

23rd May, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 23rd May, 1996  
9:00 a.m.

PRESENT:

Acting Treasurer(Philip M. Epstein), Angeles, Carey, Copeland, Crowe, Curtis, DelZotto, Eberts, Gottlieb, MacKenzie, O'Connor, Puccini, Ross, Sealy, Stomp, Swaye, Wilson and Wright.

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The reporter was sworn.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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DISCIPLINE COMMITTEE

Mr. Michael Brown, Senior Counsel-Discipline introduced Ms. Susan Davies who acted as Duty Counsel.

Re: Raymond Vincent DONOHUE - Sarnia

The Deputy Secretary placed the matter before Convocation.

Mr. Carey, Ms. Curtis and Ms. O'Connor did not participate.

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

Ms. Cohen advised that the solicitor was to be hospitalized and requested a 1 month adjournment on consent peremptory to the solicitor.

It was moved by Ms. Eberts, seconded by Mr. Copeland that the adjournment be granted peremptory to the solicitor.

Carried

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the adjournment not be peremptory to the solicitor.

Not Put

23rd May, 1996

Re: Gabriele Monika HAUSER - Toronto

The Deputy Secretary placed the matter before Convocation.

Ms. Ross withdrew for this matter.

Ms. Jane Ratchford appeared for the Society. Mr. Frank Bowman appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 18th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd May, 1996 (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

Daniel J. Murphy, Q.C., Chair  
Philip M. Epstein, Q.C.  
Heather J. Ross

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

Jane Ratchford  
for the Society

GABRIELE MONIKA HAUSER  
of the City  
of Toronto  
a barrister and solicitor

T. A. Bowman  
for the solicitor

Heard: October 31, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On April 5, 1995, Complaint D10/95 was issued, on May 25, 1995, Complaint D109/95 was issued and on July 12, 1995, Complaint D205/95 was issued against Gabriele Monika Hauser alleging that she was guilty of professional misconduct.

The matter was heard in public on October 31, 1995 before this Committee composed of Daniel J. Murphy, Q.C., Chair, Philip M. Epstein, Q.C. and Heather J. Ross. The Solicitor was present at the hearing and was represented by T.A. Bowman. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D10/95

2. a) She failed to provide a reply to the Law Society regarding a complaint by David Yerzy in spite of letters dated October 28, 1993, August 11, 1994 and October 27, 1994 and telephone messages on June 22, 1994, July 18, 1994, September 9, 1994 and September 30, 1994;
- b) She failed to provide a reply to the Law Society regarding a complaint by Raoul Boulakia in spite of letters dated July 22, 1994 and October 27, 1994 and telephone requests on September 9, 1994 and September 30, 1994;
- c) While representing her client, Eufemia Pasia, in connection with the purchase and sale of real property in 1989, she failed to serve her client in a conscientious, diligent and efficient manner in that she:
  - i) failed to provide her client with a full report upon completion of the transactions; and
  - ii) failed to account to her client for monies entrusted to her by the client.
- d) She failed to reply to the Law Society regarding a complaint by David L. Kettner in spite of letters dated October 27, 1994 and December 7, 1994 and telephone messages left on November 22, 1994, November 24, 1994, November 28, 1994, January 3, 1995 and January 5, 1995 and telephone conversations on November 29, 1994 and December 14, 1994;
- e) She failed to reply to the Law Society regarding a complaint by Jane Gill despite letters dated November 18, 1994 and January 25, 1995 and telephone messages left on January 16, 1995 and January 20, 1995.

Complaint D109/95

2. a) she failed to reply to the Society regarding outstanding issues from an investigation of the member's books and records on April 22, 1993, despite letters dated November 18, 1994, January 31, 1995 and March 6, 1995.

Complaint D205/95

2. a) She failed to co-operate with the Law Society's attempts to conduct an audit pursuant to Sections and 18 of Regulation 708, by failing to produce her books and records as set out in Section 15 of Regulation 708 despite the Society's:
  - i) visit on January 24, 1995;
  - ii) letters dated January 26, 1995, February 9, 1995 and February 23, 1995; and
  - iii) telephone messages left on January 25, 1995 and February 3, 1995.

23rd May, 1996

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D10/95 and D109/95 and is prepared to proceed with a hearing of this matter on October 31 and November 1, 1995.

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 Complaints D10/95 and D109/95 and this Agreed Statement of Facts and admits the particulars contained therein constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1986. She practices as a sole practitioner.

COMPLAINT D109/95

Particular 2(a) Failure to Reply regarding outstanding issues from an investigation of the Solicitor's books and records

5. On November 14, 1994, the Solicitor appeared before the Discipline Committee comprised of Netty Graham, Stuart Thom and Donald Lamont in respect of Complaints D292/94 and D12/94. Complaint D292/94 related to the Solicitor's failure to reply to the Law Society regarding inadequacies found during an investigation of her books and records on April 22, 1993. A copy of the Acknowledgement signed by the Solicitor acknowledging her receipt of the Law Society's Report concerning the deficiencies is found at Tab 1 of the Document Book.

6. On the morning of the hearing, the Solicitor submitted materials under cover of a letter dated April 28, 1994 (Tab 1(a), Document Book) purportedly in response to the Law Society's requests. The Committee had some concern that in the event the Society needed to correspond with the Solicitor further in connection with the materials, she may follow her pattern of not responding or replying. In this regard, the Committee asked for and the Solicitor agreed to give an Undertaking to the Society that she would respond promptly to all correspondence from the Society.

7. A finding of misconduct was made in respect of Complaints D292/94 and D12/94. The Committee which heard the matter recommended, and Convocation upheld, a three month suspension which commenced April 7, 1995. A copy of the Discipline Committee's Report and Decision and disposition by Convocation is found at Tab 2 of the Document Book.



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8. The response provided by the Solicitor was inadequate. By letter dated November 18, 1994, (Tab 3, Document Book) the Society wrote to the Solicitor requesting a response to the outstanding inadequacies in the Solicitor's books and records. The Solicitor did not respond to the letter.

9. By letter dated January 31, 1995 (Tab 4, Document Book) the Society sent a further letter to the Solicitor requesting that she respond to the previous correspondence of November 18, 1994. The Solicitor did not respond to the letter.

10. By registered letter dated March 6, 1995 (Tab 5, Document Book) the Society requested that the Solicitor provide a full and complete written response on or before March 21, 1995 or the matter would be referred to the Discipline Committee. The Solicitor did not respond to the letter.

11. Lorraine Campbell, an examiner with the Audit Department of the Law Society, has attended at the Solicitor's office on several recent occasions to review various matters. The Solicitor has co-operated with her.

#### COMPLAINT D10/95

Particular 2(a) Failure to Provide Reply regarding complaint by David Yerzy

12. By way of background, a complaint was filed with the Law Society by David Yerzy by letter dated October 30, 1992, on behalf of his client, Mr. Abdi Warsame Mohamud (Tab 6, Document Book). Mr. Mohamud had formerly been represented by the Solicitor. The complaint arose out of the Solicitor's failure to file an appeal in the client's immigration case and her failure to communicate with him. This failure to reply became the subject matter of Complaint D97/93 when the Solicitor failed to respond to enquiries from the Law Society concerning the original complaint.

13. A reply dated March 16, 1993 (Tab 7, Document Book) was eventually received from the Solicitor on September 27, 1993, the day before the hearing scheduled for Complaint D97/93.

14. At the hearing on September 28, 1993, the Solicitor was found guilty of misconduct for the failure to reply and was ultimately suspended for one month by way of the Order of Convocation dated April 21, 1994. A copy of Convocation's Order dated April 21, 1994, and the Report and Decision of the Discipline Committee which heard the matter on September 28, 1993, is found at Tab 8 of the Document Book.

15. In the Society's view, the response provided by the Solicitor on September 27, 1993 was not sufficient and as a result, it made the attempts set out hereafter to obtain a reply from the Solicitor regarding the outstanding matters.

16. By letter dated October 28, 1993 (Tab 9, Document Book), the Society wrote to the Solicitor requesting further information arising from her response received on September 27, 1993. The Solicitor did not respond.

17. On June 22, 1994, a telephone call was made to the Solicitor by a staff member of the Society. A message was left for the Solicitor to return the call. Jane Charles of the Solicitor's office returned the call and left a message on the Society's voice mail on June 29, 1994 advising that the Solicitor was leaving on July 3, 1994 for Nigeria. The Society returned the call advising the Solicitor's office that the October 1993 letter would be faxed to the Solicitor's office. The letter was faxed that afternoon. A response to the letter was not forthcoming. A copy of the notes taken during these telephone conversations and the fax transmission sheet are found at Tab 10 of the Document Book.

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18. On July 18, 1994, the Society left another message with the Solicitor's office to call the Society. Jane Charles of the Solicitor's office left another message for the Society on July 19, 1994 that the Solicitor was now back in the country and would respond in a few days. No response was forthcoming. Notes of these telephone calls are found at Tab 11 of the Document Book.

19. By registered letter dated August 11, 1994 (Tab 12, Document Book), the Solicitor was requested to provide a response with seven days, failing which the matter would be referred to discipline. No response was forthcoming.

20. On each of September 9 and 30, 1994, telephone calls were made to the Solicitor's office by the Society. Messages were left on an answering machine requesting a response to the letter of August 11, 1994. On October 4, 1994, the Solicitor called the Society and left a message on voice mail advising that she had had the letter respecting the Yerzy complaint for some time and advising that she would provide the information required if and when the insurers decided to review the matter. Notes of these telephone calls are found at Tab 13 of the Document Book.

21. By registered letter dated October 27, 1994 (Tab 14, Document Book) the Society wrote to the solicitor referring to the Solicitor's message and requesting a response to the Complaint within two weeks.

22. A response dated September 21, 1995 was received by the Law Society on October 27, 1995.

Particular 2(b) Failure to Reply to complaint by Raoul Boulaki

23. By letter dated July 13, 1994 (Tab 15, Document Book), the Society received a complaint from Raoul Boulaki, a lawyer, on behalf of his client, Omar Waiss, concerning misrepresentations allegedly made by Ms. Hauser, in the course of her handling an appeal on an immigration matter for Mr Waiss. Mr. Bouolaki also complained about the Solicitor's failure to respond to his communications after being engaged by Mr. Waiss.

24. By letter dated July 22, 1994 (Tab 16, Document Book), the Society wrote to the Solicitor requesting response to the complaint. No response was received.

25. Telephone calls were made to the Solicitor's office on September 30, 1994. A message was left on the Solicitor's answering machine requesting a response to the letter. A copy of the notes made of this message is found at Tab 17, Document Book).

26. The Solicitor called the Society on October 4, 1994 and left a message on voice mail that she had been advised that she should speak to her insurers and would provide information if and when they decided to review the matter and that if the Society needed anything before that she would be happy to provide it.

27. By registered letter dated October 27, 1994 (Tab 18, Document Book), the Society advised the Solicitor that to the Society's knowledge, there was no insurance file in this matter and advised that the Society required her response to the July 22, 1994 letter.

28. The Solicitor provided a response to the Law Society dated September 13, 1995 on October 31, 1995.

Particulars 2(c) and (d)

Failure to Serve Eufemia Pasia and Failure to Respond to Law Society

23rd May, 1996

29. Between July 1989 and October 1989, the Solicitor acted for one Eufemia Pasia in connection with the purchase and subsequent sale of a house in Oakville and in respect of financing associated with the purchase of the home.

30. The purchase price of the home was \$268,000.00 and the sale price was \$290,000.00. Mrs. Pasia also paid a deposit in an unknown amount in connection with the purchase of the house.

31. Following the completion of both transactions, the Solicitor provided Mrs. Pasia with a cheque in the amount of \$10,371.65. According to Mrs. Pasia, she never received any Reports, Statements of Account, Documents or other funds in respect of these transactions prior to retaining David Kettner on her behalf who intervened in the summer of 1994. Further details of Mrs. Pasia's dealings with the Solicitor are found in a Statutory Declaration signed by Mrs. Pasia on September 22, 1994 (Tab 19(a), Document Book).

32. After attempts in July and early August 1994 (see Tab 19(b), Document Book), Mr. Kettner was able to obtain from the Solicitor a package of documents together with a covering letter dated July 18, 1994 (Tab 19, Document Book). Following a review of these documents, Mr. Kettner wrote to the Solicitor by letter dated August 4, 1994 (Tab 20, Document Book), advising her that a number of vital documents had not been included and requested copies of these documents. These included a copy of the Statement of Adjustments on the sale, copy of the Ledger Statement for the Purchase and Sale, copies of the mortgages arranged on the subject property and a reporting letter in respect of the purchase. Without these documents, Mrs. Pasia was unable to determine whether she had been provided with the appropriate amount of money by the Solicitor.

33. When Mr. Kettner did not receive a response to his August 4 letter, 1994 by August 18, 1994, he again wrote to the Solicitor (Tab 21, Document Book) requesting a response. In addition, Mr. Kettner contacted the Solicitor's office by telephone on August 15, leaving a message which was not returned.

34. On September 23, 1994, Mr. Kettner wrote to the Law Society requesting the assistance of the Society in procuring the required reports and documents to enable Mrs. Pasia to determine the amount to which she was entitled as a result of the sale of the property (see Tab 21(a), Document Book).

35. By letter dated October 27, 1994, the Society (Tab 22, Document Book), the Society wrote to the Solicitor enclosing a copy of the complaint and requesting a response. A response was not received.

36. On November 22, 1994, the Society telephoned the Solicitor and left a message with the Solicitor's secretary to call. The telephone call was not returned.

37. A further telephone message was left with the Solicitor's secretary on November 24, 1994. The Solicitor returned the call and left a message on voice mail that she had called.

38. The Society again telephoned the Solicitor on November 28, 1994 and left a detailed message with the Solicitor's secretary to return the call. The call was not returned.

39. On November 29, 1994, the Society spoke with the Solicitor who advised that she would send a response to the office by December 6, 1994. A response was not forthcoming. Notes of the foregoing telephone calls are found at Tab 23, Document Book.

40. By registered letter dated December 7, 1994 (Tab 24, Document Book), the Solicitor was advised that if a reply was not forthcoming within seven days, the matter would be referred to the Chair of the Discipline Committee.

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41. On December 14, 1994, the Society received a telephone call from the Solicitor in which she stated she would send her reply by December 16, 1994 and would attempt to obtain the necessary documents from her accountant to send to the Society. A reply was not received. Notes of the Society's staff member in respect of this telephone message are found at Tab 25 of the Document Book.

42. On January 3, 1995, the Society left a further telephone message with the Solicitor's receptionist to call the Society. A response was not received.

43. On January 5, 1995, the Society telephoned the Solicitor and left a message with the Solicitor's secretary advising that the matter would be referred to the Discipline Committee if a reply was not received. Notes of the conversations of January 3 and 5 are found at Tab 26 of the Document Book.

44. By letter dated January 31, 1995 (Tab 27, Document Book), the Solicitor was advised that this matter would be referred to the Chair and Vice Chairs of the Discipline Committee.

45. A response dated September 30, 1995 was received by the Law Society on October 27, 1995. In addition, the Solicitor produced information to Ms. Campbell during their ongoing audit on October 27, 1995.

Particular 2(e) Failure to Reply regarding complaint by Jane Gill

46. The Solicitor is the Executrix and Solicitor for the Estate of George Stuart who died in February 1992. Jane Gill is one of the three beneficiaries. Ms. Gill had certain concerns with what she perceived to be the Solicitor's delay in winding up the estate. As a result, Ms. Gill wrote to the Society by letter dated April 8, 1994 (Tab 28, Document Book) requesting the Society's assistance in causing the Solicitor to respond to her inquiries about the status of the estate. According to Ms. Gill's letter, after certain delays in the winding up of the estate, she had attempted to call Ms. Hauser for the two weeks prior to her letter of April 8, 1994 with no response.

47. The Society subsequently wrote to the Solicitor requesting a response by letter dated May 12, 1994 (Tab 28(a), Document Book).

48. After telephone messages were left on May 31, 1994, June 6, 1994 and June 29, 1994 by the Society requesting that the Solicitor respond (see Tab 28(b), Document Book), the Solicitor provided a letter dated June 30, 1994 (Tab 29, Document Book), in which she provided certain documentation in relation to the complaint.

49. By letter dated August 10, 1994 (Tab 29(a), Document Book), the Law Society wrote to Ms. Gill requesting comments on the Solicitor's response. By letter dated November 9, 1994 (Tab 30, Document Book), the complainant provided comments to the Society with respect to the Solicitor's response of June 30, 1994. Ms. Gill further advised that she had not spoken to nor heard from the Solicitor since April of that year. As a result, she had no idea how things were progressing in respect of the estate. Ms. Gill also raised a concern about the explanation provided by the Solicitor regarding a \$200.00 payment made by the Solicitor and \$5,366.18 of payments on invoices. Ms. Gill had yet to be provided with copies of the invoices.

50. In addition, Ms. Gill had not been advised by the Solicitor as to the state of a potential action against the estate, Ms. Gill and her sister, which had been threatened back in April of 1994.

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51. By letter dated November 18, 1994 (Tab 31, Document Book), the Society wrote to Ms. Hauser enclosing a copy of Ms. Gill's letter of November 9, 1994 asking for an explanation regarding her concerns. There was no response to this letter.

52. A telephone message was left by the Society at the Solicitor's office on January 16, 1995 asking her to call the Society. On January 20, 1995 a further telephone message was left at the Solicitor's office for the Solicitor to call the Society. She did not respond. A copy of the notes pertaining to these telephone calls are found at Tab 32 of the Document Book.

53. By registered letter dated January 25, 1995 (Tab 33, Document Book), the Society requested a response. The letter further advised that if a response was not forthcoming within seven days that the matter would be referred to the Chair of the Discipline Committee. A response was not forthcoming.

54. Responses to the Law Society and to the client dated October 12, 1995 were provided to the Law Society on October 27, 1995.

#### V. DISCIPLINE HISTORY

55. On March 19, 1991, the solicitor was found guilty of professional misconduct regarding Complaint D141/90 for failing to report and failing to reply to the Law Society. The Solicitor was reprimanded in Committee.

56. On March 2, 1993, the Solicitor was found guilty of professional misconduct regarding Complaint D172/92 for failing to reply to the Law Society regarding a complaint by Mr. Singh, among others. The matter was heard in Convocation on June 24, 1993 and the Solicitor was reprimanded in Convocation and ordered to enrol in the Practice Review Program of the Professional Standards Department and pay the Society's costs of \$1,250.00.

57. On September 28, 1993, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society. The matter was heard in Convocation on April 21, 1994. Convocation did not accept the Committee's recommendation that the Solicitor be suspended for a two month period; rather, Convocation ordered a one month suspension with no costs assessed against the Solicitor.

58. On November 14, 1994, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society in respect of the complaint of a client, regarding inadequacies found during an investigation of her books and records and her failing to account for funds entrusted to her by a client. The matter was heard in Convocation on March 23, 1995.

Convocation accepted the Committee's recommendation that the Solicitor be suspended for a period of three months and pay the Society's costs in the amount of \$1,500.00. The Solicitor was suspended effective April 7, 1995.

Dated at Toronto, this 31st day of October, 1995."

#### "AGREED STATEMENT OF FACTS

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D205/95 and is prepared to proceed with a hearing of this matter on October 31 and November 1, 1995.

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 D205/95 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 10, 1986. She practises as a sole practitioner.

5. On January 24, 1995, Lorraine Campbell, Examiner with the Audit and Investigation Department of the Law Society, attended unannounced at the Solicitor's office to conduct an examination of the Solicitor's books and records under Regulation 708 of the Law Society Act. Ms. Campbell was advised that the Solicitor was at a hearing. Ms. Campbell left her business card with the receptionist and asked her to have the Solicitor call her the following morning. A copy of the handwritten notes of Ms. Campbell's conversation with the receptionist is contained at Tab 1 of the Document Book. The Solicitor did not return the call.

6. On January 25, 1995, Ms. Campbell telephoned the Solicitor and left a message with the answering service requesting that the Solicitor return her call. A copy of the handwritten notes of Ms. Campbell's telephone messages are contained at Tab 2 of the Document Book. The Solicitor did not return her call.

7. By ordinary and registered mail dated January 26, 1995 (Tab 3, Document Book), Ms. Campbell advised the Solicitor that she had been instructed to conduct an examination of the Solicitor's books and records. The Solicitor was requested to contact Ms. Campbell before February 9, 1995 to schedule an appointment. The Law Society's letter was delivered and signed for on January 30, 1995.

8. On February 3, 1995, Ms. Campbell called the Solicitor's office and left a message with the her secretary asking the Solicitor to return her call. A copy of the handwritten notes of the telephone conversation with the Solicitor's secretary is contained at Tab 4 of the Document Book. The Solicitor did not return the call.

9. A response to the Law Society's letter of January 26, 1995 was not received by February 9, 1995. By ordinary and registered mail dated February 9, 1995 (Tab 5, Document Book), Ms. Campbell enclosed a copy of her letter dated January 26, 1995 and requested her response to the same. The Law Society's letter was delivered and signed for on February 13, 1995. The Solicitor did not respond.

10. By ordinary and registered mail dated February 23, 1995 (Tab 6, Document Book), Ms. Campbell enclosed a copy of her previous letters to the Solicitor and requested a response within two weeks. The Solicitor was advised that if a response was not received within two weeks, the matter would be referred to the Discipline Committee. The Law Society's letter was delivered and signed for on February 28, 1995.

11. Ms. Campbell has attended at the Solicitor's on several recent occasions to review various matters. The Solicitor has co-operated with her.

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V. DISCIPLINE HISTORY

12. On March 19, 1991, the Solicitor was found guilty of professional misconduct regarding Complaint D141/90 for failing to report and failing to reply to the Law Society. The Solicitor was reprimanded in Committee.

13. On March 2, 1993, the Solicitor was found guilty of professional misconduct regarding Complaint D172/92 for failing to reply to the Law Society regarding a complaint by Mr. Singh, among others. The matter was heard in Convocation on June 24, 1993 and the Solicitor was reprimanded in Convocation and ordered to enrol in the Practice Review Program of the Professional Standards Department and pay the Society's costs of \$1,250.00.

14. On September 28, 1993, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society. The matter was heard in Convocation on April 21, 1994. Convocation did not accept the Committee's recommendation that the Solicitor be suspended for a two month period; rather, Convocation ordered a one month suspension with no costs assessed against the Solicitor.

15. On November 14, 1994, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society in respect of the complaint of a client, regarding inadequacies found during an investigation of her books and records and her failing to account for funds entrusted to her by a client. The matter was heard in Convocation on March 23, 1995. Convocation accepted the Committee's recommendation that the Solicitor be suspended for a period of three months and pay the Society's costs in the amount of \$1,500.00. The Solicitor was suspended effective April 7, 1995.

DATED at Toronto this 31st day of October , 1995."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Gabriele Monika Hauser be suspended for a period of six months, such suspension to take effect November 10, 1995 if she has complied with her undertaking.

REASONS FOR RECOMMENDATION

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Based on the Agreed Statement of Facts filed in connection with the above complaints the Committee finds that the Solicitor is guilty of professional misconduct. There is a joint submission on penalty of a suspension for six months effective November 10, 1995. The Committee is prepared to recommend such a suspension to Convocation for the following reasons;

- a) The Solicitor has ceased to practise law and has closed her office;
- b) The Solicitor is meeting with a staff trustee from the Law Society before November 10, 1995;
- c) All of the Solicitor's active files have been transferred to another lawyer;
- d) The Committee reviewed an extensive medical report that explains some of the actions of the Solicitor and indicates that the Solicitor may be able to return to practice if she follows the medical advice;

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e) The Solicitor has signed an undertaking and if she complies with the undertaking the Committee recommends to Convocation that the suspension be effective November 10, 1995.

Note: See amendment below

Gabriele Monika Hauser was called to the Bar on April 10, 1986.

ALL OF WHICH is respectfully submitted

DATED this 18th day of March, 1996

Daniel J. Murphy, Q.C.  
Chair

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

Ms. Ratchford in agreement with Mr. Bowman asked that the recommended penalty on page 13 of the Report be amended to include paragraphs 2 and 3 of the solicitor's undertaking dated October 31st, 1995 relating to conditions upon the solicitor returning to practice.

It was moved by Ms. Curtis, seconded by Mr. Wilson that the Report as amended be adopted.

Carried

The Wilson/Puccini motion to adopt the Report was not put.

The recommended penalty of the Committee was that the solicitor be suspended for a period of 6 months commencing November 10th, 1995 together with the conditions (paragraphs 2 and 3) as set out in the solicitor's undertaking.

There were brief submissions in support of the recommended penalty.

No submissions were required by Mr. Bowman.

Convocation was advised that costs in the amount of \$1,500 had been paid.

It was moved by Mr. Copeland, seconded by Mr. Carey that the recommended penalty be adopted.

Carried

Re: Shamdayal Bridj Mohan SAHOY - Markham

The Deputy Secretary placed the matter before Convocation.

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

Ms. Janet Brooks appeared for the solicitor and Mr. Vusumzi Msi appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 22nd March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd April, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.



23rd May, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J. P. Carey, Chair  
Maurice Cullity (January 18, 1995 only)  
Nora Angeles

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

Janet Brooks and Elizabeth Cowie  
for the Society

SHAMDAYAL BRIDJ MOHAN SAHOY  
of the Town  
of Markham  
a barrister and solicitor

Vusumzi Mahlubi Andile Msi  
for the solicitor

Heard: January 18, 1995  
October 27, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On August 25th, 1994, Complaint D215/94 was issued against Shamdayal Bridj Mohan Sahoy alleging that he was guilty of professional misconduct.

The matter was heard in public on January 18, 1995 before a Committee comprised of Thomas J.P. Carey, Chair, Maurice Cullity and Nora Angeles. The matter was heard again on June 22, 1995 and October 27, 1995 before Thomas J.P. Carey, Cullity and Nora Angeles. Janet Brooks appeared on behalf of the Law Society on January 18, 1995 and June 22, 1995. The Solicitor was not present throughout the hearing nor was he represented on the January 18, 1995 date. The Solicitor was represented by Vusumzi Mahlubi Andile Msi on June 22, 1995 and October 27, 1995. Elizabeth Cowie appeared on behalf of the Law Society on October 27, 1995.

DECISION

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

Complaint D215/94

2. a) He failed to cooperate with the Law Society's Investigation Auditor in that he failed to produce files, books and records of his practice despite written and oral requests from December, 1993 to April, 1994.

23rd May, 1996

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Shamdayal Bridj Mohan Sahoy be granted permission to resign.

REASONS FOR RECOMMENDATION

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The committee is of the opinion that the joint submission in this matter should be accepted and it recommends that the solicitor be permitted to resign his membership in the Law Society, which membership is, at present, a retired membership.

This matter was commenced with a complaint that first was before the Law Society on December 13, 1994 at a time when the solicitor was already retired, but the investigation and communication with the solicitor had commenced before his retirement was allowed by the Law Society.

When the matter first appeared before this committee, it proceeded in the absence of the solicitor. There was a real concern at that time about the health of the solicitor and his whereabouts. We had some information before us that he was extremely ill. It was further before us on June 21st, 1995 when there was a request for an adjournment. Mr. Msi appeared at that time for the solicitor as he did on October 27, 1995.

The complaint of failing to co-operate with the Law Society's investigation auditor, in that he failed to produce books and records of his practice despite written and oral requests from December '93 to April '94, arises from a complaint of Pamela Dias-Martyn and that complaint is found in Exhibit 7, the Document Book of the Law Society, at Tab 1 of that exhibit.

To summarize her complaint, Ms. Dias-Martyn essentially alleged that she had turned over her life savings of approximately \$84,000, to Mr. Sahoy to invest; that she dealt with him because he was a lawyer and because he would ensure his personal guarantee for all the funds that were invested with him. Eventually, it is her allegation that all this money went into an investment club; although her request was that only fifty percent go into an investment club with the remainder to go into a second mortgage. Interest rates were to vary between fifteen percent in the investment club and twenty-one percent in the second mortgage.

Eventually, Ms. Dias-Martyn says that she was rebuffed by Mr. Sahoy, had problems getting answers to her inquiries and was directed to a Mr. Lam who was professing to have all of her investment.

She concludes her complaint by pointing out that Mr. Lam wanted to give her a promissory note for \$76,000. She felt that Mr. Sahoy should be the one who should sign a promissory note and that she had very, very strong concerns about what M. Sahoy had done with her "life savings". On page 6 of her letter, she wrote:

"Mr. Sahoy is aware that he has done something very, very wrong with me and my funds and is just hiding from me and constantly avoiding me. He has been playing games with me and kept me in the dark and has not been straight and honest with me for far too long. I have always wanted to trust him and had a lot of patience with him but I cannot take the stress any longer and as I am getting nowhere with him, I have taken it upon myself to get in touch with higher authorities to take this man to task.

23rd May, 1996

I would appreciate you investigating this in full detail. I would, however, like to request you to meet with me prior to commencing investigations in this matter as I would like to submit to you various documents I have received from Mr. Sahoy's firm. It has been difficult, but I've tried to be as brief as possible in order to give you a picture of the transactions that took place with Mr. Sahoy. I still do not feel satisfied that I have conveyed everything. I would therefore like to discuss this case further with you."

That complaint was sent to Mr. Sahoy. He responded to it in a letter that appears as Tab 4 to Exhibit 7 which I can summarize as follows: that he was unable to reply sooner to the letter and he did respond within a month of receiving the letter, but that he had failing health and he denied any personal guarantee and any personal involvement in this investment. He denied that he was an insurer of any of her investments and he says all of her investments were with Mr. Lam.

The difficulty with his explanation, and the reason that we are here on this complaint, which I stress is a complaint of failing to co-operate as opposed to any direct allegations that the Solicitor was guilty of the allegation made by Ms. Dias-Martyn, is that the material that would shed light on the veracity of his explanation or the veracity of Ms. Dias-Martyn's complaint was not forthcoming. The necessary records, files and books that would have answered some of these allegations were never provided. In Exhibit 10, paragraph 2, outlines the documentation received regarding Ms. Dias-Martyn's complaint and indicates that the only documentation provided in connection with this complaint were photocopies of some of Ms. Dias-Martyn's cheques received by Mr. Sahoy and rough calculations on amounts received.

The Law Society's last correspondence, which is Exhibit 10, was still asking the solicitor to locate and provide all files relating to service provided to this client.

The Law Society auditors found other deficiencies in the record keeping of the solicitor and Exhibit 10 sets out those deficiencies and the material required by the Law Society to close their file. It is agreed that none of that material was forthcoming.

Shamdayal Bridj Moha Sahoy was called to the Bar on April 6, 1982.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1996

Thomas J.P. Carey,  
Chair

It was moved by Mr. Wright, seconded by Mr. Wilson that the Report be adopted.

There were no submissions and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be granted permission to resign.

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

23rd May, 1996

It was moved by Ms. Puccini, seconded by Ms. Curtis that the recommended penalty be adopted.

Carried

Re: George Larry ARGIRIS - Toronto

The Deputy Secretary placed the matter before Convocation.

Messrs. Crowe and Copeland and Ms. O'Connor withdrew for this matter.

Ms. Cohen appeared for the Society and Mr. Martin Jurjans appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd May, 1996 (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 B. Aaron, Chair  
Marshall Crowe  
Shirley O'Connor

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

Rhonda Cohen  
for the Society

GEORGE LARRY ARGIRIS  
of the City  
of Toronto  
a barrister and solicitor

Martin Jurjans  
for the solicitor

Heard: January 17, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On February 6, 1995 Complaint D452/94 was issued against George Larry Argiris alleging that he was guilty of professional misconduct. On January 15, 1996 it was replaced by Complaint D452a/94.

The matter was heard in public on January 17, 1996 before this Committee comprising Robert B. Aaron, Chair, Marshall Crowe and Shirley O'Connor. The Solicitor attended the hearing and was represented by Martin Jurjans. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D452a/94

2. a) The Solicitor advised his clients regarding, and participated in, a financial transaction which the Solicitor knew would result in his clients, Steven and Valerie Glasgow, breaking the Order of Mr. Justice Osborne of the Ontario Court (General Division) dated May 26 1989, without the consent of the opposing party.

Note: Amendment, see page 31

- b) The Solicitor acted in conflict of interest in that he:
- i) registered a \$75,000 mortgage in favour of himself in trust for Mr. Rosenbluth, while acting for a party opposed in interest to Mr. Rosenbluth, and while Mr. Rosenbluth and the Solicitor were each personal creditors of the Solicitor's clients;
  - ii) having placed himself in the position of trustee for Mr. Rosenbluth, on or about January 23 1990, registered a discharge of the \$75,000 Mortgage and failed to replace it with adequate security or make payment, without the instructions or consent of the trust beneficiary; and
  - iii) subsequently accepted a retainer from the Glasgows and allowed another solicitor in his firm to represent them in a proceeding designed to set aside the debt to Mr. Rosenbluth which the \$75,000 Mortgage was intended to secure and when the Solicitor had made himself trustee for Mr. Rosenbluth.

Evidence

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D452a/94 and is prepared to proceed with a hearing of this matter on January 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D452a/94 and this agreed statement of facts with his counsel 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.

23rd May, 1996

#### IV. FACTS

4. The Solicitor was called to the Bar in 1975 and practises in association with two other solicitors in the City of Toronto.

##### The Rosenbluth Mortgage

5. Ernest Rosenbluth ("Mr. Rosenbluth") held a mortgage on property owned by Stephen and Valerie Glasgow ("the Glasgows"). The Glasgows defaulted on the mortgage and litigation was initiated. In the litigation, Mr. Rosenbluth was represented by a solicitor, Vernon Balaban ("Mr. Balaban"), and the Glasgows were represented by a solicitor, William Bucci ("Mr. Bucci").

