

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 25th November, 1999
1:30 p.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Arnup, Banack, Bindman, Braithwaite, Carey, Chahbar, Cherniak, Coffey, Crowe, Diamond, E. Ducharme, Epstein, Hunter, Murray, Porter, Potter, Puccini, Ross, Simpson, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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Ms. Lesley Cameron, Senior Counsel - Discipline introduced Ms. Kelley McKinnon who acted as Duty Counsel.

Re: Timothy David SALOMAA - Mississauga

The Secretary placed the matter before Convocation.

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

Ms. Cameron appeared on behalf of the Society and the solicitor appeared on his own behalf assisted by Duty Counsel.

Convocation had before it the Report of the Discipline Committee dated 5th June, 1999, together with an Affidavit of Service sworn 11th June, 1999 by Pal Singh that he had effected service on the solicitor by registered mail on 9th June, 1999 together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th November, 1999 (marked Exhibit 1) together with the Report of the Discipline Committee dated 3rd June, 1999, together with an Affidavit of Service sworn 11th June, 1999 by Pal Singh that he had effected service on the solicitor by registered mail on 9th June, 1999, together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th November, 1999 (marked Exhibit 2). Copies of the Reports having been forwarded to the Benchers prior to Convocation, the reading of them were waived.

The Report of the Discipline Committee dated June 5th, 1999 is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Helene B. Puccini, Chair
Robert Martin
Tamara Stomp

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

Kathryn Seymour
for the Society

TIMOTHY DAVID SALOMAA
of the City
of Mississauga
a barrister and solicitor

Duty Counsel
for the solicitor

Heard: April 28, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 15, 1998 Complaint D1/98 was issued against Timothy David Salomaa alleging that he was guilty of professional misconduct.

The matter was heard in public on April 28, 1998 before this Committee composed of Helene Puccini, Chair, Robert Martin and Tamara Stomp. The Solicitor attended the hearing and was represented by Duty Counsel. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D/198

2. a) He breached his undertaking to the Law Society executed on June 27, 1995;
- b) He failed to produce his books and records despite Law Society's letters dated April 24, 1997, June 6, 1997 and September 12, 1997 and meetings of May 21, 1997 and June 12, 1997; and
- c) He practised while under suspension during the period from September 27, 1996 to November 25, 1997.

Evidence

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

"AGREED STATEMENT OF FACTS"I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D1/98 and is prepared to proceed with a hearing of this matter on April 28 and 29, 1998.

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, R.S.O. 1990 c. S.22.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D1/98 and admits the particulars. The Solicitor also admits that the particulars, together with the facts as set out below, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in April, 1976. He has been suspended pursuant to an Order of Convocation since September 27, 1996, for non-payment of his Errors and Omissions premiums.

Background

5. From on or about March 28, 1991 to the present, the Solicitor has had his membership rights and privileges with the Law Society suspended for a total of ten suspension periods totalling over 20 months which are summarized in the following table:

	Date Suspended	Particulars	Date Re-Instated
1	September 27, 1996	Non-payment of E&O Levy	Remains Suspended
2	March 1, 1996 Complaint D316/94	Special Discipline Convocation - Jan. 25, 1996 (4 months)	July 1, 1996
3	December 1, 1995 Complaint D166/93	Special Discipline Convocation - Oct. 27, 1995 (3 months) + other terms	March 1, 1996
4	November 1, 1993	Non-payment of E&O Levy (2 months)	December 23, 1993
5	June 26, 1993 Complaint D156/92	Special Discipline Convocation - June 24, 1993 (1 month) + costs	July 26, 1993

6	December 1, 1992	Non-payment of Annual Fees (6 days)	December 7, 1992
7	June 5, 1992	Non-payment of E&O Levy (1 month)	July 7, 1992
8	November 29, 1991	Non-payment of E&O Levy (4 months)	March 20, 1992
9	March 28, 1991	Non-payment of Annual Fees (2 months)	May 21, 1991

6. As evident from the above table, the Solicitor has been the subject of discipline by the Law Society on four separate occasions, the particulars of which are summarized in the following table:

