarred.

Re: Michael John SEMPLE - Willowdale

The Secretary placed the matter before Convocation.

Ms. Puccini withdrew for this matter.

Ms. Cohen 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 17th April, 1997, together with an Affidavit of Service sworn 1st May, 1997 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 18th April, 1997 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Helene Puccini, Chair

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

Rhonda Cohen
for the Society

MICHAEL JOHN SEMPLE
of the City
of Willowdale
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 13, 1996

26th June, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 2, 1995, Complaint D310/95 was issued against Michael John Semple alleging that he was guilty of professional misconduct.

The matter was heard in public on March 13, 1996 before Helene Puccini sitting as a single bencher. The Solicitor did not attend the hearing and was not represented by counsel. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D310/95

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

Evidence

The panel was provided with an amended Agreed Statement of Fact, signed by the Solicitor on March 11, 1996. In this amended Agreed Statement of Fact the Solicitor:

1. admitted the particular contained therein;
2. denied that this particular constituted professional misconduct;
3. indicated that a certificate was duly filed within the required time period, but;
4. that the report was not completed by a public accountant, as he was and remained unable to afford to pay an accountant to do so.

The panel heard evidence from Irene Andrighetti, Supervisor of the Annual Filing Section of the Membership/Records Department, for the Society that:

1. the Solicitor had filed Form 2 and returned the whole report. Only Form 2 was completed not Form 3 and there were no attachments;
2. the Solicitor did have funds in trust;
3. the Society had no independent means of verifying the Solicitor's trust account;
4. the Solicitor said he was not practising and was administratively suspended.

A finding of professional misconduct was made.

RECOMMENDATION AS TO PENALTY

It is recommended that Michael John Semple be reprimanded in Committee if his filings are completed by the date of Convocation, failing which he be suspended for a period of one month and thereafter indefinitely until his filings are completed. No costs.

REASONS FOR RECOMMENDATION

The Solicitor has attempted to comply with the filing requirements by filing the forms himself within the time period. He indicated the only reason he did not have a public accountant complete the form was that he was unable to afford to do so. I believe that some leniency should be extended to the Solicitor as he has attempted to comply with the spirit of the Regulations but says he could not do so for financial reasons. This is why a reprimand in Committee is recommended. However, should the filings not be completed by the date of Convocation, in the proper form, by a public accountant, then the usual suspension penalty should be imposed. The Society must be able to independently monitor the condition of the Solicitor's trust account for the protection of the public.

The Solicitor has no discipline history. He was called to the Bar on April 9, 1981.

ALL OF WHICH is respectfully submitted

DATED this 17th day of April, 1997

Helene Puccini

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

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Committee if his filings are completed failing which he be suspended for a period of 1 month and thereafter indefinitely until his filings are completed.

Ms. Cohen advised that the filings were not completed.

It was moved by Mr. Wright, seconded by Mr. Miller that the solicitor be suspended for a period of 1 month and thereafter indefinitely until his filings were completed.

Carried

Re: Roger Edgar BELLEFEUILLE - Alexandria

The Secretary placed the matter before Convocation.

Messrs. Cole and Wright withdrew for this matter.

Ms. Cameron appeared on behalf of the Society. The solicitor appeared on his own behalf.

26th June, 1997

Convocation had before it the Report of the Discipline Committee dated 14th April, 1997, together with an Affidavit of Service sworn 1st May, 1997, by Yvette Soulliere that she had effected service on the solicitor by registered mail on 18th April, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th June, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Denise Bellamy, Chair
Thomas E. Cole
Bradley H. Wright

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

Georgette Gagnon & Allan Lutfy
for the Society

ROGER EDGAR BELLEFEUILLE
of the Town
of Alexandria
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 5 & 6, 1995,
January 8 & 9, 1996
January 17, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

IN THE MATTER OF ROGER EDGAR BELLEFEUILLE

Complaint D175/94

REPORT

1. On June 2, 1994, Complaint D175/94 was issued against Roger Edgar Bellefeuille (the "Member") alleging that he was guilty of professional misconduct.

2. The matter was heard in Ottawa in public in French and English on October 5 and 6, 1995 and January 8 and 9, 1996 before this Committee comprising Denise Bellamy, Chair, Thomas Cole and Bradley Wright. The Member attended the hearing and represented himself. Mr. Allan Lutfy appeared on behalf of the Law Society.

DECISION

3. The following particulars of professional misconduct were found to have been established (particular 2(a) was not established and is discussed below):

2(b) The Member breached the provisions of Rule 5 of the Rules of Professional Conduct when he purchased a piece of property described as part of Lot 6, Concession 1, Township of Cambridge, County of Russell from his client, Charles McAuley, and in the course of doing so failed to make adequate disclosure of the conflict of interest and failed to obtain the informed consent of the client to continue acting.

2(c) In the circumstances of particular 2(b), the Member breached the provisions of Rule 7 of the Rules of Professional Conduct by not advancing the entire purchase price on closing and instead negotiating a payment schedule with his client.

2(d) In the circumstances of particulars 2(b) and 2(c), the Member's failure to complete the payment schedule caused Mr. McAuley to retain the services of another lawyer. The Member then breached the provisions of Rule 14 of the Rules of Professional Conduct by attempting to negotiate settlement of the matter directly with Mr. McAuley whom the Member knew was represented by other counsel.

2(e) The Member breached the provisions of Rule 7 of the Rules of Professional Conduct by borrowing \$179,000 more or less from the following of his clients:

Jean-Paul Brunet
Fritz Keller
Guy MacCallum
Sonia Maisonneuve
Charles McAuley
Paul Villeneuve

The allegation under this particular with respect to Raymond Lavallee was withdrawn.

2(f) The Member breached Section 14(1) of Regulation 708 of the Law Society Act by failing to deposit monies received from his client, Sydelle Katzer, into his trust account. The allegation under this particular with respect to Raymond Lavallee was withdrawn.

2(g) The Member breached Section 14(8)(c) of Regulation 708 of the Law Society Act by misapplying (but not misappropriating - see below) \$4,000.00 more or less received from his client, Sydelle Katzer, in or about April 1991.

2(h) The Member breached Rules 1 and 3 of the Rules of Professional Conduct by misleading his client, Guy MacCallum, by providing him with executed documents purportedly signed by the Member and his wife, Jocelyne Bellefeuille, when the documents had not been signed by her.

2(i) The Member made a false declaration on his Form 2 for the years 1989, 1990 and 1991 by stating that he was not indebted to and had not borrowed money from a client or former client either directly or indirectly.

FINDINGS OF THE COMMITTEE

4. Over four days, the Committee heard from twelve witnesses, some of whom gave their evidence in English and some in French. Simultaneous translation was employed at all relevant times. Submissions by the Member and by counsel were mostly in English.

5. The hearing was marked by some acrimony. The Member and the Law Society disagreed on many material facts. As a result, the Committee heard extensive evidence on every aspect of the case. The Member was very well-prepared and, despite the passage of time, had an excellent command of the facts. Although he was clearly an experienced litigator, because he was representing himself, the Committee afforded him generous leeway with respect to cross-examination and procedure.