##### The Solicitor's Loan to the Glasgows

6. In December 1988, the Solicitor, who was acquainted with the Glasgows, loaned them the sum of \$16,600.00 (the "Solicitor's Loan").

##### The Glasgows' Purchase and Sale of Property

7. In February 1989, the Glasgows signed an agreement to sell their home ("the old property") for \$335,000.00, and the following month they signed an agreement to buy a new home ("the new property") for \$398,000.00. They retained the Solicitor to act on both transactions, scheduled to close on May 31, 1989.

8. Initially, the Solicitor's expectation was that the Solicitor's Loan would be repaid from the proceeds of the sale of the Glasgows' old property. However, when it became apparent that repayment in this manner would not be possible, the Solicitor obtained security by way of mortgage on the new property. That mortgage (the "Solicitor's Mortgage") was prepared by the Solicitor and executed by the Glasgows on May 25, 1989. At the time, the Solicitor's Loan was in the amount of \$18,000.00 (Tab 1, Document Book). The Solicitor is not aware whether the Glasgows received independent legal advice in respect of either the Solicitor's Loan or the Solicitor's Mortgage.

Particular 2(a)     The Solicitor advised his clients regarding, and participated in, a financial transaction which the Solicitor knew would result in his clients, Steven and Valerie Glasgow, breaching an order of Osborne, J. dated May 26 1989, without the consent of the opposing party.

9. As at May, 1989, the Glasgows had yet to satisfy their debt to Mr. Rosenbluth.

10. On May 26, 1989, Mr. Rosenbluth, through his solicitor, Mr. Balaban, having learned that the Glasgows were selling their old property, obtained an order requiring the Glasgows to pay into court, pending the outcome of a Reference, the sum of \$75,000.00 from the sale of their old property (the "Payment Order") (Tab 2, Document Book). The motion was unopposed, although the Glasgows had actual notice of the motion and the motion record was properly served on them (Tab 3, Document Book). The Payment Order was registered on the title to the old property.

11. Mr. Bucci was served with the Payment Order and by letter dated May 29, 1989, delivered a copy to the Glasgows. Mr. Bucci advised the Glasgows, among other things, as follows:

23rd May, 1996

As you can see, Mr. Justice Osborn orders you to pay \$75,000.00 from the sale of [the old property] into Court pending the outcome of the reference regarding this lawsuit.

As I advised you in my office any failure to comply with the Order will leave you in contempt of Court, a very serious offence. As I further advised you, Mr. Rosenbluth's lawyer has stated that he is prepared to have the Order lifted or amended if he is satisfied on documentary evidence that:

- (a) you are purchasing a new home in your own name;
- (b) there is sufficient equity left in the new home after mortgages to satisfy any Judgment which may issue against you after the reference in this lawsuit.

(Tab 4, Document Book)

12. Messrs. Bucci and Balaban, on behalf of their respective clients, then engaged in discussions toward an agreement to set aside the Payment Order and to take out a new order which would be registered on title to the new property and which would preclude the Glasgows from dealing with their new property except upon the payment of \$75,000 into court. Toward this end, Mr. Bucci brought a motion returnable in Weekly Court on May 31, 1989, for an order setting aside the Payment Order and for a new order which would preclude the Glasgows from dealing with their new property except upon the payment of \$75,000.00 into court.

13. The Glasgows' motion materials included an affidavit from the Solicitor and from each of the Glasgows in which, among other things, the Glasgows state that, as of May 31, 1989, there will be only one registered encumbrance against the new property (i.e. the mortgage being assumed on the purchase). The Glasgows executed the affidavits with the knowledge that they had already executed the Solicitor's Mortgage which was to be registered on title to the new property (Tab 5, Document Book). Mr. Bucci states that all of the relevant information included in the motion materials was provided to him by the Solicitor who did not advise him of the existence of the Solicitor's Mortgage. The Solicitor states that he did not discuss the aforesaid with Mr. Bucci and states that the relevant information was given to Mr. Bucci by the Glasgows.

14. By letter dated May 29, 1989, delivered by fax, Mr. Bucci enclosed to Mr. Balaban copies of the Glasgows' draft Affidavits referred to above. Mr. Bucci further advised that the balance of the closing documents on the new property would be made available to Mr. Balaban as soon after closing as they were available, and suggested that the Payment Order be amended to reflect a prohibition of the transfer or encumbrancing of the new property until the Reference was completed (Tab 6, Document Book). The Solicitor states that he did not receive a copy of this letter nor was he advised as to its contents.

15. On May 30, 1989, Mr. Bucci spoke with Mr. Balaban who advised that he, on behalf of his client Mr. Rosenbluth, was prepared to give a reasonable time to the Glasgows to provide the said closing documents. Mr. Balaban further advised that his client would not enforce the Payment Order if he was provided with the above-noted documentation and if that documentation supported the statements made in the Glasgows' respective affidavits sworn May 30, 1989.

23rd May, 1996

16. Mr. Bucci reported his telephone conversation to the Glasgows by letter dated May 30, 1989, in which he advised them as follows:

In my opinion, this means you may close your sale deal and use the funds to purchase if, and only if, your documents are provided

to Mr. Balaban in a reasonable time and they support the statements made in your affidavits.

(Tab 7, Document Book)

17. Mr. Bucci states that he kept the Solicitor advised as to his negotiations with Mr. Balaban and that an agreement with Mr. Balaban's client had been reached. The Solicitor states that Mr. Bucci did not keep him so advised, nor was he aware of the agreement with Mr. Balaban.

18. Late in the evening of May 30, 1989, the Glasgows attended at the Solicitor's office with a copy of the Payment Order. The Solicitor states that the Glasgows advised him that it was their intention to refinance the new property in order to secure sufficient funds to pay out the debt to Mr. Rosenbluth, and that the refinancing would be accomplished as soon as possible after closing.

19. Later that same evening, the Solicitor telephoned Mr. Balaban and advised him that the Glasgows did not have the funds to satisfy the Payment Order, and that should the Glasgows be required to pay \$75,000.00 into court they would be unable to close the purchase and sale of the new property. The Solicitor further states that:

- (a) he advised Mr. Balaban that the Glasgows would place on title to the new property a \$75,000.00 mortgage to be held by the Solicitor, in trust for Mr. Rosenbluth (the "\$75,000 Mortgage");
- (b) he advised Mr. Balaban that there was sufficient equity in the new property to protect Mr. Rosenbluth's interest;
- (c) he gave to Mr. Balaban full particulars as to the sale of the old property, the purchase of the new property and of the first mortgage to be assumed with respect to the purchase of the new property; and
- (d) Mr. Balaban agreed that he would have no objection to the closing of the purchase and sale transactions on the basis of the \$75,000.00 Mortgage being registered if there was sufficient equity in the new property.

The Solicitor states that he cannot recall whether he advised Mr. Balaban of the Glasgows' purported intention to refinance the new property and to pay out the proceeds of the refinancing to Mr. Rosenbluth.

20. The Glasgows state that they overheard the telephone conversation between the Solicitor and Mr. Balaban and that Mr. Balaban agreed to the above proposal. (Tab 8, Document Book)



23rd May, 1996

21. Mr. Balaban states that he and the Solicitor neither discussed nor reached an agreement with respect to the placing of a new mortgage on either of the properties. Rather, Mr. Balaban states that the telephone conversation of May 30, 1989 concluded with the Solicitor stating that he would appear before a duty judge in court the following morning to have the Payment Order set aside.

22. After his conversation with Mr. Balaban, the Solicitor prepared a memorandum to file confirming that an agreement had been reached to place the \$75,000.00 Mortgage on title to the new property (Tab 9, Document Book). The Solicitor did not confirm this purported arrangement with Mr. Balaban in writing.

23. Mr. Balaban states that he did not confirm his telephone conversation with the Solicitor because:

- (a) he had already reached an agreement with Mr. Bucci (the Glasgows' litigation counsel) to replace the Payment Order with a new order to be registered on title to the new property;
- (b) prior to the telephone conversation with the Solicitor, Mr. Balaban had had no contact with the Solicitor in respect of this matter; and
- (c) no agreement was reached between them.

24. At or about 10:00 p.m., the Solicitor faxed a letter to the solicitor for the purchaser of the old property, Mr. Epstein. In his letter the Solicitor advised Mr. Epstein, among other things, about the existence of the Payment Order and that each of Messrs. Bucci and Balaban and the Solicitor would attend before a judge the following day to have the Payment Order varied or expunged from the title to the old property (Tab 10, Document Book). The Solicitor's letter to Mr. Epstein did not make reference to any other agreement having been reached with Mr. Balaban.

25. On May 31, 1989, Mr. Balaban wrote to Mr. Bucci by faxed letter to confirm that he had received instructions from his client to consent to the following:

- (a) that the Payment Order be vacated;
- (b) that a new order be taken out to apply specifically to the new property to provide that the Glasgows be restrained from selling, disposing or otherwise encumbering the new property prior to the Reference in the action between Mr. Rosenbluth and the Glasgows, and dispose of any proceeds obtained from the sale, disposal or encumbrance of the new property which may occur prior to the reference, except upon payment of the sum of \$75,000.00 into court;
- (c) that the two orders (being the vacating order and the new order) be registered concurrently so that Mr. Rosenbluth suffered no loss of interest or protection by reason of the registration of the vacating order; and
- (d) that Mr. Bucci's firm provide an undertaking that no documents will be registered against the title to the new property following registration of the transfer in favour of the Glasgows, such that direct transfer to the Glasgows of title in the new property might be affected.

Mr. Balaban further advised that if the above terms met with the Glasgows' approval, Mr. Bucci may advise the duty judge at 1:45 p.m., and it would not be necessary for Mr. Balaban to attend at court (Tab 11, Document Book). The Solicitor states that he was not provided a copy of this letter.

26. Mr. Balaban did not receive a reply to his letter to Mr. Bucci. On May 31, 1989, he attended before the duty judge. Neither the Solicitor nor Mr. Bucci were in attendance.

23rd May, 1996

27. Mr. Bucci states that the reason he did not attend in court was because he was contacted by the Solicitor at about noon on the day of the motion, and that the Solicitor advised him that he (Mr. Bucci) need not attend in court that day because the Solicitor had reached an "alternative arrangement" with Mr. Balaban to "take care of the matter from the real estate end". The Solicitor admits that he advised Mr. Bucci that he (the Solicitor) had reached an agreement with Mr. Balaban to place the \$75,000 Mortgage on title to the new property. The Solicitor denies that he used the word "alternative" and that he advised Mr. Bucci not to attend at court that day.

28. By letter dated June 13, 1989, Mr. Bucci confirmed with the Solicitor that the real estate transactions had closed as a result of "arrangements...made through [the Solicitor's] office to satisfy the intent of the [Payment Order]" (Tab 12, Document Book). The Solicitor did not reply to Mr. Bucci to qualify the contents of Mr. Bucci's letter.

29. On May 31, 1989, the Solicitor closed the purchase and sale of each of the old and new properties. That day the Glasgows executed a Direction prepared by the Solicitor by which the Solicitor was directed to pay out the funds realized on the sale of the old property, and not to pay \$75,000 into court but rather to register the \$75,000 Mortgage on title to the new property (Tab 12A, Document Book).

30. On May 31, 1989, the Solicitor sent the Glasgows for independent legal advice in respect of the \$75,000 Mortgage (Tab 15, Document Book).

31. On June 1, 1989, the Solicitor registered on title to the new property the transfer to the Glasgows and the \$75,000 Mortgage. The \$75,000 Mortgage was the second mortgage on title to the new property behind a vendor's mortgage which was assumed by the Glasgows (Tabs 13 and 14, Document Book). The purchase price of the new property was \$398,000 and the amount of the then outstanding first mortgage to be assumed by the Glasgows was approximately \$219,000.

32. Prior to registering the \$75,000 Mortgage the Solicitor did not provide to Mr. Balaban a draft of the \$75,000 Mortgage for his approval. After registration of the \$75,000 Mortgage, the Solicitor did not provide Mr. Balaban a copy of the registered document.

33. The recitals to the \$75,000 Mortgage provide, among other things:

The mortgagors [the Glasgows] acknowledge that this mortgage is being given by them as collateral security to ensure the mortgagors' future compliance, if so required, with the order of The Honourable Mr. Justice Osborn dated May 26, 1989, in lieu of their immediate compliance in respect thereof... The principal sum hereby secured, together with the interest accrued therein, shall be payable whenever and to whomsoever the Supreme Court of Ontario may direct, under action #17825/87.  
[emphasis added]

34. By letter dated June 13, 1989, Mr. Balaban inquired of Mr. Bucci as to the status of the matter:

I note that you have not responded to my last letter suggesting the manner in dealing with the outstanding order of Mr. Justice Osborne. This was actually a letter which conformed to your proposal to me as set out in your earlier letter to me.

23rd May, 1996

I can only assume from the information I received from you that both real estate deals closed on May 31, 1989 and one or more of the following alternatives occurred.

1. The sum of \$75,000.00 was paid into court in compliance with the order of Mr. Justice Osborne;
2. A fresh order has been obtained amending the original order and had been registered against the property to the newly acquired property.
3. Neither of the real estate deals closed.

If alternative number 1 took place please advise when the payment was made.

If alternative number 2 is in effect, I would appreciate a copy of the order.

If the deal did not close please advise when the new closing date is set for.  
(Tab 15A, Document Book)

The Solicitor states that he was not provided a copy of this letter, nor advised of its contents.

35. To date, the Glasgows have not paid any funds into court pursuant to the Payment Order, nor has the Payment Order been varied or expunged.

36. The Solicitor admits that the Glasgows, by not paying the moneys into court as ordered by the Payment Order, were in breach of the Payment Order, but he states that he saw the \$75,000 Mortgage as in keeping with the spirit and intent of the Payment Order and as the best possible short term resolution of the matter.

Particular 2(b) The Solicitor acted in conflict of interest in that he:

- i) Registered a \$75,000 mortgage in favour of himself in trust for Mr. Rosenbluth, while acting for a party opposed in interest to Mr. Rosenbluth, and while Mr. Rosenbluth and the Solicitor were each personal creditors of the Solicitor's clients.

36. The Solicitor admits that registering the \$75,000.00 Mortgage to himself in trust placed him in a conflict of interest in that it resulted in his being: 1) solicitor for the Glasgows; 2) trustee for Mr. Rosenbluth and 3) a creditor of the Glasgows.

Particular 2(b) The Solicitor acted in a conflict of interest in that he:

- ii) Having placed himself in the position of trustee for Mr. Rosenbluth, on or about January 23 1990, registered a discharge of the \$75,000 Mortgage and failed to replace it with adequate security or make payment, without the instructions or consent of the trust beneficiary.

23rd May, 1996

38. On or about June 20, 1989, on consent of the parties, the Court gave Judgment to Mr. Rosenbluth in the mortgage default litigation and ordered a Reference to a Master for an accounting of the amounts owing to Mr. Rosenbluth by the Glasgows under the defaulted mortgage (Tab 16, Document Book).

39. By letter dated June 28, 1989, the Solicitor delivered a copy of the \$75,000.00 Mortgage to Mr. Bucci and suggested that he take steps to have the Payment Order varied (Tab 17, Document Book).

40. By letter dated July 17, 1989, Mr. Balaban confirmed with Mr. Bucci a recent telephone discussion held between them. Mr. Balaban wrote, among other things, as follows:

You advised me that your client had not paid \$75,000.00 into Court in furtherance of the Order of Mr. Justice Osborn. As I indicated to you there had been no arrangement made with me to stay the Order of Mr. Justice Osborn although I had indicated a willingness to amend the Order as more particularly outlined in my two faxes to you dated May 31st and June 17th respectively. They responded to your proposal contained in your letter of May 29th, 1989.

As far as I am concerned, your clients are in contempt of court by reason of your clients' failure to comply with the Order. I remain willing to allow an amendment to the Order to vary it to apply to the new property provided you can satisfy me that nothing has been done since May 31, 1989 to impair my clients' security against said property by reason of the Order being registered against it.

If arrangements are not made to either comply with the Order or vary it to have to apply appropriately to the new property I will be bringing a motion against your clients for contempt.  
(Tab 18, Document Book)

The Solicitor states that he did not receive a copy of this letter.

41. In August 1989, Mr. Balaban, on behalf of Mr. Rosenbluth, commenced a contempt proceeding against the Glasgows as a result of their failure to comply with the Payment Order.

42. On September 14, 1989, Mr. Bucci sent to Mr. Balaban a copy of the abstract of the new property. Mr. Balaban states that this is the first time he learned of the existence of the \$75,000.00 Mortgage and that it had been registered on title.

43. On October 11, 1989, Mr. Rosenbluth's contempt motion was heard before Hollingworth, J. who ordered the Glasgows to pay to Mr. Rosenbluth the sum of \$75,000.00 by October 31, 1989, failing which the motion would be reinstated forthwith. Costs of the motion were awarded to Mr. Rosenbluth (the "Contempt Order") (Tab 19, Document Book). The Contempt Order was a compromise acceptable to Mr. Rosenbluth. At the hearing of the motion Mr. Balaban took the position that the \$75,000 Mortgage was invalid because no moneys had been advanced under it.

23rd May, 1996

44. Shortly thereafter, Mr. Bucci advised Mr. Balaban that the Glasgows had arranged sufficient funding to pay off Mr. Rosenbluth's judgment. In addition, the Solicitor confirmed with Mr. Balaban that the Glasgows had secured sufficient funding for \$100,000 (which the Solicitor states he believed at the time would be sufficient to satisfy the Glasgows' debt to Mr. Rosenbluth), but that the Glasgows were then attempting to obtain a better rate of interest.

45. However, a few days later the Solicitor contacted Mr. Balaban to advise that the Glasgows had not arranged sufficient funding. Instead, the Solicitor advised that the Glasgows were prepared to discharge the \$75,000 Mortgage and to place a new \$100,000 mortgage on title to the new property the net proceeds of which were to be paid out to Mr. Rosenbluth.

46. On November 8, 1989, Master Linton delivered his Report on Reference and found that the Glasgows owed Mr. Rosenbluth approximately \$113,000.00 (Tab 20, Document Book).

47. By letters each dated November 8, 1989, the Solicitor and Mr. Balaban wrote to each other. Mr. Balaban wrote to the Solicitor as follows:

"This letter will confirm our discussions of the 7th of November, 1989.

During the course of our discussions you advised me that your clients Mr. and Mrs. Glasgow had not arranged sufficient funding to pay off my client's judgment in the Supreme Court. This is contrary to the information which you had provided to me last Friday when you stated "we have a commitment for the full amount but we are trying to obtain a better rate".

Your clients have been advised as to the full amount by their litigation solicitor, William Bucci, and I am advised by him that he was notified by your clients Mr. and Mrs. Glasgow on the 2nd of the month that they had arranged full funding of the judgment.

I wish to make it perfectly clear to you that if you put a mortgage for \$100,000.00 against the Glasgow's property in the next few days they will continue to be contempt of court as will your actions. You will be impairing my client's rights by placing a mortgage against the title of the property at a time when your clients are aware of the outstanding award of the court and presumably, since you are acting as solicitor for the mortgagee your clients the mortgagee will be deemed to have knowledge of same.

I also wish to make perfectly clear to you that at no time did you ever discuss with me the placing of any mortgage against the title to the [new] property as security for the court order of Mr. Justice Osborn. You did so on your own initiative and without prior consultation with me. By so doing you placed your clients in a position of being in contempt of the court order and I can only suggest to you that they may very well be seeking indemnity against you in consequence thereof should they be committed to jail.

23rd May, 1996

To my mind you have been totally dishonest in your dealings both with your clients, Mr. Bucci and myself. You have violated your obligations both to the court, to your clients and to other solicitors. I would respectfully suggest that you remedy all of these problems by 2:00 p.m. or I will take what action I deem appropriate." [emphasis added] (Tab 21, Document Book)

48. The Solicitor's letter of November 8, 1989, stated as follows:

"As you know, Mr. and Mrs. Glasgow gave to George Argiris, in trust \$75,000.00 2nd Mortgage on 6 Tollbar Court, Richmond Hill, as collateral security to ensure their future compliance, if so required with the Order of The Honourable Mr. Justice Osborn dated May 26, 1989. You have taken the position that this Mortgage is a sham since no monies were actually advanced to Mr. and Mrs. Glasgow under this Mortgage. You advised me that Mr. Justice Hollingworth made a similar remark concerning the validity of this Mortgage when you were last in Court before him. Mr. and Mrs. Glasgow have arranged a \$100,000.00 2nd Mortgage on the said property. All of the net proceeds will be paid to your client. I propose to discharge in the near future the aforementioned \$75,000.00 existing 2nd Mortgage to George Argiris, in trust firstly, because you do not think it is valid and secondly, the new 2nd Mortgagee will require it to be discharged before funds on the new 2nd Mortgage of \$100,000.00 can be advanced." (Tab 22, Document Book)

49. The same day, the Solicitor, with knowledge of the Glasgows' debt to Mr. Rosenbluth, registered the Solicitor's Mortgage on title to the new property to secure his own \$18,000.00 loan to the Glasgows.

50. On January 23, 1990, at about 9:30 a.m., Mr. Balaban's client filed a writ of seizure and sale against the Glasgows in respect of the mortgage default litigation. The Writ formed an interest in land from the time of its filing against the new property.  
(Tab 23, Document Book)

51. The same day, a representative of the Solicitor's office attended at the Registry Office to register the proposed \$100,000 mortgage and discharge the \$75,000 Mortgage. However, the \$100,000 mortgage transaction could not close because of the writ of seizure and sale which had been filed earlier that day. Nevertheless, the Solicitor's representative registered a discharge of the \$75,000.00 Mortgage. The Solicitor did not write to or advise Mr. Balaban that a discharge had been registered (Tab 24, Document Book).

52. The Solicitor states that the discharge of the \$75,000 Mortgage was registered because the writ of seizure and sale was already a registered interest in the Glasgows' new property and because Mr. Balaban had taken the position at the motion before Hollingworth, J. that the \$75,000 Mortgage was invalid.

53. In the result:

- (a) Mr. Rosenbluth's second mortgage on the new property (the \$75,000 Mortgage), held in trust by the Solicitor, was removed from title;

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- (b) the Solicitor, formerly the holder of a third mortgage on title to the new property in the amount of \$18,000 (being the "Solicitor's Mortgage"), became the holder of the second mortgage on title to the new property; and
- (c) Mr. Rosenbluth retained the Judgment and Writ to be personally enforced against the Glasgows and their property.

54. The Solicitor states that he did not intend to claim a priority over the debt owing to Mr. Rosenbluth. However, as events unfolded (see "events subsequent" below) circumstances did not arise in which the Solicitor had an opportunity to claim a priority over Mr. Rosenbluth.

Particular 2(b) The Solicitor acted in conflict of interest in that he:

- iii) subsequently accepted a retainer from the Glasgows and allowed another solicitor in his firm to represent them in a proceeding designed to set aside the debt to Mr. Rosenbluth which the \$75,000 Mortgage was intended to secure and when the Solicitor had made himself trustee for Mr. Rosenbluth.

55. By Order of Master Peterson dated March 16, 1990, Mr. Bucci's firm was removed as solicitors of record for the Glasgows (Tab 25, Document Book).

56. On or about September 9, 1990, a lawyer associated with the Solicitor's office wrote to Mr. Balaban to advise that the former had received instructions from the Glasgows to bring a motion to set aside the Judgment in favour of Mr. Rosenbluth to which the Glasgows had consented in June, 1989.

57. On or about December 11, 1990, by Order of Moldaver, J. the Glasgows' motion (for which the Solicitor was named as the Solicitor of Record) was dismissed, with solicitor and client costs to Mr. Rosenbluth in the amount of \$3,000.00. The Court's endorsement stated that there was absolutely no merit to the motion and that it was close to an abuse of process and was completely unfounded (Tab 26, Document Book).

#### Events Subsequent

58. On October 28, 1992, Cabot Trust Company (the mortgagee of the first mortgage which was assumed by the Glasgows) issued a notice of sale on the new property (Tab 27, Document Book).

59. Five days later, on November 2, 1992, the Solicitor issued a notice of sale in respect of his mortgage on the new property (the Solicitor's Mortgage) (Tab 28, Document Book.) notice thereof being sent to, inter alia, Mr. Rosenbluth at his home and Mr. Balaban.

60. The new property was sold under the first notice of sale issued by Cabot Trust Company. The proceeds of the sale were sufficient only to pay out Cabot Trust Company.

61. On January 11, 1993 Mr. Rosenbluth commenced a civil action against the Solicitor. That action was subsequently settled with a payment to Mr. Rosenbluth from the Solicitor's insurer. (Tab 29, Document Book)

62. On January 15, 1993 the Glasgows each made an assignment in to bankruptcy (Tab 30, Document Book).

VI. DISCIPLINE HISTORY

63. In April 1983 the Solicitor was reprimanded in Convocation for:

- (a) instructing his former secretary to sign as a witness to the purported execution of a mortgage knowing his secretary had not witnessed such purported execution and swore his secretary's false affidavit as commissioner knowing the affidavit was false;
- (b) falsely swearing as commissioner, an affidavit as to the legal age and marital status attached to a mortgage knowing the said affidavit was not signed by the party in his presence and that he had not administered the required oath; and
- (c) on two occasions, instructing his former secretary to swear as commissioner the purported affidavits as to legal age and marital status attached to mortgages knowing that the said affidavits were not signed in her presence and that she had not administered the required oath.

64. On November 1991 the Solicitor was reprimanded in Committee for breach of an undertaking and communicating directly with a person represented by a solicitor.

DATED at Toronto this 15th day of January, 1996."

FINDING OF THE COMMITTEE

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Based on the Agreed Statement and the admissions in it, the Complaint is established and there is a finding of professional misconduct.

RECOMMENDATION AS TO PENALTY

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The Committee accepts a joint submission and agreement as to penalty and recommends that George Larry Argiris be suspended for a period of one month and that he pay the Law Society's costs in the amount of \$3,000 forthwith.

The Committee notes that Mr. Argiris has already signed an undertaking to participate in the Practice Review Program.

REASONS FOR RECOMMENDATION

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The facts of this case constitute serious misconduct. Mr. Argiris effectively assisted his clients in breaching a Court order, although his explanation is that it was a short term resolution and he had the best interest of his clients at heart.

This is not the way lawyers in Ontario conduct themselves when they are facing a court order with which they do not agree. The proper course of conduct is to move to have it varied or to move for a stay of the order to reach an alternative arrangement. It is entirely improper to put into place other arrangements which are contrary to the court order.



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In doing so, Mr. Argiris breached at least two rules of professional conduct. The first is Rule 1, the general rule with respect to integrity:

*The lawyer must discharge with integrity all duties owed to clients, the court, the public and other members of the profession.*

More importantly, for the purposes of the breach of the Court order, he breached Rule 11, The Lawyer and the Administration of Justice, which states:

*The lawyer should encourage public respect for and try to improve the administration of justice.*

At issue here is the following excerpt from Rule 11, commentary 1:

*The lawyer must not subvert the law by counselling or assisting in activities which are in defiance of it. The lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations.*

There are no irresponsible allegations here, but there certainly are actions which undercut an order of a Justice of the Ontario Court General Division. These actions undermine the public respect for the administration of justice and ought not to be the example lawyers are setting for their clients and the public generally.

There are three examples of conflict of interest set out in the complaint.

The first was in registering the \$75,000 mortgage in favour of himself as trustee for the party opposite rather than in the name of Mr. Rosenbluth directly, while the Member was acting for the Glasgows, and perhaps more importantly, while Mr. Rosenbluth and the Member were both personal creditors of the Glasgows.

Mr. Argiris had a personal financial interest in this transaction. There is no issue that he did not disclose the loan to Mr. Balaban or to Mr. Rosenbluth. This placed Mr. Argiris in a rather serious conflict position.

The second conflict was in discharging the \$75,000 mortgage. Having made himself trustee for Mr. Rosenbluth, he then proceeded to discharge the mortgage without ensuring that he had the consent of the beneficiary, Mr. Rosenbluth, to do so.

The third conflict was allowing the other solicitor in his office to bring a motion to set aside the very debt which that \$75,000 mortgage in trust for Mr. Rosenbluth was intended to secure. He put himself in the position of trustee for Mr. Rosenbluth and then acted in a manner inconsistent with that role. This was a rather serious conflict of interest.

In taking this step, the Member breached Rule 5 - the conflict of interest rule. The Rule states:

*The lawyer must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client or prospective client concerned, should not act or continue to act in a matter when there is or there is likely to be a conflicting interest.*

In this case, there were conflicting interests. There was a situation where the lawyer himself had a personal financial interest in the matter. It is relevant to refer at this point to Rule 5, commentaries 1, 2, 3, 4 (Disclosure and Consent commentary), 7 (where a lawyer has a personal interest in conflict with his duties), and 13 (acting against a former client).

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Turning to the Member's discipline record, the Committee notes Mr. Argiris' discipline record (cited in Paragraphs 63 and 64 above). In 1983 there was a serious act of misconduct, namely (among other things) instructing his secretary to falsely sign as a witness the execution of a mortgage; and falsely swearing as a commissioner an affidavit that he did not in fact commission. There are two other matters in the same complaint. These are rather serious matters of integrity. For these acts, Mr. Argiris was reprimanded in Convocation.

In 1991 it was found that he communicated with opposite parties who were represented by solicitors. He was again reprimanded, but only in Committee.

Although the 1983 misconduct was a long time ago, it was a serious act of misconduct. Added to the acts of 1991 and the gravity of the current complaint, a suspension is warranted and we have accepted the agreement of the parties as to penalty. Mr. Argiris through his solicitor has agreed to the one month suspension.

Our imposition of penalty is based not only on the agreement of the parties but on three cases submitted to us by the Society. The most directly on point is Frederick Bernard Sussman, who was suspended by Convocation for one month in January, 1995. In that case, the Member, who practised law without a discipline record for more than 50 years, unfortunately counselled his clients to breach an order in a family law matter. The order had allowed a father access to his children. Mr. Sussman counselled the wife to breach that order so that the father no longer had access. There was no question that Mr. Sussman acted in what he thought were his client's best interests, and without *mala fides*. In coming to their conclusion that a one-month suspension was appropriate, David Scott, Q.C., for the Committee, stated the following in his reasons:

"As members of the Bar, we are all officers of the court and the burden of responsibility as such is no greater than when resting on the shoulders of the advocate who appears before the courts. There can be no behaviour more disruptive to our system of justice and more likely to bring its administration into disrepute than a lawyer while representing a party to a dispute counselling his or her client to disobey the clear, unequivocal terms of a court order. To do so is to undermine the court's effectiveness, contaminate the esteem with which it is held in the eyes of the citizenry and uphold the laws of the jungle. Behaviour of this kind is particularly troubling by reason of the highly undesirable example which it provides to ordinary citizens, lawyers and indeed, law students."

In our opinion, this passage applies precisely to the facts in the case before us.

We were provided with two other cases - the William Alexander King case of June 22, 1995 and the Timothy David Salomaa decision of the Committee on January 18, 1995 and the Order of Convocation dated October 27, 1995.

These were more serious acts of misconduct. In the King case there was a two month suspension, and in Salomaa there was a three month suspension.

Those cases, however, were more blatant examples of acting in a conflict. They were cases in which the solicitors acted on both sides of a transaction, did not disclose this fact to either side, had a financial interest in the outcome, and in one of the cases, there was a financial loss to one of the clients.

These two cases were pointed out to us to indicate that in conflict of interest cases of this nature, an appropriate penalty range is from one to three months.

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The Committee is of the opinion that the Argiris case does not merit a two or three month suspension. The actions of Mr. Argiris are not as egregious as in the two other cases and this leads us to the opinion that one month is appropriate in this matter.

The actions of Mr. Argiris, however wrong they were, may well have been intended to carry out the spirit and intent of the Court order, but they compounded the problem and created delay. He took improper actions without authority from the parties opposite, and this was at the heart of the issue.

We note that Mr. Argiris appeared remorseful, and admits that he ought not to have acted as he did. To his credit, he has agreed to participate in the Practice Review program.

George Larry Argiris was called to the Bar on March 20, 1975.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1996

Robert B. Aaron  
Chair

Ms. Cohen asked that an amendment be made to paragraph 2a) on page 1 of the Report by deleting the word "breaking" in the third line of the paragraph and inserting the word "breaching" so that the sentence reads "...breaching the Order of Mr. Justice Osborne."

It was moved by Mr. Wright, seconded by Ms. Ross that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and pay the Society's costs in the amount of \$3,000.

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

Both counsel made brief submissions in support of the recommended penalty.

Ms. Cohen advised that the costs had been paid.

Mr. Jurjans requested that the suspension commence on June 28th, 1996 because of the solicitor's court obligations.

There were questions from the Bench.

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

It was moved by Mr. DelZotto, seconded by Ms. Curtis that the solicitor be suspended for a period of 6 months.

It was moved by Ms. Stomp, seconded by Mr. Wright that the solicitor be suspended for a period of 3 months.

Counsel, the solicitor, the reporter and the public were recalled and advised of the motions for an increased penalty.

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The matter was stood down for 10 minutes.

Re: James William ANDREW - Toronto

The Deputy Secretary placed the matter before Convocation.

Mr. Gottlieb withdrew for this matter.

Ms. Ratchford appeared for the Society and Mr. Jonathan Marler appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th April, 1996 (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

Clayton Ruby, Chair  
Nancy L. Backhouse  
Gary Gottlieb

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

Jane Ratchford  
for the Society

JAMES WILLIAM ANDREW  
of the City  
of Toronto  
a barrister and solicitor

Linda Lamb  
for the solicitor

Heard: November 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On May 24, 1994, Complaint D117/94 was issued, on December 20, 1994, Complaint D438/94 was issued, on March 16, 1995, Complaint D39/95 was issued, on May 29, 1995, Complaint D111/95 was issued, on June 19, 1995, Complaint D164/95 was issued and on November 3, 1995, Complaint D343/95 was issued against James William Andrew alleging that he was guilty of professional misconduct.