Complaint #	Particulars of Complaint	Date + Disposition Details
D120/91	failed to reply to Society	Dec 17, 1991: Reprimand in Committee
D45/92	practised while under suspension	July 9, 1992: Reprimanded in Committee
D156/92	failed to serve client re: mortgage transaction (item #5 above)	June 24, 1993: Suspended for one month commencing June 26, 1993 + costs of \$4,500 by Jan 26, 1994
D166/93	Re: loan transaction - acted in conflict of interest; failed to serve client; failed to advise client to seek ILA (item #3 above)	Oct 27, 1995: Suspended for three months commencing Dec 1/95; to enrol in Practice Review Program (Professional Standards Dept. - LSUC); undertake not to act for both sides in any transaction; pay costs of \$6,000 <i>prior</i> to resuming practice; undertake not to attempt to set aside mortgage on his cottage property
D316/94	practised while under suspension; failed to maintain sufficient trust balances to meet trust obligations to clients (item #2 above)	Jan 25, 1996: Suspended for four months, commencing March 1, 1996 + to pay costs of \$2,000

2(a) Re: Breach of Undertaking

7. In the context of the most recent prior discipline proceeding against the Solicitor (Complaint D316/94), the Solicitor executed an Undertaking on June 27, 1995 (Tab 1, Document Book) in which he undertook to:

1. maintain his client trust cash receipt and cash disbursement ledgers on a daily basis;
2. maintain his trust comparison (trust bank reconciliation) ledger on a monthly basis;
3. submit his trust comparison ledger to the Law Society on a monthly basis commencing July 25, 1995 and thereafter on the 25th day of each month for five months.

8. The Solicitor has since breached his Undertaking to the Law Society by failing to maintain his books and records on a current basis as summarized in the following table:

Regulation	Record	Produced	Date of Last Entry	Arrears Y/N
15(1)(b)	Trust Receipts Journal	May 21/97	September, 1996	Y
15(1)(a)	Trust Disb. Journal	May 21/97	Oct. 23, 1996	Y
15(1)(h)	Trust Comparisons	June 12/97	September, 1996	Y
15(1)(e)	General Receipts Journal	Not Produced		
15(1)(f)	General Disb. Journal	Not Produced		
15(1)(c)	Client trust ledgers	Not Produced		
15(1)(g)	Fee book	Not Produced		
15(1)(j)	Trust Deposits			
15(1)(j)	Trust Bank Statements			

2(b) Re: Failure to Produce Books and Records

9. By letter dated April 24, 1997, Janet Merkley, an examiner with the Law Society, advised the Solicitor that she had been instructed to conduct an investigation of the Solicitor's books and records and, in that regard, that she had attended at the Solicitor's office on Tuesday, April 22, 1997, and had left her business card. The examiner further advised the Solicitor that, if he had not addressed the matter and responded to her within one week of her letter (dated April 24, 1997), the matter would be referred to the Discipline Committee for further action (Tab 3).

10. From that time and to the present, the Solicitor was delinquent in responding to the Law Society and has failed to produce the required books and records. The Law Society's efforts to conduct an audit of the Solicitor's practice are summarized in the following table:

Date	Produced	Particulars
April 22, 1997	N/A	Examiner left business card at Solicitor's office with receptionist + asked that Solicitor call her. (Tab 3)
April 24, 1997	N/A	Examiner sent letter by regular and registered mail to Solicitor requesting that he produce books and records. (Tab 3)
April 29, 1997	N/A	Solicitor telephoned Examiner. Solicitor stated: " <i>No, I am not practising. I am finishing up - loose ends. Doing other work - not practising. My accountant has my books and is in Florida. Accountant back on that day. (May 7th) Will fax in last 2 or 3 bank statements showing no activity.</i> " Solicitor stated he would call Examiner on May 7th. (Tab 4)
May 21, 1997	Produced Trust Receipts and Disbursements Journals to September, 1996 only.	Solicitor stated: " <i>No, not practising. No, not since September - think 30th. No - not going to practise. Cannot afford to. I am a consultant - process immigration. The account may have Royal Bank deposit book. Will look for it. Will supply general - next week or next.</i> " Solicitor requested that Examiner take his books with and copy them outside of his office. He did not have space for Examiner. Examiner did as requested. (Tab 5)
June 6, 1997	N/A	Examiner sent Solicitor letter by fax and regular mail. She requested appointment for either June 11th or 12th. Examiner stated that his trust account would be frozen at that time. She requested that Solicitor bring his books up to date. (Tab 6)
June 11, 1997	N/A	June 12th appointment confirmed. (Tab 7)