6. With respect to credibility, unless it is otherwise specified herein, the Committee preferred in all material respects the evidence of the witnesses over any conflicting evidence of the Member. The Committee found the Member often selectively evasive when examined by the Society or questioned by the Committee.

7. Each particular is reviewed below.

Particular 2(a)

(assisting client to avoid making full disclosure of assets during separation negotiations contrary to Rule 3, Commentary 6)

8. The client, Gerry Deguire, testified that in 1988 the Member advised him that he might have to make a considerable equalization payment to his wife upon separation and that a way should be found to prevent complete disclosure of his assets, and that the method suggested by the Member was that he lend the Member \$50,000.00 through his company as a means of lowering his net worth.

9. In 1992, Mr. Deguire petitioned his wife for divorce. Her Answer and Counterpetition alleged that he had made a false and fraudulent statement of his assets [during the earlier separation negotiations] with the intent of deceiving her. His Reply and Answer to Counterpetition states that she was aware at all material times that his company had lent the money to the Member, that the loan was disclosed in Mr. Deguire's corporate financial records, and that both spouses had agreed not to disclose their respective personal savings whether in banks or otherwise. The Member testified without contradiction that the wife received independent legal advice during the separation negotiations despite the absence of financial statements, the inference being that she was then content to proceed without exchanging financial statements.

10. It is probable that the parties decided for themselves not to make full disclosure and that Mrs. Deguire did not object to her husband's failure to do so until it became tactically advantageous in the divorce litigation. Mr. Deguire's statement in the divorce action is at odds with his later allegation of wrong-doing on the part of the Member. Mrs. Deguire was not called as a witness, and the separation agreement was not entered as evidence. With some hesitation, we find that this particular was not made out. (The Deguire company loan to the Member is not part of this Complaint.)

Particulars 2(b) and (c)

(purchasing land from a client without disclosing a conflict of interest, obtaining the client's consent to act, or advancing the whole of the purchase price contrary to Rule 5)

11. The client, Charles McAuley, sold land to the Member for \$35,000.00 on installment terms which the Member negotiated and which he has not honoured in full. After registered the deed, the Member conveyed the land to G-7 Investments Inc., a company owned by the Member, for \$50,000.00 and registered a mortgage in favour of Gordon Savage for \$4,500.00. Mr. McAuley did not have his own lawyer when he sold his land to the Member. The Committee finds that the Member prepared the documents, negotiated the terms, failed to advance the whole of the purchase price on closing, failed to advise Mr. McAuley to seek legal advice, failed to obtain his consent to act on both sides of the transaction, and failed to disclose that the consideration for the flip to G-7 was \$50,000.00 with a mortgage for \$45,000.00.

12. Commentary 17 to Rule 5 provides that the burden of proof rests with the lawyer to show that he or she has acted in good faith, that adequate disclosure has been made, and that the client's consent has been obtained. The Member has not met the onus. In any event, the Society led ample evidence to prove these particulars, and the Member was unable to make a satisfactory answer. These particulars are made out.

Particular 2(d)

(attempting to negotiate a settlement directly with a person represented by a lawyer except through or with the consent of the lawyer contrary to Rule 14)

13. Mr. McAuley testified about the land sale, but not about the Member's alleged attempts to settle directly with him after he had retained James Jeffcott. Mr. Jeffcott did testify as to what Mr. McAuley told him about the Member's alleged attempts to settle directly with Mr. McAuley; however, Mr. Jeffcott's evidence on this point was hearsay. On the other hand, in direct evidence the Member admitted that he drove Mr. McAuley (an old family friend) to the meetings with Mr. Jeffcott at least two occasions, that he knew Mr. McAuley had retained Mr. Jeffcott, but that he nevertheless felt that he could still talk to Mr. McAuley about the legal matter at hand when driving him to the meetings at Mr. Jeffcott's office. In addition to accepting the direct evidence, the Committee has no reason to doubt Mr. Jeffcott's evidence, and accepts it partly on the basis that the rules of evidence applicable to an administrative hearing respecting hearsay are more relaxed than in a criminal or civil law setting. This particular is made out.

Particular 2(e)

(borrowing from clients contrary to Rule 7)

14. From 1986 to 1991, the Member borrowed about \$179,000.00 from five men, Jean-Paul Brunet, Fritz Keller, Guy MacCallum, Charles McAuley, and Paul Villeneuve, and one woman, Sonia Maisonneuve. Despite some repayments, the amount outstanding including interest to the six creditors as of January 1996 was about \$269,027.00. Although some payments have been made, the bulk remains outstanding and it is doubtful that even the capital will be repaid in full.

15. The men were elderly with little formal education, and unsophisticated. The woman was a young 18 years old, and unsophisticated. The Member had acted for all six as their lawyer at various times. All but Mr. McAuley regarded him as their lawyer at the time of the loans, but Mr. McAuley was a little uncertain as to the nature of a solicitor-client relationship. The Member claimed to have acted for Mr. McAuley in the past merely as his agent. We find that the services provided were of a legal nature (such as advising and representing Mr. McAuley on an impaired driving charge) and were rendered by the Member acting as a lawyer.

16. The Member was in a position of superiority and personal ascendancy over the six. He did not disclose to them the extent of his borrowings and liabilities. He had special knowledge as a result of having acted as their lawyer that they had funds available. Although technically no file was open in his office at the time of the borrowings (some just been closed), there is no doubt that the six were his clients within the meaning of Rule 7.

17. The six clients had little or no experience in these matters, and trusted the Member unquestioningly. He was able to borrow from them with minimal scrutiny as to the soundness of the transaction or of the security being offered. Although he revealed to them that he wished to borrow to finance a large land development and gave them junior securities on the land and promissory notes, he

did not advise them that real estate ventures are often risky especially for those in junior positions, did not show them his financial statements, and did not provide them with enough information so that they could satisfy themselves independently that the securities were sound. He failed to protect fully each client's interest and failed to advise them to seek independent legal advice. He has failed to meet the onus on him under Rule 7 on any of these points.

18. At the time of the borrowings, the Member in effect acted as their lawyer in that he advised them on the significance of legal documents and acted as their counsellor. No other lawyer attended the meetings. A solicitor-client relationship could be inferred even though there were no formal retainers or reporting letters.

19. The Member testified that the securities were sound because of the value of the land at the time of the loans, and that he had honest intentions or repaying them. It is not necessary to decide whether or not he had honest intentions. Had the development succeeded, he may well have repaid everyone; however, even if he had repaid them and even if none of his client creditors had complained, the Member would still have been guilty of misconduct under Rule 7. The application of Rule 7 does not hinge on the viability of the loan, but on the solicitor-client relationship.