The matter was heard in public on November 8, 1995 before this Committee composed of Clayton Ruby, Chair, Nancy L. Backhouse and Gary Gottlieb. The Solicitor was present at the hearing and was represented by Linda Lamb. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D117/94

2. a) He failed to maintain books and records contrary to sections 14 and 15 of Regulation 708 of the Law Society Act;
- b) He breached an Order of Convocation, made on or about November 1, 1993 for the suspension of his rights and privileges to practise law, as a result of his failure to pay his Annual Fees by continuing to practise law after the date of Convocation's Order suspending him.

Complaint D438/94

2. a) He failed to reply to the Law Society regarding a complaint by C.J. Smith despite letters dated October 21, 1993, March 30, 1994, October 4, 1994 and November 11, 1994, and a telephone request on October 18, 1994;
- b) He failed to file with the Society within six months of the termination of the fiscal year ending January 31, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D39/95

2. a) He misappropriated funds in the amount of \$535.00 from his clients, Lorne and Pamela Moore, which he received on or about June 17, 1994.

Complaint D111/95

2. a) he failed to reply to the Law Society's requests that he proved a response to inadequacies discovered during an examination of his books and records on January 13, 1993, despite letters dated September 29, 1994, October 31, 1994, March 6, 1994 and April 10, 1994.

Complaint D164/95

2. a) he failed to reply to the Law Society regarding a complaint by Katie Thomson despite letters dated January 31, 1995 and March 8, 1995 and a telephone conversation on February 23, 1995 and telephone messages left on February 23, 1995 and March 6, 1995.

Complaint D343/95

2. a) he failed to account for monies entrusted to him by his client, David Nicoll, in the sum of \$1,000.00;
- b) he failed to reply to the Law Society regarding a complaint by David Nicoll despite letters dated April 11, 1995 and May 10, 1995 and telephone communications on May 3, 1995 and May 5, 1995; and
- d) he failed to reply to the Law Society regarding a complaint by Robert Rose despite letters dated April 24, 1995 and May 25, 1995 and telephone communications on May 16, 1995 and May 23, 1995.

Evidence

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

"I. JURISDICTION AND SERVICE

1. The Solicitor admits service of the above Complaints and is prepared to proceed with a hearing of these matters on October 31 and November 1, 1995.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed the above Complaints together with his counsel and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

3. The Solicitor was called to the Bar on March 21, 1975. On October 18, 1994, he provided the Society with an Undertaking not to practise law. He has been suspended for non-payment of his filing levy since February 24, 1995.

Complaint D117/94

2a) He failed to maintain books and records contrary to sections 14 and 15 of Regulation 708 of the Law Society Act;

4. A Law Society auditor attended at the Solicitor's office on January 14, 1994 to review the Solicitor's books and records. The examination revealed that the Solicitor had failed to perform any trust comparisons from the inception of his sole practice in May of 1992. Co-signing controls were immediately implemented on the trust account.

5. By February 14, 1994, the Solicitor had brought the trust comparisons up-to-date.

2b) He breached an Order of Convocation, made on or about November 1, 1993 for the suspension of his rights and privileges to practice law, as a result of his failure to pay his Annual Fees by continuing to practice law after the dated of Convocation's Order suspending him.

6. The Solicitor received a Notice of Annual Membership Fees and memorandum dated June 1, 1993, in which the Law Society advised the Solicitor that payment of the first instalment of his annual fees was due on July 1, 1993. The Notice stated that pursuant to s. 36 of the Law Society Act failure to pay the annual fees within four months after the due dated may result in suspension.

7. The Solicitor received a Final Notice of Annual Membership Fees and memorandum dated September 23, 1993, in which the Law Society advised the Solicitor that payment of the first instalment of his annual fees was due on July 1, 1993. The memorandum stated that payment of the full amount outstanding must be received by November 1, 1993 to avoid suspension.

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8. By registered letter dated November 2, 1993 (received November 11, 1993), the Law Society advised the Solicitor that his rights and privileges as a member had been suspended effective November 1, 1993 as a result of his failure to pay his annual fees.

9. The Law Society received the Solicitor's payment of his outstanding annual fee on April 6, 1994 and the Solicitor was reinstated to the practice of law on that day.

10. The Solicitor practised law during the period of suspension as follows:

- i. Solicitor's interim account to Legal Aid dated November 26, 1993 for client, A.M.C., showing that the Solicitor attended court on November 12, 1993;
- ii. Solicitor's interim account to Legal Aid dated December 24, 1993 for client, A.L., showing that the Solicitor performed services on November 7, 1993, November 15, 1993, November 18, 1993, December 1, 1993, December 2, 1993, December 8, 1993, December 13, 1993, December 15, 1993, December 16, 1993, December 20, 1993, December 21, 1993, December 22, 1993 and December 23, 1993;
- iii. Order dated September 20, 1993 which was approved as to form and content by the Solicitor on November 26, 1993 for client, S.A.

Complaint D438/94

2a) He failed to reply to the Law Society regarding a complaint by C.J. Smith despite letters dated October 21, 1993, March 30, 1994, October 4, 1994 and November 11, 1994, and a telephone request on October 18, 1994;

11. The Solicitor acted on behalf of the estate of the former spouse of C.J. Smith. Ms. Smith was contacted by the Solicitor after her former spouse died as their two children were named as the beneficiaries in insurance policies. The Solicitor requested that Ms. Smith provide him with certified copies or the original birth certificates of the children and he would look after this matter on her behalf. Ms. Smith complied with his requests. The Solicitor did not attend to finalizing the matter. By letter dated June 8, 1993, Ms. Smith wrote to the Law Society complaining about the Solicitor's handling of the matter.

12. By letter dated June 25, 1993, the Law Society wrote to the Solicitor enclosing a copy of Ms. Smith's letter of complaint. The Solicitor was requested to provide his response to the Law Society within two weeks. The Solicitor did not respond.

13. By letter dated September 7, 1993, the Solicitor provided his response to the Law Society.

14. By letter dated October 21, 1993, the Law Society wrote to the Solicitor requesting further information about the complaint. The Solicitor did not respond as in his view, the further information which was requested was either in his letter of September 7, 1993 or within the knowledge of the Complainant.

15. By letter dated March 30, 1994, the Law Society enclosed a copy of its letter dated October 21, 1993 and requested a response from the Solicitor to the same. The Solicitor did not respond.

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16. By registered letter dated September 29, 1994, the Law Society wrote to the Solicitor reminding him of his professional obligation to respond to communications from the Society. The Solicitor was requested to provide his response within seven days, or the matter would be referred to the Chair of the Discipline Committee for further instructions. The correspondence was returned to the Law Society marked "moved".

17. By registered letter dated October 4, 1994 (reviewed October 6, 1994, the Law Society wrote to the Solicitor at his new address. The Solicitor was advised that if a response was not received within seven days, the matter would be referred to the Chair of the Discipline Department for further instructions. The Solicitor did not respond.

18. On October 18, 1994, a Law Society staff member, Ms. Carpenter, called the Solicitor and left a message for him to return her call. The Solicitor returned Ms. Carpenter's call and advised her that he was winding down his practice. The Solicitor further advised that he would respond.

19. By registered letter dated November 11, 1994, the Law Society wrote to the Solicitor reminding him that no response had been received to the Society's previous letters. The Solicitor was requested to provide his response within seven days, or the matter would be referred to the Chair of the Discipline Committee for their consideration. The Solicitor did not respond.

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

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

21. A Notice of Default in Annual Filing, dated August 5, 1994 was received by the Solicitor from the Law Society.

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

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

24. By registered mail, the Solicitor received a Third Notice of Default in Annual Filing, dated January 11, 1995 from the Law Society. The Solicitor was advised that his name would go before Convocation on February 24, 1995 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on February 24, 1995 [sic]. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file.



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

26. To date, the Solicitor has not filed for the fiscal year ended January 31, 1994.

Complaint D39/95

2a) He misappropriated funds in the amount of \$535.00 from his clients, Lorne and Pamela Moore, which he received on or about June 17, 1994.

27. On October 12, 1993, Lorne and Pamela Moore retained the Solicitor to act on their behalf in a wrongful dismissal suit. They provided the Solicitor with a cheque in the amount \$1,000.00.

28. The Solicitor failed to deposit the cheque into his trust account. The audit by the Law Society of the Solicitor's books and records revealed that there was a balance of \$7.34 at the end of October 1993 and no trust transfers were made throughout the month of October 1993 for fees.

29. On or about June 17, 1994, the Solicitor requested an additional \$535.00 from the Moores in order to obtain an "Actuary Report" on their behalf. The Solicitor advised them that the report was necessary to substantiate their pension loss at trial.

30. On or about June 17, 1994, the Solicitor attended at the Moore residence and collected their cheque payable to the Solicitor in trust in the amount of \$535.00. The Solicitor did not deposit the \$535.00 to his trust account.

31. On August 9, 1994, the Solicitor withdrew from the Moore's case. New counsel for the Moores requested delivery of the Actuary Report. The Solicitor advised that he had left it at home, but would deliver it.

32. On September 12, 1994, the Moore's case was settled however, despite several attempts by the Moores and their new counsel, the Solicitor failed to deliver the Actuary Report.

33. By letter dated October 30, 1994, Mr. Moore complained to the Law Society of the Solicitor's failure to account.

34. By letter dated November 11, 1994, the Law Society sent an enquiry letter to the Solicitor requesting his comments on Mr. Moore's letter within two weeks.

35. By letter dated November 21, 1994, the Solicitor admitted to the Law Society that he improperly used client trust funds in the amount of \$535.00. In his letter to the Law Society, the Solicitor admitted, "I have practised almost 20 years and this is the only instance where I have used client trust funds". By letter of the same date, the Solicitor admitted to his clients, Mr. & Mrs. Moore, that he used their monies for personal purposes and not to obtain the Actuary Report. The Solicitor offered an apology to his clients and provided them with a certified cheque in the amount of \$535.00. The Solicitor further attached his account for \$1,000.00.

Complaint D111/95

2(a) He failed to reply to the Law Society's requests that he provide a response to inadequacies discovered during an examination of his books and records on January 13, 1993, despite letters dated September 29, 1994, October 31, 1994, March 6, 1995 and April 10, 1995.

36. An audit of the Solicitor's books and records was commenced on January 13, 1993 by Christine Phillips, Examiner with the Audit and Investigation Department of the Law Society. Ms. Phillips discovered several discrepancies with respect to the Solicitor's books and records and discussed the same with the Solicitor. The Solicitor signed an Acknowledgement dated February 2, 1994 in which he confirms receipt of the Law Society report on the deficiencies in his books and records.

37. By letter dated September 29, 1994, the Law Society enclosed a copy of its report and set out the discrepancies the report had disclosed with respect to the Solicitor's books and records. The Solicitor was requested to acknowledge receipt of the Law Society's letter. No response was received from the Solicitor because soon thereafter, he executed the Undertaking not to practise and believed that a response was no longer necessary.

38. By letter dated October 31, 1994, the Law Society wrote to the Solicitor enclosing a copy of its letter dated September 29, 1994. The Solicitor was requested to respond forthwith. No response was received.

39. By letter dated March 6, 1995, the Law Society wrote to the Solicitor enclosing a copy of its letters dated September 29, 1994 and October 31, 1994. The Solicitor was requested to respond forthwith. No response was received.

40. By registered letter dated April 10, 1995, the Law Society wrote to the Solicitor enclosing a copy of its letters dated September 29, 1994, October 31, 1994 and March 6, 1995. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that should he fail to provide his response within 15 days, the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. No response was received. The Society's letter was returned marked "unclaimed".

Complaint D164/95

2a) He failed to reply to the Law Society regarding a complaint by Katie Thomson despite letters dated January 31, 1995 and March 8, 1995 and a telephone conversation on February 23, 1995 and telephone messages left on February 23, 1995 and March 6, 1995.

41. By letter dated January 18, 1995, Katie Thomson of Legal Transcript Services, wrote to the Law Society complaining about the Solicitor's failure to pay an outstanding account in the amount of \$522.23.

42. By letter dated January 31, 1995, the Law Society wrote to the Solicitor enclosing a copy of Ms. Thomson's letter of complaint and requested his comments within two weeks. No response was received.

43. On February 23, 1995, a Law Society employee telephoned the Solicitor and left a message on his answering machine. On that date, the Solicitor returned the call and advised the Society that he would respond by March 3, 1995. Later that day, a Law Society employee telephoned the Solicitor to confirm his address and once again left a message on his answering machine.

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44. On March 6, 1995, a Law Society employee telephoned the Solicitor and left a message on his answering machine. The Solicitor did not and does not have the financial means to pay the account.

45. By registered letter dated March 8, 1995, the Law Society enclosed a copy of its letter dated January 31, 1995. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee for further instructions.

V. DISCIPLINE HISTORY

46. On February 18, 1987, the Solicitor was found guilty of professional misconduct for practising while under suspension and misleading counsel for the Law Society. He was reprimanded in Committee.

47. On February 1, 1994, the Solicitor was found guilty of professional misconduct for failure to file for the fiscal year ended November 30, 1992. He was reprimanded in Committee and ordered to pay costs in the amount of \$300.00. To date, the costs remain unpaid."

The Solicitor and the Society also agreed on the following facts regarding Complaint D343/95:

"I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D343/95 and is prepared to proceed with a hearing of this matter on November 8, 1995.

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 D343 and this agreed statement of facts with his counsel and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 21, 1975. On October 18, 1994, he provided the Society with an Undertaking not to practise law. He has been suspended for non-payment of his filing levy since February 24, 1995.

Particulars 2(a) and (b) - Nicoll Complaint

5. In January 1993, the Solicitor was consulted by David Nicoll regarding certain family law matters. The Solicitor was provided with a retainer in the amount of \$1,000.00.

6. The Solicitor prepared motions for custody and interim custody, filed the motions, paid the filing fee of \$125.00 and met with the client a number of times and attended at court a number of times.

7. On March 5, 1993, Mr. Nicoll advised the Solicitor that he was not satisfied with the services provided and obtained his file materials from the Solicitor.

23rd May, 1996

8. By letter dated April 26, 1993, Mr. Nicoll requested an account for services rendered from the Solicitor. The Solicitor did not respond.

9. By letter dated March 28, 1995, Mr. Nicoll again wrote to the Solicitor requesting an account. The Solicitor did not respond.

10. By letter dated March 28, 1995, Mr. Nicoll wrote to the Law Society requesting its assistance in obtaining the account and return of any balance owing to him from the retainer.

11. By letter dated April 11, 1995, the Society wrote to the Solicitor enclosing a copy of the letter of complaint and asking for a response within two weeks. The Solicitor did not respond.

12. On each of May 3 and May 5, 1995, the Society telephoned the Solicitor and left messages requesting a response to the letter of complaint.

13. On May 5, 1995, the Solicitor telephoned the Society and advised that a response would be forthcoming by May 8, 1995.

14. By letter dated May 10, 1995 and sent by registered mail, the Society advised the Solicitor that the matter would be referred to Discipline if a response was not received within seven days.

15. The Solicitor did not render an account because the client retrieved the file. The Solicitor maintains that the value of the work exceeds the amount of the retainer by approximately \$1500.00.

Particular 2(c) Failure to Reply to Law Society concerning the Rose Complaint

16. By letter dated March 29, 1995, a solicitor, Robert Rose, wrote to the Law Society concerning the Solicitor. Mr. Rose advised that he had attempted to contact the Solicitor, without success, for a lengthy period of time concerning trust funds Mr. Rose was holding on account of a client of the Solicitor.

17. By letter dated April 24, 1995, the Society enclosed a copy of Mr. Rose's complaint and asked for a reply within two weeks. The Solicitor did not respond.

18. On May 16, 1995, the Solicitor advised the Society by telephone that he would respond by May 19, 1995. No response was received.

19. On May 23, 1995, the Society called the Solicitor and left a message concerning his lack of response.

20. By registered mail dated May 25, 1995, the Society wrote to the Solicitor and advised that if a response was not received within seven days, the matter would be referred to discipline. The letter was returned as "unclaimed".

21. According to the Solicitor, the client picked up her file in November of 1994, as a result of the Solicitor's undertaking not to practice.

V. DISCIPLINE HISTORY

22. On February 18, 1987, the Solicitor was found guilty of professional misconduct for practising while under suspension and misleading counsel for the Law Society. He was reprimanded in Committee.

23. On February 1, 1994, the Solicitor was found guilty of professional misconduct for misconduct for failure to file for the fiscal year ended November 30, 1992. He was reprimanded in Committee and ordered to pay costs in the amount of \$300.00. To date, the costs remain unpaid."

23rd May, 1996

RECOMMENDATION AS TO PENALTY

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The Committee recommends that the Undertaking given by the Solicitor be accepted by Convocation and that he be suspended for a period of six months from the date this matter is heard by Convocation, and indefinitely thereafter until the Solicitor provides psychiatric evidence satisfactory to the Law Society that he is competent to practise law.

REASONS FOR RECOMMENDATION

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The joint submission in this case is acceptable to us.

We have been advised by counsel that the solicitor has been suffering from depression and first came into the care of a psychiatrist, Dr. Gordon, in 1994. After being treated by Dr. Gordon for approximately one year, he changed his medical doctor to Dr. Rosenberg who made a diagnosis of clinical depression. He is presently being treated by Dr. Rosenberg and is on medication for that condition. We append to our reasons the Personal and Professional History of James William Andrew, and the proposed undertaking.

It is our view that the proposed penalty meets the needs of the public for protection and meets the needs of the solicitor in terms of his own personal difficulties and is consistent with the discipline history to which we have given some weight. Therefore, we recommend to Convocation that the undertaking be accepted and that the suspension, as indicated in it, be imposed.

James William Andrew was called to the Bar on March 21, 1975.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1996

Clayton C. Ruby  
Chair

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

There were no submissions and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months and indefinitely thereafter until the Solicitor provided psychiatric evidence satisfactory to the Law Society that he was competent to practise law. In addition the Committee recommended that the solicitor's undertaking be accepted by Convocation.

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

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

Carried

23rd May, 1996

Re: Mary Gale Bullas TRAPP - Kitchener

The Deputy Secretary placed the matter before Convocation.

Ms. Ratchford appeared for the Society and Mr. Peter Madorin appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 18th March, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 10th April, 1996 (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

Harriett E. Sachs, Chair  
Robert B. Aaron  
Gordon Z. Bobesich

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

Elizabeth Cowie  
for the Society

MARY GALE BULLAS TRAPP  
of the City  
of Kitchener  
a barrister and solicitor

Peter Madorin, Q.C.  
for the solicitor

Heard: December 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On September 9, 1992, Complaint D150/92 was issued, on December 2, 1992, Complaint D189/92 was issued, on June 15, 1993, Complaint D163/93 was issued and on July 27, 1995, Complaint D204/95 was issued against Mary Gale Bullas Trapp alleging that she was guilty of professional misconduct.

The matter was heard in public (with the exception of medical evidence which was heard in camera) on December 12, 1995 before this Committee composed of Harriet E. Sachs, Chair, Robert B. Aaron and Gordon Z. Bobesich. The Solicitor was present at the hearing and was represented by Peter Madorin, Q.C. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D150/92

2. a) She failed to reply to the Law Society regarding a complaint by Ron Pfohl, despite letters dated February 27, 1992 and June 18, 1992 and telephone requests on May 29, 1992, June 1, 1992 and June 9, 1992.

Complaint D189/92

2. a) She failed to provide a reply to the Law Society regarding discrepancies found in her books and records as a result of an audit on February 13, 1990, despite letters dated February 10, 1992, March 24, 1992 and April 24, 1992.
- b) She failed to provide a reply to the Law Society regarding a complaint by Simone Watts despite letters dated September 3, 1992; October 1, 1992 and October 16, 1992 and telephone requests on September 22, 1992; September 24, 1992 and September 28, 1992.
- c) She failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to reply within five days to the Society's October 16, 1992 letter regarding a complaint by Simone Watts, within five days.
- d) She failed to provide a reply to the Law Society regarding a discrepancy in her annual filing and outstanding late filing levy for the fiscal year ended March 31, 1991, despite letters dated May 26, 1992, June 29, 1992, July 27, 1992, August 27, 1992 and October 22, 1992.
- e) She failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to reply to the Society's October 22, 1992 letter within five days, regarding a discrepancy and outstanding late filing levy with respect to her annual filing for the fiscal year ended March 31, 1991.
- f) She failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to provide a further reply to the Society regarding a complaint by J.C. Erskine, by October 21, 1992.
- g) She failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to reply to the Society's October 29, 1992 letter within five days, regarding a complaint by J.C. Erskine.
- h) She failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to contact the Professional Standard Department of the Law Society by October 14, 1992.

Complaint D163/93

2. a) She failed to file with the Society within six months of the termination of his fiscal year ending March 31, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act;

Complaint D204/95

2. a) in or around September 1989, she misapplied the sum of \$9,650.00 from her trust account in favour of her client Sangha - Flying Dutchman;

23rd May, 1996

- b) she misled her client, Sheena Rahaman Shew, by falsely advising her that the Law Society had placed co-signing controls on her trust account about the settlement of her motor vehicle litigation;
- c) she misappropriated her client Nettie Schmidt's trust funds in the amount of \$12,000.00;
- d) she misled her client, Nettie Schmidt, by falsely advising her that she had invested her \$12,000.00 in a mortgage on a property in Hamilton;
- e) she failed to produce her books and records for examination by the Law Society's Audit and Investigation Department, as required pursuant to section 18 of Regulation 708 of the Law Society Act;
- f) she failed to comply with her Undertaking to the Law Society dated July 6, 1994 to co-operate with the Law Society's Audit and Investigation Department.

#### Evidence

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

#### "AGREED STATEMENT OF FACTS - D150/92, D189/92, D163/93

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D150/92, D189/92 and D163/93 and is prepared to proceed with a hearing of these matters on December 12 and 13, 1995.

##### II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard partially in public pursuant to Section 9 of the Statutory Powers Procedure Act. The Solicitor will make application to have submissions on penalty heard in camera, which application will not be opposed by the Society.

##### III. ADMISSIONS

3. The Solicitor has reviewed Complaints D150/92, D189/92 and D163/93 and admits the particulars contained therein. The Solicitor admits that the particulars in the Complaints together with the facts as hereinafter set out constitute professional misconduct.

##### IV. FACTS

4. The Solicitor was called to the Bar on March 29, 1977. She practices as a sole practitioner.

Complaint D150/92  
Particular 2(a)

5. Ron Pfohl, a client of the Solicitor, advised the Society, by letter received by the Society on January 8, 1991 (Tab 1, Document Book), of the Solicitor's delay and failure to communicate with respect to his and his wife's wrongful dismissal action.

6. By letter dated January 28, 1991 (Tab 2, Document Book), the Law Society requested the Solicitor's reply to Mr. Pfohl's complaint.



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7. By letter dated April 4, 1991 (Tab 3, Document Book), the Solicitor provided the Society with a synopsis of the circumstances involving Mr. and Mrs. Pfohl's wrongful dismissal case. The Solicitor stated in her letter that she had sought the opinion of another lawyer who had advised that Mr. and Mrs. Pfohl did not have a good case.

8. Mr. Pfohl advised the Society, by letter received by the Law Society on May 3, 1991 (Tab 4, Document Book), that the Solicitor's letter of April 4, 1991 was the first he had heard regarding another lawyer's opinion in the matter.

9. By letter dated February 27, 1992 (Tab 5, Document Book), the Society forwarded to the Solicitor a copy of Mr. Pfohl's letter received by the Society on May 3, 1991. The Solicitor was requested to address Mr. Pfohl's allegations of delay, failure to communicate, and that he and his wife had been misled as to their prospects for success in the action, and that arrangements had been made whereby the matter would proceed on a contingency fee basis. The Society's letter welcomed the Solicitor's additional written comments and stated that in the absence of same a determination would be made based on the material presently before the Society.

10. A Law Society staff employee telephoned the Solicitor at her office to inquire as to her further reply and left a telephone message for the Solicitor on May 29, 1992 requesting she return the call. The Solicitor did not return the call.

11. A Law Society staff employee spoke to the Solicitor by telephone on June 1, 1992. The Solicitor advised that she had been very busy but that she would reply by June 5, 1992. The Solicitor was provided with the Society's facsimile transmission number. No reply was received.

12. A Law Society staff employee spoke with the Solicitor by telephone on June 9, 1992. The Solicitor advised that she would respond by June 10, 1992. No reply was received.

13. By registered mail dated June 18, 1992 (Tab 6, Document Book), the Society forwarded to the Solicitor a copy of its February 27, 1992 letter. The Solicitor was reminded of her obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

14. The Solicitor has not requested an extension to reply nor has she provided the Society with an explanation for her failure to reply.

Complaint D189/92  
Particular 2(a)

15. On February 13, 1990, a Law Society examiner attended at the Solicitor's office to examine her books and records. A copy of the examiner's report is contained as Tab 7 of the Document Book.

16. By letter dated July 5, 1991 (Tab 8, Document Book), the Law Society advised the Solicitor that despite her advice on February 13, 1990, the Society had not received the following documents:

- (i) trust listing and trust bank reconciliation for April 30, 1990;
- (ii) copies of client trust ledger accounts for all clients with outstanding balances as at April 30, 1990.

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Due to the Solicitor's delay in providing the aforementioned documents, the Society requested the Solicitor also provide a copy of her trust listing and trust reconciliation for June 30, 1991. The Society further requested the Solicitor provide an undertaking regarding her books and records. The Solicitor was requested to provide her reply forthwith. No reply was received.

17. James Axler, an associate of the Solicitor's, advised the Law Society by letter dated June 23, 1991 (Tab 9, Document Book), that the Solicitor was away on holiday for the month of July but that he would bring the Society's July 5th letter to her immediate attention upon her return. The Solicitor did not reply to the Society.

18. By letter dated October 1, 1991 (Tab 10, Document Book), the Law Society forwarded to the Solicitor a copy of its July 5, 1991 letter. The Solicitor was requested to reply forthwith.

19. By letter dated November 15, 1991 (Tab 11, Document Book), the Law Society forwarded to the Solicitor copies of its July 5, 1991 and October 1, 1991 letters. The Solicitor was advised that should a reply not be received within fifteen days, the matter would be referred to the Discipline Committee.

20. The Solicitor advised the Law Society by telephone on December 2, 1991 that she would forward a response that day or the next by facsimile transmission.

21. By letter dated December 2, 1991 (Tab 12, Document Book), the Solicitor advised the Society that she was meeting with her accountant, Tom Drake, the following week to review her fiscal period of April 1, 1990 through to March 31, 1991 and that at that time, Mr. Drake would review her trust listings and reconciliations up until June 30, 1991. The Solicitor enclosed her April 30, 1990 reconciliation and trust statement which she believed to be correct, however, Mr. Drake had not yet reviewed the same. The Solicitor advised that she would forward the remainder of her reconciliations, statements and copies of client trust card when she forwarded her annual filing for the fiscal year ended March 31, 1991. The Solicitor stated that she would provide the Society with the requested undertaking at the same time as her filing and she further briefly responded to the requirements of the undertaking. The Solicitor advised that she expected to be in a position to complete these matters by December 17, 1991.

22. By letter dated December 18, 1991 (Tab 13, Document Book), the Solicitor advised that the required information would be forthcoming on December 20, 1992. No reply was received.

23. By registered mail dated January 9, 1992 (Tab 14, Document Book), the Law Society forwarded to the Solicitor a copy of its July 5, 1991 letter. The Solicitor was advised that should a reply not be received by January 13, 1992, the matter would be referred to the Discipline Committee.

24. A Law Society staff employee spoke with the Solicitor by telephone on January 15, 1992. The Solicitor advised that she received the Society's January 9, 1992 letter that day and would respond to the same by January 17, 1992.

25. On January 17, 1992, the Solicitor advised the Law Society by phone that Friday, January 17, 1992 had been a very busy day and she was working on her response that day.

26. By letter dated January 28, 1992 (Tab 15, Document Book), the Solicitor provided the Law Society with the following:

- trust listing and trust bank reconciliation for April 30, 1990
- copies of client trust ledger cards for all clients with outstanding balances in trust as at April 30, 1990

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- trust listing and trust bank reconciliation for June 30, 1991
- undertaking from the Solicitor addressed to the Law Society
- copy of information received from the Toronto Dominion Bank concerning apparent shortage on MacCon trust ledger
- evidence of payout of balances of Hewick loan

27. By letter dated February 3, 1992 (Tab 16, Document Book), the Solicitor provided the Law Society with the following documents:

- June 30, 1991 Trust Statement
- June 30, 1991 Trust account reconciliation statement
- June 30, 1991 Bank Statement for chequing account #113 from National Trust

28. By letter dated February 10, 1992 (Tab 17, Document Book), the Law Society advised the Solicitor that:

- her response regarding the MacCon shortage was not satisfactory. The Solicitor was requested to replace the shortage of \$354.00 forthwith in the MacCon account and provide the Society with evidence of the same
- she provide a copy of the release from Lawrence Hewick regarding her indebtedness to him
- the client ledgers did not match the trust list for April 30, 1990 and the Solicitor was requested to:
  - explain why the Malthaner trust ledger identified an outstanding balance of \$43.00 as at April 30, 1990 when she detailed a lesser amount of \$28.00 on April 30, 1990 trust list
  - explain why the Geraghty trust ledger identified an outstanding balance of \$259.90 as at April 30, 1990 when she detailed a lesser amount of \$49.90 on the April 30, 1990 trust list
- Due to the numerous delays on this file, the Solicitor was requested to forward trust listings and trust bank reconciliations for the period July 31, 1991 to January 31, 1992
- The Solicitor was requested to ensure that her client trust ledger balances match those listed monthly in her trust comparison

No reply was received.

29. By letter dated March 24, 1992 (Tab 18, Document Book), the Society forwarded to the Solicitor a copy of its February 10, 1992 letter. The Solicitor was requested to respond forthwith. No reply was received.

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30. By registered mail dated April 24, 1992 (Tab 19, Document Book), the Society forwarded to the Solicitor copies of its previous seven letters to which a satisfactory reply had not been received. The Solicitor was advised that should a reply not be received within fifteen days, the matter would be referred to the Discipline Committee. No reply was received.

31. To date, the Solicitor has not provided the Society with a satisfactory response.

Particulars 2(b) and (c)

32. By letter dated August 13, 1992 (Tab 20, Document Book), Simone Watts advised the Society of her concerns regarding the Solicitor's handling of certain matrimonial proceedings on her behalf.

33. By letter dated September 3, 1992 (Tab 21, Document Book), the Society forwarded to the Solicitor a copy of Ms. Watts' letter dated August 13, 1992. The Solicitor was requested to provide her comments to the same within two weeks. No reply was received.

34. A Law Society staff employee left telephone messages for the Solicitor at her office on September 22, 1992, September 24, 1992 and September 28, 1992 requesting she return the call. The calls were not returned.

35. By registered mail dated October 1, 1992 (Tab 22, Document Book), the Society forwarded to the Solicitor a copy of its September 3rd letter. The Solicitor was reminded of her obligation to reply. The Solicitor was advised that should a reply not be received with seven days of the date of this letter, the matter would be referred to the Discipline Committee. No reply was received.

36. On October 7, 1992, the Solicitor provided the Society with a written undertaking (Tab 23, Document Book), which stated, in part:

1. To reply promptly to communications from the Law Society, in the case of telephone communications, to reply within two business days of such communication; and, in the case of correspondence, to reply within five days of the date of the correspondence.

37. By registered mail dated October 16, 1992 (Tab 24, Document Book), the Society forwarded to the Solicitor a copy of its October 1st and September 3rd letter. The Solicitor was reminded of her undertaking to the Society dated October 7, 1992. The Solicitor was advised that should a response not be received within five days from the date of this letter, the matter would be referred to the Discipline Committee. No reply was received.

38. The Solicitor has failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to reply within five days of the Society's letter dated October 16, 1992.

Particulars 2(d) and (e)

39. On April 24, 1992, the Solicitor filed with the Society for the fiscal year ended March 31, 1991.

23rd May, 1996

40. By letter dated April 27, 1992 (Tab 25, Document Book), the Law Society advised the Solicitor that although she appeared to be holding herself out as a member of a firm, her filing disclosed that she was a sole practitioner and therefore, she must maintain a trust account in her own name pursuant to the Regulation. The Solicitor was requested to advise the Society that she was complying strictly with subsection 1 of section 14 of the Regulation. No reply was received.

41. By letter dated May 26, 1992 (Tab 26, Document Book), the Law Society forwarded to the Solicitor a copy of its April 27, 1992 letter. The Solicitor was requested to give this matter her early attention. No reply was received.

42. By letter dated June 29, 1992 (Tab 27, Document Book), the Society requested the Solicitor reply to its April 27th and May 26th letters as soon as possible so that this matter could be resolved without involving the Discipline Committee. No reply was received.

43. By letter dated July 27, 1992 (Tab 28, Document Book), the Society forwarded to the Solicitor copies of its previous correspondence. The Solicitor was advised that should a reply not be received within fifteen days, the matter would be referred to the Discipline Committee. No reply was received.

44. By registered mail dated August 27, 1992 (Tab 29, Document Book), the Society forwarded to the Solicitor copies of its previous correspondence. The Solicitor was advised that should she fail to resolve the outstanding matter within two weeks of the date of this letter, the matter would be referred to the Discipline Committee. No reply was received.

45. By registered mail dated October 22, 1992 (Tab 30, Document Book), the Society forwarded to the Solicitor copies of its previous correspondence. The Solicitor was reminded of her undertaking to reply to the Society dated October 7, 1992 (Tab 23, Document Book). The Solicitor was advised that should a full and complete response not be received within five days of the date of this letter, the matter would be referred to the Discipline Committee. No reply was received.