June 12, 1997	<p>Some client files produced;</p> <p>Trust comparisons in arrears - last one produced was Sept, 1996 - showing overdrawn client trust ledger cards;</p> <p>Trust disbursements journal (in arrears) produced showing activity during suspension period - Sept 30 to Oct 23, 1996;</p> <p>Trust receipts journal (in arrears) produced showing activity during suspension period - Sept 30, 1996;</p> <p>Trust bank statements and cancelled trust cheques produced showing activity during suspension period - Sept 30 to Dec 13, 1996;</p> <p>Trust deposit slips produced showing deposits during the suspension period from Sept 30 to Nov 29, 1996</p>	<p>Examiner interviewed Solicitor. He stated when questioned on Practising Under Suspension: <i>"I had ongoing stuff to do. I transferred files over - did not do work on them. Work done prior to suspension. Did not practise during time and not now. I am doing immigration work. Have an agent in Middle East. Ad in paper over there. Application (pre-screening) form. I review questionnaire and see if they have required points to come here. Also - export business. I am not acting as a solicitor on these immigration matters."</i></p> <p>Examiner requested further files and documentation be produced.</p> <p>Solicitor's trust account at the Scotiabank was frozen at this time.</p> <p>(Tab 8)</p>
September 12, 1997	N/A	Examiner sent Solicitor letter by fax, regular and registered mail requesting further books and records, enclosing a copy of a list given to him, dated June 12, 1997 and also enclosing a memo from the Law Society on suspended solicitors not being allowed to practise. (Tab 9)
September 29, 1997	N/A	Examiner telephoned Solicitor and made appointment for October 17, 1997 at 9:30 a.m. (Tab 10)
October 16, 1997	None	Solicitor called and left message with Lana Lauda at LSUC cancelling our appointment for tomorrow stating he would re-schedule at the Society's convenience. He told her that he had to go to Hamilton. Solicitor has not contacted LSUC since. (Tab 10)

11. To date, the Solicitor has failed to remedy his breach of Undertaking and has failed to produce his books and records to the Law Society.

2(c) Re: Practising While Under Suspension

12. By registered letter dated September 27, 1996, and signed for on October 1, 1996, the Solicitor was advised that his rights and privileges as a member of the Society were suspended for one year beginning September 27, 1996 and from year to year thereafter for failure by the Solicitor to comply with the requirements respecting the Society's Errors and Omissions Insurance Plan for 1996 (Tab 2). The Solicitor remains suspended to this date on the basis of his non-payment of his E & O levy.

13. However, during this most recent period of suspension that commenced on September 27, 1996 and is still in effect, the Solicitor has acted on several matters which are summarized by the following table:

Client	Date of Closing	Date of Services Performed	Services Performed by Solicitor
Ventresca (Tabs 11-13)	N/A	Sep 27/96 Oct 1/96 Oct 27/96	Affidavit sworn by client, commissioned by Solicitor; Letter to Solicitor from David Ball - ongoing discussions; Letter to Solicitor from David Ball - ongoing discussions (last two dates: Solicitor accepted faxes in his office as Barrister & Solicitor)
Orszulik/Corrance (Tab 14)	Sept 26/96	May 5/97	Discharge of Mortgage (Solicitor accepted fax as Barrister & Solicitor)

Duff (Tab 15)	Sept 30/96	Sept 30/96 Sept 30/96 Sept 30/96 Sept 30/96 Sept 24/96 Sept 30/96 Sept 30/96 Oct 15/96	Agreement of Purchase & Sale; Direction - funds payable to Solicitor; Statement of Adjustments; Registered Transfer & Affidavit (Affidavit signed by Solicitor); Registered Mortgage; Requisition Letter - noting closing date of purchase; Certified Cheque Vouchers; Reporting Letter; Solicitor's Final Report
Karakatsanis (Tab 16)	Nov 29/96	Nov 29/96 Nov 12/96 Nov 29/96 Nov 29/96	Agreement of Purchase & Sale; Mortgage Discharge Statement; Letter to Bank from Solicitor - requesting mortgage discharge; Statement of Adjustments; Statement of Funds

14. The Solicitor has advised the Law Society that he does not intend to continue to practise law and is presently working as an immigration consultant.