20. The duty of a lawyer to a client can continue even after the solicitor-client relationship in its strict sense has ended. The confidence a client reposes in the lawyer can continue even after the bill has been rendered and the file closed. The duty and the relationship can be erased in some circumstances, the most obvious being the retention of another lawyer practising in the same area (a word deliberately left ambiguous) as the first lawyer. Each case must be examined. In this case, the evidence established that the five men and one woman were the Member's clients at the material times, and the Member was unable to show otherwise.

21. The Member testified that he did not appreciate that the word "client" in Rule 7 included former clients who did not have an open file with him at the time of the borrowing. That demonstrates a reckless ignorance of the application of the Rules. Members have a positive obligation to know and understand the Rules. At the very least, if he was unsure, he should have sought an interpretation from the Law Society. This is not imposing a requirement of 20/20 hindsight. The Rules exist to protect the public, and a member walks on eggs if he or she fails to ascertain their application.

22. Clients lending to non-lawyers tend to protect themselves with independent legal advice. Rule 7 is designed to ensure that clients, whose guard is understandably down when dealing with their own lawyer, are not taken advantage of by that same lawyer. A non-lawyer has far greater opportunity to borrow from the unwary with impunity than does a lawyer. One of the prices lawyers pay for membership in a profession that engenders such high levels of trust is a higher standard of conduct than that imposed on the laity.

23. The Member cross-examined at length and in detail on the issue of solicitor-client relationship. Depending on the witness, the Member took the position that either (a) the witness was a former client because the file had been closed (even if earlier the same day), or (b) the witness was not a client because no bill had been rendered meaning that the Member had not acted as the witness's lawyer, or (c) in the case of Mlle. Maisonneuve, that she was not his client because his real clients were her parents in that they were paying her legal bills.

24. Toward the end of the hearing, the Member stated that he was probably "caught" in the Brunet, Villeneuve and Keller matters, and later conceded that he was caught by Rule 7, Commentary 3 with respect to the other witnesses under this particular. The Committee has interpreted his statements as an admission of guilt on this particular, albeit received late in the day. In any event, the case in this particular was amply made out by the Society.

Particular 2(g) (Particular 2 (f) is set out below)
(misappropriating \$4,000.00 from a client)

25. In 1987, the Member was retained by Dr. Sydelle Katzer to handle a claim brought against her by a building contractor. Her instructions included delaying resolution until her finances in better order. Over the course of about four years, the Member reviewed the claim, delivered a statement of defence, attended on discoveries, prepared a pre-trial conference memorandum, attended a pre-trial, received a trial record, attended Assignment Court, and negotiated a settlement for \$28,500.00 being about 56% of the amount then owing. The minutes of settlement called for \$5,000.00 to be paid in March 1990, and \$23,500.00 to be paid in March 1991.

26. In March 1990, Dr. Katzer paid the first \$5,000.00 by sending the Member a cheque dated March 24, 1990, payable to both the Member and the creditor to be forwarded to the creditor. At the same time, she sent a cheque payable to the Member for \$500.00 toward his services. The Member forwarded the \$5,000.00 to the creditor, presumably by endorsing the cheque prior to delivery.

27. The Member testified that he would have billed Dr. Katzer in full in March 1990, but he believed that she lacked the resources to pay him then, and that if he rendered an account, he would be liable for tax whether or not he received payment. He stated that he recognized that the first payment under the minutes was an important one in the honouring of the settlement, and that given their long relationship, he was content to delay rendering his final account.

28. In March 1991, Dr. Katzer desired to make another payment to her creditor. She sent a cheque dated March 25, 1991 for \$12,000.00 again payable to both the Member and the creditor. At the same time, she sent a cheque payable to the Member for \$500.00 toward his services. The Member claimed that he had advised her that he would be rendering his final account. Dr. Katzer claimed that she instructed him to forward the full \$12,000.00 to her creditor. We find both claims true in that it was her intention, as with the \$5,000.00 cheque, that the Member endorse the \$12,000.00 cheque and deliver it to her creditor, and that it was the Member's intention to deduct his final account from it first.

29. Dr. Katzer was living in Detroit and banking in Windsor at the material times. When the Member received the \$12,000.00 cheque in the mail, he, by telephone through her daughter, advised her that the cheque was improperly drawn [in light of his desire to deduct his bill which he could not do with a joint payee] and would not be used. To save time, he suggested, also through her daughter, that she wire replacement funds from her Bank of Montreal account in Windsor to his local Bank of Montreal G-7 investments account. (This aspect of the Complaint is dealt with below).

30. Dr. Katzer did not call back to instruct the Member simply to endorse the cheque, but wired the money to him in early April 1991. Shortly thereafter, the Member forwarded \$8,000.00 to the creditor and kept \$4,000.00 for himself. The Member claimed that he had prepared a hand-written account dated March 25, 1991, and had mailed the account to the address for service for Dr. Katzer shown on the statement of claim. Counsel for the Society pointed out that the date of the account was the same as the date of Dr. Katzer's \$12,000.00 cheque, and submitted that that was coincidental and was evidence that the account was not legitimate. We find nothing odd about a lawyer preparing an account to coincide with the date of a cheque he or she receives from a client.

31. Dr. Katzer testified that the account never arrived because she had moved years earlier, and that the Member knew her new address because he had written her several times at the new location. The Member testified that the misdirection of the account occurred because, by March 1991, he had wound down his law practice, was operating from home, did not have a secretary, had not written his client in quite some time, and had simply used the address on the statement of claim without verifying the address by reviewing the file. We accept his testimony on this point.

32. Dr. Katzer testified that she did not learn that the creditor had received only \$8,000.00 in March 1991 until February 1992 when the creditor's solicitor sent her an accounting and a request for further payment. She sought legal advice and reported the Member. The Member testified that, from the moment he was questioned about the matter, he steadfastly maintained that he had sent an account. The investigator for the Society agreed that he had so maintained.

33. Regrettably Dr. Katzer's instructions as to the distribution of the \$12,000.00 were not in writing. To remove any doubt about the intended recipient, all she had to do was make the cheque payable only to the creditor and ask the Member to forward it. There was never any need to add him as a payee.

34. Dr. Katzer claimed that the two \$500.00 cheques she had sent to the Member were full payment for his services in the litigation matter; however, it was not reasonable for her to believe that his services, rendered over about four years and ending in a good result, were worth a mere \$1,000.00 including disbursements and GST. Although no dockets were submitted as evidence and no assessment of the account has ever been done, we find that fees, disbursements and GST totalling \$5,000.00 were quite reasonable given the work involved over many years and the result obtained. Nevertheless, Dr. Katzer sued the Member in Small Claims Court for the return of the \$4,000.00 and was successful.

35. In Small Claims Court, the burden of proof is a balance of probabilities. When disbarment for misappropriation is the issue, the burden rises to approach (without reaching) the criminal burden of beyond a reasonable doubt. While we have found that the Member's account was reasonable, we have also found that Dr. Katzer instructed him to forward the full \$12,000.00 to her creditor. Accordingly, we find that he did not misappropriate the funds, but did misapply them when, despite the legitimacy of his bill, he failed to follow his client's instructions.