46. The Solicitor has not requested an extension to reply.

47. The Solicitor has failed to comply with her undertaking to the Law Society dated October 7, 1992 by failing to reply to letters from the Law Society dated May 26, 1992, June 29, 1992, July 27, 1992, August 27, 1992, and October 22, 1992.

#### Particulars 2(f) and (g)

48. On July 9, 1992, Complaint D132/92 (Tab 31, Document Book), was issued against the Solicitor regarding her failure to reply to the Law Society regarding a complaint by J.C. Erskine despite letters dated February 13, 1992 and May 29, 1992 and telephone requests on May 27, 1992 and May 28, 1992.

49. On October 6, 1992, the Solicitor executed an Agreed Statement of Facts (Tab 32, Document Book), regarding Complaint D132/92.

50. By letter dated October 7, 1992 (Tab 33, Document Book), the Solicitor provided the Society with a brief of synopsis of her involvement regarding Mr. Erskine's complaint. The Solicitor undertook in her letter to the Discipline Committee to have a full report to them within fourteen days, on or by Wednesday, October 21, 1992.

51. The Solicitor provided the Society with a further undertaking on October 7, 1992 as stated in paragraph 23 of this Agreed Statement of Facts.

23rd May, 1996

52. On October 9, 1992, the Solicitor was found guilty of professional misconduct regarding her failure to reply to the Society.

53. By letter dated October 29, 1992 (Tab 34, Document Book), the Law Society advised the Solicitor that a result of her failure to provide a reply to the Society regarding the complaint by Mr. Erskine, she had breached her undertaking to the Discipline Committee. The Solicitor was advised that should she fail to comply with her undertaking immediately, the matter would be referred to the Discipline Committee. No reply was received.

54. The Solicitor has failed to comply with her undertaking to the Law Society dated October 9, 1992 by failing to reply to the Society's October 29, 1992 letter.

55. The Solicitor failed to comply with her undertaking to the Discipline Committee by failing to provide a full report regarding the complaint by Mr. Erskine.

Particular 2(h)

56. On October 7, 1992, the Solicitor provided a written undertaking (Tab 23, Document Book) to the Society which stated, in part:

To contact the Professional Standard Department of the Law Society by October 14, 1992 and to co-operate in the review process of the Professional Standard Department, as well as, to implement any recommendations made as a result of the practice review.

57. By letter dated October 23, 1992 (Tab 35, Document Book), the Law Society advised the Solicitor that as a result of her failure to contact the Professional Standards Department, she had breached her undertaking to the Society. The Solicitor was advised that should she fail to contact Ms. McCaffrey of the Professional Standards immediately, the matter would be referred to the Discipline Committee. No reply was received.

Complaint D163/93

Particular 2(a)

58. The Solicitor's fiscal year end is March 31. The Solicitor did not file her Form 2 or Form 3 within six months of the fiscal year ending March 31, 1992, as required by S.16(2) of Regulation 573 under The Law Society Act.

59. A Notice of Default in Annual Filing, dated October 6, 1992 (Tab 36, Document Book) was forwarded to the Solicitor by the Law Society.

60. By registered letter dated November 9, 1992 (Tab 37, Document Book), the Law Society advised the Solicitor that she had not taken the necessary steps to bring her filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, she was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve her from the obligation to make annual filings and that she might be brought before the Discipline Committee for failure to file. The Solicitor did not respond to this correspondence.

61. The late filing fee began to accrue on November 24, 1992.

23rd May, 1996

62. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing, dated March 26, 1993 (Tab 38, Document Book). In that Notice the Solicitor was advised that her name would go before Convocation on April 23, 1993 for suspension of her rights and privileges should her late filing fee remain unpaid as of 5:00 p.m. on April 22, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve her from her obligation to make annual filings and that she may be brought before the Discipline Committee for failure to file. The Solicitor did not respond to this correspondence.

63. By letter dated April 13, 1993 (Tab 39, Document Book), the Law Society advised the Solicitor that her annual filing and late filing levy had not been received. The Solicitor was reminded that her name would go before Convocation on April 23, 1993 should payment not be received by April 22, 1993.

64. By registered mail dated April 27, 1993 (Tab 40, Document Book), the Solicitor was advised that her rights and privileges as a member of the Society had been suspended as of April 23, 1993 as a result of her failure to pay her late filing levy.

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

66. To date, the Solicitor has not yet filed the required forms or paid the late filing levy.

#### V. SOLICITOR'S CIRCUMSTANCES

67. Since the Solicitor started practising in March of 1977, she has always had a problem with alcoholism and depression. Prior to 1989 she had undergone psychiatric treatment on two occasions for alcoholism. In 1989 she was admitted to Homewood Sanitarium for treatment for alcoholism. Notwithstanding, she continued to suffer from depression and drank to excess. This problem became even more acute in April of 1992 when her then associate, James Axler, ceased practising with her. Several criminal charges had been laid against him and, in addition, he was before the Discipline Committee. Ultimately, Mr. Axler was found guilty of the criminal charges and, in addition, was disbarred. In the meantime, the Solicitor tried to carry on both her practice and deal with Mr. Axler's practice. The added stresses caused her to drink even more heavily until, ultimately, she came under the care in November of 1992 of Dr. Wagdy Botros, a psychiatrist. She remains under his care to this date. Reports from Dr. Botros will be submitted as part of the submissions on behalf of the Solicitor in respect of penalty. These facts are tendered by way of explanation and not as an excuse for the Solicitor not properly dealing with the matters that are the subject of these three complaints.

#### VI. DISCIPLINE HISTORY

68. The Solicitor was found guilty of professional misconduct on January 15, 1992 and received a reprimand in committee as a result of her failure to reply to letters from the Society.

69. The Solicitor was found guilty of professional misconduct on October 7, 1992 and received a reprimand in committee as a result of her failure to reply to letters from the Society regarding the complaint by J.C. Erskine. The Solicitor also provided the Society with the following undertakings on October 7, 1992:

23rd May, 1996

To have a full report to them (J.C. Erskine) within 14 days, on or by Wednesday, October 21, 1992.

To reply promptly to communications from the Law Society, in the case of telephone communications, to reply within two business days of such communication; and, in the case of correspondence, to reply within five days of the date of the correspondence.

To contact the Professional Standards Department of the Law Society by October 14, 1992 and to co-operate in the review process of the Professional Standard Department, as well as, to implement any recommendations made as a result of the practice review.

DATED at Toronto this 12th day of December, 1995."

"AGREED STATEMENT OF FACTS - D204/95

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D204/95 and is prepared to proceed with a hearing of this matter on December 12 and 13, 1995.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard partially in public pursuant to Section 9 of the Statutory Powers Procedure Act. The Solicitor will make application to have submissions on penalty heard in camera, which application will not be opposed by the Society.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D204/95 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 March 29, 1977. At all time relevant to this Complaint, she practised as a sole practitioner.

Particular 2(a) Misapplication of \$9,650.00 in trust monies

5. The Solicitor was retained by Sheena Rahaman Shew with respect to a claim arising from a motor vehicle accident on February 4, 1987. After some negotiations, the Wawanesa Mutual Insurance Company forwarded a letter dated August 30, 1989 settling Miss Rahaman-Shew's claim for the amount of \$9,650.00. The Solicitor did not have instructions from her client to accept this settlement. A copy of this letter is attached hereto as Exhibit 1.

6. Attached to the letter was a cheque in the amount of \$9,650.00 payable to the Solicitor in trust. The Solicitor deposited that cheque into her trust account on September 1, 1989, as indicated by the endorsement on the back of the cheque. A copy of this cheque is attached hereto as Exhibit 2.

7. This deposit is confirmed by the entry on the Solicitor's bank deposit slip for September 1, 1989, indicating a deposit of \$9,650.00 for the benefit of Sheena Rahaman. A copy of this deposit slip is attached hereto as Exhibit 3.



23rd May, 1996

8. However, the Solicitor's trust receipts journal for the period indicates that the \$9,650.00 has been credited to Sangha-Flying Dutchman and not to Sheena Rahaman-Shew. A copy of this journal is attached hereto as Exhibit 4.

9. The Solicitor's trust listing for the month ending September 30, 1989 also reflects the amount of \$9,650.00 being credited to "Sangha P/F Flying Dutchman". A second ledger for Sangha has a balance of \$412.02 and the balance for Sheena Rahaman-Shew is shown as \$12.75. A copy of this trust listing is attached hereto as Exhibit 5.

10. As of October 31, 1989, the trust listing no longer reflects the \$9,650.00. The second ledger for Sangha has been reduced to \$57.02 and the listing for Sheena Rahaman-Shew remains at \$12.75. According to this trust listing, the total trust balance is \$5,804.97. A copy of this trust listing is attached hereto as Exhibit 6.

11. According to the notes made on the face of the trust account bank statement for the month ending October 31, 1989, a deposit was made, on October 26, 1989, of \$10,000.00 from Sangha. That cheque was returned by reason of insufficient funds on October 27, 1989, and the bank charge of \$5.00 levied on October 31, 1989 was charged to Sangha, as indicated in the note on the bank statement. A copy of this trust account bank statement is attached hereto as Exhibit 7.

12. On October 25, 1989, the Solicitor issued trust cheque 0892 to Zinszer, Sloane in trust in the amount of \$10,000.00, and the notation indicates it was a deposit on the Sangha purchase from the Flying Dutchman. A copy of this cheque is attached hereto as Exhibit 8.

13. The majority of the \$10,000.00 disbursement to Zinszer, Sloane on behalf of Sangha was comprised of the misapplication of the Rahaman Shew settlement funds in the amount of \$9,650.00, as follows:

	\$ 9,650.00	(Rahaman Shew settlement)
plus	<u>412.02</u>	(Sangha - Sept. 30/89 trust ledger)
	10,062.02	
less	10,000.00	(disbursement to Zinszer, Sloane)
less	<u>5.00</u>	(service charge for NSF cheque)
	57.02	(Sangha - Oct. 31/89 trust ledger)

Particular 2(b)     Misleading Sheena Rahaman Shew with respect to trust account co-signing controls

14. As the Solicitor had not forwarded the concluding documentation requested by Wawanesa Mutual Insurance, the company again wrote to the Solicitor on December 5, 1989. A copy of this correspondence is attached hereto as Exhibit 9.

15. In December, 1992, the Solicitor met with Sheena Rahaman Shew and advised her the insurance company had offered a settlement of \$7,500.00 plus solicitor's fees of approximately \$800.00 plus chiropractor's bills of approximately \$1,300.00. Ms. Shew declined the offer as insufficient and instructed the Solicitor to try to obtain a better settlement. The Solicitor failed to inform Ms. Shew that she had in fact accepted the settlement.

16. As of March 31, 1993, the balance in the Solicitor's trust account was \$1,391.83. A copy of the bank statement is attached hereto as Exhibit 10.

23rd May, 1996

17. Between April and July, 1993, Ms. Shew telephoned the Solicitor on a number of occasions and finally advised her that, due to the matter having consumed so much time and due to the Solicitor's illness, Ms. Shew had decided to accept the insurance company's offer. The Solicitor stated to Ms. Shew that she had the funds in her trust account but, due to co-signing controls on the account, could not release the funds. Co-signing controls were placed on the Solicitor's trust account on May 3, 1993, but the funds were not in her trust account.

18. As at May 31, 1993, the balance in the Solicitor's trust account was \$4,017.42. A copy of the May 31, 1993 bank statement is attached hereto as Exhibit 11.

19. On or about November 14, 1994, Ms. Shew received \$8,500.00 from the Solicitor and released her from all future claims. A copy of this release is attached hereto as Exhibit 12.

Particular 2(c) Misappropriation of \$12,000.00 trust funds of Nettie Schmidt  
Particular 2(d) Misleading Nettie Schmidt with respect to monies invested

20. In November, 1987, the Solicitor invested \$14,000.00 belonging to her client, Mrs. Nettie Schmidt, in a residential mortgage. Mrs. Schmidt received monthly interest only payments from the mortgagor.

21. That mortgage was discharged in November, 1990 and on December 18, 1990, the Solicitor orally advised Mrs. Schmidt that she would forward \$2,000.00 to her and that she had invested the remaining \$12,000.00 in another mortgage on a property in Hamilton. By letter dated December 19, 1990, the Solicitor forwarded to Mrs. Schmidt the \$2,000.00 and 12 post-dated cheques, each in the amount of \$135.00. A copy of this letter is attached hereto as Exhibit 13. Mrs. Schmidt received no report on the transaction nor any details about the mortgage investment.

22. On August 19, 1991, the Solicitor wrote to Mrs. Schmidt, referring to the "loan" and enclosing 4 post-dated cheques, each in the amount of \$135.00. A copy of this letter is attached hereto as Exhibit 14.

23. On January 5, 1993, the Solicitor wrote to Mrs. Schmidt with respect to the "\$12,000.00 loan" enclosing 12 post-dated cheques. A copy of this letter is attached hereto as Exhibit 15.

24. The post-dated cheques, each in the amount of \$135.00, were issued on the Solicitor's personal bank account. A cheque dated October 1, 1993 was returned by the Solicitor's bank by reason of insufficient funds. A copy of this cheque is attached hereto as Exhibit 16.

25. The cheque dated December 1, 1993 was also returned by the Solicitor's bank by reason of insufficient funds. A copy of this cheque is attached hereto as Exhibit 17.

26. Mrs. Schmidt is a retired senior citizen and widow who is dependent upon the monthly income from the investment to supplement her pension.

27. On or about December 12, 1994, Mrs. Schmidt received the sum of \$13,890.00 from the Solicitor. A copy of the final release is attached hereto as Exhibit 18.

Particular 2(e) Failure to produce books and records  
Particular 2(f) Failure to comply with Undertaking

28. The Law Society has been attempting to examine the books and records of the practice of the Solicitor since March 16, 1993.

23rd May, 1996

29. After a number of telephone calls, an appointment was made for an examination on May 3, 1993, but the Solicitor did not make her records available. On that date, co-signing controls were placed on the Solicitor's trust accounts.

30. On July 6, 1993, the Solicitor gave an Undertaking to the Law Society not to engage in the practice of law until the final disposition of outstanding complaints. The Solicitor also undertook to co-operate fully with the Staff Trustee and with auditors of the Law Society. A copy of that Undertaking is attached hereto as Exhibit 19.

31. On September 17, 1993, an Examiner with the Society contacted the Solicitor and made an appointment to examine her books and records on September 22, 1993. On September 21, 1993, at 3:32 p.m., the Solicitor cancelled that appointment. Since that date, the Examiner has been unable to reach the Solicitor.

32. On October 25, 1993, upon application under Section 43 of the Law Society Act, the Court ordered that the Law Society through the Staff Trustee be appointed to wind up the practice of the Solicitor.

V. DISCIPLINE HISTORY

33. The Solicitor was reprimanded in Committee on January 15, 1991 for failing to reply to the Law Society.

34. The Solicitor was reprimanded in Committee on October 7, 1992 for failing to reply to the Law Society regarding a complaint and ordered to pay costs of \$500.00. She provided an Undertaking to co-operate with the Practice Review Programme and to reply promptly to communications from the Law Society. She also undertook to provide a further reply regarding the complaint within two weeks.

DATED at Toronto this 12th day of December, 1995."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Mary Gale Bullas Trapp be granted permission to resign.

REASONS FOR RECOMMENDATION

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There was no issue before this Committee that the Solicitor is not capable of practising law at this time. There is also no issue that the Solicitor's misconduct is sufficiently serious that her right to practise should be terminated. The only issue is how that termination should be effected - disbarment or permission to resign.

The Society and the Solicitor jointly submitted that the Solicitor should be granted permission to resign. The Committee is persuaded that this joint recommendation should be accepted.

The mitigating circumstances present in this case which caused the Committee not to recommend that the Solicitor be disbarred are the fact that throughout the period during which the misconduct occurred the Solicitor was suffering from clinical depression and alcoholism. Further, the Solicitor did not entirely ignore her condition. She attempted, unsuccessfully, to deal with it on numerous occasions.

23rd May, 1996

The Committee noted the fact that in April of 1992 the Solicitor's difficulties were compounded by the fact that an associate of hers was charged criminally and was before the Discipline Committee. This factor, however, would not have been significant when the misappropriations which form the basis of Complaint D204\95 took place. With reference to those misappropriations, the Committee did note that the clients concerned were apparently reimbursed to their satisfaction.

Ultimately, it is the medical brief which was received by the Committee in camera (and is available as Appendix A) which persuaded this Committee that it would be inappropriate to cause the Solicitor the additional stigma of disbarment. It is sufficient, in this Committee's opinion, that the Solicitor's right to practise be withdrawn by granting her permission to resign.

Mary Gale Bullas Trapp was called to the Bar on March 29, 1977.

ALL OF WHICH is respectfully submitted

DATED this 18th day of March, 1996

Harriet Sachs  
Chair

It was moved by Ms. Stomp, seconded by Mr. DelZotto that the Report be adopted.

There were no submissions and the Report was adopted.

The penalty recommended by the Discipline Committee was that the solicitor be granted permission to resign.

There were brief submissions by the Society's counsel in support of the recommended penalty.

It was moved by Ms. Puccini, seconded by Mr. Wright that the solicitor be permitted to resign.

Carried

Re: James STEFOFF - Toronto

The Deputy Secretary placed the matter before Convocation.

Messrs. MacKenzie and Gottlieb withdrew for this matter.

Ms. Georgette Gagnon appeared for the Society. The solicitor was present and assisted by Ms. Davies, Duty Counsel.

Convocation was advised that the solicitor had accepted short service.

Convocation had before it the Report of the Discipline Committee dated 26th April, 1996, together with an Affidavit of Service sworn 14th May, 1996 by Audrey D. Cado that she effected service personally on the solicitor on 30th April, 1996 (marked Exhibit 1), together with the Acknowledgment, Declaration and Consent signed by the solicitor on 23rd May, 1996 (marked Exhibit 2). The Acknowledgement to accept short service dated 13th May, 1996 signed by the solicitor was marked Exhibit 3. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

23rd May, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

H. Sachs (Chair)  
N. Backhouse  
W.A.D. Millar

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

Elizabeth Cowie  
for the Society

JAMES STEFOFF  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: March 6, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On December 13, 1993, Complaint D350/93 was issued against James Steffoff alleging that he was guilty of professional misconduct.

The matter was heard in public on March 6, 1996 before this Committee composed of H. Sachs, Chair, N. Backhouse, and W.A.D. Millar. Mr. Steffoff attended the hearing unrepresented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D350/93

2. (a) he failed to serve his client, Zora Gorgiev and Vladmir Gorgiev, in a conscientious, diligent and efficient manner in respect of their motor vehicle accident claim for which he was retained in March, 1988.
2. (b) he failed to report to the Law Society's Errors and Omissions Department a potential claim arising from his negligence in respect of Zora Gorgiev and Vladmir Gorgiev's motor vehicle accident claim for which he was retained in March, 1988; and
2. (c) on or about November 7, 1990 he attended and bid on behalf of his clients, Zora Gorgiev and Vladmir Gorgiev, at the sale by auction of his clients' property at 47 Medway Crescent, Scarborough, Ontario, at which auction his clients would have been prohibited from bidding.

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 D350/93 and is prepared to proceed with a hearing of this matter on December 12 and 13, 1995.

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 D350/93 and admits the particulars and facts contained therein. The Solicitor admits that the said particulars and facts constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on March 19, 1970. He practises as a sole practitioner in the City of Toronto.

Particular 1(a) The Solicitor failed to serve his clients, Zora and Vladimir Gorgiev, in a conscientious, diligent and efficient manner in respect of their motor vehicle accident claim for which he was retained in March, 1988.

Motor Vehicle Action

5. On October 26, 1984 Zora and Vladimir Gorgiev were rear-ended in a motor vehicle accident and suffered personal injuries. They retained the firm of Thomson Rogers to represent them in a law suit.

6. On October 11, 1985 a Statement of Claim (No. 2518661/85) was issued on behalf of the Gorgievs.

Undertakings

7. On February 24, 1986, examinations for discovery were held and the Gorgievs gave three undertakings to provide information to the defendants, as follows:

- (i) question 457 -- a list of dates of consultation with Dr. Peters;
- (ii) question 629 -- enquire of Reliable Sportswear regarding the layoffs of Mrs. Gorgiev in December 1984 and January 1985;
- (iii) question 649 -- a copy of exhibit 1 from the examinations for discovery.  
(Tab 1, Document Book)

8. In March 1988 the Gorgievs met and retained the services of the Solicitor to represent them in their lawsuit and provided him with all the documents in their possession regarding the lawsuit. The Gorgievs retained the Solicitor because they were having some difficulties with their previous solicitor and because the Solicitor had a working knowledge of Macedonian, the Gorgievs' first language.

23rd May, 1996

9. The Gorgievs have some knowledge of English.

10. On March 17, 1988 the Solicitor wrote to the Gorgievs confirming that he spoke to them concerning their accident and indicating that he would contact them shortly. (Tab 2, Document Book)

11. The Solicitor did not serve and file a notice of change of solicitors at this time.

Motion to Dismiss Gorgiev's Action for Failure to Answer Undertakings

12. On May 5, 1988 the defendants in action No. 251866/85 served the Gorgievs with a notice of motion, returnable May 19, 1988 seeking an order dismissing their action for failure to honour the undertakings and deliver an affidavit of documents. (Tab 3, Document Book)

13. The Gorgievs took the notice of motion to the Solicitor who advised them that the matter was in hand and that he would give whatever information was needed to the law firm representing the defendants.

14. On May 12, 1988 the Solicitor telephoned the defendants' solicitor, Nina Richmond and advised her that he had been retained by the Gorgievs. (Tab 3, Document Book)

15. Several days later the Gorgievs provided the Solicitor with some of the information necessary to answer the undertakings including a letter from Mrs. Gorgiev's physician, Dr. A.P. Peters, dated May 13, 1988 and a letter from Reliable Sportswear. (Tab 4, Document Book)

16. On May 19, 1988 the Solicitor telephoned Ms. Nina Richmond before the return of the motion scheduled for that day. He advised her that he could fulfil the requirements of the motion shortly and consented on behalf of the Gorgievs to an order in the form sought by the defendants. (Tab 3, Document Book)

Order of Judge Hudson dated May 19, 1988

17. On May 19, 1988 Judge Hudson rendered a decision pursuant to the defendants' motion and ordered the Gorgievs to deliver answers to undertakings and an affidavit of documents by June 2, 1988. The face of the order indicates that it was issued with the consent of the Gorgievs. (Tab 5, Document Book)

18. On or about June 2, 1988 Mrs. Gorgiev called the Solicitor to enquire about the status of the case and the Solicitor advised her that everything was under control.

19. On June 27, 1988 a copy of the order of Judge Hudson dated May 19, 1988 was mailed to the Solicitor and the Gorgievs by the defendants' solicitors. (Tab 6, Document Book)

20. On June 27, 1988 the Solicitor wrote to the defendants' solicitors and confirmed that he had received the information necessary to answer the outstanding undertakings and that he was attempting to obtain the Gorgiev's file from their former solicitor. (Tab 7, Document Book)

21. On the advice of the Solicitor, the Gorgiev's account with Thomson Roger was taxed, reduced by approximately 25%, and satisfied at the time of the sale referred to the paragraph 48 of this Agreed Statement of Facts.

22. On June 30, 1988 the Gorgievs went to the Solicitor's office with a copy of the order and were assured by the Solicitor that he would be attending in court and would obtain money for them soon.

23rd May, 1996

23. For the next several months the Gorgievs contacted the Solicitor regularly who advised them that he was working toward collecting money for them.

Motion for Dismissal of the Gorgiev's Action for Failure to Comply with Order of Judge Hudson

24. On December 1, 1988 the defendants in action no. 251866/85 mailed a motion record to the Gorgievs and the Solicitor for a motion returnable December 14, 1988 seeking an order dismissing the Gorgiev's action for their failure to comply with the order of Judge Hudson dated June 2, 1988. The motion indicated that the undertakings had not been fully satisfied and an affidavit of documents had not been delivered. (Tab 8, Document Book)

25. On or about December 1, 1988 the Solicitor requested a retainer from the Gorgievs in the amount of \$2,000. On or about December 2, 1988, the Gorgievs state they provided a cheque to the Solicitor but it was never cashed.

26. On December 14, 1988 the defendants' solicitor received a letter from the Solicitor enclosing a notice of change of solicitors. (Tab 9, Document Book)

27. On December 14, 1988 the Solicitor telephoned Ms. Nina Richmond and consented to an order that the Gorgievs comply with the order of Judge Hudson by January 4, 1989, failing which the defendants could move without notice to dismiss the action with costs. (Tab 3, Document Book)

Order of Mr. Justice J.C. Kane dated December 14, 1988

28. On December 14, 1988 a decision was issued by Judge J.C. Kane ordering the Gorgievs to comply with the order of Judge Hudson by January 4, 1989, failing which the defendants could move without notice to dismiss the Gorgievs' action with costs. The order states that it was issued with the consent of the Gorgievs. (Tab 10, Document Book)

29. The Solicitor admits that he consented to the order.

30. The Solicitor did not advise the Gorgievs about the order nor did he consult with them before he provided his consent on their behalf to the order. The Gorgievs believed that all the undertakings had been answered the previous summer.

31. On January 4, 1989 a copy of the order of Judge J.C. Kane dated December 14, 1988 was mailed to the Solicitor by the defendants' solicitor. (Tab 11, Document Book)

Dismissal of Gorgievs' Action With Costs by Judge Corbett

32. On January 24, 1989 the Gorgievs' action was dismissed with costs payable by the Gorgievs pursuant to the order of Judge Corbett. (Tab 12, Document Book)

33. On February 3, 1989 the order of Judge Corbett was mailed to the Solicitor by the defendants' solicitors. (Tab 13, Document Book)

34. The Solicitor took no steps to move to set the order aside nor did he advise the Gorgievs of the dismissal of their action. The Solicitor states he required a financial retainer prior to acting.

35. In or about February 1989, the Gorgievs telephoned the Solicitor and he continued to assure them that their motor vehicle action was progressing.



Assessment of Costs

36. On May 30, 1989 the Solicitor was served with a bill of costs from the defendants' solicitors and a notice of appointment for assessment of costs. (Tab 14, Document Book) The Solicitor states that he informed the Gorgievs of the appointment but they did not attend.

37. On June 26, 1989 the Solicitor attended an assessment of the defendants' costs. (Tab 15, Document Book)

38. On July 4, 1989 the Solicitor delivered a notice of objection to the assessment of costs. (Tab 15, Document Book)

39. On August 9, 1989 an assessment officer issued a certificate of assessed costs against the Gorgievs in the amount of \$6,973.75. (Tab 15, Document Book)

40. On September 5, 1989 a copy of the certificate of assessment was mailed to the Solicitor by the defendants' solicitors with a request for payment. (Tab 16, Document Book)

41. The Solicitor did not advise the Gorgievs about the costs award ordered against them.

42. The defendants received no response from the Solicitor regarding payment of costs and subsequently a writ of seizure and sale was issued against the Gorgievs on October 19, 1989. The defendants' solicitors asked the Sheriff, Judicial District of York to enforce the writ of seizure and sale. (Tab 17, Document Book)

Judicial Sale of Gorgievs' House

43. On July 28, 1990 the Gorgievs were served with a notice of sale by the Sheriff, Judicial District of York. The notice indicated that their home was to be sold to satisfy outstanding judgments and executions, including assessed costs owing to the defendants. (Tab 18, Document Book)

44. The Gorgievs took the letter to the Solicitor and asked him why they had to pay money to the person who hit them in the motor vehicle accident and why their house was being sold. The Solicitor advised them that they owed money to lawyers and that he would take care of everything.

45. On August 28, 1990 the defendants' solicitors received a letter from the Solicitor enquiring as to the amount of money required to satisfy the executions, which was responded to on August 30, 1990. (Tab 19, Document Book)

46. From August to November, 1990 the Gorgievs frequently telephoned the Solicitor who advised them that all was well and that no one could sell their house without his permission.

47. There were two writs of seizure and sale filed with the Sheriff against the Gorgievs' property, one being the writ filed by the defendants' solicitors.

48. On November 7, 1990 a judicial sale of the Gorgievs home was held. The Solicitor assured the Gorgievs that he would purchase back their home for them. The Solicitor attended at the public auction with the Gorgievs and bid for the property. The Solicitor won the bid but did not complete the purchase and the property was ultimately purchased by the second highest bidder, Mr. Stencell. The Gorgievs first learned that the property had been purchased by Mr. Stencell on December 1, 1990. (Tab 20, Document Book)

49. The Gorgievs attempted to contact the Solicitor in December 1990 and were unsuccessful. They retained new counsel, Mr. Daved Muttart.

50. The Gorgievs had owned the property since April 1, 1982 and paid \$80,000.00 for it. Mr. Stencell purchased the property at the auction on November 7, 1990 for \$95,000.00 plus the sum of \$38,609.00 to discharge the only mortgage registered on title.

51. In February, 1991, the Gorgievs repurchased the house from Mr. Stencell for \$168,000. Mr. Stencell made a profit of \$34,391.00 and the equity in the Gorgievs home was decreased by the same amount.

Gorgievs' Civil Action Against the Solicitor

52. On June 15, 1992 the Gorgievs first learned that their motor vehicle action had been dismissed through their new counsel.

53. Mr. Muttart wrote to the Solicitor and advised him that the Gorgievs intended to bring an action against him. Mr. Muttart asked the Solicitor to report the matter to his insurers, which the Solicitor did not do, as he believed he had not been negligent. (Tab 21, Document Book)

54. On July 28, 1992 the Gorgievs brought a motion for an order setting aside the previous orders and seeking costs against the Solicitor. The motion was opposed by the defendants. The Solicitor did not attend at the motion.

Order of Mr. Justice Borins dated November 16, 1992

55. On November 16, 1992 Mr. Justice Borins denied the Gorgievs' motion to reinstate their action. Mr. Justice Borins found that: *"The facts which give rise to this motion paint a very serious picture of a lawyer who seriously mislead his clients and the court. There is no question of the gross neglect to his duties to his clients, his colleagues, and the court by James Steffoff has resulted in the plaintiffs losing their day in court and perhaps more. In light of the gross neglect of Mr. Steffoff, and the long delay, I decline to exercise my jurisdiction in favour of setting aside the three judgments, it being my opinion that it would be unfair to the defendants to do so and that the plaintiffs are better advised to obtain their remedy from Mr. Steffoff."* (Tab 22, Document Book)

56. On November 17, 1992 the Gorgievs' solicitor complained to the Law Society on behalf of the Gorgievs and sued the Solicitor. (Tab 23, Document Book)

57. On January 12, 1993 the Solicitor was noted in default by the Gorgievs for failing to file a statement of defence. The Solicitor had, prior to this date, informed his insurers of the claim.

58. On February 24, 1993 the Solicitor responded to the complaint and indicated that Errors & Omissions had denied him coverage on the claim.

59. On January 15, 1993 the Solicitor retained counsel to move to set aside his having been noted in default on the Gorgievs' claim.

60. In September 1993 the Solicitor was successful in having the action reopened and provided the Gorgievs with a statement of defence and counterclaim.

61. In April 1995, the civil action was settled, and the Solicitor paid the settlement from his personal funds.

23rd May, 1996

Particular 1(b) The Solicitor failed to report to the Law Society's Errors & Omissions Department a potential claim arising from his negligence in respect of Zora and Vladimir Gorgiev's motor vehicle accident claim for which he was retained in March 1988.

62. On January 4, 1989 a copy of the order of Judge J.C. Kane dated December 14, 1988 was mailed to the Solicitor by the defendants' solicitors.

63. On January 24, 1989 the Gorgievs' action was dismissed with costs pursuant to the order of Judge Corbett.

64. On February 3, 1989 the order of Judge Corbett was mailed to the Solicitor by the defendants' solicitors.

65. The Solicitor took no steps to move to set the order aside nor did he advise the Gorgievs of the dismissal of their action.

66. The Solicitor admits knowledge of the potential claim against him upon his receipt of the February 3, 1989 letter from Ms. Nina Richmond to him enclosing the order of Judge Corbett dated January 24, 1989 dismissing the Gorgievs' action with costs.

67. The Solicitor failed to report to the Law Society's Errors & Omissions Department a potential claim arising from his negligence in respect of the Gorgievs.

68. Errors & Omissions coverage was denied to the Solicitor on the basis that he clearly knew about his error before July 1, 1989 and did not report it. Any claim was excluded from coverage under the current insurance policy.

Particular 1(c) On or about November 7, 1990 the Solicitor attended and bid on behalf of his clients Zora and Vladimir Gorgiev, at the sale by auction of his clients' property at 47 Medway Crescent, Scarborough, Ontario, at which auction his clients would have been prohibited from bidding.

69. On November 7, 1990, a judicial sale of the Gorgievs' home was held. The Solicitor attended at the public auction with the Gorgievs, who were the sellers of the property.

70. The judicial sale of the Gorgievs's property was by auction without reserve.

71. The Solicitor bid on the Gorgievs' property on their behalf and put forward the highest bid thereby obtaining the property.

72. In bidding for the property on behalf of the Gorgievs as sellers of the property in a without reserve auction, the Solicitor violated Sections 55, 56 and 57 of the Conveyancing and Law of Property Act, R.S.O. 1990, c.34. The Solicitor states he was unaware of these provisions.

#### V. PRIOR DISCIPLINE

73. On September 29, 1989, the Solicitor was reprimanded in Committee for failing to comply with requests on behalf of his client to turn the client's file over to new solicitors; and for failing to reply to the Law Society regarding a complaint.

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

RECOMMENDATION AS TO PENALTY

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The Committee recommends that James Steffoff be suspended for a period of one month commencing June 10, 1996.

REASONS FOR RECOMMENDATION

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The committee is prepared to accept the joint recommendation of a one month suspension. The committee recognizes that the conduct complained of constitutes a very serious instance of failure to serve clients.