V. PRIOR DISCIPLINE

15. Refer to paragraph 6, above.

DATED at Toronto, this 27th day of April, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Timothy David Salomaa be suspended for a period of six months and that there be no order as to costs.

REASONS FOR RECOMMENDATION

At the commencement of the hearing, the Committee was advised that the Solicitor agreed that the conduct complained of constituted professional misconduct. The Law Society was seeking disbarment, a penalty the Solicitor disagreed with. The Solicitor, through duty counsel, Linda Fong, advised the Committee that the Solicitor no longer wished to practise law and wished to resign. The Solicitor had been administratively suspended for non-payment of errors and omissions insurance. He was still administratively suspended at the date of the hearing.

The Committee was asked to amend particular 2(c) of the Complaint to delete the words "to the present" and to insert the words, "to November 25, 1997". This was done and the amended Complaint, particular 2(c), now read, "He practised while under suspension during the period from September 27, 1996, to November 25, 1997".

The Committee made a finding that the Solicitor actually practised while under suspension for the period from October 1, 1996, until November 29, 1996. This is a period of only two months, not the fourteen months alleged in the amended particular 2(c). The Committee queried what should be the correct date for the commencement of the administrative suspension. Counsel for the Law Society argued that the suspension should run from September 27, 1996, the date that Convocation made the order. The Solicitor received actual notice of the suspension when he signed for the registered letter on October 1, 1996, which gave him written notice of the September 27, 1996 order of Convocation. The Law Society argued that September 27, 1996 should be the effective date of the suspension as a solicitor is responsible for knowing his status at all times and is responsible for maintaining his status in good standing. The Committee was satisfied that the Solicitor had actual notice of his suspension on October 1, 1996. It found that in the absence of any evidence that the Solicitor was avoiding service of the registered letter giving notice of the administrative suspension, it should accept that the suspension commenced on the date that the Solicitor actually received notice of the suspension, October 1, 1996.

The Committee found that the Solicitor effectively stopped practising law on November 29, 1996, almost two months after he was administratively suspended on October 1, 1996, and commenced working as an immigration consultant. Because of a previous discipline matter the Solicitor had given an undertaking to the Society on June 27, 1995, to provide the Society with monthly trust reconciliation statements. It appeared that the Solicitor also stopped submitting these statements to the Law Society when he was suspended on October 1, 1996. Having stopped providing these statements to the Law Society he was guilty of a breach of undertaking which resulted in particular 2(a) of the Complaint being issued. The Solicitor still had not produced his books and records at the date of the hearing, this being the subject matter of particular 2(b).

The Law Society counsel referred the Committee to the O'Leary case, which set out the general rule as to what should be the appropriate penalty for practising while under suspension. The Committee accepted the position that practising while under suspension constituted a serious breach of a solicitor's duty to his profession and to the public. By practising while suspended the Solicitor put the public at serious risk because he was practising without liability insurance. The Committee was also mindful of the fact that this Solicitor had been administratively suspended for either non-payment of fees or insurance on a number of previous occasions. The Committee accepted the proposition that in a case such as this one, a solicitor who practises while under suspension on more than one occasion should be treated more severely than in a case where there is a single default in a single period of suspension. The Committee agreed that the general rule should be applied in this case and that the penalty should be at least a period of suspension equal to the period of practising while under suspension. Also, an additional period of suspension be imposed as a specific and general deterrent. The Solicitor should not be put in a better position by the disposition of the case than he would have been in had there been a compliance with professional obligations.

The Law Society was seeking a penalty of disbarment in this case on grounds that the Solicitor was ungovernable, largely due to his discipline history. Counsel noted that in a previous discipline order regarding this Solicitor, dated January 25, 1996, the author noted that, "The Solicitor's record is becoming a serious one that may very well be approaching the type that would label the Solicitor as ungovernable". This Committee was referred to the cases of Cloutier, MacGregor, Nicholson, Donohue, Woodley, and Bronstein; cases in which the solicitors were disbarred for ungovernability.