36. Our finding is not inconsistent with the Small Claims Court judgment in that Dr. Katzer was entitled to recover money that the Member misapplied even if he were later to establish on an assessment that he was entitled to fees of the same amount (an amount we find reasonable), and were later to recover them.

37. Subsection 14(8)(c) of Regulation 708 under the Law Society Act states:

(8) Money shall not be drawn from a trust account other than,

(c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been delivered (emphasis added);

38. As a matter of professional conduct, if a client sends a trust cheque to his or her lawyer with instructions to forward the full amount to another payee, but the lawyer, even when relying on a legitimate billing, instead deducts the amount of the billing and forwards only the balance, the lawyer has improperly drawn the money from the trust account. Normally, lawyers may draw fees from

trust upon delivery of an account because of either an express or implied authorization to do so. The lawyer is not so authorized when the client has instructed otherwise. In such a case, the lawyer who draws for fees is guilty of misapplication or misappropriation, depending on the circumstances. In most cases, the latter calls for disbarment, the former for a serious penalty short of disbarment. However, in some cases, even misapplication can call for disbarment just as in some cases misappropriation can call for less than disbarment.

39. At the hearing, much attention was paid to the manner in which Dr. Katzer drew the \$5,000.00 first settlement cheque. The Member argued that she had sent the \$5,000.00 cheque payable only to the creditor and that he had forwarded it to the creditor. The \$12,000.00 cheque was drawn in favour of both the Member and the creditor. The Member asserted that Dr. Katzer knew that the \$12,000.00 cheque was partly for fees which was why she drew it in that manner, and that had she intended the full amount to go to the creditor, she would have drawn it in favour of only the creditor in accordance with her past practice and would not have agreed with the Member's suggestion to wire the funds, but would have called back and instructed him to endorse the cheque and deliver it.

40. By Dr. Katzer's hand-written bank book, it is apparent that the Member was wrong about the \$5,000.00 cheque. It had been drawn in the same manner as the \$12,000.00 cheque. Counsel for the Society submitted that the Member's assertions on this point were further evidence of the Member's untruthfulness.

41. Upon checking his records overnight, the Member produced to us a photocopy of another cheque drawn by Dr. Katzer for \$10,000.00 payable only to the renovator who later became her creditor. She had sent it to the Member in 1987, and he had photocopied it and forwarded it to the payee. It was payment for work done by the payee and was paid prior to the payee's law suit. The Member testified that he had confused the manner in which the payee was shown on the \$10,000.00 cheque with the manner in which the same payee was shown \$5,000.00 cheque. Several years have gone by. We do not wish to saddle him with a finding of untruthfulness by telescoping the time frame and imposing a requirement of perfect memory on him as to how someone else drew cheques several years ago. In any event, given our finding that he did render an account but nonetheless misapplied the funds to pay that account, nothing turns on the manner in which the \$5,000.00 cheque was drawn.

42. In summary, the Member did bill Dr. Katzer for \$4,000.00, but she did not purport to pay it out of the \$12,000.00. Her instructions were to pay the entire \$12,000.00 to her creditor regardless of and in ignorance at the relevant time of the existence of the Member's account. He is likely entitled to his bill, but in ignoring her instructions as to the recipient of the funds, he misapplied them.

43. Other than Katzer, the Society has not alleged any pattern or other instances of trust account irregularities. We find that there is insufficient evidence to prove misappropriation in this particular, but we do find the Member guilty of misapplication of trust funds amounting to serious professional misconduct.

44. In some cases, a member could argue prejudice upon a committee substituting one offence for another. In this case, the Member suffered no prejudice. He provided an exhaustive defence including considerable evidence as to the allegation of misappropriation. He would have had to provide the same evidence, both oral and documentary, to defend against an allegation of misapplication. Although misapplication is a separate offence, the concept of misapplication may be considered as subsumed under the concept of misappropriation. In almost all cases, the evidence required to defend against an allegation of misappropriation would have an a fortiori relevance to an allegation of misapplication.

Particular 2(f)
(failing to deposit monies in trust)

45. The Member testified that he suggested to Dr. Katzer that she wire the \$12,000.00 directly into his Bank of Montreal G-7 account purely as a convenience to her because she did not have an account with the Royal Bank where the Member maintained his trust account. However, having received the funds, he did not forthwith pay them into his trust account as required by Section 14(1) of Regulation 708 of the Law Society Act. Instead, he paid \$8,000.00 to her credit and \$4,000.00 to himself directly from the G-7 account. Thus, there is no record in his law firm accounting records of the disbursement or the fee payment. This particular is made out.

Particular 2(h)
(misleading client as to execution of document)

46. No expert evidence was led as to the signature appearing to be that of the Member's wife Jocelyne Bellefeuille, on a joint Promissory Note that the Member gave Guy MacCallum. The Member testified that he could not determine whether it was her signature, but claimed that either it was or that he had her authority to sign the Note on her behalf. Mme. Bellefeuille was not called to testify by either the Member or the Society, and no power of attorney given by her was entered as evidence. We determined that we did not need the testimony of an expert in handwriting analysis in this instance and noted that the signature purporting to be hers looks quite unlike her handwriting (engrossed upon another exhibit) and quite like the handwriting of the Member (engrossed upon many exhibits). We find that Mme. Bellefeuille did not sign the Note and that Mr. MacCallum was misled into thinking that she had.

Particular 2(i)
(making a false statutory declaration in Form 2)

47. In light of our finding that the Member borrowed from clients contrary to Rule 7, we find that he made a false statutory declaration on his Form 2 for the years 1989, 1990 and 1991.

48. We invite submissions on penalty.

IN THE MATTER OF ROGER EDGAR BELLEFEUILLE

Complaint D175/94

RECOMMENDATION AS TO PENALTY

49. The Committee recommends that Roger Edgar Bellefeuille be granted permission to resign within 30 days of Convocation so deciding, failing which resignation that he be disbarred and struck off the rolls.

REASONS FOR RECOMMENDATION

50. On January 17, 1997, the Committee heard submissions from the Society and the Member on penalty. The Member gave an Undertaking not to practise in June 1994, and is currently not practising.

51. This was not a quasi-criminal hearing, but an administrative law hearing into whether the Rules of Professional Conduct had been breached and, if so, to what extent and to what sanction. The process is not primarily punitive in intention despite the harsh consequences that can befall a member whose conduct falls below the standard. Paramountcy must be given, not to the consequences of a member, but to the protection of the public, the preservation of the reputation of the profession, and the provision of guidance as to what is and is not acceptable professional conduct. While other important considerations are properly taken into account, the primary focus is on the offenses, not the offender.

52. The Committee examined each particular of the complaints separately before examining the misconduct in its entirety. It is likely that no single instance of misapplying funds, improper borrowing, conflict of interest, misleading clients, or filing false declarations would have resulted in a recommendation of permission to resign. However, the totality shows such a reckless flouting of the Rules that we are compelled so to recommend.