We have before us a joint recommendation of a one month suspension. The committee was concerned that given the serious nature of the misconduct, this joint recommendation was too low a penalty. However, the committee has taken into account the following factors which have persuaded it to accept the joint recommendation.

Firstly, this was a joint recommendation and it appears as though the solicitor did cooperate with the Society in bringing this matter to an uncontested solution.

Secondly, the solicitor has paid out of his own personal funds a significant financial amount - we were advised over \$95,000 - to the clients to compensate them for their loss. Thus, the clients have been fully compensated for the results of the solicitor's misconduct and the solicitor has paid a significant financial price for his misconduct.

The solicitor advised the committee that during the period in question, he was suffering from alcohol addiction for which he has received treatment and from which he has now recovered.

The solicitor also advised the committee that he has taken steps to correct the problems which led to his practice being so out of control; that the failures to serve noted in the Agreed Statement of Facts occurred. He advised the committee that he has significantly reduced his case load and that, in those instances where he feels that he is not able to competently serve his clients, he refers the files to other solicitors.

He also advised the committee that he has put in place, in his practice, systems in order to monitor his practice such that matters are not allowed to linger and files do not get procrastinated on in the way that led to the misconduct which forms the basis of the complaints before us.

The committee is also prepared to accept the joint recommendation that the suspension commence on June the 10th, 1996.

James Steffoff was called to the Bar on the 19th day of March, 1970.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1996

Harriet E. Sachs  
Chair

It was moved by Mr. Copeland, seconded by Mr. Carey that the Report be adopted.

23rd May, 1996

The were no submissions and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month commencing June 10th, 1996.

It was moved by Mr. Copeland, seconded by Mr. Carey that the recommended penalty be adopted.

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

It was moved by Mr. Swaye, seconded by Mr. DelZotto that the solicitor be suspended for a period of 3 months.

Counsel, the solicitor, the reporter and the public were recalled and advised of the motion for an increased penalty.

The matter was stood down for 10 minutes.

#### RESUMPTION OF THE GEORGE LARRY ARGIRIS MATTER

There were further submissions by both counsel.

Counsel, the solicitor, the reporter and the public withdrew for further deliberations.

Counsel, the solicitor, the reporter and the public were recalled and heard further submissions from Mr. Jurgans.

Convocation took a brief recess at 10:40 a.m. and resumed in camera at 10:55 a.m.

IN CAMERA Content Has Been Removed

Counsel, the solicitor, the reporter and the public were recalled and advised of Convocation's decision that the solicitor be suspended for a period of 6 months commencing July 1st, 1996 and pay the Society's costs in the amount of \$3,000.

Counsel were advised that Reasons would be prepared.

#### RESUMPTION OF THE JAMES STEFOFF MATTER

There was no request for an adjournment and further submissions were made by both counsel in support of the 1 month suspension.

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

The Swaye/DelZotto motion for a 3 month suspension carried.

23rd May, 1996

The main motion for a 1 month suspension was not put.

Reasons would be prepared.

Counsel, the solicitor, the reporter and the public were recalled and advised of Convocation's decision to suspend the solicitor for a period of 3 months commencing June 10th, 1996.

Counsel were advised that Reasons would be prepared.

The Acting Treasurer withdrew from Convocation being ineligible to sit on the following matter. Ms. Curtis took the Chair.

Re: Gordon Wilfred ECCLESTONE - North York

The Deputy Secretary placed the matter before Convocation.

Ms. Ross withdrew for this matter.

Ms. Leslie Cameron appeared for the Society. Mr. William Trudell appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th November, 1995, together with an Affidavit of Service sworn 28th November, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 16th November, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd May, 1996 (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

Daniel J. Murphy, Q.C., Chair  
Philip M. Epstein, Q.C.  
Heather J. Ross

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

Leslie Cameron  
for the Society

GORDON WILFRED ECCLESTONE  
of the City  
of North York  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: October 31st, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On July 26, 1995, Complaint D92/95 was issued and on September 25, 1995, Complaint D246/95 was issued against Gordon Wilfred Ecclestone alleging that he was guilty of professional misconduct.

The hearing was heard in public (with a portion heard in camera) on October 31st, 1995 before this Committee comprised of Daniel J. Murphy, Q.C., Chair, Philip M. Epstein, Q.C. and Heather J. Ross. The Solicitor was not present at the hearing nor was he represented. Leslie Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D92/95

2. (a) he failed to serve his clients, Steven Bruce and Leonard Ellis, in a conscientious, diligent and efficient manner in connection with their defence of criminal charges brought against them in late 1993, in that:
  - (i) he failed to attend court appearances on May 31 and June 28, 1994;
  - (ii) he failed to keep his clients reasonably informed;
  - (iii) he failed to follow his clients' instructions concerning the venue of the trial of the criminal proceedings;
  - (iv) he withheld information from and misled his clients as to the status of and steps that he had taken on their behalf in the criminal proceedings;
  - (v) he refused to accompany his clients to a show cause bail hearing when their arrest was a result of his neglect and errors;
- (b) he failed to serve his client, Steven Bruce, by failing to deliver all papers and property to which the client was entitled, including the client's police duty notebooks;
- (c) he failed to reply to the Law Society regarding a complaint by Steven Bruce, despite letters dated December 7, 1994 and January 10, 1995 and telephone messages left on December 29, 1994 and January 6, 1995;

Complaint D246/95

2. a) he failed to co-operate with the Law Society representative's attempts to conduct an audit pursuant to sections 9 and 18 of Regulation 708, when he failed to produce books and records as set out in section 15 despite the Society's:
  - i) visits on April 21, 1994, July 27, 1994, August 23, 1994, August 25, 1994, August 26, 1994, September 1, 1994, September 6, 1994, September 14, 1994, September 19, 1994, September 22, 1994 and September 23, 1994;
  - ii) letters dated February 7, 1995, April 3, 1995, April 13, 1995 and April 27, 1995; and
  - iii) telephone call on October 18, 1994;

- b) he breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees, by continuing to practise during the period December 1, 1992 to December 30, 1992;
- c) he breached an Order of Convocation that he suspend his practice for failure to pay his Errors & Omissions Insurance Levy, by continuing to practise during the period November 1, 1993 to September 23, 1994;
- d) he misled a Discipline Committee on July 19, 1994 when asked if he had practised since November 1, 1993 by advising them that he had not practised since that time when such was not the case.

Reasons for finding of Professional Misconduct

Gordon Wilfred Ecclestone is charged with professional misconduct in connection with certain matters arising out of Complaint D92/95 and D246/95. The matters are extremely serious.

The allegations essentially are that he failed to serve his clients Steven Bruce and Leonard Ellis in a conscientious and diligent fashion. He failed to reply to the Law Society regarding the complaint from Steven Bruce. He failed to return important evidence given to him by Steven Bruce when he had been discharged. He failed to attend court appearances. He failed to cooperate with the Law Society's representative's attempts to conduct an audit. He practised while under suspension. He seriously misled a Discipline Committee on July 19, 1994 when he advised them that he had not practised since November 1, 1993, which was clearly not the case.

The Society has had the benefit of hearing from the Crown Attorney in Kenora, Mr. Scutt, Mr. Steven Bruce and Mr. Leonard Ellis and a representative of the Society. The Committee has also had the benefit of an extensive Document Book which clearly substantiates the charges of professional misconduct against Mr. Ecclestone.

We were given at the opening of the proceeding a Document Book indicating significant attempts to serve Mr. Ecclestone at his home where he apparently carries on practice in Willowdale, Ontario. The document brief indicates that as recently as October 25, 1995, Mr. Ecclestone was personally served with the Complaints and supporting documentation. The service brief also indicates numerous attempts by Law Society counsel to send the documents to Mr. Ecclestone. Mr. Ecclestone chose not to appear, or for whatever reason is unable to appear. We were not given any explanation.

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Gordon Wilfred Ecclestone be disbarred.

REASONS FOR RECOMMENDATION

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Mr. Ecclestone's reputation is not unknown to the Committee and the Committee is mystified as to why Mr. Ecclestone both did not appear and tendered no explanation to the Committee with respect to these very serious charges. The Committee is left with a picture of a lawyer who is currently ungovernable and who is placing his clients at serious risk.



23rd May, 1996

The consequences to Mr. Ellis and Mr. Bruce of the Solicitor's conduct was extremely serious. As a direct result of his misconduct they were incarcerated for three days, and in view of the fact that they are police officers on a reserve and were incarcerated in a district and location with persons with whom they had been in contact as police officers put them at serious jeopardy.

Regrettably, the Committee finds it has no alternative but to recommend to Convocation that Mr. Ecclestone be disbarred. There may be an explanation in mitigation and it may be that some other penalty is more appropriate in the circumstances. However, the Committee has been deprived of the opportunity to consider any other penalty in view of Mr. Ecclestone's failure to appear before us and tender some explanation.

Accordingly, the Committee contemplates that Mr. Ecclestone may well attend before Convocation and tender some explanation which, in Convocation's wisdom, they may accept and decide to substitute another, more fitting penalty. For the moment we can do nothing else than recommend disbarment, and we do so.

Gordon Wilfred Ecclestone was called to the Bar on the 17th day of September, 1953.

ALL OF WHICH is respectfully submitted

DATED this 13th day of November, 1995

Philip M. Epstein, Q.C.  
(for the Committee)

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

There were no submissions and the Report was adopted.

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

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

Ms. Cameron requested that pages 109 - 118, pages 123 - 188 and pages 189 - 195 of the Joint Record Book be received in camera and that the submissions on this material be heard in camera.

The Joint Record Book was marked Exhibit 3, Memorandum of Argument - Exhibit 4, Factum of the Law Society of Upper Canada - Exhibit 5, Law Society's Brief of Authorities - Exhibit 6 and Materials in Support marked Exhibit 7.

Mr. Trudell made preliminary submissions regarding the psychiatric report.

Counsel, the solicitor, the reporter and the public withdrew to deliberate on the preliminary matters.

Counsel, the solicitor, the reporter and the public returned and advised that the in camera material would be received in camera and that submissions be heard in public to the extent possible and if necessary in camera submissions would be made separately.

23rd May, 1996

Mr. Trudell made submissions and advised that the solicitor undertook to resign administratively and never apply for readmission.

There were questions from the Bench.

Ms. Cameron made submissions asking that there be conditions on the resignation including a written undertaking to resign and that it be irrevocable or that there be a section 35 hearing on an application for readmission.

There were further questions from the Bench.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:20 P.M.

CONVOCATION RECONVENED AT 2:05 P.M.

PRESENT:

Acting Treasurer (Philip M. Epstein), Angeles, Carey, Copeland, Crowe, Curtis, DelZotto, Eberts, Gottlieb, MacKenzie, O'Connor, Puccini, Ross, Stomp, Swaye, Thom, Wilson and Wright.

.....

RESUMPTION OF THE GORDON WILFRED ECCLESTONE MATTER (Ms. Curtis in the Chair)

Convocation resumed in camera deliberations.

IN CAMERA Content Has Been Removed

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded in Convocation, that he undertake not to practice and to resign and that if he reapplied he would be subject to a section 35 hearing. In addition the solicitor would satisfy the Society with respect to his books and records.

The solicitor was reprimanded.

Mr. Epstein returned to Convocation as Acting Treasurer.

23rd May, 1996

Re: Arif RAZA - Toronto

The Secretary placed the matter before Convocation.

Mr. Gottlieb withdrew for this matter.

Ms. Cohen appeared for the Society. Mr. Alawi Mohideen appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 4th March, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd May, 1996 (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

Gary Lloyd Gottlieb, Q.C., Chair  
Hope Sealy  
Robert B. Aaron

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

Audrey Cado  
for the Society

ARIF RAZA  
of the City  
of Toronto  
a barrister and solicitor

Alawi K. Mohideen  
for the solicitor

Heard: November 14, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On May 25, 1995, Complaint D57/95 was issued against Arif Raza alleging that he was guilty of professional misconduct.

The matter was heard in public on November 14, 1995 before this Committee composed of Gary Lloyd Gottlieb, Q.C., Chair, Hope Sealy and Robert B. Aaron. The Solicitor was present at the hearing and was represented by Alawi K. Mohideen. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D57/95

2. a) he failed to file with the Society within six months of the termination of his fiscal year ending June 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;
- b) he failed to reply to the Law Society's concerns arising from an examination of his books and records on January 27, 1992, despite letters dated October 24, 1994, November 29, 1994 and January 5, 1995 and a telephone request on February 9, 1995.

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 D57/95 and is prepared to proceed with a hearing of this matter on November 14 and 15, 1995.

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 D57/95 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1980. He practises as a sole practitioner.

Particular 2(a)

Failure to file his Forms 2/3 for his fiscal year ending June 30, 1994

5. The Solicitor's fiscal year end is June 30th. The Solicitor did not file his Form 2 or Form 3 within six months of his fiscal year ending June 30, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated January 6, 1995 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

23rd May, 1996

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated February 9, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on or about February 14, 1995. A copy of the Notice and Acknowledgement of Receipt of a Registered Item card is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on February 22, 1995.

9. To date the Solicitor has not filed the required forms.

Particular 2(b)

Failure to reply to the Law Society

10. A Law Society Examiner reviewed the Solicitor's books and records on January 27, 1992, February 3, 1992, February 4, 1992 and February 12, 1992. The examiner discovered several discrepancies with respect to the Solicitor's books and records and discussed the same with the Solicitor. The Solicitor was provided with a copy of the examiner's February 12, 1992 report.

11. On February 12, 1992, the Solicitor executed an Acknowledgement in which he acknowledged receipt of the Law Society's February 12, 1992 report and agreed to ensure that the deficiencies would be corrected forthwith and to comply, in the future, with Regulation 573, sections 14 and 15 of the Law Society Act.

12. By letter dated March 6, 1992, the Law Society forwarded to the Solicitor an article on the spot audit programme and a pamphlet setting out sections 13 to 18 of the Regulation. The Solicitor was advised that the examiner's report, dated February 12, 1992 disclosed the following:

- 1) though he had held negotiable or other valuable property from time to time, he did not maintain a central negotiable valuable property record as required by subsection 1(i) of the Regulation. The Solicitor was requested to institute and maintain a central record showing all negotiable or other valuable property, other than money, held in trust from time to time for all clients. The Solicitor was requested to record valuables held from time to time in chronological order that included the date of receipt, a description of each valuable, its value, by whom lodged, the whereabouts of each valuable, the date and release and to whom. He was asked to forward to the Law Society, within a month, a copy of the completed record;
- 2) he had allowed money to be transferred from his trust account to his general account on account of fees for which billings or other written notifications had not first been delivered (mailed) to clients as required by subsection 8(c) of the Regulation. The Solicitor was requested to institute a strict procedure to ensure that billings were prepared, delivered, entered and posted before transfers are made from trust to general on account of fees earned, and confirm to the Law Society in writing that this procedure was in place;

- 3) he had not maintained a clients' trust ledger showing separately for each person for whom money has been received in trust all such money received and disbursed and any unexpended balance therein as required by subsection 1(c) of section 15 of the Regulation. The Solicitor was requested to institute and maintain currently a trust ledger and to notify the Law Society, in writing, when this procedure is in place;
- 4) he had allowed a number of inactive trust ledger accounts to have balances that remained unchanged over long periods. The Solicitor was requested to prepare a listing of trust ledger account balances including a column showing the date of last entry in each account and then to review the listing so that instructions could be given to close inactive accounts, if possible, either by paying the balances held to or on behalf of the clients, or by billing and transferring to the general account if he was entitled to any of those amounts. The Solicitor was requested to forward to the Law Society a copy of the next regular monthly trial balance of the clients' trust ledger showing the balances remaining after his review;
- 5) he permitted money representing earned fees to accumulate in the trust account contrary to subsection 7 of the Regulation;
- 6) he had allowed clients' trust funds to be occasionally posted to a trust ledger account entitled "miscellaneous," when subsection 1(c) of section 15 of the Regulation requires that a separate trust ledger account be maintained for each client for whom trust funds are held. The Solicitor was requested that he confirm with the Law Society that he had discontinued this practise;
- 7) he did not maintain a transfer record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made as required by subsection 1(d) of section 15 of the Regulation. The Solicitor was requested to establish a transfer journal to initiate all transfers of money between clients' trust ledger accounts to comply with that subsection of the Regulation, and confirm to the Law Society that this was in operation;
- 8) he had allowed his general cash receipts record to not always show the full particulars of money received as required by subsection 1(e) of section 15 of the Regulation;
- 9) he did not maintain a record of fees billed which would comply with that required by subsection 1(g) of section 15 of the Regulation. The Solicitor was requested to institute a fees record which meets the requirements of the Regulation, and confirm to the Law Society that such a record was in operation;
- 10) he had allowed reconciling items on his trust bank reconciliations which had been corrected prior to the visit of the Law Society examiner, but which had been permitted to exist uncorrected over a period in excess of one month;
- 11) he had allowed monthly trust bank reconciliations to contain outstanding, stale-dated trust cheques as reconciling items;

23rd May, 1996

- 12) he had allowed outstanding deposits shown on his trust bank reconciliations to not always be credited by his bankers by at least the next banking day, indicating that deposits of money had not regularly been made as soon as possible after receipt, and "forthwith" as required by subsection 1 of section 14 of the Regulation.
- 13) he had allowed the monthly trust comparisons between total trust obligations and total trust funds on deposit to have differences between the totals which were neither explained nor corrected as required by subsection 1(h) of section 15 of the Regulation. The Solicitor was requested to investigate the differences on the monthly trust comparisons for the 12-month period preceding the examiner's visit, and to report to the Law Society within one month of the letter;
- 14) he had allowed overdrawn trust ledger accounts to exist uncorrected over periods in excess of one month. The Solicitor was requested to prepare and forward to the Law Society within one month from the date of the letter, a listing of overdrawn trust ledger accounts which existed at December 31, 1991, identifying client accounts showing the names of payees of trust cheques which either caused or contributed to the overdrawn condition, the cheque amounts and the amounts of the overdrawn accounts, the dates they arose, and full explanations of the reasons for the overdrawn accounts;
- 15) he had made a practice of writing off small clients' trust account credit balances in contravention of subsection 8 of section 14 of the Regulation;
- 16) he had allowed trust bank reconciliations supporting the monthly trust comparisons required by subsection 1(h) of section 15 of the Regulation to be incompletely detailed;
- 17) he had allowed fee billings rendered to clients to not include a detailed accounting of fees and disbursements as required by section 2 of the Solicitor's Act and Rule 9 of the Rules of Professional Conduct. The Solicitor was requested to ensure that all future billings detail disbursements made on behalf of the client and the fee charged and to notify the Law Society when the Solicitor followed this procedure;
- 18) he had not made monthly the trust comparison required by subsection 1(h) of section 15 of the Regulation. The Solicitor was requested to notify the Law Society when this procedure is followed;
- 19) he had failed to maintain his Forms 4 and 5 in individual investment files for mortgages held by him in trust. The Solicitor was requested to forward to the Law Society completed copies of the Forms 4 and 5 within 30 days for all mortgages held in trust;
- 20) he had not corrected inadequacies disclosed on a prior examination and reported to him on July 3, 1990, specifically to sections marked by hand as numbers 1, 2, 3, 4, 5, and 6.

The Solicitor was requested to have a public accountant report directly to the Law Society within one week of the date of the letter to the effect that all of the inadequacies encountered by the Law Society's examiner have been corrected, and provide an opinion as to whether or not the Solicitor appears to be complying strictly within sections 14 and 15 of the Regulation. No reply was received.

13. By letter dated April 7, 1992, the Law Society forwarded to the Solicitor a copy of its March 6, 1992 letter and requested a written response forthwith.

14. By letter dated April 9, 1992, the Solicitor advised the Law Society that he had acknowledged each of the Law Society's requests and had implemented the procedures necessary to rectify the inadequacies disclosed by the examinations of his books and records.

15. By letter dated June 5, 1992, the Law Society advised the Solicitor that his letter of April 9, 1992 did not meet all of the requirements as set out in the Law Society's March 6, 1992 letter. The Solicitor was requested to respond specifically to the sections marked by hand as 1, 4, 13, 14, 18, 20 and 21 of the letter of inadequacies. No reply was received.

16. By letter dated July 7, 1992 the Law Society forwarded to the Solicitor a copy of its June 5, 1992 letter and requested a written response forthwith.

17. By letter dated July 30, 1992, the Solicitor forwarded to the Law Society a cheque in the amount of \$775.75 in payment for the costs of the Law Society's audit and advised that he was enclosing a completed Form 4 certificate, shortly. The Law Society did not receive the Form 4 certificate.

18. By letter dated August 17, 1992, the Solicitor forwarded to the Law Society copies of his trust listings and trust bank account reconciliations for the month of July 1992.

19. By letter dated September 1, 1992, the Law Society advised the Solicitor that a response to the sections marked by hand as 13, 14 and 21 of the Law Society's March 6, 1992 letter required a response. The Solicitor's trust listings had revealed several remaining inactive trust ledger accounts and the Solicitor was requested to deal with same. The Solicitor was advised that the Form 4 certificate had not been received and was requested to forward a copy of same. The Solicitor was requested to forward copies of his bank statements with the copies of the trust bank reconciliations for the months of January 1992 to July 1992 inclusive.

20. By letter dated November 20, 1992, the Solicitor forwarded to the Law Society his trust listing, trust bank account reconciliation and trust bank statement for the month of October, 1992 and advised that he would forward to the Law Society a Form 4 certificate.

21. By letter dated December 20, 1992, the Solicitor forwarded to the Law Society his trust listing, trust bank account reconciliation and trust bank statement for November, 1992 and a completed Form 4 certificate. The Solicitor advised the Law Society that he was forwarding a corrected Form 2 certificate. A Form 2 certificate was not received by the Law Society.

22. By letter dated March 22, 1993, the Law Society advised the Solicitor that he had not met the requirements of sections 13, 14 and 21 of the Law Society's March 6, 1992 letter and had not forwarded the trust comparison for December 31, 1992 as requested in the Law Society's March 6, 1992 letter. The Law Society further advised that it had not received the amended Form 2 and the listing of client liabilities for \$872.52 that the Solicitor had held in trust from the partnership Mohideen and Raza as requested in the Law Society's October 20, 1992 letter. No reply was received.

23. By letter dated May 12, 1993, the Law Society forwarded to the Solicitor a copy of its March 22, 1993 letter and requested a written response forthwith. No reply was received.



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24. By registered letter dated June 17, 1993, the Law Society forwarded to the Solicitor a copy of its March 22, 1993 and May 12, 1993 letters. The Solicitor was reminded of his obligation to respond promptly to all communications from the Law Society. The Solicitor was advised that should he fail to provide the Law Society with a written response within fifteen days, the matter would be referred to the Discipline Committee. The Law Society's June 17, 1993 letter was returned by Canada Post marked with the Solicitor's new address.

25. By registered letter dated June 24, 1993, the Law Society forwarded to the Solicitor, at his new address, a copy of its letters dated March 22, 1993 and May 12, 1993. The Solicitor was reminded of his obligation to respond promptly to all communications from the Law Society. The Solicitor was advised that should he fail to provide the Law Society with a written response within fifteen days, the matter would be referred to the Discipline Committee. The Law Society's June 23, 1993 letter was signed for and delivered on June 29, 1993.

26. By telephone on July 14, 1993, the Solicitor left a message for a Law Society staff employee indicating that he had received the Law Society's June 24, 1993 letter, but having moved his practise in April, was having difficulty locating files needed to respond to the Law Society. The Solicitor requested an extension until July 21, 1993 to respond.

27. By telephone on July 14, 1993, Solicitor left a message for a Law Society staff employee advising that he had been unable to locate files needed to complete his response. The Law Society advised the Solicitor that a final extension to respond by July 21, 1993 would be granted.

28. By letter dated July 14, 1992 [sic], the Solicitor replied to the Law Society's March 22, 1993 letter and forwarded to the Law Society a completed Form 2 certificate and a copy of his trust listings and bank reconciliations for the months of December 1992 and January 1993.

29. By letter dated July 23, 1993, the Solicitor advised the Law Society that he had been unable to locate his file and therefore asked for a facsimile transmission of the Law Society's letters that require a response and a copy of his responses to the Law Society.

30. By facsimile transmission on July 28, 1993, the Law Society forwarded to the Solicitor a copy of its March 6, 1992 letter and the Solicitor's April 9, 1992 letter.

31. By letter dated August 24, 1993, the Law Society acknowledged receipt of the Solicitor's July 14, 1993 letter and advised the Solicitor of the following:

- The Law Society requested that the Solicitor provide copies of his bank statements for the months ended December 31, 1992 and January 31, 1993.
- The Law Society noted a debit balance of \$0.10 for 92-89 Sharma, Ajaya & Seema which was permitted to remain uncorrected for a period in excess of one month, and requested that the Solicitor confirm in writing forthwith that he had corrected same.
- The Solicitor was advised that in order to correct the reconciling difference of \$0.70, the Solicitor would have to inject his own funds into the trust bank account.

23rd May, 1996

- The Solicitor was requested to review several inactive trust ledger accounts and close them, either by paying the balances held to or on behalf of the clients, or by billing and transferring to the general account if the Solicitor was entitled to any of those amounts. The Solicitor was requested to forward to the Law Society a copy of the next trust ledger showing the balances after his review and to include the date of last entry on each account.
- The Solicitor was requested to forward to the Law Society a copy of the client trust listing for \$872.52 which constituted the client liabilities of the Solicitor's partnership, Mohideen and Raza.
- The Solicitor was requested to forward to the Law Society an amended Form 2, the original of which showed a negative response to question 7.
- The Solicitor was requested to forward to the Law Society a copy of written notification to Mr. Khan, indicating that he was informed of the default of his mortgage.
- The Solicitor was requested to provide a response to sections 12, 14 and 21 of the Law Society's March 6, 1992 letter.

No reply was received.

32. By letter dated October 6, 1993, the Law Society forwarded to the Solicitor a copy of its August 24, 1993 letter and requested a written response forthwith. No reply was received.

33. By registered letter dated November 18, 1993, the Law Society forwarded to the Solicitor a copy of its August 24, 1993 and October 6, 1993 letters. The Solicitor was reminded of his obligation to respond promptly to all communications from the Law Society. The Solicitor was advised that should he fail to provide the Law Society with a written response within fifteen days, the matter would be referred to the Discipline Committee. The Law Society's June 23, 1993 letter was signed for and delivered on November 25, 1993.

34. On December 3, 1993, a Law Society staff employee met with the Solicitor at Osgoode Hall in Toronto. The Solicitor advised that he had not replied earlier because he had confused the Audit Department's requests with a letter from the Law Society's Annual Filing department. He indicated that he had replied to the Annual Filing department. The Solicitor requested clarification of the items listed in the Law Society's August 24, 1993 letter. The Solicitor advised that:

- he would prepare an amended Form 2 for 1991;
- he would provide a copy of the Power of Sale that Mr. Kahn had received, and that Mr. Khan had known about his default of mortgage before the Solicitor had;
- he was meeting with his accountant on December 10, 1993 and that he would respond to the Law Society by December 14, 1993.

No written reply was received.

35. By letter dated March 16, 1994, the Law Society forwarded to the Solicitor a copy of its letters dated August 24, 1993, October 6, 1993 and November 18, 1993 and requested a written response forthwith.

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36. By telephone on April 11, 1994, the Solicitor advised that would reply that day and that he had received the Law Society's March 16, 1994 letter two weeks previously.

37. By letter dated April 11, 1994, the Solicitor responded to the Law Society's August 24, 1993 letter:

- The Solicitor enclosed a copy of the bank statement for the month ending January 29, 1993 and advised that he could not locate the bank statement for the month ending December 31, 1992. He also enclosed a copy of his bank statement for the month ended February 26, 1993;
- The Solicitor advised that the debit balance of \$0.10 for the Sharma file #92-89 was corrected on April 15, 1993;
- The Solicitor advised that the reconciling difference of \$0.70 was corrected on September 1, 1993 by his own injection of funds into the trust bank account;
- The Solicitor advised that the inactive trust ledger accounts were being gradually disbursed but that there were several undisbursed ledger accounts, and that the he would inform the Law Society as they were disbursed and closed;
- The Solicitor advised that the trust bank account for the partnership, Mohideen and Raza, was closed in March, 1993 and that the funds were transferred to the Solicitor's current trust account. The Solicitor advised that he would obtain the trust listing from his accountant and forward it to the Law Society forthwith;
- The Solicitor enclosed an amended Form 2;
- The Solicitor advised that Mr. Khan had received a copy of the Power of Sale with respect to the default of his mortgage and therefore, he believed, no written notification was necessary;
- The Solicitor advised that with respect to sections 13, 14 and 21 of the Law Society's March 6, 1992 letter, a response was included in his 1992 annual filing and that a copy of same was enclosed.

38. By letter dated October 24, 1994, the Law Society advised the Solicitor that it still required the following from the Solicitor:

- a copy of the Solicitor's client trust listing evidencing the clearance of inactive client trust account balances;
- a copy of the Mohideen and Raza trust listing, totally \$872.52;
- a copy of the written notification to Mr. Khan indicating that he was informed of the default of his mortgage. If such a notification had not yet taken place, the Solicitor was requested to notify Mr. Khan forthwith and forward to the Law Society a copy of that letter.

A copy of the Law Society's October 24, 1994 letter is attached as Exhibit "C" to this Agreed Statement of Facts. No reply has been received.

39. By letter dated November 29, 1994, the Law Society enclosed a copy of its October 24, 1994 letter and requested a written response forthwith. A copy of the Law Society's November 29, 1994 letter is attached as Exhibit "D" to this Agreed Statement of Facts. No reply has been received.

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40. By registered letter dated January 5, 1995, the Law Society forwarded to the Solicitor a copy of its letter dated October 24, 1994 and November 29, 1994. The Solicitor was reminded of his obligation to respond promptly to all communications from the Law Society. The Solicitor was advised that should he fail to provide the Law Society with a written response within fifteen days, the matter would be referred to the Discipline Committee. The Law Society's June 23, 1993 letter was signed for and delivered on January 9, 1995. A copy of the Law Society's January 5, 1995 letter and Acknowledgement of Receipt of a Registered Item card is attached as Exhibit "E" to this Agreed Statement of Facts. No reply has been received.

41. By telephone on February 9, 1995, the Solicitor's office advised the Law Society that the Solicitor would prepare a response on that day or the next. The Law Society's handwritten notes are attached as Exhibit "F" to this Agreed Statement of Facts.

42. To date, the Solicitor has not provided the Law Society with a written response.

V. DISCIPLINE HISTORY

43. The Solicitor was found guilty of professional misconduct and reprimanded in committee on March 17, 1992 with respect to his failure to file for the fiscal year ended June 30, 1990.

DATED at Toronto this 14th day of November, 1995."

Finding of the Committee

Based on the Agreed Statement of Facts, the Record before the Committee, and the admission of the Member, we have made a finding of professional misconduct.

RECOMMENDATION AS TO PENALTY

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The Committee recommends that the Member:

1. be given until December 19, 1995 to file all outstanding returns and clear up all outstanding matters to the satisfaction of the Law Society's Audit Department. If the member complies by December 19, 1995, the Committee recommends that there be a one month suspension; if he does not comply by that date, such suspension should continue indefinitely until all filings have been made and all outstanding matters resolved to the satisfaction of the Law Society's Audit Department;
2. enrol in the Law Society's Practice Review Program;
3. pay Law Society costs in the amount of \$500.

REASONS FOR RECOMMENDATION

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This matter has given the Committee considerable difficulty. We have carefully considered the submissions made and have agreed that the matter not be dealt with by way of a reprimand in Committee, as requested by the Member, for a number of reasons.

23rd May, 1996

There is a previous history based on similar facts. Regarding the failure to file for the year ended June 30, 1990, there was a reprimand in Committee on March 17, 1992. While that discipline matter was proceeding through the system, the Member's books and records were being examined by a Law Society Examiner in January and February, 1992. The Member executed an Acknowledgement in which he agreed to ensure that audit deficiencies would be corrected and agreed to comply with Regulation 573 sections 14 and 15 of the Law Society Act.

The current Complaint relates to the examination of the Member's books and records with respect to a different year-end, but overlapping the time period of the reprimand in Committee in March, 1992 and subsequent, in part, to the signing of the Acknowledgment and undertaking to comply. The facts referred to in paragraphs 10 through 15 of the Agreed Statement bracket the Committee reprimand in March, 1992. So, while the last Committee was dealing with the failure to file for the fiscal year-end of June 30, 1990, an audit investigation was underway and uncovering other problems detailed in paragraph 12 of the Agreed Statement, items 1 through 20.

It is the view of this Committee that the Member had his chance back in 1992 and we cannot accept the submission of his Counsel that this matter not be referred to Convocation.

We are concerned about the governability of this Member. We are concerned about his refusal or inability to respond to letters from the Law Society which were sent as long ago as October, 1994. We are concerned about a Member who signs an undertaking to comply in February, 1992 and by November, 1995 was still not in compliance; and who in April 1992 advised the Society that he had implemented the necessary procedures to rectify inadequacies, but has still failed to do so.

The Agreed Statement of Facts repeatedly refers to attempts by the Law Society to obtain responses and repeatedly makes the statements "no reply was received", or "no written reply was received." Repeatedly ignoring communications from the Society over a period of years is misconduct, and is unacceptable behaviour which does not warrant leniency from this Committee.

The Committee feels that something more than a reprimand in Committee has to be done to bring to the attention of the Member the importance of complying with the Law Society's rules and regulations and responding promptly to the Society's communications.