Duty counsel argued that the Solicitor was seeking permission to resign and had no intention or desire to practise law. Duty counsel argued that disbarment is the most serious penalty and should be reserved for most serious cases. She cited "Legal Ethics" by Gavin Mackenzie for the observation that most disbarments result from misappropriations, convictions for serious criminal offences, and other serious professional misconduct. This case by comparison was far less serious than those types of cases and should not warrant a penalty of disbarment. This Solicitor has not engaged in conduct in anyway similar to these types of cases. She noted as mitigating circumstances that the Solicitor had signed an Agreed Statement of Fact, had co-operated with the Law Society; and had signed an undertaking not to practise law on March 17, 1998. She noted also that the cases cited above for ungovernability usually involved solicitors who did not show up at their hearings and did not co-operate with the Law Society, which was not the case here. She argued that there was no effective difference between disbarment and permission to resign except that the member would be humiliated by disbarment.

The Solicitor advised the Committee that he was suffering from high blood pressure and had been having financial difficulties. He said that at the time he had not been anticipating that his premium from L.P.I.C. would be so large. It was over \$14,000.00. He was not able to pay this amount at one time and had asked L.P.I.C. to give him some time to pay. They apparently refused this request.

On the evidence, the Committee could not find that the Solicitor was ungovernable and, therefore, the penalty of disbarment had to be rejected. The Committee also found that the penalty of permission to resign was too severe in this case as well. The Committee was of the opinion that the penalty imposed must be equitable. The Committee held that it was not their role to simply recommend a penalty because the Solicitor requested it. In this case the wrongdoing was serious and the discipline history was extensive. The appropriate penalty appeared to be a significant period of suspension while taking into consideration all other relevant factors, including mitigating factors, such as the Solicitor's co-operation with the Law Society. This appeared to be a case where the Solicitor appeared to have had some financial problems and had given up on the practice of law. The Committee agreed that it would be appropriate to follow the general rule and to impose a more severe penalty that would have been appropriate in a case where there was no discipline history. For these reasons, the Committee recommends that a period of suspension of six months be imposed. This does not appear to be a proper case for making an order for costs against the Solicitor. He said he was having financial difficulties and has shown some co-operation with the Law Society.

Timothy David Salomaa was called to the Bar on April 8, 1976.

ALL OF WHICH is respectfully submitted

DATED this 5th day of June, 1999

Helene Bruce Puccini, Chair

The Report of the Discipline Committee dated June 3rd, 1999 is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Tamara K. Stomp, Chair
Thomas E. Cole
Gerald A. Swaye, Q.C.

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

Kathryn Seymour
for the Society

TIMOTHY DAVID SALOMAA
of the City
of Mississauga
a barrister and solicitor

Duty Counsel
for the solicitor

Heard: November 17, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D104/98 was issued on July 7, 1998 against Timothy David Salomaa alleging that he was guilty of professional misconduct.

The matter was heard in public on November 17, 1998 before this Committee composed of Tamara Stomp, Chair, Thomas E. Cole and Gerald A. Swaye, Q.C. The Solicitor attended the hearing and was represented by Duty Counsel. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D104/98

2. b) He failed to reply to the Law Society regarding a complaint from a fellow Solicitor and questions concerning his acting for a vendor in a real estate transaction in June 1997.

[particular 2a) was withdrawn on consent]

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 D104/98 and is prepared to proceed with a hearing of this matter on November 17 and 18, 1998.

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 D104/98 and admits the particulars. The Solicitor also admits that the particulars, together with the facts as set out below, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in April, 1976. He has been suspended pursuant to an Order of Convocation since September 27, 1996, for non-payment of his Errors and Omissions premiums.

2(b) Re: Failure to Reply to the Law Society

5. In or around June of 1997, the Solicitor acted for Raffaele Iatomasi as Vendor in the sale of the property at 2268 Perran Drive, Mississauga. By letter dated June 23, 1997, the Solicitor replied to a letter of requisitions regarding the transaction from the purchaser's Solicitor, Mr. Nick Mircheff (Tab 2).

6. On the date of closing, June 30, 1997, the Solicitor provided a personal Undertaking to the law firm, Mircheff & Mircheff, with regard to the real estate transaction (Tab 3).

7. By letter dated February 6, 1998, Mr. Mircheff advised the Law Society that the Solicitor had failed to comply with the Undertaking of June 30, 1997, which the Solicitor had provided to Mr. Mircheff's firm in relation to the Iatomasi real estate transaction. Mr. Mircheff enclosed copies of three letters dated October 16, 1997, December 8, 1997, and January 12, 1998 which he had faxed to the Solicitor requesting confirmation that the Undertaking had been fulfilled. As he had received no response, Mr. Mircheff requested the Law Society's assistance (Tab 4).