53. With respect to the Katzer funds, we found the Member not guilty of misappropriation, but of misapplication. We gave him the benefit of the doubt where the burden on the Society was high and the circumstances of the instructions somewhat ambiguous. The benefit of that doubt saved him from a recommendation for disbarment, but not from a recommendation for a very serious penalty, which recommendation is bolstered by the other misconduct.

54. With respect to the conflict of interest in the purchase from Mr. McAuley and the various improper borrowings, it is unlikely that the Member's client base was composed entirely of substance-abusing teenagers and elderly men with little formal education. However, except for \$50,000.00 borrowed from the Member's client and brother-in-law, Mr. DeGuire, (in circumstances that disquieted us but were insufficient to find professional misconduct on the evidence before us), they are the very clients the Member induced to sell or lend to him. The Lavallee complaint was withdrawn, and we drew no adverse inference from its having been originally laid.

55. There is no instance of a purchase or a borrowing from any individual client having business sophistication. (The Member testified that he tried to interest Dr. Katzer in his real estate venture. She testified that she refused because, in her words, she never gives up control.) Institutional or brokered lenders did lend to the Member, but they first obtained primary securities. The only individual clients to lend to him for his real estate venture were those least capable of assessing the project, ensuring adequate security and protecting their investments. The Member had the advantage of the position of authority and aura of integrity that membership at the Bar confers on its members. Large amounts of money were lost by people ill-equipped to lose them, and the likelihood of substantial restitution is quite problematic.

56. Rule 7 prohibits borrowing from clients save in exceptional circumstances. The Rule states in part:

1. The lawyer must not borrow from a client save:
 - (a) (this unconditional exception refers to financial institutions and the like, and is applicable here)
 - (b) this conditional exception refers to related persons defined under the Income Tax Act, and is inapplicable here)
2. (this conditional exception refers to borrowings by the lawyer's spouse and by corporations, syndicates and partnerships in which the lawyer's spouse has a substantial interest, and is inapplicable here)

3. Whether a person lending money to a lawyer....is to be considered a client....is to be determined having regard to all circumstances. If the circumstances are such that the lender...might reasonably suppose that he was entitled to look to the lawyer for guidance and advice in respect of the loan..., the lawyer should consider himself bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

None of the exceptions in Rule 7 applies to the Member. To comply with Rule 7, the Member had a very heavy onus, not met here, to sever his solicitor-client ties with the persons he intended to borrow from such that they would have fairly been regarded, and would have fairly regarded themselves, as former clients, disentitled to look to him for guidance and advice in respect of the loans. They would then have received independent legal representation and appraisals, and the loans would have been either properly secured or never made. In either event, there would have been no conflict of interest. Financial losses by non-exempt clients and those wearing the cloak of a client through loans to their lawyers and the loss of reputation to the legal profession are the very mischiefs that Rule 7 is designed to prevent.

57. The Member's interpretation of the meaning of 'client' in Rule 7 was not credible. He submitted, for example, that a person whose file had closed earlier the same day was no longer a client. We noted the Member's obvious intelligence and his ten years' prior experience at the Bar. It is not sustainable that he could have rationally and thoughtfully believed that the mere closing of a file instantaneously ended the solicitor-client relationship.

58. With respect to the purchase from Mr. McAuley, either the fair market value of the land was the purchase price of \$35,000.00 (in which case the flip to the Member's company, G-7 Investments, for \$50,000.00 was used to inflate the value and obtain a \$45,000.00 mortgage from Mr. Savage) or the fair market value was \$50,000.00 (in which case \$35,000.00 was unfair to Mr. McAuley). The Member's conflicted conduct was improper for a lawyer. The question then arose whether the conduct was fraudulent. We were not afforded any evidence that either \$35,000.00 or \$50,000.00 was a commercially unreasonable figure in the context of local values. It is probable that Mr. McAuley had a reasonable idea of the value of his land, and to our knowledge, Mr. Savage has not filed a complaint with the Society with respect to his mortgage. On the evidence before us, we could not find that Mr. Mauley was underpaid or that Mr. Savage is unhappy with his security and prospects for repayment. Thus, we refrained from finding deliberate fraud by the Member. However, given that a client was involved, we do find that the Member's purchase, flip and mortgage were improper and, in conjunction with the other misconduct, deserving of termination of membership.

59. With respect to the attempts to negotiate directly with the client of another lawyer, we note that Mr. McAuley had been regarded as akin to an uncle in the Bellefeuille family, the Member had acted for him over many years, the attempts occurred when the Member was driving Mr. McAuley to see his new lawyer, and apparently no harm was done. The degree of misconduct under this particular was tempered, but only slightly, by these factors.

60. With respect to the purported signature of the Member's wife on a document, we find that the use thereof was improper and a deliberate attempt to give Mr. MacCallum a false sense of security.

61. The Society submitted that the appropriate range of penalty was from a lengthy suspension to disbarment, and sought disbarment. The Society asked us to consider the consequences on the clients, and the message that a penalty less than disbarment would send to them, the public at large, and other lawyers.

62. The Member submitted that he has learned the meaning of 'client', his competence as a lawyer has not been questioned, he and his family have suffered a great deal in his small community as a result of the lack of success of his real estate venture and the unfavourable publicity surrounding his involvement in the discipline process, and he has suffered enough. He did not submit character evidence, letters of support, or evidence of any physical or psychological impairment. He admitted to financial stress in the early 1990's (a few years after the borrowings arose), expressed remorse at the penalty hearing, and stated that he was one of the founders of the Stormont, Dundas & Glengarry Legal Aid Clinic. He submitted that he had and continues to have faith in his land venture, and that he has always had honest intentions of repaying everyone even though ten lean years have elapsed.

63. The Member also submitted that 30 months have elapsed since he gave his undertaking not to practise, that when he gave it, he expected that the matter would be resolved within six to nine months, and that if he had been suspended then, it is likely that the period of suspension would have ended by now. He sought a reprimand in Committee or Convocation, and submitted that if a suspension were imposed, the 30 months be taken into account. The Member sought commuting of any period of suspension; however, some of the delay was normal and systemic, and some was caused by the Member himself. The delay resulting from his request for a French panel of Benchers was not in any way held against him, as the Committee believes that such a request is completely proper.

64. We considered a suspension of between 18 and 24 months. Had we so recommended, we would have commuted six to nine months owing to delays which were beyond the control of the Committee members and for which the Member ought not to suffer. However, upon a thorough review of the case, the Committee is of the view that a suspension, even a lengthy one, is insufficient penalty given the totality of the misconduct, but that disbarment is not appropriate.

65. When we found professional misconduct for improper borrowing, we determined that it was irrelevant whether the Member had had an honest intention to repay the loans, and that he may have been prevented from doing so because of the drop in the real estate market in the late 1980's and early 1990's. However, we determine that an honest intention to repay, coupled with an inability to do so as a result of economic factors beyond one's control, may have a bearing on penalty. The evidence before us was insufficient to establish that the Member deliberately set out to defraud his clients, and we do recognize that the market slid dramatically at the relevant times. Similar to giving the Member the benefit of the doubt in the Katzer matter, these considerations have caused us to stop short of a recommendation for disbarment.