The Member had his chance in March, 1992 and has apparently not benefited from the leniency shown on that occasion. We therefore recommend the following penalty:

1. The Member will have until December 19, 1995 to file all the outstanding returns and to clear up all outstanding matters to the satisfaction of the Law Society's audit department.
2. The Member must enrol in the Law Society's Practice Review program.
3. The Member shall pay the Society's costs in the amount of \$500.
4. If the Member complies by December 19, 1995, then there will be a one month suspension and if he does not comply by that date, such suspension will continue until all filings have been made and all outstanding matters resolved to the satisfaction of the Law Society's audit department.

23rd May, 1996

Arif Raza was called to the Bar on April 10, 1980.

ALL OF WHICH is respectfully submitted

DATED this 4th day of March, 1996

Robert B. Aaron  
for the Committee

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Report be adopted.

There were no submissions and the Report was adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 1 month if the solicitor completed all his filing requirements and if his filings were not completed that the suspension continue indefinitely until all filings are made. In addition the solicitor is to enroll in the Society's Practice Review Program and pay the Society's costs in the amount of \$500.

Ms. Cohen advised that the solicitor had completed his filings to the satisfaction of the Society's Audit Department.

Counsel for the solicitor requested that the suspension commence June 7th, 1996.

It was moved by Mr. Copeland, seconded by Mr. Wright that the solicitor be suspended for a period of 1 month commencing June 7th, 1996, enroll in the Society's Practice Review Program and pay costs in the amount of \$500.

Carried

Re: Thomas David Stapleton SHORTILL - Toronto

The Secretary placed the matter before Convocation.

Ms. Curtis 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 11th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (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:

23rd May, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C., Chair  
Kim A. Carpenter-Gunn  
Neil Finkelstein

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

Rhonda Cohen  
for the Society

THOMAS DAVID STAPLETON SHORTILL  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: December 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 9, 1995, Complaint D379/94 was issued; on September 26, 1995, Complaint D253/95 was issued; and on October 31, 1995, Complaint D319/95 was issued against Thomas David Stapleton Shortill alleging that he was guilty of professional misconduct.

The matter was heard in public on December 6, 1995 before this Committee composed of Philip M. Epstein, Q.C., Chair, Neil Finkelstein and Kim A. Carpenter-Gunn. The Solicitor was present at the hearing and was not represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D319/95

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;

Complaint D253/95

2. a) he failed to co-operate with the Law Society representative's attempts to conduct an audit pursuant to section 18 of Regulation 708, when he failed to produce his books and records as set out in section 15 despite:

- i) letters dated February 3, 1995, February 17, 1995, March 27, 1995, April 10, 1995, April 24, 1995 and May 8, 1995; and
- ii) telephone calls on January 31, 1995 and March 3, 1995.

Complaint D379/94

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

Evidence

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

"AGREED STATEMENT OF FACTS - D253/95 & D319/95

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of each of Complaints D253/95 and D319/95 and is prepared to proceed with a hearing of these matters on December 5 and 6, 1995.

II. IN PUBLIC/IN CAMERA

- 2. The parties agree that each of these matters should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

- 3. The Solicitor has reviewed each of Complaints D253/95 and D319/95 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 March 19, 1970. He has been practising as a sole practitioner. As of November 1, 1994, the Solicitor has been suspended for non-payment of the Annual Fee.

Complaint D253/95

Particular 2. a) he failed to cooperate with the Law Society representative's attempts to conduct an audit pursuant to Section 18 of Regulation 708, when he failed to produce books and records as set out in Section 15 despite:

- i) letters dated February 3, 1995, February 17 1995, March 27, 1995, April 10, 1995, April 24, 1995 and May 8, 1995; and
- ii) telephone calls on January 31, 1995 and March 3, 1995.



23rd May, 1996

5. On January 31, 1995, Lorraine Campbell, Examiner with the Audit and Investigation Department of the Law Society (the "Examiner") telephoned the Solicitor to advise that she would be attending at his office to conduct an audit of his books and records under Regulation 708 of The Law Society Act. The Solicitor advised the Examiner that he had recently declared bankruptcy and that his Trustee in Bankruptcy required his books and records by February 20, 1995. The Solicitor also stated that his books and records were in arrears approximately one year. The Examiner instructed the Solicitor to close both of his trust accounts and to fax to her statements showing the trust accounts closed. The Examiner advised the Solicitor that she would contact him during the first week of March, 1995, to arrange an appointment with him. A copy of the handwritten notes of the Examiner's conversation with the Solicitor is contained at Tab 1 of the Document Book.

6. By letter dated February 3, 1995 (Tab 2 of the Document Book), the Examiner confirmed the aforesaid conversation with the Solicitor and, in particular, that she would contact the Solicitor during the first week of March to schedule an appointment. The Examiner also requested that the Solicitor send to the Examiner either a copy of his final bank statements, or a confirmation letter from his bank advising that he has closed both of his trust accounts. The Solicitor did not reply.

7. On February 17, 1995 (Tab 3 of the Document Book), the Examiner wrote a follow-up letter to the Solicitor requesting his early attention to this matter. The Solicitor did not reply.

8. On March 3, 1995, the Examiner initiated a telephone conversation with the Solicitor during which the Solicitor advised that he would, that afternoon, fax to the Examiner each of a Royal Bank statement and a Canadian Imperial Bank of Commerce statement showing the trust accounts closed. The Solicitor also advised that his books and records had not yet been delivered to the Trustee in Bankruptcy. The Examiner advised that she would call the Solicitor during the third week of March to set up an appointment. A copy of the handwritten notes of the Examiner's conversation with the Solicitor is contained at Tabs 4 and 5 of the Document Book.

9. On March 3, 1995, the Solicitor faxed to the Examiner a letter with attachments (Tab 6 of the Document Book). In the letter, the Solicitor stated, among other things, that:

- (a) the Trustee in Bankruptcy filed for the Solicitor's personal bankruptcy on January 9, 1995;
- (b) the Notice to Bankrupt re: Meeting of Creditors on January 26, 1995 was enclosed;
- (c) he had stopped using his trust account at the Royal Bank in November, 1994 and enclosed a trust statement showing a "nil" balance to the end of January, 1995; and
- (d) the C.I.B.C. trust account was closed as at February 1, 1995 (documentation was enclosed).

10. By letter dated March 27, 1995 (Tab 7 of the Document Book), the Examiner wrote to the Solicitor to request, among other things, that he contact her prior to April 10, 1995, to schedule an appointment for the audit of the Solicitor's books and records. The Solicitor did not reply.

11. By letter dated April 10, 1995 (Tab 8 of the Document Book), the Examiner wrote to the Solicitor to request a reply to her March 27, 1995 letter. The Solicitor did not reply.

23rd May, 1996

12. By letter dated April 24, 1995 (Tab 9 of the Document Book), the Examiner wrote to the Solicitor to request a reply to her letters of March 27, 1995 and April 10, 1995, and to advise that if a reply was not received, she would have to refer the matter to the Discipline Committee. The Solicitor did not reply.

13. By letter dated May 8, 1995 (Tab 10 of the Document Book), the Examiner wrote to the Solicitor attaching a copy of her previous letters and requested a response from the Solicitor within two weeks from the date of the letter. The Examiner further advised that if a response was not received as requested, the matter would be referred to the Discipline Committee. The Law Society's letter was delivered by registered mail on May 11, 1995.

14. To date, the Solicitor has not responded to the Examiner's attempts to schedule an appointment for an audit of the Solicitor's books and records.

Complaint D319/95

Particular 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.

15. The Solicitor's fiscal year end is January 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.

16. A Notice of Default in Annual Filing dated August 16, 1995 was forwarded to the Solicitor by the Law Society. A copy of the Notice is contained in the Document Book at Tab 11).

17. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 18, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on September 22, 1995. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is contained in the Document Book at Tab 12. The Solicitor did not reply to this correspondence.

18. The late filing fee began to accrue on October 3, 1995.

19. The Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

20. The Solicitor does not have a discipline history.

DATED at Toronto this 5th day of December, 1995."

"AGREED STATEMENT OF FACTS - D379/94

23rd May, 1996

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D379/94 and is prepared to proceed with a hearing of this matter on May 10, 1995.

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 D379/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 19, 1970. He practised as sole practitioner until his suspension on November 1, 1994 as a result of his failure to pay his annual fee.

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

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

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 7, 1994. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of the late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on September 15, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

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

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

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

V. DISCIPLINE HISTORY

11. The Solicitor does not have a discipline history.

DATED at Toronto this 10th day of May, 1995"

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Thomas David Stapleton Shortill be suspended for a period of one month and thereafter until such time as the Solicitor makes the requisite filings for the fiscal years 1994 and 1995, and produces his books and records for an audit by the Society, such suspension to commence at the conclusion of his current administrative suspension.

REASONS FOR RECOMMENDATION

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On the basis of the finding of professional misconduct, the committee recommends to Convocation that the solicitor be suspended for a period of one month and thereafter indefinitely on a month to month basis until such time as the solicitor has made the requisite filings for each of the fiscal years ended January 31st, 1994 and January 31st 1995 and has produced his books and records for an audit by the Society.

The solicitor has also undertaken that in future he will respond to written communications from the Law Society within one week of receipt of such communications and shall respond to telephone communications from the Law Society within two business days thereafter.

Based on the Agreed Statements of Facts and the fact that the solicitor does not have a prior discipline record, in all of the circumstances, the committee accepts the joint submission with respect to penalty. The committee will therefore recommend to Convocation that the solicitor be suspended for a period of one month and thereafter indefinitely on a month to month basis until such time as he has made the requisite filings for each of the fiscal years ended January 31st, 1994 and January 31st, 1995 and produced his books and records for an audit by the Society.

The suspension to be imposed by Convocation is to commence at the end of the current administrative suspension.

Thomas David Shortill was called to the Bar on March 19, 1970.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1996

Philip M. Epstein, Q.C.  
Chair

It was moved by Mr. Wright, seconded by Ms. Stomp that the Report be adopted.

There were no submissions and the Report was adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 1 month and thereafter until such time as the solicitor makes the requisite filings for the fiscal years 1994 and 1995 and produces his books and records for an audit by the Society, such suspension to commence at the conclusion of his current administrative suspension.

It was moved by Mr. Wright, seconded by Mr. Copeland that the recommended penalty be adopted.

Carried

23rd May, 1996

The Acting Treasurer withdrew from Convocation, being ineligible to sit on the following matter. Mr. MacKenzie took the Chair.

Re: Johanne Lisette BEZAIRE - Kingston

The Secretary placed the matter before Convocation.

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 11th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (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

Philip M. Epstein, Q.C., Chair  
Kim A. Carpenter-Gunn  
Neil Finkelstein

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

Rhonda Cohen  
for the Society

JOHANNE LISETTE BEZAIRE  
of the City  
of Kingston  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: December 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On June 30, 1995, Complaint D184/95 was issued and on September 26, 1995, Complaint D255/95 was issued against Johanne Lisette Bezaire alleging that she was guilty of professional misconduct.

The matter was heard in public on December 6, 1995 before this Committee composed of Philip M. Epstein, Q.C., Chair, Kim A. Carpenter-Gunn and Neil Finkelstein. The Solicitor was not present at the hearing nor was she represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D184/95

2. a) she failed to comply with her Undertaking to the Law Society, dated June 16, 1992, by failing to co-operate with and, implement the recommendations made by the Professional Standards Department and pay costs of the services provided by the Professional Standards Department.

Complaint D255/95

2. a) she failed to file with the Society within six months of the termination of her fiscal year ending 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

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 each of Complaint D184/95 and Complaint D255/95 and is prepared to proceed with a hearing of both matters on October 31 and November 1, 1995.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed each of Complaint D184/95 and Complaint D255/95 and admits the particulars contained therein. The Solicitor admits that the particulars, together with the facts as hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 29, 1977. She practices as a sole practitioner.

Complaint D184/95

- Particular 2(a) She failed to comply with her Undertaking to the Law Society, dated June 16, 1992, by failing to co-operate with and, implement the recommendations made by the Professional Standards Department and pay costs of the services provided by the Professional Standards Department.

23rd May, 1996

*Background*

5. A Complaint, D39/92, was issued against the Solicitor with respect to her failure to file for the fiscal year ended November 30, 1992 and her failure to comply with an undertaking to the Law Society dated June 13, 1989 (the "1989 Undertaking"), which required the Solicitor to file within the time period prescribed by Section 16 of Regulation 708 of the Law Society Act. (Document Book, Tab 1).

6. As a result of the foregoing, the Solicitor was found to have committed professional misconduct and, on June 16, 1992, the Solicitor was Reprimanded in Committee, with a further undertaking (the "Undertaking") to, among other things, participate in the Practice Review Programme (the "Programme").

*The Within Complaint*

7. The Undertaking stated, among other things, the following:

"1. [C]ontact in writing, within seven days, the Professional Standards Department regarding their Practice Review Programme with respect to books and record keeping and if accepted into their Programme, to co-operate with the Professional Standards Department and to implement the recommendations made by the Programme; and

2. [P]ay the costs of the service provided by the Professional Standards Department which, I understand, are determined at a rate of \$50,00 an hour.

I ACKNOWLEDGE that any breach of this Undertaking may lead to further discipline proceedings, and I hereby consent to this document being introduced in evidence in those proceedings. I have retained an executed copy of this Undertaking.

(Document Book, Tab 2)

8. By letter dated June 22, 1992, the Solicitor made application for admission into the Programme and confirmed her understanding that the cost of the Programme was \$50.00 per hour. (Document Book, Tab 3)

9. In September, 1992, the Solicitor received from the Law Society written authorization which acknowledged her acceptance into the Programme. The Law Society's letter also confirmed, among other things, the following:

"The Coordinator of the programme will be contacting you in the near future to confirm a mutually agreeable date where the Law Society's Systems Advisor can attend at your office. The purpose of this attendance is to review with you your present procedures as they relate to books and records and determine what remedial measures, if any, should be undertaken to correct any deficiencies identified. Upon completion of the review, a report is prepared on the attendance, and a copy of the report is then provided to you. Once you have

23rd May, 1996

reviewed same, your comments regarding the contents of the report, and specifically the recommendations contained therein, will be requested in writing. The receipt of your response will conclude the first phase of the review process, after which you will be given a period of approximately two months to initiate the implementation of the recommendations.

The second part of the process, the remedial phase, begins with a follow-up attendance by staff at your office to assess your progress at implementing the recommendations referred to above and provide you with such assistance as may be appropriate. The follow-up report will be provided to you for your review and comments. At this point, in most circumstances, a Review Panel is convened. The Panel is composed of Benchers who will meet with you to discuss your involvement in the programme to date and to determine additional remedial courses of action. For this purpose, the Panel members will be provided with relevant file materials and copies of these materials will be provided to you as well. If a remedial programme is approved by the Panel, then some assurance (probably an Undertaking) will be sought that you will attempt to implement it. Your progress will be monitored by the Programme staff, who will continue to provide you with assistance as required or requested.

...

The Committee as a whole will decide when it is appropriate for the Programme to be concluded.

...

If you have any questions or comments, please do not hesitate to contact me." (Document Book, Tab 4)

10. No questions or concerns regarding the aforesaid letter were raised by the Solicitor.

11. Law Society staff made a first attendance at the Solicitor's office on November 5, 1992.

12. Thereafter, a report dated February 22, 1993 (the "First Report"), which contained the results of the Law Society's review and recommendations, was sent out to the Solicitor with a request that she review same and reply with her comments on or before March 22, 1993. The First Report identified a number of areas which required the Solicitor's attention:

- a) file management;
- b) time management;
- c) financial management.

The First Report also recommended that the Solicitor consider hiring someone on at least a part time basis to assist her in reorganizing the "paper clutter in her office".

(Document Book, Tab 5)

13. The Solicitor did not reply to the First Report. Accordingly, by letter dated March 23, 1993, the Law Society unilaterally extended the time for delivery of the Solicitor's reply to no later than April 13, 1993. (Document Book, Tab 6)

6) The Solicitor did not reply.



23rd May, 1996

14. By letter dated April 21, 1993, the Law Society further extended the time for delivery of the Solicitor's reply to no later than May 5, 1993. The Law Society also reminded the Solicitor as follows:

"As you are on an Undertaking from Discipline to participate in and cooperate with the Practice Review Programme, failure to respond by the above date may put you in breach of your Undertaking and we will have no alternative but to inform the Discipline department accordingly." (Document Book, Tab 7)

15. Shortly thereafter, the Solicitor contacted the Law Society by phone to advise that she had not received the entire contents of the First Report which had been mailed to her three months earlier in February, 1993. As a result, the Law Society caused a second copy of the First Report and enclosures to be delivered to the Solicitor. The Law Society requested that the Solicitor provide her reply to the First Report on or before May 31, 1993. (Document Book, Tab 8)

16. The Solicitor's reply was not received until July 7, 1993, at which time she advised the Law Society, among other things, as follows:

"...I have reviewed your report. Some of the items I had addressed before receiving it and I have implemented others since. My report was submitted this year well before the deadline.

There are some recommendations which I would like to discuss with you, however, when we meet on July 20th. The office structure and the nature of my practice make implementation difficult or perhaps undesirable.

I feel that some assistance in the areas of written retainers and improved billing procedures would be very beneficial." (Document Book, Tab 9)

17. Thereafter, Law Society staff attended at the Solicitor's office on July 20, 1993, August 26, 1993 and October 14, 1993.

18. On or about October 28, 1993, the Law Society delivered to the Solicitor a second report (the "Second Report"). Among other things, the Second Report identified the following deficiencies in the Solicitor's practice and procedures:

"The solicitor appears to be caught in a circle, wherein, without the benefit of technology, she is unable to earn sufficient revenue to be able to afford the technology which will allow her to practice more efficiently and to better communicate with her clients.

Without the benefit of support staff, the solicitor must perform most of the secretarial and accounting duties. The risk in doing so is that the solicitor likely has insufficient time to meet all of her practice, financial and client obligations (as evidenced by her discipline, complaints and audit history).

The solicitor has recently been docketing some of her time, and indicated that she found the process of billing clients was easier if she had completed the time dockets for a particular matter. The solicitor should continue to docket her time (ideally, all of her office time) so that she is able to see how much of her work could be delegated to support staff, and to assist her in billing clients for all appropriate services performed on their behalf (or at least to gain the benefit of the knowledge of how much of her work she will not be compensated for).

The staff members of the Professional Standards Department will continue to work with the solicitor to assist her in meeting the requirements of the Practice Review Programme."

The Solicitor was requested to reply to the Second Report on or before November 19, 1993. (Document Book, Tab 10)

19. On or about October 29, 1993, the Director of the Programme attended at the Solicitor's office to review the status of her practice and her progress in implementing the earlier recommendations. A report of this attendance dated November 4, 1993 was sent to the Solicitor who responded on or about December 6, 1993.(Document Book, Tab 11)

20. The Solicitor provided a written reply to the Second Report on or about November 17, 1993. In her reply, she confirmed, among other things, the following:

"I have reviewed your report and feel that it accurately describes the areas in which I can improve [sic]. I am prsently [sic] docketing my time almost religiously and am finding bookkeeping much easier since your short course.

I am also purchasing a computer, as is the other lawyer in the office. We will share the cost of software.

Thank you for your assistance." (Document Book, Tab 12)

21. By letter dated November 24, 1993, the Law Society acknowledged receipt of the Solicitor's reply to the Second Report, and advised her that it was the Law Society's intention to monitor her file for a period of time to allow her an opportunity to continue her efforts at implementing the recommendations made in the course of the Programme.

22. Law Society staff conducted a follow-up review of the Solicitor's practices on April 13, 1994, and a report dated April 18, 1994 (the "Third Report"), was delivered to the Solicitor on or about April 26, 1994. Also delivered was an interim account for services rendered dated January 16, 1994, in the amount of \$1,043.25. The Solicitor was requested to reply to the Third Report on or before May 16, 1994. (Document Book, Tab 13)

23. The Solicitor did not reply to the Third Report. Accordingly, the Law Society wrote to the Solicitor on three separate occasions to request her reply and to unilaterally extend the time for delivery of same. The third such letter included the following reminder:

23rd May, 1996

"I am enclosing a copy of the undertaking signed by you in 1992 wherein you undertook *inter alia* to cooperate with the Practice Review Programme and to pay costs of same at \$50.00 per hour." (Document Book, Tabs 14, 15 and 16)

24. By letter dated August 8, 1994, the Solicitor replied to the Third Report. In her reply, among other things, she disagreed with many of the comments and recommendations made by the Law Society staff and expressed dissatisfaction with the Law Society's interim account. (Document Book, Tab 17)

25. The Law Society responded to the Solicitor's concerns by letter dated August 22, 1994, (Document Book, Tab 18).

26. Thereafter, it was agreed between the Law Society and the Solicitor that a staff member would attend at the Solicitor's office on October 7, 1994, to conduct a further follow-up review of the Solicitor's practices (Document Book, Tab 19). However, the Solicitor subsequently cancelled the meeting. Thereafter, by two telephone calls on September 23, 1995 the Solicitor reiterated her concerns and advised the Programme Director that she was considering ceasing her participation in the Programme. The Solicitor was asked to and agreed to confirm her intentions in writing on or before October 17, 1994. (Document Book, Tabs 20, 21 and 22)

27. On October 17, 1994, the Solicitor telephoned the Law Society to advise that her uncle had been killed in a car accident and that she would call again the next day. (Document Book, Tab 23)

28. On October 20, 1995, the Solicitor telephoned the Law Society to advise that she would call back (Document Book, Tab 24). She did not.

29. By letter dated November 22, 1994, the Law Society wrote to the Solicitor to advise, among other things, the following:

"I am writing regarding your involvement in the Practice Review Programme.

Given that we have heard nothing further from you regarding participation in the Programme, we will assume that you are no longer willing to cooperate in same. Accordingly, it is our intention to recommend to the Professional Standards Committee that your file be closed on that basis.

I would remind you that you have signed an undertaking in Discipline to participate in the Programme and to pay costs of same. We will have no choice but to advise Discipline of your lack of response and the apparent breach of the undertaking. Should you wish to contact me regarding this matter, please do so by December 12, 1994." (Document Book, Tab 25)

30. By letter received January 4, 1995, the Solicitor responded as follows:

"I called your office on several occasions; you were at a meeting each time. I fell into the hands of the medical profession in November and have been preoccupied ever since.

23rd May, 1996

With respect to the payment agreement, I am not refusing to honour my undertaking. I requested further information as to the hours recorded because I believe them to be excessive. I have not received a response.

As my arrangements for my practice are such that I have none of the usual expenses, paying instead a flat monthly rate for almost all services with only court and Registry Office fees paid separately, I cannot see the point of spending a day on my general accounts." (Document Book, Tab 26)

31. The Law Society responded to the Solicitor by letter dated January 16, 1995, among other things, as follows:

"According to our records the last time you contacted this office was on October 20, 1994. I was unavailable at that time to speak with you. You advised my secretary that you would call me back. No message was received by my secretary, nor on my voice mail, to indicate any attempt by you to reach me. Our letter to you of November 22, 1994 indicated our intention to close your file given that we had not heard further from you regarding participation and asked that you contact me by December 12, 1994 with any concerns you may have had; we did not hear from you until three weeks past that date.

The account provided by Ms. Shoreman on April 26, 1994 indicated the days and hours spent by the Systems Advisor with you. At your request, we have attempted to further break down that account by providing the actual times of each attendance. Enclosed please find the amended account which has, in fact, been reduced by half an hour.

Please contact me by February 1, 1995 to advise of your intentions regarding the Practice Review Programme. Should no response be received from you by that date, we will refer this matter back to Discipline." (Document Book, Tab 27)

32. The Solicitor did not reply. Accordingly, by letters dated February 15, 1995 and March 6, 1995, the Law Society again wrote to the Solicitor to request that she:

- (a) advise as to her decision regarding her participation in the Programme;
- (b) advise whether she intended to honour the Undertaking; and
- (c) satisfy the account with respect to the costs incurred by the Professional Standards Department.

Specifically in the letter dated March 6, 1995, the Solicitor was advised that, due to her lack of response thus far, the Discipline Department had been notified. (Document Book, Tabs 28 and 29)

33. The Solicitor did not respond.

34. By letter dated April 25, 1995, the Solicitor was advised that, on the basis of her failure or refusal to co-operate with the Professional Standards Department, her Programme file had been closed as of April 13, 1995, and the matter had been referred to the Discipline Department. (Document Book, Tab 30)

35. To date, the Solicitor has not co-operated with the Professional Standards Department in connection with her participation in the Programme, nor has she satisfied, in whole or in part, the account for services rendered dated January 16, 1995.

Complaint D255/95

Particular 2(a) She failed to file with the Society within six months of termination of her fiscal year ending 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.

36. By Notice of Default in Annual Filing dated June 5, 1995 (the "First Notice"), the Solicitor was advised by the Office of the Auditor of the Law Society that she had not complied with the annual filing requirements of section 16 of Regulation 708 pursuant to the Law Society Act. (Document Book, Tab 31)

37. The Solicitor did not respond to the First Notice.

38. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filings dated July 7, 1995. The Solicitor was advised that she had not taken the necessary steps to bring her filings up-to-date and that a fee of \$10.00 per day is applied on filings made after the due date and on default in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, she was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve her from the obligation to make annual filings and that she might be brought before the Discipline Committee for failure to file. The Law Society Second Notice was signed for and delivered. (Document Book, Tab 32)

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

40. As at today's date, the Solicitor has not responded to either of the First or Second Notices.

V. DISCIPLINE HISTORY

A. JANUARY 1985

The Solicitor was found guilty of professional misconduct and received a Reprimand in Committee on January 29, 1985. She was reprimanded for failing to reply to fellow solicitors, failing to respond to the Law Society, failing to report and account to clients, failing to co-operate with the Law Society's examination of her books and records, failing to file her Forms 2 and 3 for the fiscal year ending December 31, 1982 and failing to serve clients in a conscientious and diligent manner. The Reprimand in Committee was founded on the Solicitor's undertaking which restricted her practice so that she could not practice without supervision by another lawyer and that she could not practice out of an office physically separate from the office of the supervising lawyer. Mr. Alfred Heder, barrister and solicitor, provided the Law Society with an undertaking agreeing to supervise the Solicitor for a period of one year. Formal supervision ceased after a one year period.

23rd May, 1996

B. JUNE 1989

The Solicitor received a Reprimand in Committee on June 13, 1989, with respect to her failure to file for the fiscal years ending November 30, 1985, November 30, 1986 and November 30, 1987. She gave an undertaking (the "1989 Undertaking") to, among other things, maintain on a current basis the books and records for her practice as required by section 15 of The Law Society Act, make filings as required by section 16 of Regulation 573 of The Law Society Act, reply within two weeks from the date of her receipt of all correspondence from the Audit and Discipline Departments of the Law Society, retain the services of a bookkeeper to maintain the books and records of her practice, and submit monthly trust reconciliations to the Law Society for a period of one year.

C. JUNE, 1992

On June 16, 1992, the Solicitor was Reprimanded in Committee, with the Undertaking to, among other things, participate in the Programme, for failing to file for her fiscal year ended November 30, 1990, and failing to satisfy the 1989 Undertaking.

DATED at Kingston this 29th day of November, 1995."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Johanne Lisette Bezaire be suspended for a period of one month and thereafter indefinitely until the requisite filings are made. In addition, the Solicitor is to pay the sum of \$1,043.23 at the rate of \$200 per month commencing January 1, 1996 on the first of each month.

REASONS FOR RECOMMENDATION

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There is a joint submission of the Society and the solicitor. The joint submission was that the solicitor be suspended for one month and thereafter until the requisite filings be completed and that the solicitor pay the sum of \$1,043.23 at the rate of \$200 per month commencing January 1st, 1996 on the first of each month until the balance is fully paid.

The committee has taken into account the previous discipline record of the solicitor. We are advised that the solicitor had almost completed the practice review program before she dropped out. Although we have some concerns about that fact and some concerns about the repeated discipline problems of the solicitor, we are also advised that the solicitor intends to leave practice after all of her discipline matters have been cleared up.

Accordingly, and with some reservations, we accept the joint submission and recommend same to Convocation.

Johanne Lisette Bezaire was called to the Bar on March 29, 1977.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1996

Philip Epstein, Q.C.  
Chair

A letter from the Society to the solicitor dated May 21th, 1996 was marked Exhibit 2.

23rd May, 1996

It was moved by Ms. Stomp, seconded by Mr. Copeland that the Report be adopted.

There were no submissions and the Report was adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 1 month and thereafter indefinitely until the requisite filings are made. In addition the solicitor is to pay the sum of \$1,043.23 at the rate of \$200 a month commencing January 1st, 1996.

It was moved by Mr. Wright, seconded by Ms. Puccini that the recommended penalty be adopted.

It was moved by Mr. Swaye, seconded by Mr. Gottlieb that the matter be adjourned to the June Convocation, peremptory to the solicitor and that the solicitor be informed of the increased penalty.

It was moved by Mr. Copeland, seconded by Ms. Ross that the solicitor be suspended for a period of 3 months together with the conditions set out in the Report.

Counsel, the reporter and the public withdrew.

The Swaye/Gottlieb motion to adjourn the matter was lost.

The Copeland/Ross motion to suspend the solicitor for a period of 3 months carried.

The main motion to adopt the recommended penalty was not put.

Reasons are to be prepared.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 3 months together with the conditions set out in the Report including the payment of costs.

Counsel was advised that Reasons would be prepared.

The Acting Treasurer returned to Convocation.

Re: Richard Alexander SUTTON - Toronto

The Secretary placed the matter before Convocation.

Ms. Cohen appeared for the Society and Mr. Roger VanDuffelin appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 10th October, 1995, together with an Affidavit of Service sworn 24th October, 1995 by Ron Hoppie that he had effected service on the solicitor by registered mail on 16th October, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd February, 1996 (marked Exhibit 2), together with the Report of the Discipline Committee dated 4th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 3), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd May, 1996 (marked Exhibit 4). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

23rd May, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert B. Aaron

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

Elizabeth Cowie  
for the Society

RICHARD ALEXANDER SUTTON  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: February 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 17, 1995 Complaint D223/95 was issued alleging that Richard Alexander Sutton was guilty of professional misconduct. On November 22, 1995 it was replaced by Complaint D223a/95.

The matter was heard in public on February 13, 1996 before Robert B. Aaron sitting as a single-bencher panel. The Member attended the hearing and represented himself. Elizabeth Cowie appeared on behalf of the Law Society.

Procedural Note

This case appears to be the first instance of a single-bencher panel hearing under the amendments to Regulation 708. The matter was originally scheduled to be heard before a three-person panel. As the result of a perceived or potential conflict of interest, one of the members excused himself.

The changes to Section 9 of Regulation 708 under the Law Society Act had been proclaimed into force as of the day of the hearing, but no guidelines as to implementation had yet been distributed to benchers or staff.

The relevant portions of the new Section 9 subsection (3.1) provide:

*A quorum of the Committee is one member of the Committee  
who is not a bencher by virtue of his or her office,*

*(a) where the particulars of the complaint to be heard by the  
Committee are confined to allegations that a member has,....*

*(vi) failed to respond to inquiries from the Society,*

*[or]*

*(b) where, before the hearing begins, the member and counsel  
for the Society consent to a hearing before a single  
bencher...*



I pointed out to the Member and to Ms. Cowie, counsel for the Society, that I could proceed with the hearing sitting as a single-bencher discipline panel on particular 2(a) only, but would need the consent of both parties to proceed as a single-bencher panel with respect to particulars 2(b) and 2(c). I offered to adjourn the hearing but counsel for the Society and the Member consented to have me proceed as a single-bencher panel.

#### Terminology

When Regulation 708 refers to lawyers who may have been guilty of professional misconduct, the terminology used is "member", meaning member of the Law Society of Upper Canada. For example, section 9(1) reads:

*Where information comes to the notice of the Society that indicates that a member may have been guilty of professional misconduct...[emphasis added]*

For some reason it is the custom of Convocation and the Society's discipline department to refer to lawyers who are the subject of Society discipline complaints as "Solicitors", even when it is obvious that the person being disciplined is clearly a "Barrister".

As a Solicitor myself, I find it puzzling and offensive that lawyers in discipline proceedings are, by custom, referred to as Solicitors and never as Barristers. The implication clearly is that discipline proceedings are only meant for Solicitors and never Barristers. I note in passing, however, that the sworn complaints always refer to the lawyer as a "Barrister and Solicitor".

Accordingly, I shall in these Reasons utilize the term *Member* in the hopes that its use will become more accepted in the discipline process.

#### DECISION

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

#### Complaint D233a/95

2.   a)   He failed to reply to the Law Society requesting a response to the letter of inadequacies dated September 7, 1994 arising from an examination of his books and records on July, 1993, despite letters dated January 11, 1995, February 17, 1995 and March 20, 1995;
- b)   He failed to honour a financial obligation to Paul Rosenberger in relation to his practice; and
- c)   He failed to honour a financial obligation to Joan Smurlick Conveyancing Inc. incurred in relation to his practice.

#### Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D223a/95 and is prepared to proceed with a hearing of this matter on November 28 and 29, 1995.

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 D223a/95 and admits the particulars contained therein together with the facts hereinafter set out.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1979. Effective March 31, 1995, the Solicitor notified the Law Society that he was no longer in private practice and his status was changed to reflect that he is otherwise employed in Ontario. He is currently employed by Securibyte Consulting Inc..