8. By letter dated March 9, 1998, sent to the Solicitor's address of record with the Law Society, a Complaints Officer of the Law Society enclosed a copy Mr. Mircheff's letter of February 6, 1998, and asked the Solicitor to comment on the fact that he had signed an Undertaking on June 30, 1997, which indicated that he had represented a party to a real estate transaction while he was suspended from the practice of law. The Complaints Officer also requested that the Solicitor indicate his intentions with respect to the Undertaking which was the subject of Mr. Mircheff's complaint. She advised the Solicitor of his duty to respond promptly to communications from the Law Society (Tab 5).

9. Upon obtaining a new address for the Solicitor, the Complaints Officer, by letter dated, March 24, 1998, resent her letter of March 9, 1998 to the Solicitor at the new address, and requested that the Solicitor reply to her letters within seven days (Tab 6). The Solicitor did not respond.

10. The Complaints Officer telephoned the Solicitor on April 7, 1998. She spoke with Sharon Salomaa who indicated that she expected the Solicitor home around 5:30 p.m. The Complaints Officer left a message with Ms. Salomaa for the Solicitor to return the call and instructed that if she was not available when he called back, that he leave a voice mail message indicating when she could expect his response to the letter from Mr. Mircheff. Ms. Salomaa indicated that she would give the Solicitor this message. The Solicitor returned the call that day and left a message advising that he had received the Law Society's letter only two or three days prior and that he would provide a written response by facsimile by the following Wednesday, April 15, 1998. The Complaints Officer's notes from these telephone transactions are reproduced at Tab 7 of the Document Book.

11. On April 15, 1998, the Solicitor faxed 3 pages to the Law Society including: a facsimile cover page, a draft Certificate of Discharge of Lien, and draft Discharge of Charge/Mortgage. The Solicitor advised the Law Society on the fax cover page that he would advise of the registration particulars of the documents by the end of the week (Tab 8).

12. On April 16, 1998, the Law Society spoke to the Solicitor on the telephone. He again advised that he would register the necessary documents the following day and would advise the Law Society of the particulars. Later that day, the Complaints Officer contacted the Solicitor by telephone and left him a message advising him that, while he had provided some documents, he had not addressed the issue of practising under suspension. The Complaints Officer requested that the Solicitor respond to the Society in writing or by facsimile as soon as possible. The Complaints Officer's notes from these telephone transactions are reproduced at Tab 7 of the Document Book. The Solicitor did not respond to the issue of practising under suspension nor did he send confirmation of registration of the draft documents he had provided to the Society.

13. By letter dated April 22, 1998, which was sent via registered and ordinary mail, and was signed as received on April 24, 1998, the Complaints Officer advised the Solicitor that she had not received a response from him to the issue of his practising while under suspension nor confirmation of registration of the documents faxed to the Law Society on April 15, 1998. She advised the Solicitor of his professional obligation, pursuant to Rule 13, Commentary 3, to respond promptly to the Law Society, and further advised that if the Solicitor failed to respond within seven days of her letter, the matter would be referred to Discipline (Tab 9). The Solicitor did not respond.

14. To date the Solicitor has not replied to the Law Society's requests for information.

PRIOR DISCIPLINE

15. From on or about March 28, 1991 to the present, the Solicitor has had his membership rights and privileges with the Law Society suspended for a total of ten suspension periods totalling over 20 months which are summarized in the following table:

	Date Suspended	Particulars	Date Re-Instated
1	September 27, 1996	Non-payment of E&O Levy	Remains Suspended
2	March 1, 1996 Complaint D316/94	Special Discipline Convocation - Jan. 25, 1996 (4 months)	July 1, 1996
3	December 1, 1995 Complaint D166/93	Special Discipline Convocation - Oct. 27, 1995 (3 months) + other terms	March 1, 1996