66. We also noted in partial counterbalance to his argument for a lesser penalty that the Member had had an opportunity to repay substantial amounts of the loans, but did not. In March 1991, the Member received a cheque for \$236,000.00 for his share of fees in a personal injury file from his then co-counsel. The fee settlement gave the Member an early opportunity to repay or at least redeem most if not all of the delinquent loans. Instead, he paid his clients small amounts, paid \$125,000.00 to his senior brokered mortgagees, and used the rest for his own purposes.

67. For the reasons set out above and in greater detail in our Decision, we believe that the public needs protection from lawyers who conduct themselves in the manner of the Member. The instances of misconduct are numerous and the consequences on his clients, grievous. In our view, termination of his membership, although by means other than disbarment, is required. A clear message should be sent to the public and the profession that conduct falling this far below the standard expected of lawyers will not be tolerated, and will receive appropriate sanction.

26th June, 1997

68. It is true that a layperson would likely not suffer a penalty as severe as the loss of professional standing for engaging in conduct similar to that of the Member, but a lawyer who is also an entrepreneur must act, not just in accordance with the ethos of entrepreneurship, but in accordance with the ethos of professional standing imposed partly by the properly stringent Rules of Professional Conduct. Higher standards entail higher penalties. People lose money in other people's ventures every day. We impose our sanctions when the agency of the loss is a conflicted lawyer.

Bradley H. Wright for the Committee

DATED this 14th day of April, 1997

The following correction was made to the Report:

- page 8, paragraph 19, 3rd line - the word "or" be replaced with the word "of"

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

The recommended penalty of the Discipline Committee was that the solicitor be granted permission to resign within 30 days of Convocation hearing this matter failing which he be disbarred.

Both counsel made submissions in support of the recommended penalty.

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

Carried

Re: Nellie Maria LANTEIGNE - Sudbury

The Secretary placed the matter before Convocation.

Ms. Curtis, Ms. O'Connor and Messrs. Adams and Wilson withdrew.

Ms. Budweth appeared on behalf of the Society. Mr. Chris Paliare appeared on behalf of the solicitor who was present.

An application was brought by the Society pursuant to Rule 9 to receive further evidence and the material in dispute were the Affidavits of Nicole Anatol and Sue McCaffrey.

Submissions were made by both counsel.

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

It was moved by Ms. Cronk, seconded by Mr. Crowe that the Affidavits not be received.

Carried

Counsel, the solicitor, the Secretary, the reporter and the public were recalled and informed of Convocation's decision that the material not be received.

Convocation took a brief recess at 4:50 p.m. and resumed at 5:00 p.m.

26th June, 1997

Convocation had before it the Report of the Discipline Committee dated 29th January, 1997, together with an Affidavit of Service sworn 5th February, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 30th January, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th June, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Elvio L. DelZotto, Q.C., Chair
W. Michael Adams
Shirley O'Connor

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

Christina Budweth
for the Society

NELLIE MARIA LANTEIGNE
of the City
of Sudbury
a barrister and solicitor

Alexander Toffoli
for the solicitor

Heard: October 29 &
December 10, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 11, 1996 Complaint D165/96 was issued against Nellie Maria Lanteigne alleging that she was guilty of professional misconduct.

The matter was heard in public on October 29 and December 10, 1996 before this Committee composed of Elvio L. DelZotto, Q.C., Chair, W. Michael Adams and Shirley O'Connor. The Solicitor attended the hearing and was represented by Alexander Toffoli. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D165/96

2. a) She failed to reply to the Law Society regarding a complaint by Michael O'Hara despite letters dated January 31, 1996, February 14, 1996, and February 26, 1996 and telephone messages/requests left on February 13, 1996 and February 21, 1996;
- b) She failed to account to her clients Roger and Diane Fournier for \$5,777.50, more or less, advanced to her;
- c) She failed to reply to the Law Society regarding a complaint by Michael Barnett despite letters dated November 7, 1995, February 14, 1996 and February 26, 1996 and telephone messages/requests left on February 13, 1996 and February 21, 1996;
- d) She failed to fulfil her undertaking given to Michael Barnett and his client to pay property taxes and provide and register a transfer/deed;
- e) She failed to reply to the Law Society regarding a complaint by Helen and Andy Van Drunen despite letters dated November 7, 1995, February 14, 1996 and February 26, 1996 and telephone messages/requests left on February 13, 1996 and February 21, 1996; and
- f) She failed to fulfil her undertaking to the Law Society dated July 24, 1995 to provide full and complete written response to written communications from the Law Society within two weeks of receipt and respond to telephone communications from the Law Society within two business days.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D165/96 and is prepared to proceed with a hearing of this matter on September 17 and 18, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D165/96 with her counsel, Alexander Toffoli, and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitutes professional misconduct. The Solicitor states however that the professional misconduct was inadvertent and due to stress and other unavoidable factors present at the relevant time. Medical and other evidence will be presented at the hearing.

IV. FACTS

4. The Solicitor is 45 years of age. She was called to the Bar in 1978 and carries on her practice as a sole practitioner in Val Caron in the Sudbury area.

Particulars 2(a) and (b) - Fail to reply and fail to account

5. Roger and Diane Fournier retained the Solicitor in 1994 in connection with a real estate transaction which closed in August of 1992. The Fourniers had purchased property in respect of which there was a zoning problem with the intended use for the property. The Fourniers retained the Solicitor to investigate two potential avenues of recourse. First, they sought advice concerning the commencement of an action against the real estate agent and possibly the solicitor who acted for them in the matter. They also wished to discuss the possibility of a rezoning application. During a meeting with the Solicitor on March 4, 1994, the Fourniers provided her with a retainer in the amount of \$1,047.50. A further retainer of \$4,700.00 was provided on August 11, 1994. At the time it was decided that the Solicitor would commence a rezoning application. While it appears that an application for rezoning was prepared, the Solicitor never proceeded with that matter.

6. The Fourniers heard nothing from the Solicitor regarding this matter for some time and in September of 1995 began to call her on a regular basis to determine the status of their file. The Fourniers did not receive any response to their inquiries and in November of 1995 retained Michael O'Hara to pursue the matter on their behalf. Mr. O'Hara wrote to the Solicitor by letter dated November 20, 1995, a copy of which is attached as Exhibit 1 to this Agreed Statement of Facts. That letter asked for an accounting of monies held in trust by the Solicitor as well as a detailed breakdown of services rendered with respect to the rezoning application. The letter also enclosed a direction and sought delivery of the Fournier's file to Mr. O'Hara's office. The Solicitor did not respond.