Particular 2 a) He failed to reply to the Law Society requesting a response to the letter of inadequacies dated September 7, 1994 arising from an examination of his books and records on July 23, 1993, despite letters dated January 11, 1995, February 17, 1995 and March 20, 1995;

5. On July 23, 1993, Theda Lean, an Examiner with the Audit and Investigation Department of the Law Society, completed an audit of the Solicitor's books and records. Ms. Lean discovered a number of inadequacies in the Solicitor's books and records. The Solicitor's questionnaire is contained at Tab 1 of the Document Book. This same audit gave rise to another Complaint (D238/94), which was sworn December 12, 1994 and served shortly thereafter, and which is pending Convocation. (Paragraph 26, *infra*)

6. By letter dated September 7, 1994, (Document Book, Tab 2), the Solicitor was advised of the following deficiencies that were previously set out in a report from Ms. Lean:

- i. money had been transferred from the Solicitor's trust account to his general account on account of fees for which billings or other written notifications had not first been delivered to clients;
- ii. trust money was being improperly handled through his general account rather than through his trust account;
- iii. trust money was held in the form of a term deposit for a client but for which a trust liability was not recorded in the client's trust ledger;
- iv. trust cash disbursements did not always show the full particulars required by subsection 1(b) of section 15 of Regulation 708;
- v. the Solicitor's trust cash receipts book was not entered up-to-date at the time of the auditor's visit;
- vi. the Solicitor's trust cash disbursements book was not entered up-to-date at the time of the auditor's visit;

- vii. a transfer record was not maintained as required by subsection 1(d) of section 15 of Regulation 708, showing all transfers of money between client's trust ledger accounts and explaining the purpose for which each transfer was made;
- viii. the general cash receipts record did not always show the full particulars of money received as required by subsection 1(e) of section 15 of Regulation 708;
- ix. the general cash receipts book was not entered up-to-date at the time of the auditor's visit as required by subsection 2(a) of section 15 of Regulation 708;
- x. the general cash disbursements record did not always show the full particulars required by subsection 1(f) of section 15 of Regulation 708;
- xi. the Solicitor's accounting records generally were in arrears in entering and posting;
- xii. the Solicitor was unable to produce monthly trust comparisons and current books and records during the initial visit of the auditor;
- xiii. entries in the client's trust ledgers did not always reflect the nature of the actual transactions;
- xiv. the Solicitor set up a sub-ledger in his name in the trust account in contravention of section 14(4), (6), and (7) of Regulation 708; and
- xv. on one occasion, the Solicitor released insurance settlement funds to his client prior to obtaining a signed release.

The Solicitor was asked to acknowledge receipt of the Law Society's letter in writing, addressing each deficiency as set out in the letter and confirming his compliance with Sections 14 and 15 of Regulation 708 and the Rules of Professional Conduct.

7. By letter dated December 5, 1994, (Document Book, Tab 3), the Solicitor wrote to the Law Society in response to its letter of September 7, 1994. The Solicitor replied to the inadequacies set out, however, he did not provide the following as requested by the Law Society:

- i. that the Solicitor remit within 20 days of the effective date of his trust comparison, copies of:
  - a) the listing of trust obligations;
  - b) the trust bank reconciliation; and
  - c) the trust bank statement;

for each month ended May 31, 1994 to May 31, 1995, inclusive.

- ii. that the Solicitor confirm in writing he was in compliance with Sections 14 and 15 of Regulation 708 and the Rules of Professional Conduct as stated in the last paragraph of the Law Society's letter to show that the Solicitor's books and records were now current.

23rd May, 1996

8. By letter dated January 11, 1995, the Law Society wrote to the Solicitor acknowledging receipt of the Solicitor's December 5, 1994 letter, and requesting a response to the matters indicated above. The Solicitor did not respond. (Document Book, Tab 4)

9. By letter dated February 17, 1995, the Law Society wrote to the Solicitor with an enclosed copy of its January 11, 1995 letter and requested a response forthwith. The Solicitor did not reply. (Document Book, Tab 5)

10. By registered letter dated March 20, 1995, the Law Society enclosed copies of its correspondences dated January 11, 1995 and February 17, 1995. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his written response was not received within 15 days of the date of the letter, the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. The Solicitor did not respond. (Document Book, Tab 6)

Particular 2 b) He failed to honour a financial obligation to Paul W. Rosenberger in relation to his practice.

11. By letter dated February 8, 1994, Paul Rosenberger wrote to the Solicitor requesting payment of invoices outstanding for court services provided to the Solicitor. There were four invoices outstanding for a total amount of \$259.22 dating from April 27, 1992 to September 13, 1993. The Solicitor did not reply. (Document Book, Tab 7)

12. On September 23, 1994, Mr. Rosenberger wrote to the Solicitor reminding him of his outstanding accounts and advising that if he did not receive payment within two weeks of the date of the letter, he would ask the Law Society to intervene and assist in obtaining satisfaction of the outstanding invoices. The Solicitor did not reply. (Document Book, Tab 8)

13. By letter dated November 17, 1994, Mr. Rosenberger wrote to the Law Society with enclosed copies of the letters to the Solicitor and requested the Law Society's assistance in obtaining payment of the outstanding invoices. (Document Book, Tab 9)

14. On January 9, 1995, the Law Society left a telephone message for the Solicitor. On January 11, 1995, the Solicitor returned the telephone call, advised that he was in serious financial difficulty and unable to pay the account. He agreed to attempt to pay a portion of the outstanding money as soon as possible and was advised to copy the Law Society on any letter accompanying payment to Mr. Rosenberger. The Solicitor did not make a payment. (Document Book, Tab 10)

15. On each of January 26, January 31, February 2 and February 17, 1995, the Law Society left telephone messages for the Solicitor. The Solicitor did not reply. (Document Book, Tab 11)

16. By letter dated March 16, 1995, the Law Society wrote to the Solicitor with an enclosed copy of Mr. Rosenberger's letter of November 17, 1994 and, among other things, requested the Solicitor's comments on the circumstances therein described. The Law Society requested either a written response within two weeks of the date of the letter, or for the Solicitor to contact the Law Society by telephone. The Solicitor did not reply. (Document Book, Tab 12)

17. On each of April 3, and April 7, 1995, the Law Society left telephone messages for the Solicitor. He did not reply. (Document Book, Tab 13)

23rd May, 1996

18. By registered letter dated May 3, 1995, the Law Society wrote to the Solicitor, and advised, among other things, that if it did not receive a written response to its March 16, 1995 letter within seven days of the date of the registered letter, that the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not reply. (Document Book, Tab 14)

Particular 2 c) He failed to honour a financial obligation to Joan Smurlick Conveyancing Inc. incurred in relation to his practice.

19. On February 1, 1995, Joan Smurlick wrote to the Law Society to request assistance in obtaining payment of her outstanding account with the Solicitor. On May 2, 1994, Ms. Smurlick conducted a title search for the Solicitor and to date, had been unsuccessful in collecting the amount of \$109.55 from the Solicitor for her services. (Document Book, Tab 15)

20. By letter dated March 16, 1995, the Law Society wrote to the Solicitor with an enclosed copy of Ms. Smurlick's letter and requested, among other things, the Solicitor's written comments on the circumstances therein described within two weeks of the date of the letter or to contact the Law Society by telephone. The Solicitor did not reply. (Document Book, Tab 16)

21. On each of April 3, and April 7, 1995, the Law Society left telephone messages for the Solicitor. The Solicitor did not reply. (Document Book, Tab 17)

22. By registered letter dated May 3, 1995, the Law Society wrote to the Solicitor advising, among other things, that if it did not receive a written response to its letter of March 16, 1995 within seven days of the date of the letter, that the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not reply. (Document Book, Tab 18)

23. By letter dated May 30, 1995, the Law Society wrote to the Solicitor regarding both Complainants and advised that it would seek instructions from the Chair and Vice-Chair of the Discipline Committee as a result of concerns arising from the investigation of both the Smurlick and Rosenberger matters. (Document Book, Tab 19)

24. By letter dated June 12, 1995, the Solicitor wrote to the Law Society to advise that he was no longer in private practice and that, at the time of writing, he was unable to pay the outstanding accounts of either Complainant. He said he would settle both accounts when he had the money. (Document Book, Tab 20)

#### V. DISCIPLINE HISTORY

25. On April 5, 1989, the Solicitor was reprimanded in Committee with undertaking for failure to maintain books and records.

26. On May 30, 1995, the Solicitor appeared before the Discipline Committee with respect to complaints of failure to maintain books and records, improper withdrawals from trust, improper use of trust account, failure to produce books and records, failure to honour undertaking, and failure to file forms. That matter is pending Convocation. A copy of the Report and Decision of the Committee is attached at Tab 21 of the Document Book.

DATED at Toronto this 14th day of November, 1995."

#### Finding

The Agreed Statement of Facts does not contain an admission of professional misconduct.

23rd May, 1996

Particular 2(a)

A member of the Society has an ongoing responsibility to keep and maintain his or her books and records in order and up-to-date. This particular relates not to correcting deficiencies disclosed by an audit but rather to failing to respond to letters from the Society concerning deficiencies disclosed in that audit.

The audit in this case took place on July 23, 1993. For some reason it took the Society more than 13 months to write the Member following this audit. The Society's letter was dated September 7, 1994 and the Member responded December 5, 1994. A complaint relating to the substance of the audit findings (D238/94) was sworn December 12, 1994 and at the date of the hearing before me, was pending Convocation.

The Member took the position that by having separate complaints, relating to the audit on one hand, and failing to respond to the correspondence on the other, the Society was somehow improperly "splitting its case".

His position was that once the Society filed the first complaint, he was then in an "adversarial role" with the Society and that the Society's January letter (and the two later letters) somehow did not call for a response.

I reject the submission that once a complaint is filed the Member is then in an adversarial role with the Society and the Member is excused from responding to further correspondence. The Member did admit that it "would have been preferable" to reply in January or February. Of this, there can be no doubt. Failure to respond to communications from the Society is professional misconduct and there will be a finding accordingly.

Particulars 2(b) and 2(c)

Failure to pay obligations incurred in the course of practice is a clear violation of the Rules, and despite the submissions made as to financial hardship, there will be a finding of professional misconduct on these two particulars.

RECOMMENDATION AS TO PENALTY

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It is recommended that Richard Alexander Sutton be reprimanded in Convocation and pay the Society's costs in the amount of \$250.

REASONS FOR RECOMMENDATION

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It was the submission of the Society that with a reprimand in Committee in 1989 and a further complaint pending Convocation at the time of this hearing, the Member was "climbing the ladder one step at a time" Ms. Cowie asked me to consider a three month suspension and payment of the Society's costs in the amount of \$1,000. She urged that it was appropriate in this situation to indicate to the profession that continued reattendance before the Discipline Committee would be dealt with in a serious fashion, for the protection of the public.

The Member testified at length under oath about his financial and health problems. He denied that his was an escalating discipline history, and that the matter currently pending before Convocation (arising out of the audit) involved more serious charges than the current complaints.

23rd May, 1996

The Member is no longer practising law, and is employed with a struggling private company. Having heard the evidence of the Member and the submissions by the Society and the Member, it is my view that a three month suspension would be excessive. I am satisfied that a reprimand in Convocation would be sufficient in the circumstances.

The Society requested costs in the amount of \$1,000 which I believe is excessive in light of the Member's financial circumstances and the likelihood that it could ever be paid. It is recommended that the Member be ordered to pay the Society's costs in the amount of \$250.

Richard Alexander Sutton was called to the Bar on April 6, 1979.

ALL OF WHICH is respectfully submitted

DATED this 4th day of March, 1996

Robert B. Aaron

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Daniel J. Murphy, Q.C., Chair  
Ronald D. Manes  
Hope Sealy

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

Kate G. Wooton  
for the Society

RICHARD ALEXANDER SUTTON  
of the City  
of Etobicoke  
a barrister and solicitor

Harry J. Doan  
for the solicitor

Heard: May 30, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On December 12, 1994 Complaint D328/94 was issued and on March 14, 1995 Complaint D38/95 was issued against Richard Alexander Sutton alleging that he was guilty of professional misconduct.

The matter was heard in public on May 30, 1995, before this Committee comprised of Daniel J. Murphy, Q.C., Chair, Ronald D. Manes and Hope Sealy. The Solicitor attended the hearing and was represented by Harry J. Doan. Kate Wootton appeared on behalf of the Law Society.

DECISION

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

Complaint D328/94

2. a) He failed to maintain his books and records in accordance with s. 15 of Regulation 708 made pursuant to the Law Society Act;
- b) During the period May, 1992 to March, 1993 he withdrew a total of \$2,350.00 from his trust account for or toward payment of his fees for which a billing or other written notification had not been delivered in contravention of s. 14(8)(c) of Regulation 708 made pursuant to the Law Society Act;
- c) During the period April, 1992 to March, 1993, he failed to reasonably promptly draw money, to which he was entitled, from his trust account in contravention of s. 14 of Regulation 708 made pursuant to the Law Society Act, by operating his general account transactions through his trust account;
- d) He failed to co-operate with the Law Society by not producing his complete books and records as required by s. 18 of Regulation 708 made pursuant to the Law Society Act despite repeated requests by the Society that he provide his books and records necessary for examination;
- e) He failed to honour an Undertaking to a fellow solicitor, Mr. Norman Freedman, in that he failed to pay to Mr. Freedman his assessed fees.

Complaint D38/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 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

Part of the evidence before the Committee contained the following Agreed Statements of Facts.

With respect to Complaint D328/94:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint 328/94 and is prepared to proceed with a hearing of this matter on May 30 and 31, 1995.

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 328/94 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1979. He practises as a sole practitioner in the City of Etobicoke.

Particulars 2(a), 2(b) and 2(c)

5. In June, 1993, the Law Society commenced an audit of the Solicitor's practice as a result of a cheque, which was remitted by the Solicitor to the Law Society in payment of his Errors and Omissions Fees, that was returned due to insufficient funds in the Solicitor's bank account.

6. The Law Society's audit revealed that the Solicitor failed to maintain his books and records as follows (Tabs 1, 2, 3 and 4 Document Book)

- (i) Trust cash receipts and cash disbursement journal were three month in arrears;
- (ii) Trust comparisons were one month in arrears;
- (iii) General cash receipts and cash disbursement journal were incomplete and in arrears;
- (iv) General cash receipts journal not always showing source of funds;
- (v) Copies of duplicate deposit slips for the period May 1992 and June 1993 were not available for examination; and
- (vi) Bank errors not detailed on trust bank reconciliations.

7. The Law Society's audit also disclosed that the following transfers were made by the Solicitor, from client trust accounts, without an account being rendered to the client (Tabs 5 and 6, Document Book):

Client Name	Date of Transfer	Amount	Date of Fee Bill
Brown	Mar 17/93	\$ 400.00	none
Schwartzner	Sep 11/93	750.00	none
Brown	Jul. 2/92	500.00	none
Jones	Jun 30/92	200.00	none
Brown	May 19/92	500.00	none
		\$ 2,350.00	

23rd May, 1996

8. The Law Society's audit also disclosed that the Solicitor had accumulated earned fees in a personal trust account under the name "RAS" contrary to section 14(7) of Regulation 708 pursuant to the *Law Society Act* (Tab 7, Document Book).

10. It is the Solicitor's explanation that this sub-ledger account was created as a "cushion" account due to service charges being imposed by his bank.

Particular 2(d)

11. On or about June 24, 1993, a Law Examiner attended at the Solicitor's office to conduct an examination of his books and records. The Solicitor was, however, unable to produce his books and records, as he advised that they were in the possession of his accountant.

12. On or about July 7, 1993, the Law Society Examiner re-attended at the Solicitor's office and the Solicitor produced his books and records relating to his trust account. On July 23, 1993, the Law Society Examiner re-attended at the Solicitor's office and the Solicitor produced his general cash receipts and cash disbursements journals. The Solicitor was however unable to produce copies of his duplicate deposit slips for the period between May 1992 and June 1993. The Solicitor advised the Law Society Examiner that he was unable to locate the duplicate deposit slips and made a commitment to produce them on August 4, 1993.

13. On or about August 3, 1993, at approximately 10:00 a.m., the Law Society Examiner telephoned the Solicitor's office to confirm the appointment scheduled for August 4, 1993 and left a message for him to return the call. The Law Society Examiner telephoned the Solicitor, again, at approximately 4:45 p.m., at his residence and the Solicitor advised that he was unable to locate the duplicate deposit slips but that he was still attempting to find them. Copies of the Law Society Examiner's handwritten telephone transaction notes are contained at Tabs 8, 9 and 10 of the Document Book.

14. On or about August 4, 1993, the Law Society Examiner telephoned the Solicitor, who advised that he was going to request copies of the duplicate deposit slips from his bank. A copy of the Law Society Examiner's handwritten telephone transaction notes are contained at Tab 11 of the Document Book.

15. On or about August 17, 1993, the Law Society Examiner telephoned the Solicitor and discussed with him the procedure involved with respect to obtaining copies of the deposit slips from the bank. The Solicitor again agreed to obtain the deposit slips and provide copies to the Law Society. A copy of the Law Society Examiner's handwritten telephone transaction note is contained at Tab 12 of the Document Book.

16. On or about September 16, 1993, the Law Society Examiner telephoned the Solicitor and left a message for him to return the call. The Solicitor did not return the call. A copy of the Law Society Examiner's handwritten telephone transaction note is contained at Tab 13 of the Document Book.

17. On or about November 3, 1993, the Law Society Examiner telephoned the Solicitor who advised that he had not obtained copies of the deposit slips as the branch where he maintained his trust account had closed. The Examiner advised the Solicitor to contact his bank's head office to seek direction in obtaining the information he required. The Solicitor agreed to do so. A copy of the Law Society Examiner's calender for November 3, 1993 with handwritten telephone transaction notes is contained at Tab 14 of the Document Book.

18. By letter dated February 2, 1994 (Tab 15, Document Book), the Law Society requested that the Solicitor advise as to the steps he had taken to locate the missing deposit books or to obtain duplicate copies of the same. The Solicitor was advised that if he did not respond within 15 days, the matter would be referred to the Discipline Department for failure to co-operate and failure to produce books and records. The Solicitor did not respond.

19. To date, the Solicitor has not produced either his missing deposit books or duplicate copies of the same.

Particular 2(e) - Failure to honour undertaking to another solicitor

20. The Complainant, Norman Freedman, is a solicitor who was retained by Mrs. Anita Jones, with respect to a motor vehicle accident which occurred in April, 1989. After Mr. Freedman had completed a substantial amount of work on Mrs. Jones' file, she decided to retain the services of the Solicitor to continue with her claim.

21. By letter dated June 14, 1991 (Tab 16, Document Book), the Solicitor forwarded a direction, executed by Mrs. Jones, and requested the release of her file.

22. By letter dated September 2, 1991 (Tab 17, Document Book), the Complainant acknowledged receipt of the Solicitor's letter dated June 14, 1991 and enclosed his account for services rendered to Mrs. Jones. The Complainant requested a cheque from the Solicitor in the amount of \$259.01 for his outstanding disbursements and also requested that the Solicitor confirm that his account for fees in the amount of \$7,500.00 plus GST in the amount of \$525.00 would be the first charge to be paid out of the proceeds of any settlement or judgment.

23. By letter dated September 19, 1991 (Tab 18, Document Book), the Solicitor acknowledged receipt of the Complainant's letter dated September 2, 1991. The Solicitor also confirmed that the Complainant's fees would be the first charge to be paid out of the proceeds of any settlement or Judgment subject to Mrs. Jones's right to have the Complainant's account assessed.

24. By letter dated August 28, 1992 (Tab 19, Document Book), the Complainant forwarded Mrs. Jones's file to the Solicitor notwithstanding that the Complainant's disbursements with respect to Mrs. Jones's file had not yet been paid. The Complainant also confirmed that his fees would be a first charge to be paid out of the proceeds of any settlement or Judgment and this his outstanding account for fees and disbursements was \$8,284.01. The Complainant further advised that he had scheduled an appointment to have his fees assessed on June 2, 1993. The Complainant requested that the Solicitor confirm receipt of Mrs. Jones's file and to keep him advised as to the progress of the file.

25. By letter dated September 11, 1992 (Tab 20, Document Book), the Complainant confirmed his telephone conversation with the Solicitor regarding the status of the file and that the Solicitor had agreed to withhold the sum of \$8,284.01 to cover the Complainant's outstanding fees and disbursements, pending the assessment of his account in June, 1993.

26. By letter dated June 3, 1993 (Tab 21, Document Book), the Complainant advised the Solicitor that his solicitor/client account was assessed as submitted in the amount of \$8,284.01 and confirmed that his fees were a first charge as against any recovery that Mrs. Jones made.

23rd May, 1996

27. By letter dated January 20, 1994 (Tab 22, Document Book), the Complainant confirmed a telephone conversation he had had with the Solicitor several weeks earlier wherein the Solicitor advised him that Mrs. Jones's matter was close to settlement. The Complainant requested an update as to whether or not the matter had settled and confirmed that he was not prepared to reduce his account beyond the assessed amount of \$8,434.00.

28. By letter dated February 9, 1994 (Tab 23, Document Book), the Complainant requested the Solicitor to respond to his letter dated January 20, 1994.

29. By letter dated May 12, 1994 (Tab 24, Document Book), the Complainant requested an update from the Solicitor with respect to the status of Mrs. Jones's file and advised that he still had not received a response from the Solicitor with respect to his letters dated January 20, 1994 and February 9, 1994.

30. By letter dated May 25, 1994 (Tab 25, Document Book), the Complainant advised the Solicitor that it had come to his attention that Mrs. Jones's matter had settled in December, 1993 and that the Solicitor had come into funds in early January, 1994. The Complainant indicated that the Solicitor had not responded to his communications and requested a cheque in the amount of \$8,434.00 for his assessed account which the Solicitor had undertaken to pay as a first charge against any settlement proceeds. The Complainant further advised that if he was not in funds by 5:00 p.m. on May 26, 1994, he would report both the Solicitor and his associate, George Wootten, to the Law Society.

31. By letter dated May 27, 1994 (Tab 26, Document Book), Mr. Wootten advised the Complainant that the Solicitor had the settlement funds in his trust account. Mr. Wootten further advised that he had discussed the matter with the Solicitor, who had agreed to forward \$5,000.00 to the Complainant, in full settlement of the Complainant's outstanding account. Mr. Wootten further advised that if this was not agreeable to the Complainant, the Solicitor intended to commence proceedings to have the Complainant's account re-assessed.

32. By letter dated May 27, 1994 (Tab 27, Document Book), the Complainant made a formal complaint against the Solicitor to the Law Society for his failure to honour his undertaking to the Complainant to pay his assessed fees, with respect to Anita Jones's action, as a first charge as against any settlement recovery.

33. By letter dated May 31, 1994 (Tab 28, Document Book), the Complainant advised the Solicitor that his position, as expressed in Mr. Wootten's letter dated May 27, 1994 with respect to payment of his account, was a violation of the undertaking that the Solicitor had given to the Complainant when the file was transferred to him. The Complainant further advised that he had reported the matter to the Law Society.

34. By letter dated June 29, 1994 (Tab 29, Document Book), the Solicitor responded to the Law Society with respect to the Complainant's letter of complaint. The Solicitor explained that when he gave the undertaking to protect the Complainant's account, it was an implied term of that undertaking that the account would be reasonable. The Solicitor further advised that through inadvertence he attended on the incorrect day to the assessment of the Complainant's account. It was his intention to contest the amount submitted by the Complainant, as his account was, in the Solicitor's opinion, unconscionable. The Solicitor advised that he would be taking the appropriate course of action to have the Complainant's account re-assessed and promised to advise the Law Society further as the matter proceeded.

23rd May, 1996

35. By letter dated August 10, 1994 (Tab 30, Document Book), the Law Society requested confirmation from the Solicitor that the sum of \$8,434.01 had been placed in an interest bearing account and a copy of his trust ledger card indicating same. The Society also inquired as to why steps had not yet been taken to have Mr. Freedman's account re-assessed and advised that same should have already been done. The Society further advised that if the Solicitor failed to take action with respect to his position that the Complainant's account was unconscionable within 7 days, the matter would be referred to the Chair and Vice-Chair of Discipline.

36. By letter dated September 2, 1994 (Tab 31, Document Book), the Solicitor's office confirmed that an interest bearing account had been opened and that \$8,434.00 had been deposited into same on July 31, 1994. A copy of the Solicitor's trust ledger card evidencing same was enclosed in the letter.

37. On or about September 28, 1994, the Complainant advised the Law Society that he had not been served with any documentation with respect to a re-assessment of his account.

38. As at November 1, 1994 the Solicitor had not responded to the Society with respect to whether or not he had taken any steps to have the Complainant's account assessed. As a result, the matter was referred to the Chair and Vice-Chair of Discipline on November 10, 1994 and a formal complaint was authorized against the Solicitor with respect to his failure to honour the undertaking he gave to the Complainant.

39. By letter dated March 23, 1995, the Complainant was served with a motion record with respect to the Solicitor's motion to set aside the assessment of the Complainant's account. Although the motion record indicated that the motion was returnable on April 10, 1995, the Solicitor did not file his motion record with the court and set the matter down as the solicitor who was scheduled to argue the motion was unable to attend on April 11, 1995 due to a family emergency.

40. The Solicitor has advised that the motion has been rescheduled for June 2, 1995.

V. DISCIPLINE HISTORY

41. The Solicitor was Reprimanded in Committee on April 5, 1989 for failing to maintain books and records.

Dated at Toronto, this 30th day of May, 1995."

With respect to Complaint D38/95:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D38/95 and is prepared to proceed with a hearing of this matter on May 30 and 31, 1995.

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 D38/95 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 6, 1979. He practices as a sole practitioner in the city of Etobicoke.

5. The Solicitor's fiscal year end is April 30th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending April 30, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated November 3, 1994 was received by the Solicitor from the Law Society. A copy of the Notice is attached as Exhibit "A" of this Agreed Statement of Facts.

7. By registered mail, the Solicitor received a Second Notice of Default in Annual Filing dated December 14, 1994 from the Law Society. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's Second Notice and Acknowledgement of Receipt card is attached as Exhibit "B" of this Agreed Statement of Facts.

8. By letter dated December 20, 1994, the Solicitor's secretary, Ms. Fairchild, advised the Law Society that the December 14, 1994 Notice had been received. She further advised that the Solicitor was in the process of completing his filing when he had broken his arm and then required surgery. Ms. Fairchild advised that the Solicitor would be back in the office in the new year. A copy of the letter is attached as Exhibit "C" of this Agreed Statement of Facts.

9. The late filing fee began to accrue on December 28, 1994 and to date remains outstanding.

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

11. The Solicitor made the required filing on May 29, 1995.

### V. DISCIPLINE HISTORY

12. The Solicitor was Reprimanded in Committee on April 5, 1989 for failing to maintain books and records.

DATED at Toronto, this 30th day of May, 1995"

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Alexander Sutton be reprimanded in Convocation and that on or before the date the matter is heard in Convocation he produce the deposit book referred to in Complaint D328/94 and the fee billing referred to in paragraph 7 of Complaint D328/94, failing which, that he be suspended for two months and thereafter until he produces these documents.

REASONS FOR RECOMMENDATION

The Solicitor ceased to practise law on March 31, 1995. All of the things that the Solicitor failed to do are of an administrative nature with the exception of the Jones matter. After reviewing all of the evidence this appears to be more a misunderstanding between solicitors than any real attempt by the Solicitor not to honour his undertaking.

The Solicitor is now employed by a private company and we are satisfied that a reprimand in Convocation is sufficient in the circumstances.

The Society requested costs in the sum of two thousand dollars. The Committee was made aware of two decisions that are going to Convocation in which a committee found that we do not have jurisdiction to award costs. This Committee reserves its decision on costs until Convocation has dealt with those cases.

Richard Alexander Sutton was called to the Bar on the 6th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 10th day of October, 1995

Daniel J. Murphy, Q.C.  
Chair

It was moved by Ms. Eberts, seconded by Ms. Stomp that the Reports be adopted.

It was moved by Ms. Ross, seconded by Ms. Puccini that the section entitled Terminology on page 2 of the March 1996 Report be deleted.

The motion was withdrawn and the matter referred to the Discipline Policy Committee.

The Eberts/Stomp motion to adopt the Reports carried.

The recommended penalty of the Discipline Committee of the October 1995 Report was that the solicitor be reprimanded in Convocation if the required documents were produced failing which that he be suspended for a period of 2 months and thereafter until he produced the documents.

The recommended penalty of the Discipline Committee of the March 1996 Report was that the solicitor be reprimanded in Convocation and pay the Society's costs in the amount of \$250.

Ms. Cohen advised that the required documents had been produced.

It was moved by Mr. Wright, seconded by Ms. Puccini that the solicitor be reprimanded in Convocation as recommended in the October Report.

23rd May, 1996

It was moved by Mr. Wright, seconded by Ms. Puccini that the solicitor be reprimanded in Convocation and pay costs as recommended in the March Report.

Ms. Cohen made submissions in support of the reprimand in Convocation but that there be 2 Orders issued.

Mr. VanDuffelin made submissions in support of the reprimand with a single Order being issued.

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

It was moved by Mr. Gottlieb, but failed for want of a seconder that the Orders be combined into 1 penalty with a reprimand in Convocation.

The Wright/Puccini motions to adopt the recommended penalties in both Reports carried.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded and pay the Society's costs and that 2 Orders would be issued.

Mr. Epstein administered the reprimand.

Re: Joseph Glenn Michael BARNES - Kemptville

The Secretary placed the matter before Convocation.

Messrs. Wilson, Crowe and MacKenzie withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 28th March, 1996, together with an Affidavit of Service sworn 15th April, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 15th April, 1996 (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

Richmond C. E. Wilson, Q.C., Chair  
Marshall Crowe  
Gordon Z. Bobesich

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

JOSEPH GLENN MICHAEL BARNES  
of the Town  
of Kemptville  
a barrister and solicitor

Jane Ratchford  
for the Society

Not Represented  
for the solicitor

Heard: December 13, 1995



23rd May, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On August 8, 1991, Complaint D94/91 was issued, on March 25, 1992, Complaint D54/92 was issued, on February 21, 1994, Complaint D422/93 was issued, on May 3, 1993, Complaint D114/93 was issued and on August 24, 1995, Complaint D203/95 was issued against Joseph Glenn Michael Barnes alleging that he was guilty of professional misconduct.

This matter was heard partially in camera on December 13, 1995 before this Committee composed of Richmond C.E. Wilson, Q.C., Chair, Marshall A. Crowe and Gordon Z. Bobesich. Mr. Barnes was present at the hearing and represented himself. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D94/91

2. a) He failed to reply to the Society regarding a complaint by Donnell Hughes despite letters dated April 15, 1991 and June 14, 1991 and telephone messages on May 31, 1991 and June 3, 1991.
- b) He failed, upon discharge, to provide an account to his client, Thomas Longmire, for all funds held or previously dealt with.
- c) He failed to provide a reply to the Society regarding a complaint by June Davis despite letters dated February 27, 1991, March 26, 1991, and May 23, 1991 and telephone requests on May 8, 1991, May 14, 1991 and May 15, 1991.
- d) He misled a client, June Davis, by twice telling her that her divorce petition had been filed with the Sheriff's Office when it had not been filed.
- e) He failed to respond to numerous telephone calls from his client, June Davis, without explanation.
- f) He failed to provide a reply to the Society regarding a complaint by Lynn Curry despite letters dated April 15, 1991 and June 13, 1991, and telephone requests on May 27, 1991, May 28, 1991, May 29, 1991, May 31, 1991 and June 3, 1991.
- g) He misled a client, Lynn Curry, by repeatedly assuring her that two Statements of Claim had been prepared and filed when they had not.

23rd May, 1996

Complaint D54/92

2. a) he failed to maintain sufficient balances on deposit in his trust bank accounts to meet his obligations to his clients, thereby breaching subsection 14(12) of Regulation 573 to the Law Society Act.

Complaint D422/93

2. a) He failed to comply with his Undertaking to the Law Society, dated April 8, 1992 to:

... within seven days of the date set out herein below, contact the Professional Standards Program of the Law Society for the specific purpose of applying to and participating in the Professional Standards Program.

In that he failed to co-operate with the Professional Standards Program, despite letters dated May 24, 1992, August 11, 1992, August 13, 1992, August 31, 1992, October 21, 1992, October 30, 1992, February 8, 1993, July 28, 1993, August 23, 1993, September 22, 1993, and October 12, 1993, and telephone messages left on July 27, 1992, July 29, 1992, August 5, 1992, November 26, 1992, December 18, 1992, December 14, 1992, January 5, 1993, March 23, 1993 and March 24, 1993.

- b) He failed to provide a reply to the Law Society regarding complaints by:

(i) Dr. P.A. Townsend despite letters dated July 21, 1993 and September 8, 1993 and telephone messages left on August 29, 1993 and August 31, 1993;

(ii) A.M. Kostecki despite letters dated September 23, 1993 and November 26, 1993 and telephone messages left on November 22, 1993 and November 25, 1993;

(iii) Lila Metz despite letters dated February 2, 1993 and February 26, 1993 and telephone messages left on February 16, 1993 and February 22, 1993;

(iv) Pierre J. Bernier, Wedgewood Building Corporation despite letters dated October 13, 1993 and November 16, 1993 and telephone messages left on November 3, 1993, November 9, 1993 and November 11, 1993;

- c) He failed to serve his client A.M. Kostecki, in a conscientious, diligent and efficient manner concerning a litigation action in that he failed to reply to communications from his client dated February 12, 1993 and February 19, 1993 requiring a reply.

- d) He failed to comply with his Undertaking to the Law Society dated April 8, 1992 to:

...reply promptly to all communications from the Law Society, other lawyers and clients. In the case of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three business days of receipt thereof.

23rd May, 1996

In that he failed to reply to the Law Society regarding complaints by A.M. Kostecki, Lila Metz and Pierre J. Bernier, and correspondence from his client, A.M. Kostecki, requiring a reply.

- e) He failed to serve his client Lila Metz, in a conscientious, diligent and efficient manner in that he failed to provide her with a final, executed account regarding a matrimonial matter.

Complaint D114/93

- 2. a) He failed to reply to communications from the Law Society regarding a complaint by Donald and Shirley Woo despite letters dated September 28 and November 12, 1992 and telephone requests on October 21 and November 2, 1992;
- b) He breached his Undertaking given to the Law Society on April 8, 1992 to reply promptly to Law Society communications.