4	November 1, 1993	Non-payment of E&O Levy (2 months)	December 23, 1993
5	June 26, 1993 Complaint D156/92	Special Discipline Convocation - June 24, 1993 (1 month) + costs	July 26, 1993
6	December 1, 1992	Non-payment of Annual Fees (6 days)	December 7, 1992
7	June 5, 1992	Non-payment of E&O Levy (1 month)	July 7, 1992
8	November 29, 1991	Non-payment of E&O Levy (4 months)	March 20, 1992
9	March 28, 1991	Non-payment of Annual Fees (2 months)	May 21, 1991

16. As evident from the above table, the Solicitor has been the subject of discipline by the Law Society on a number of prior occasions, the particulars of which are summarized in the following table:

Complaint #	Particulars of Complaint	Date + Disposition Details
D120/91	failed to reply to Society	Dec 17, 1991: Reprimand in Committee
D45/92	practised while under suspension	July 9, 1992: Reprimanded in Committee
D156/92	failed to serve client re: mortgage transaction (item #5 above)	June 24, 1993: Suspended for one month commencing June 26, 1993 + costs of \$4,500 by Jan 26, 1994
D166/93	Re: loan transaction - acted in conflict of interest; failed to serve client; failed to advise client to seek ILA (item #3 above)	Oct 27, 1995: Suspended for three months commencing Dec 1/95; to enrol in Practice Review Program (Professional Standards Dept. - LSUC); undertake not to act for both sides in any transaction; pay costs of \$6,000 <i>prior</i> to resuming practice; undertake not to attempt to set aside mortgage on his cottage property
D316/94	practised while under suspension; failed to maintain sufficient trust balances to meet trust obligations to clients (item #2 above)	Jan 25, 1996: Suspended for four months, commencing March 1, 1996 + to pay costs of \$2,000
D1/98	breached an undertaking to the Law Society; failed to produce books and records to the Law Society; practised while under suspension	April 29, 1998: Discipline Committee recommended that the Solicitor be suspended for 6 months. The matter has not yet been determined by Convocation.

DATED at Toronto this 17th day of November, 1998."

RECOMMENDATION AS TO PENALTY

This Committee recommends Convocation impose a penalty of two months suspension. No order as to costs.

REASONS FOR RECOMMENDATION

The Member has consented to this Committee, chaired by myself, hearing the matter set out in Complaint D104/98. This is notwithstanding that at the time of the hearing, I was a member of a Committee, chaired by Helene Puccini, dealing with another matter of the Member's for which a decision had not yet been rendered. All participants were aware that on the matter being dealt with by the Committee chaired by Helene Puccini, the Society had requested a finding of ungovernability and termination of membership. The Society made the same request with respect to the matter before us.

The Member has admitted misconduct and the particulars thereof as set out in the Agreed Statement of Facts set out in this Decision. In summary, the Member is before us for having failed to reply to the Law Society regarding a complaint from a fellow solicitor that he had not fulfilled undertakings with regard to a real estate transaction. The undertakings appear to have been standard ones. The real estate transaction closed on June 30, 1997 and letters in October and December, 1997 and January of 1998 from the solicitor requesting compliance by the Member with the undertakings given upon closing, were not responded to, and a complaint was sent to the Law Society on February 6, 1998.

The Society would have received this complaint before the hearing by the Committee chaired by Helene Puccini on April 29, 1998. Count (a) of this Complaint was withdrawn as it alleged practising while under suspension, and the time period involved was already covered in the matter heard by the Committee chaired by Helene Puccini. However, the particular of count (b) in this Complaint was not technically covered in the matters before that committee and therefore it comes before us for decision.

However, this Committee cannot bring itself to a finding of ungovernability and termination on this one count, particularly when the Society could have dealt with it amongst the other matters before the Committee chaired by Helene Puccini. In addition, it is somewhat related conduct in the sense that the matters before the Committee chaired by Helene Puccini were breaching an undertaking to the Law Society, failing to produce books and records to the Law Society, and practising while under suspension. This is a matter of failing to respond to correspondence from a fellow solicitor and then to the Law Society. The finding of professional misconduct adds another finding to the six already made as against the Member. This recommended suspension will be the tenth of either administrative or discipline suspensions that the Member has or is serving since 1991. Although this Committee is attracted to the idea that the Member be out of the profession, this single count does not propel us to that disposition.

Timothy David Salomaa was called to the Bar on April 8, 1976.