7. A further letter was sent by Mr. O'Hara on November 27, 1995, a copy of which is attached as Exhibit 2 to this Agreed Statement of Facts. The letter was hand delivered. Mr. O'Hara followed up with a telephone call to the Solicitor's office on November 27, 1995 during which she explained that she was closing her Hammer office and moving all files to Sudbury. She indicated that as a result of this, she might have some difficulty locating the file but assured Mr. O'Hara that the file would be delivered to his office on or by Monday, December 4, 1995. The Solicitor did not deliver the file as promised.

8. Mr. O'Hara sent a further letter dated December 6, 1995, a copy of which is attached as Exhibit 3 to this Agreed Statement of Facts. The Solicitor did contact Mr. O'Hara's office later that day and indicated that the file could be picked up at her office on the afternoon of December 11, 1995.

9. The file was available on December 11, 1995 to the extent that it contained photocopies of the Fournier's original documents without a report or a statement of account.

10. As a result, Mr. O'Hara wrote a further letter dated December 11, 1995, a copy of which is attached as Exhibit 4 to this Agreed Statement of Facts.

11. Mr. O'Hara happened to see the Solicitor outside of his office on December 21, 1995, at that time, she attributed some of her difficulties in producing the entire file to health problems she was experiencing. As a result, Mr. O'Hara allowed the Solicitor further time to comply with the Fournier's request, which was set out in a letter dated December 27, 1995, a copy of which is attached as Exhibit 5 to this Agreed Statement of Facts. Mr. O'Hara requested that five specific matters be addressed by January 2, 1996. No response was received from the Solicitor. Mr. O'Hara attempted to contact the Solicitor two additional times on January 8, 1996. Following the Solicitor's failure to communicate with Mr. O'Hara after those telephone messages, Mr. O'Hara made a complaint to the Law Society by letter dated January 9, 1996, a copy of which is attached as Exhibit 6 to this Agreed Statement of Facts.

12. On January 21, 1996, a staff member of the Society telephoned the Solicitor regarding Mr. O'Hara's complaint. She indicated she was having a number of personal and work related problems but would respond that week. The Solicitor did not respond.

13. The Society wrote to the Solicitor by letter dated January 31, 1996 asking for her response to the complaint within two weeks. No response was received.

14. On or about February 5, 1996, the Solicitor telephoned the Society and advised she would have a response to the Society by February 8, 1996. No response was received.

15. On February 13, 1996, the Society telephoned the Solicitor regarding the complaint. The Solicitor advised that she could not find the Society's letters and asked that they be re-sent. The Solicitor indicated that she would respond by February 19, 1996.

16. The Society wrote to the Solicitor on February 14, 1996.

17. On February 21, 1996, a staff member of the Society telephoned the Solicitor who advised that her response would be delivered by overnight courier that day. No response was received.

18. By letter dated February 26, 1996, the Society wrote to the Solicitor by letter that was delivered by registered mail advising that the matter would be referred to the Chair and Vice-Chairs of Discipline if her response was not received within seven days. No response was received, although the Solicitor collected the registered mail item on March 1, 1996. A copy of the Society's February 26, 1996 letter is attached as Exhibit 7 to this Agreed Statement of Facts.

19. On March 29, 1996, the Solicitor telephoned the Society and left a message advising of additional personal problems that she was experiencing and undertaking to provide a response to Mr. O'Hara's complaint the following week. No response was received.

Particulars 2(c) and (d) - Fail to reply and fail to fulfill undertaking

20. Michael Barnett acted for the purchasers on a real estate transaction in which the Solicitor acted for the vendors. The closing of the matter was scheduled for April 12, 1995. On the day of closing, it was discovered that the transfer was signed incorrectly. Rather than delaying the closing, Mr. Barnett agreed to accept the Solicitor's undertaking to provide a newly executed transfer and to register same. The Solicitor also gave an undertaking to pay the tax arrears in the amount of \$256.00 from the sale proceeds. A copy of the Solicitor's undertaking is attached as Exhibit 8 to this Agreed Statement of Facts. The Solicitor sent a trust cheque to the Township in payment of the tax arrears, the cheque was not honoured by the Solicitor's bank.

21. Mr. Barnett wrote to the Solicitor by letter dated May 26, 1995 to complain of her failure to honour her undertaking. Not having received any response, Mr. Barnett wrote to the Law Society by letter dated June 6, 1995 to complain of her conduct. Copies of both letters are attached collectively as Exhibit 9 to this Agreed Statement of Facts. The Law Society wrote to the Solicitor to seek her comments respecting the complaint by letter dated June 20, 1995. The Solicitor did not respond. A representative of the Law Society left messages with the Solicitor's office on July 25 and 27, 1995 asking for a reply to its correspondence. The Solicitor replied to the July 27, 1995 message indicating that she would courier her response. No response was received and a further call was placed to the Solicitor on July 31, 1995. The Solicitor indicated she would be sending her response by registered mail. The Solicitor did reply to Mr. Barnett's complaint by letter dated July 28, 1995, a copy of which is attached as Exhibit 10 to this Agreed Statement of Facts.

22. After receiving the Solicitor's response, the Solicitor sent further information complaining of Mr. Barnett's conduct in another matter to the Law Society.

23. By letter dated November 7, 1995, the Law Society communicated with the Solicitor acknowledging the further information sent by her and questioning the status of her undertaking given in relation to a real estate complained of by Mr. Barnett and seeking the status of her completion of those undertakings. A copy of the Law Society's letter is attached as Exhibit 11 to this Agreed Statement of Facts. The Solicitor did not respond.

24. A staff member of the Society telephoned the Solicitor on February 13, 1996. The Solicitor indicated that she could not find the Law Society's letters and asked that they be re-sent to her. She indicated she would respond by February 19, 1996. By letter dated February 14, 1996, the Society wrote to the Solicitor confirming the telephone conversation of February 13, 1996. The Solicitor's not having been received by the Society on February 19, 1996, a staff member of the Society telephoned the Solicitor on February 21, 1996. The Solicitor advised that her response would be delivered via overnight courier that day. No response was received.

25. By letter dated February 26, 1996, sent registered mail, the Society wrote to the Solicitor advising the matter would be referred to discipline if a response was not received within seven days. The Solicitor signed for the registered mail item on March 1, 1996, but did not respond to the Society. A copy of the February 26, 1996 letter is attached as Exhibit 12 to this Agreed Statement of Facts.

26. On March 29, 1996, the Solicitor called the Society and left a message advising of personal problems that she was experiencing and undertaking to deliver a response by the following week. No response was ever received.

Particular 2(e) - Fail to reply to the Society

27. Helen and Andy van Drunen, the Solicitors clients, were vendors of a parcel of land that they had severed from their property. The van Drunens entered into an agreement of purchase and sale with the Owacs. The Royal Bank was to provide first mortgage financing for the Owacs. The Royal Bank was represented by Patrick Cull. The financing of the transaction also involved a vendor take-back mortgage.

28. The Solicitor had acted for the van Drunens in respect of the severance of the parcel. At the time of the closing, a certificate of consent from the Land Division Committee was to be registered on title along with the transfer. It was the Solicitor's responsibility to obtain the certificate. The certificate was not, however, registered. In fact, the certificate was never taken out by the Solicitor and the approval of the Committee lapsed on June 24, 1992.