ALL OF WHICH is respectfully submitted

DATED this 3rd day of June, 1999

Tamara Stomp, Chair

It was moved by Ms. Ross, seconded by Ms. Potter that the Report marked Exhibit 1 be adopted.

Carried

It was moved by Ms. Ross, seconded by Mr. Crowe that the Report marked Exhibit 2 be adopted.

Carried

The recommendation as to penalty to the Report marked Exhibit 1 was that the solicitor be suspended for a period of 6 months.

The recommendation as to penalty to the Report marked Exhibit 2 was that the solicitor be suspended for a period of 2 months.

The Society's counsel made submissions in support of the suspensions and took the position that they be served consecutively.

Ms. McKinnon on behalf of the solicitor made submissions in support of the suspensions being served concurrently.

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

It was moved by Ms. Ross, seconded by Mr. Porter that the recommended penalties be amended to provide that the period of the suspensions be consecutive rather than concurrent.

Carried

Mr. Bindman wanted it noted that he abstained from voting.

It was moved by Mr. Wright, seconded by Mr. Crowe that the suspensions be served concurrently.

Not Put

It was moved by Mr. Bindman but failed for want of a seconder that the solicitor be permitted to resign.

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 8 months to be served consecutively.

Re: MOTION - Michael Angelo SPENSIERI

Mr. Banack withdrew for this matter.

Ms. Cameron appeared on behalf of the Society and Mr. Spensieri appeared on his own behalf.

At Discipline Convocation in October 1999 Mr. Spensieri sought an order of Convocation allowing his 1990 readmission application to be continued before a committee.

Ms. Cameron advised that Mr. Spensieri sought a different ruling than was presented to Convocation in October 1999.

Ms. Cameron asked that Convocation hear from Mr. Spensieri on the ruling he was seeking to be followed by submissions from the Society on its position.

Mr. Spensieri advised that he sought an ruling from Convocation to have his status changed from a person permitted to resign to readmission as a full member followed immediately by his voluntary resignation along the Bradbury lines.

Ms. Cameron opposed the order sought by Mr. Spensieri because it was not the issue that the Society agreed to put before the Convocation Management Tribunal and she further submitted that Convocation did not have the jurisdiction to make such an order under the new Act.

There were questions from the Bench followed by a reply by Mr. Spensieri.

There were further questions followed by a reply by Ms. Cameron.

Counsel, Mr. Spensieri, the reporter and the public withdrew.

It was moved by Mr. Topp, seconded by Mr. Epstein that the 1989 Order of Convocation on penalty be set aside and Convocation hear submissions on the issue of penalty.

It was moved by Mr. Crowe, seconded by Mr. Wright that Mr. Spensieri make a new application for readmission under the current rules and procedures.

Mr. Cherniak asked that an amendment be made to the Crowe/Wright motion that Convocation direct that the hearing panel hear evidence relating to the solicitor's capacity in the 1989 hearing.

Withdrawn

Counsel for the Society, Mr. Spensieri, the reporter and the public were recalled.

Ms. Cameron was asked to make submissions on the issue of functus officio.

Counsel for the Society, Mr. Spensieri, the reporter and the public withdrew.

The Crowe/Wright motion that Mr. Spensieri make a new application for readmission was voted on and adopted.

The Topp/Epstein motion was not put.

Counsel for the Society, Mr. Spensieri, the reporter and the public were recalled and informed that Mr. Spensieri's application before Convocation was dismissed and that a new application for readmission be made under the current rules and procedures.

Re: Roland William PASKAR - Mississauga

Mr. Topp withdrew for this matter.

Ms. Elizabeth Cowie appeared on behalf of the Society and Mr. Robert Burke, Q.C. appeared in an advisory capacity on behalf of the solicitor, who was present.

The solicitor addressed Convocation requesting an adjournment.

Ms. Cowie made submissions opposing the adjournment.

There was a reply by the solicitor.

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

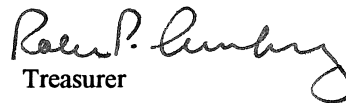
It was moved by Ms. Ross, seconded by Mr. Porter that the adjournment be granted to the Discipline Convocation on January 27th, 2000.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed that the adjournment was granted to January 27th, 2000.

CONVOCATION ROSE AT 5:30 P.M.

Confirmed in Convocation this 27 day of January, 2000


Treasurer