26th June, 1997

29. The van Drunens have embarked on the process of re-submitting their application to the Land Division Committee and have taken the position that the Solicitor is responsible for reimbursing them for any expenses incurred in re-obtaining the severance. The van Drunens corresponded with the Society to complain about the Solicitor's conduct by letter dated November 11, 1994, a copy of which is attached as Exhibit 13 to this Agreed Statement of Facts. The Society wrote to the Solicitor requesting her response by letter dated November 22, 1994. The Solicitor finally responded by letter dated June 12, 1995, a copy of which is attached as Exhibit 14 to this Agreed Statement of Facts.

30. The Law Society initially took the position that the Solicitor's response provided a satisfactory answer to the clients' complaint. This information was communicated to the clients who provided additional information by letter dated August 8, 1995, a copy of which was enclosed with the Society's correspondence to the Solicitor of November 7, 1995 seeking her further response. The Solicitor did not reply. Copies of both correspondence are attached collectively as Exhibit 15 to this Agreed Statement of Facts.

31. On February 13, 1996, a staff member of the Society telephoned the Solicitor who indicated that she could not find the Society's letters and asked that they be re-sent to her. She undertook to respond to them by February 19, 1996. On February 14, 1996, a staff member of the Society wrote to the Solicitor to confirm the February 13, 1996 telephone conversation. No reply was received.

32. On February 21, 1996, a staff member of the Society telephoned the Solicitor who advised that her response would be delivered via overnight courier that day. No response was received.

33. The Society wrote to the Solicitor via registered mail on February 26, 1996 advising that the matter would be referred to the Chair and Vice-Chairs of Discipline if her reply was not received within seven days. A copy of the February 26, 1996 is attached as Exhibit 16 to this Agreed Statement of Facts. No response was received. The Solicitor did sign for this registered mail item on March 1, 1996.

34. On March 29, 1996, the Solicitor telephoned the Society to advise that she was having personal problems but that she would provide responses the following week. No response has been received to date.

Particular 2(f) - Breach of Undertaking

35. On July 24, 1995, the Solicitor gave an Undertaking to the Society in connection with a complaint of professional misconduct arising out of her failure to respond to the Society's initial correspondence regarding the van Drunen complaint. A copy of the Undertaking is attached as Exhibit 17 to this Agreed Statement of Facts. On the basis that a reply had been provided and the Undertaking given, the matter was converted to an Invitation to Attend. The Solicitor acknowledges that her failure to respond to the Society constitutes a breach of this Undertaking as supported by the facts set out above.

V. DISCIPLINE HISTORY

36. On January 29, 1991 the Solicitor appeared before the Discipline Committee for failing to file her Forms 2/3. The matter was withdrawn and converted to an Invitation to Attend.

DATED at Toronto this 9th day of August, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends to Convocation that;

- a) Nellie Maria Lanteigne be suspended for three months and indefinitely thereafter until the Solicitor produces a report by a psychiatrist approved by the Secretary of the Law Society of Upper Canada stating that the Solicitor is fit to practise;
- b) the Solicitor then be required to practise for one year under the supervision of a lawyer approved by the Secretary of the Law Society of Upper Canada;
- c) the Solicitor be required to participate in and co-operate with the Practice Review Program of the Law Society.

REASONS FOR RECOMMENDATION

The Solicitor admitted to professional misconduct as set out in the Complaint and the Agreed Statement of Fact. The matters complained of all took place at a time in the Solicitor's life when she had serious personal problems in her marriage. The unfortunate breakup was compounded by the fact that she had shared office space with her husband at that time and because of that circumstance needed to move to her new premises. During the move many of her records were not easily available to answer the Law Society requests to produce information about her handling of files for clients.

The Solicitor introduced medical evidence to explain her actions.

Dr. Larry Doyle M.D., a forensic psychiatrist testified that he saw the Solicitor for one and a half hours, considered what the Solicitor saw as the problem and discussed the facts related to her stress. He testified that the failing marriage was the main factor. He referred to the problem as post traumatic stress disorder. He stated she had functional impairment at that time and had no focus, but could with proper treatment be able to function normally fairly soon.

Dr. Doyle said that there was no medication given to her by him and that if she could not do what was required by the Law Society it was up to her to decide if she needed any.

In a letter Dr. Jacalski gave an opinion that because of the stress disorder the Solicitor could not appear in September at the Law Society hearing.

Dr. Doyle was unaware of this letter and said he would have told her to appear at the September hearing. In cross examination, he was asked whether if he had been told that she had not replied, would he change his diagnosis. He replied that he would not; however, he would have concluded she needed medication and counselling.

He was asked what he would conclude if she was not functioning at a level to respond to the Law Society and could lose her licence to practice.

He further stated that with counselling she should be at a normal level of functioning within two months and should continue counselling for about two years.

Mary Laughlin was called to testify about the Solicitor's counselling with her. Suffice it to say that she was supportive of the Solicitor and felt that she could if the stress factors were removed function normally.

26th June, 1997

The Solicitor testified on her own behalf. It was clear that under stress she could not control her emotions. Although her marriage was over at the time of the hearing, she had difficulty during her testimony in chief, dealing with her personal problems. It is clear to the Committee that the Solicitor is not fit to practise at this time.

There is no finding of malice or of intent to mislead the Law Society, and there is no evidence of misappropriation.

The fact that the Solicitor was unable to deal with the Law Society requests for information leads the Committee to the conclusion that the Law Society must protect the public and it is the Committee's recommendation which will accomplish that end.

Nellie Maria Lanteigne was called to the Bar on June 16, 1978.

ALL OF WHICH is respectfully submitted

DATED this 29th day of January, 1997

Elvio L. DelZotto, Q,C,. Chair

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

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months and indefinitely thereafter until the solicitor produces a report by a psychiatrist approved by the Secretary stating that the solicitor is fit to practise and upon returning to practice be supervised by a lawyer approved by the Secretary and be required to participate in and co-operate with the Practice Review Program.

There were submissions by Mr. Paliare in support of a lesser penalty of the reprimand in Convocation.

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

Mr. Paliare made further submissions in reply.

There were questions for both counsel from the Bench.

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

It was moved by Mr. MacKenzie, seconded by Ms. Backhouse that the solicitor be reprimanded in Convocation on her undertaking to continue psychiatric treatment for as long as her doctor feels it is necessary.

Carried

It was moved by Mr. Wright, seconded by Mr. Cole that the solicitor be reprimanded in Committee on the condition she undertake to continue with psychiatric treatment until in the opinion of the psychiatrist it is no longer required and continue practising under the supervision of another lawyer.

Not Put

26th June, 1997

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded in Convocation on her undertaking to continue psychiatric treatment for as long as her doctor feels it is necessary.

CONVOCATION ROSE AT 7:10 P.M.

Confirmed in Convocation this *26* day of *September*, 1997

Treasurer