Complaint D203/95

- a) He acted in a conflict of interest by:
  - (i) failing to explain the conflict of interest created by his interest in Castlereigh Development Corporation to his clients, Mr. Fred Eder, 809207 Ontario Inc., CanCorp Financial Services Ltd. and Municipal Savings and Loan Corporation, in relation to the construction and financing of the Church Street Plaza;
  - (ii) representing both the mortgagees (CanCorp Financial Services Ltd. and Municipal Savings and Loan Corporation) and the mortgagor, 809207 Ontario Inc. in relation to the Church Street Plaza and the mortgagee (CanCorp) and mortgagor (Fred Eder) in relation to the Second Avenue property in Ottawa without explaining this conflict to his clients or obtaining their consent to act for all of them;
  - (iii) preparing and serving a Statement of Claim on behalf of 809207 Ontario Inc. and Mr. Eder against CanCorp in relation to the two mortgages registered by Mr. Barnes on behalf of CanCorp referred to in paragraph (a)(ii) above.
- b) He failed to respond to communication from William Davis Q.C., concerning the Fuentes matter.
- c) He failed to respond to communication from the Complaints Department of The Law Society of Upper Canada.
- d) He breached the undertaking executed by him on April 8, 1992, in which he undertook to respond promptly to all communication from the Law Society and other lawyers.

Evidence

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

"AGREED STATEMENT OF FACTS - D54/92

I. Jurisdiction and Service

1. The Solicitor admits service of Complaint D54/92 and is prepared to proceed with a hearing of this matter on April 8, 1992.

II. In Public/In Camera

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

III. Admissions

3. The Solicitor has reviewed this Agreed Statement of Facts with his counsel, Scott Milloy, and admits the particulars contained therein.

4. The Solicitor admits that he has committed the professional misconduct as set out under paragraph 2(a) of Complaint D54/92, sworn March 25, 1992.

IV. Background Facts

5. The Solicitor was called to the Bar on April 13, 1981 and is a sole practitioner in a general practice of law.

6. The Solicitor has a current discipline matter pending, namely Complaint D94/91, sworn August 8, 1991, wherein he has admitted professional misconduct. A Discipline Committee Panel seized with the Complaint is scheduled to deal with the issue of penalty on April 8, 1992.

7. The Solicitor, with the advice of his counsel, and with the consent of counsel for the Society, desires that both Complaints D94/91 and D54/92 be dealt with at the same time and by the same Discipline Committee Panel currently seized with D94/91.

V. Facts

8. Mr. Stephen Copeland, by letter dated July 24, 1989, filed a complaint by the Law Society concerning the Solicitor. The letter of complaint was received on August 3, 1989.

9. As a result of the complaint, an audit investigation was conducted pursuant to Section 18 of the Regulations of the Law Society Act.

10. On February 12, 1990, Mr. Doug Weber, an investigation auditor for the Society, attended at the law office of the Solicitor to investigate the complaint.

11. Although Mr. Weber found the complaint to be groundless, the Solicitor's books and records, including his monthly trust comparisons were found to be in arrears. The last available trust comparison prepared was for the month of October, 1989. When Mr. Weber re-attended at the Solicitor's office on April 24, 1990, he found that the trust comparisons were made current and disclosed no overdrawn accounts to and including January 31, 1990. The Solicitor had not yet prepared comparisons for February, 1990 or for March, 1990.

12. The Solicitor was requested to file his monthly trust comparisons with the Audit Department for the ensuing 12 months.

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13. From March, 1990 to November, 1991, the trust listings indicated several overdrawn trust accounts. Although many overdrawn accounts were corrected, new overdrawn accounts appeared. As at November 30, 1991, there were seven overdrawn trust accounts, some of which had been in existence for 11 months.

14. The differences, or trust shortages, between the adjusted or true bank balance and the total liabilities were corrected by November 30, 1991.

15. Although the trust shortages were corrected, several overdrawn trust accounts still existed as at November 30, 1991.

16. On October 31, 1991, Mr. Weber informed the Solicitor that if he did not correct all the overdrawn trust accounts immediately, even if it meant injecting his own funds into the trust bank account, the matter would be reported to the Discipline Department.

17. In November, 1991, when it was apparent that the Solicitor had not corrected the overdrawn trust accounts, co-signing controls were arranged on the Solicitor's trust bank accounts.

18. The chart attached as Appendix "A" to this document, sets out the amount of overdrawn trust accounts as at November 30, 1991. Some of the overdrawn balances changed from the date that they went into overdraft balance. However, all the trust accounts in the chart had been continuously overdrawn since the date as indicated in the last column of the chart.

19. By letter dated January 15, 1992, addressed to Mr. Weber, the Solicitor provided his monthly trust comparison report for December, 1991. At this point in time, all previous overdrawn accounts, except for the \$3,500 overdrawn trust account for the Solicitor's client, Sterling Manner, had been corrected.

20. By letter dated February 19, 1992, the Solicitor provided Mr. Weber with a photocopy of the deposit he made from his general account to cover the overdraft in the Scotiabank trust account for his client, Sterling Manner. In the result, all overdrawn trust accounts had been corrected.

21. The accounts overdrawn were transactions that were honest but incorrect but attributable to accounting problems.

#### V. Past Discipline

1. The Solicitor was Reprimanded in Committee on April 4, 1989 regarding conflict of interest, deceiving a client, failure to serve his clients in a conscientious, diligent and efficient manner.

2. The Solicitor was Reprimanded in Committee on January 15, 1991 regarding his failure to file and failure to reply.

DATED at Toronto this 8th day of April, 1992."

#### "AGREED STATEMENT OF FACTS - D94/91

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D94/91 and is prepared to proceed with a hearing of this matter on November 19, 1991.

##### 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.

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### III. ADMISSIONS

3. The Solicitor has reviewed the Complaint D94/91 and admits the particulars contained therein.

### IV. FACTS

4. The Solicitor was called to the bar on April 13, 1981 and is a sole practitioner.

Particular 2a) - Donnell J. Hughes, Complainant

5. By letter dated May 9, 1990 the Complainant, a lawyer, wrote to the Law Society advising of the difficulties he had encountered in having the Solicitor release a client file (Thomas Longmire) pursuant to a written direction duly executed by the client authorizing delivery of the file and of trust proceeds to the Complainant's firm. In the letter of May 9, 1990, the Complainant also conveyed his concern of potential liability to the Law Society for the perceived negligence of the Solicitor's representation of Mr. Longmire.

6. The Law Society wrote to the Solicitor by letter dated May 25, 1990 enclosing a copy of the letter of complaint. It was suggested to the Solicitor, in view of the fact that a claim may be made which would involve the Society's "Errors & Omissions" insurance policy, that he may wish to contact the Director of Insurance. The Solicitor was requested to provide his comments to the Complainant's letter within two weeks. No reply was received.

7. By registered mail, the Law Society wrote to the Solicitor, by letter dated July 19, 1990, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

8. By letter dated September 13, 1990, the Solicitor's secretary, Diane Polak, advised the Law Society that due to their change of address, the Law Society's correspondence dated August 21, 1990 was received on September 12, 1990. The Solicitor was out of the country at that time but was expected back on September 26, 1990. She would draw the matter to his attention upon his return.

9. By letter dated September 20, 1990, the Law Society wrote to the Solicitor acknowledging receipt of the correspondence dated September 13, 1990 and advising that his response was expected upon his return to the office at the end of September. No reply was received.

10. By registered mail, the Law Society wrote to the Solicitor, by letter dated December 12, 1990, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

11. The Solicitor responded by letter dated January 3, 1991. He provided a synopsis of his dealings with the client.

12. By letter dated January 22, 1991 the Law Society wrote to the Solicitor stating that the Society had been advised that the Solicitor had not reported to his client. The Solicitor was requested to provide an explanation or a copy of the report. A reply was requested within ten days of the date of the letter. No reply was received.

13. By letter dated April 15, 1991, the Law Society again requested the Solicitor's explanation or a copy of the reporting letter to Mr. Longmire. He was further requested to advise whether an account had been rendered. The Solicitor was requested to reply within fourteen days of the date of the letter.

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14. A Law Society staff employee left messages at the Solicitor's office on May 31, 1991 and June 3, 1991. The calls were not returned.

15. By registered mail, the Law Society wrote to the Solicitor, by letter dated June 14, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

16. By letter dated June 27, 1991, the Complainant advised the Law Society that, as of that date, a statement of account had not been received from the Solicitor.

Particular 2b)

17. By letter dated April 3, 1990, the Complainant, a fellow solicitor, advised the Solicitor that he had instructions from Thomas Longmire to take over the file from the Solicitor concerned with Mr. Longmire's claim for personal injuries arising out of an accident which occurred on November 7, 1988. In that letter, the Solicitor was requested to call the Complainant in order that arrangements could be made to have the file picked up.

18. By letter dated April 5, 1990, the Complainant forwarded to the Solicitor a Direction authorizing the release of the file and trust proceeds to the Complainant, duly executed by Mr. Longmire.

19. By letter dated April 18, 1990, the Complainant wrote to the Solicitor, as no response had been received, advising the Solicitor that in the absence of his co-operation in delivering the file, the Complainant recommended that the Solicitor report this potential claim to his insurer. No reply was received.

20. By letter dated April 27, 1990, the Complainant requested the Solicitor deliver the most relevant evidence, being the client's "pain diary", as the limitation period was approaching in November, 1990. The Solicitor was requested to respond by May 4, 1990. No reply was received.

21. By letter dated May 9, 1990 the Complainant wrote to the Law Society advising of the difficulties he had encountered in having the Solicitor release a client's, Thomas Longmire, file, as well as, a claim of potential negligence as a result of the Solicitor's representation of Mr. Longmire.

22. After letters had been sent from the Law Society to the Solicitor in connection with the Complainant's letter dated May 9, 1990, the Solicitor responded by letter to the Law Society dated January 3, 1991. He provided a synopsis of his dealings with the client.

23. By letter dated January 22, 1991 the Law Society wrote to the Solicitor stating that the Society had been advised that the Solicitor had not reported to his client. The Solicitor was requested to provide an explanation or a copy of the report. A reply was requested within ten days of the date of the letter.

24. By letter dated April 15, 1991, the Law Society again requested the Solicitor's explanation or a copy of the reporting letter to Mr. Longmire. He was further requested to advise whether an account had been rendered. The Solicitor was requested to reply within fourteen days of the date of the letter.

25. A Law Society staff employee left messages at the Solicitor's office on May 31, 1991 and June 3, 1991. The calls were not returned.

23rd May, 1996

26. By registered mail, the Law Society wrote to the Solicitor, by letter dated June 14, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

27. By letter dated June 27, 1991, the Complainant advised the Law Society that, as of that date, a statement of account had not been received from the Solicitor.

Particular 2c) - June Davis, Complainant

28. By letter dated October 19, 1990, the Complainant, a client of the Solicitor's, advised the Law Society of several concerns she had regarding the Solicitor's handling of her case.

29. By letter dated November 14, 1990, the Law Society wrote to the Solicitor, enclosing a copy of the letter of complaint. The Solicitor was requested to respond within two weeks. No reply was received.

30. By letter dated December 13, 1990, the Law Society wrote to the Solicitor, enclosing a copy of the letter of complaint and the Society's previous correspondence. The Solicitor was requested to respond within ten days. No reply was received.

31. A Law Society staff employee left a message on the answering machine at the Solicitor's office on January 4, 1991. The call was not returned.

32. A Law Society staff employee spoke with the Solicitor's secretary on January 10, 1991. The Solicitor's secretary advised that he would reply within a day or two. No reply was received.

33. By registered mail, the Law Society wrote to the Solicitor, by letter dated January 21, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

34. By letter dated January 25, 1991, the Solicitor advised that he agreed with the contents of the letter of complaint. He would, if the Complainant was agreeable, finish the matter on the basis of disbursements only.

35. By letter dated February 6, 1991, the Complainant requested the Solicitor provide an estimate of disbursements.

36. By letter dated February 27, 1991, the Law Society wrote to the Solicitor enclosing a copy of the Complainant's letter dated February 6, 1991. He was requested to respond directly to the Complainant with a copy of his response forwarded to the Law Society within fourteen days. No reply was received.

37. By letter dated March 26, 1991, the Law Society wrote to the Solicitor requesting a reply to their correspondence dated February 27, 1991, within two weeks of the date of the letter. No reply was received.

38. A Law Society staff employee spoke with the Solicitor by telephone on April 3, 1991. The Solicitor advised that he should have the matter completed by the end of the week.

39. A Law society staff employee spoke with the Complainant by telephone on April 24, 1991. The Complainant advised that she had neither heard or received anything from the Solicitor.



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40. A Law Society staff employee left messages at the Solicitor's office on May 8, 1991, May 14, 1991 and May 15, 1991. The calls were not returned.

41. By registered mail, the Law Society wrote to the Solicitor, by letter dated May 23, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter. No reply was received.

42. By registered mail, the Law Society wrote to the Solicitor, by letter dated June 13, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter. No reply was received.

Particular 2d)

43. The Complainant retained the Solicitor in September, 1989 to act on her behalf in initializing divorce proceeding.

44. Early in the month of March, 1990, the Complainant executed the Petition for Divorce and delivered the same to the Solicitor by special delivery.

45. By letter dated March 20, 1990, the Solicitor advised the Complainant that they had made the necessary changes to the Petition for Divorce and would be submitting the document for issuance and service.

46. On July 2, 1990, that Solicitor advised the Complainant, by telephone, that the papers had been given to the Ottawa Sheriff's office, who in turn would forward the documents onto the Nova Scotia Sheriff's office, to serve on her husband. The Solicitor provided the Complainant with the same information on two other occasions. The documents were never issued or filed by the Solicitor.

47. During the week of October 8, 1990, the Complainant contacted the Sheriff's Office in Ottawa and was advised that they had not received any documents from the Solicitor. Mrs. Barney, a staff employee at the Sheriff's Office, advised that Complainant that their office did not accept documents for service out of Province.

Particular 2e)

48. During the year prior to the her letter of complaint dated October 19, 1990, the Complainant had made over 20 telephone calls to the Solicitor seeking information concerning her file. In more than fifteen of those telephone calls placed to the Solicitor, the Complainant was advised that the Solicitor was "not available to speak to her". The Solicitor never returned any of the Complainant's telephone calls to him.

Particular 2f) - Lynn Curry, Complainant

49. By letter dated December 12, 1990, the Complainant advised that Law Society that the Solicitor was not returning her telephone calls regarding the status of her file.

50. By letter dated January 8, 1991, the Law Society wrote to the Solicitor, enclosing a copy of the letter of complaint. The Solicitor was requested to provide his comments within two weeks.

51. By letter dated January 25, 1991, the Solicitor advised the Law Society that he agreed with the contents of the Complainant's letters. He was turning the matter over to the E & O Department.

23rd May, 1996

52. By letter dated February 1, 1991, the Law Society advised the Solicitor that by agreeing to the contents of the letter of complaint, he raised issues of potential misconduct. The Solicitor was requested to provide all details of the situation in relation to the issuance of the Statement of Claim, including instructions received and the Solicitor's failure to carry out the same. The Solicitor was requested to respond within two weeks. No reply was received.

53. A Law Society staff employee left messages at the Solicitor's office on February 25, 1991, February 28, 1991, March 5, 1991, March 6, 1991 and March 11, 1991. The calls were not returned.

54. By registered mail, the Law Society wrote to the Solicitor, by letter dated March 15, "1990", indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter.

55. By letter dated March 27, 1991, the Solicitor advised the Law Society that he did not have specific recollections of when things happened on this case. If the Law Society drafted a letter which confirmed the information needed, the Solicitor would sign the same.

56. By letter dated April 15, 1991, the Law Society wrote the Solicitor and confirmed his intention to respond to the Society's concerns by way of a prepared statement. In this connection the Society enclosed in its letter of April 15, 1991, a prepared statement for the Solicitor to sign, titled Certificate. The Solicitor was requested to return the Certificate within two weeks of the date of the letter. No reply was received. Attached hereto and forming part of this Agreed Statement of Facts is a copy of the said Certificate.

57. During the week of May 27, 1991, a Law Society staff employee spoke with the Solicitor by telephone. The Solicitor advised that he would have something to the Law Society by next week. No reply was received.

58. By registered mail, the Society wrote to the Solicitor, by letter dated June 13, 1991, indicating that the matter would be referred to the Chair of the Discipline Committee if the Solicitor did not reply within seven days of the date of the letter. The Solicitor did not reply.

Particulars 2g)

59. The Complainant retained the Solicitor regarding a contractual dispute with Canadian College of Health Service Executives (CCHSE).

60. As negotiation efforts had failed, the Complainant, on January 31, 1990, authorized the Solicitor to file two Statements of Claim. One against CCHSE and one against CEO.

61. By letter dated February 7, 1990, the Solicitor advised Drache Rotenberg, Counsel for the Defendant, that he was in the final stages of drafting the Statement of Claim. If a reply was not received from Drache Rotenberg within ten days, the Solicitor advised that he would proceed with the issuance of the Statement of Claim.

62. Through February, 1990 to April, 1990, the Complainant was repeatedly assured by the Solicitor, by telephone, that the Statements of Claim had been filed and that a delay of formal notification was to be expected. The Solicitor never issued the Statements of Claim or had them filed.

63. In mid-April, 1990, the Complainant advised the Solicitor that she had been informed by an individual on the CCHSE Board that she had no knowledge of a claim against the organization. The Solicitor's response to the Complainant was that he "couldn't understand how she could not know about the claim."

64. Since that time, the Complainant's telephone messages left for the Solicitor have not been returned. A scheduled meeting arranged through the Solicitor's secretary was cancelled by the Solicitor at the hour of the meeting.

V. PAST DISCIPLINE

65. The Solicitor was Reprimanded in Committee on April 4, 1989 regarding conflict of interest, deceiving a client, failure to serve his clients in a conscientious, diligent and efficient manner.

66. The Solicitor was Reprimanded in Committee on January 15, 1991 regarding his failure to file and failure to reply.

DATED at Toronto this 19th day of November, 1991."

"SUPPLEMENTARY AGREED STATEMENT OF FACTS

I am prepared to proceed with a hearing in respect of Complaints D94/91 and D54/92 on December 12 and 13, 1995. I further agree to the use of the Agreed Statement of Facts executed by me on November 19, 1991 for Complaint D94/91 and the Agreed Statement of Facts executed by me on April 8, 1992 for Complaint D54/92 for the purposes of making a finding of misconduct and imposing a penalty in respect of these Complaints at the hearing.

Dated at Toronto, this 12th day of December, 1995"

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D114/93, D422/93 and D203/95 and is prepared to proceed with a hearing of this matter on December 12 and 13, 1995, in Toronto.

II. IN PUBLIC/IN CAMERA

2. The parties request that a portion of this matter be heard in camera.

III. ADMISSIONS

3. The Solicitor has reviewed the above Complaints as amended and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1981. During the time material to these Complaints, the Solicitor was a sole practitioner in Kemptville, Ontario. On November 1, 1993, the Solicitor was suspended for failure to pay his annual fee and errors & omissions levy. Thereafter, the Solicitor ceased to practise law. On December 13, 1993, the Staff Trustee of the Law Society took over the Solicitor's practice.

Complaint D422/93

Particular 2(b) - Fail to Reply to the Law Society

(i) - Dr. P.A. Townsend

5. By letter dated June 28, 1993 (Document Book, Tab 1), the Society received a letter of complaint from Dr. P.A. Townsend concerning medical information supplied by Dr. Townsend to the Solicitor for which an account remained outstanding.

23rd May, 1996

6. By letter dated July 21, 1993 (Document Book, Tab 2), the Society wrote to the Solicitor enclosing Dr. Townsend's letter asking that he reply within two weeks. The Solicitor failed to respond.

7. On August 11, 18, 26 and 31, 1993, the Society attempted to contact the Solicitor by telephone (Document Book, Tab 3). In the first two instances, the Society was unable to reach the Solicitor. In the second two instances, messages were left for the Solicitor, which he did not return.

8. By registered letter dated September 8, 1993 (Document Book, Tab 4), the Society wrote to the Solicitor asking that he respond within seven days of the date of the letter, otherwise, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

2(b)(ii) - A.M. Kostecki

9. By letter dated August 29, 1993 (Document Book, Tab 5), Dr. A. M. Kostecki wrote to the Law Society concerning a complaint about the Solicitor.

10. The Society subsequently received letters dated September 18 and 19, 1993 (Document Book, Tabs 6 and 7) containing further information about Dr. Kostecki's complaint.

11. By letter dated September 23, 1993 (Document Book, Tab 8), the Society wrote to the Solicitor enclosing Dr. Kostecki's letters and asking for a reply within two weeks. A response was not received.

12. Telephone messages were left for the Solicitor on his answering machine on each of November 22 and 25, 1995 (Document Book, Tab 9). The Solicitor did not respond.

13. By registered letter dated November 26, 1993 (Document Book, Tab 10), the Society wrote to the Solicitor asking for a response to its letter of September 23, 1993 within seven days, otherwise, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

14. The Solicitor had concerns about dealing with Mr. Kostecki who was not his client and because of certain allegations made by Mrs. Kostecki against Mr. Kostecki.

2(b)(iii) - Lila Metz

15. By letter dated November 20, 1992 (Document Book, Tab 11), Lila Metz complained to the Law Society through her then solicitor, D.G. Menzies, concerning the Solicitor.

16. By letter dated February 2, 1993 (Document Book, Tab 12), the Society wrote to the Solicitor enclosing a copy of Mr. Menzies' letter and asking for a response within two weeks. The Solicitor did not respond.

17. Telephone messages were left with the Solicitor's office on each of February 16 and 22, 1993 (Document Book, Tab 13). The Solicitor did not respond.

18. By registered letter dated February 26, 1993 (Document Book, Tab 14), the Society wrote to the Solicitor asking for a response concerning this matter within seven days, otherwise, the matter would be referred to the Chair of Discipline. The Solicitor did not respond.

2(b)(iv) - Pierre J. Bernier

19. By letter dated September 28, 1993 (Document Book, Tab 15), Pierre Bernier, Executive Vice-President and Chief Financial Officer of Wedgewood Building Corporation, wrote to the Law Society concerning a complaint about the Solicitor.

20. By letter dated October 13, 1993 (Document Book, Tab 16), the Society wrote to the Solicitor enclosing Mr. Bernier's letter and asking for a reply within two weeks. The Solicitor did not reply.

21. The Society left telephone messages on each of November 3, 9 and 11, 1993 at the Solicitor's office, which were not answered (Document Book, Tab 17).

22. By registered letter dated November 16, 1993 (Document Book, Tab 18), the Society wrote to the Solicitor asking for a response to its correspondence within seven days, failing which, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

2(c) - Fail to Serve his client, A.M. Kostecki

23. By letter dated February 7, 1993 (Document Book, Tab 19), Dr. Kostecki wrote to the Solicitor concerning certain matters pertaining to the Solicitor's representation of Dr. Kostecki's wife in a motor vehicle accident.

24. By letter dated February 11, 1993 (see Tab 19), the Solicitor responded to Dr. Kostecki. Dr. Kostecki wrote further letters of February 12 and 19, 1993 concerning follow up matters to his letter of February 7th and the Solicitor's response of February 11, 1993. The Solicitor failed to respond to Dr. Kostecki which ultimately resulted in Dr. Kostecki lodging a complaint with the Law Society.

2(d) - Fail to Comply with Undertaking to Law Society

25. On April 8, 1992, the Solicitor gave an Undertaking to the Law Society in connection with discipline proceedings concerning Complaints D94/91 and D54/92 (Document Book, Tab 20).

26. Pursuant to paragraph one of the Undertaking, the Solicitor undertook "that I shall reply promptly to all communications from the Law Society, other lawyers and clients. In the case of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three business days of receipt thereof."

27. The Solicitor's failure to reply to the Society regarding the complaints by Mr. Kostecki, Ms. Metz and Mr. Bernier and correspondence from his client, Mr. Kostecki, constitutes a breach of the Undertaking.

2(e) - Fail to Serve Lila Metz

28. The Solicitor acted for Lila Metz from August, 1991 until approximately March, 1992 in connection with a matrimonial matter.

29. In March, 1992, Ms. Metz's matter was taken over by another solicitor, D.G. Menzies.

30. The Solicitor provided Ms. Metz with a draft unsigned Statement of Account dated February 28, 1992 (Document Book, Tab 21). He failed to provide her with a final Statement of Account signed by the Solicitor. There was no retainer provided.

23rd May, 1996

Complaint D114/93

2(a) - Failure to Reply to Communications from the Law Society re: Woo

31. By letter dated July 8, 1992 (Document Book, Tab 22), Shirley and Donald Woo wrote to the Law Society concerning a complaint about the Solicitor.

32. By letter dated July 28, 1992 (Document Book, Tab 23), the Law Society wrote to the Solicitor enclosing a copy of the Woo's letter and asking for a response within two weeks. The Solicitor did not respond.

33. Telephone messages were left by the Society at the Solicitor's office on each of September 1, October 21 and November 2, 1992 (Document Book, Tab 24). The Solicitor did not respond.

34. By registered letter dated September 11, 1992 (Document Book, Tab 25), the Society wrote to the Solicitor asking him to respond within seven days, failing which, the matter would lead to discipline action being taken.

35. The Solicitor responded by letter dated September 10, 1992 (Document Book, Tab 26).

36. By letter dated September 28, 1992 (Document Book, Tab 27), the Society wrote to the Solicitor requesting further information arising out of his response of September 10, 1992. The Solicitor did not respond.

37. Telephone messages were left for the Solicitor on each of October 21 and November 2, 1992 (see Tab 24). The Solicitor did not respond.

38. By registered letter dated November 12, 1992 (Document Book, Tab 28), the Society wrote to the Solicitor asking for his response within seven days, otherwise, the matter would lead to discipline action being taken. The Solicitor did not respond.

2(b) - Breach of Undertaking

39. The Solicitor's failure to respond to the Law Society as set out above constitutes a breach of his Undertaking given on April 8, 1992 to respond to the Law Society within one week of receipt of such communications.

Complaint D203/95

Particular 2(a) - Conflict of Interest

40. Frederick and Christine Eder were the sole shareholders of 809207 Ontario Inc. ("809207"). This company owned a parcel of land in the Village of North Gower. In 1989, Mr. Eder decided to construct a shopping centre plaza (hereinafter referred to as the "Plaza") on the subject property.

41. Mr. Eder was introduced to the Solicitor by a mortgage broker. Mr. Eder retained the Solicitor to represent him in this business venture. At all material times to this complaint, the Solicitor represented Mr. and Mrs. Eder and 809207.

42. It was necessary to obtain mortgage financing in order to raise funds for the construction of the Plaza. A first mortgage loan in the amount of \$900,000 was arranged from CanCorp Financial Services Ltd. ("CanCorp") to 809207 pursuant to a letter of commitment dated May 11, 1989 (Document Book, Tab 29). Mr. Eder was a guarantor of the loan. The Solicitor acted for CanCorp in relation to the mortgage financing. CanCorp received an \$85,000 brokerage fee for the transaction.

23rd May, 1996

43. The contractor for the project was Castlereigh Developments Corporation ("Castlereigh"), a company partly owned by the Solicitor and of which he was a director.

44. By August, 1989, CanCorp had advanced about \$500,000 under its commitment. CanCorp then became unable or unwilling to advance further funds for continued construction. The Solicitor then acted for Municipal Savings & Loan Corporation ("Municipal") and 809207 in relation to Municipal's provision of new first mortgage financing in the amount of \$750,000. CanCorp agreed to postpone its mortgage to Municipal's mortgage upon provision of a collateral mortgage to CanCorp in the amount of \$200,000, on a property on Second Avenue, in Ottawa, owned by Mr. Eder. The Solicitor acted for all parties in these two transactions (Document Books, Tabs 30 and 31).

45. The Solicitor provided a Certificate of Title to Municipal by report dated August 21, 1989 (Document Book, Tab 32). The \$750,000 mortgage on the Plaza and the \$200,000 collateral mortgage on the Second Avenue property are found at Tabs 33 and 34 of the Document Book.

46. The Solicitor reported to CanCorp and provided a Statement of Account for services rendered under cover of the letter dated August 23, 1989 (Document Book, Tab 35).

47. Although the Solicitor disclosed his interest in Castlereigh to his clients, the Solicitor failed to explain to Mr. Eder, 809207, CanCorp & Municipal the conflict of interest created by the Solicitor acting as their solicitor in relation to the construction and financing of the Plaza and having an interest in the company which was constructing the Plaza.

48. The Solicitor also failed to explain the conflict of interest to his respective clients or to obtain their consents concerning his acting as solicitor for all parties in the transactions referred to in paragraph 44 above.

49. Subsequent to November, 1989, 809207 went into default under the CanCorp and Municipal mortgages. Municipal began power of sale proceedings under its mortgage. Municipal was successful and the Plaza was sold.

50. By Statement of Claim dated April 20, 1990 (Document Book, Tab 36), the Solicitor commenced an action on behalf of 809207 and the Eders against a number of parties, including CanCorp. The Solicitor should not have taken such steps against a client for whom he had acted in the same series of transactions which were the subject matter of the Statement of Claim.

#### Particulars 2(b) and (c) - Failure to Respond To Communications

51. By letter dated December 23, 1992 (Document Book, Tab 37), William Davis, a solicitor in Ottawa, wrote to the Solicitor enclosing settlement funds and asking the Solicitor to have a final release in duplicate executed by the Solicitor's clients. Mr. Davis did not receive a response to this letter.

52. By letter dated February 5, 1993, Mr. Davis followed up with the Solicitor asking for return of the final executed release (see Tab 37). The Solicitor did not respond.

53. By letters dated February 24, March 17 and April 26, 1993 (see Tab 37), Mr. Davis followed up again with the Solicitor, however, he did not receive any response. In mid-May, 1993, Mr. Davis did receive some communication from the Solicitor but there were still outstanding matters concerning the settlement of the matter including failure of the Solicitor to provide a final release properly executed by his clients.

23rd May, 1996

54. Mr. Davis again wrote to the Solicitor on May 26 and August 30, 1993 (see Tab 37). The Solicitor did not respond to either letter.

55. By letter dated October 28, 1993 (see Tab 37), Mr. Davis complained to the Law Society and enclosed his various correspondence with the Solicitor.

56. By letter dated November 17, 1993 (Document Book, Tab 38), the Society wrote to the Solicitor enclosing Mr. Davis' letter and requesting a response within two weeks.

57. The Society attempted to reach the Solicitor by telephone on each of December 7 and 10, 1993 without success (Document Book, Tab 39).

58. By registered letter dated December 14, 1993 (Document Book, Tab 40), the Society wrote to the Solicitor and asked for his response within seven days, failing which the matter would be referred to Discipline. The Solicitor did not respond.

Particular 2(d) - Failure to Comply with Undertaking

59. The Solicitor's failure to respond to both Mr. Davis and the Law Society as set out in paragraphs 51 to 58 is a breach of the Solicitor's Undertaking of April 8, 1992.

V. PRIOR DISCIPLINE

60. The Solicitor was reprimanded in Committee on April 4, 1989 for conflict of interest and failure to serve clients in a conscientious, diligent and efficient matter.

61. The Solicitor was reprimanded in Committee on January 15, 1991 for failure to file and for failure to reply to the Law Society.

DATED at Toronto, this 12th day of December, 1995."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Joseph Glenn Michael Barnes be granted permission to resign.

REASONS FOR RECOMMENDATION

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The Solicitor gave testimony surrounding the events complained of. The Solicitor for the Society confirmed that the information provided by the Solicitor was to the best of their knowledge accurate and complete.

Without detailing the specific facts the Solicitor advised that during this period he was forced to live apart from his family because of what has now been confirmed as improper and unsupported allegations with regard to personal improprieties. The strain of this burden required him to seek medical assistance and that he had ceased practising law as a result of these strains. Not only did he not wish to continue to practise law but that while the burden of the unfounded allegations had now been lifted, his psychological problems continued and he could not foresee wishing to undertake the legal practise ever again. He accordingly asked us for permission to resign.



23rd May, 1996

Notwithstanding the number of improprieties it appeared clear that had there been no mitigating circumstances the penalty would have been one of a period of suspension. Having served the suspension the Solicitor would then be entitled to return to practise. As the mitigating circumstances were clearly a contributing factor to the Solicitors problems, but more importantly continued to leave him prone to permit similar instances of professional error were he to rejoin active practise, the public's best interest would be served by accepting his resignation and we did so with understanding and sympathy.

Joseph Glenn Michael Barnes was called to the Bar on the 13th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1996

Richmond C. E. Wilson  
Chair

Ms. Ratchford advised Convocation that the solicitor was unable to attend Convocation but he had advised her that he was content to have the matter proceed in his absence.

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the matter be adjourned.

Lost

It was moved by Ms. Ross, seconded by Ms. Curtis that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be granted permission to resign.

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

Carried

Re: Lee Edward WARD - Carlton Place

The Secretary placed the matter before Convocation.

Messrs. Carey and MacKenzie, Ms. Curtis and Ms. O'Connor withdrew for this matter.

Mr. Michael Brown appeared for the Society. Ms. Davies, Duty Counsel appeared on behalf of the solicitor. The solicitor was not present.

Mr. Brown advised that the solicitor requested an adjournment and that the Society opposed.

Ms. Davies advised that the solicitor was unable to attend due to a conflict in scheduling. The solicitor was prepared to give an undertaking not to practice until the completion of his matter and was willing to have it made peremptory.

23rd May, 1996

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the adjournment be granted.

Counsel, the reporter and the public withdrew.

The motion to grant the adjournment was voted on and adopted.

Counsel, the reporter and the public were recalled and informed of Convocation's decision to adjourn the matter to the Assignment Tribunal in June, peremptory to the solicitor and that the solicitor give a written undertaking not to practice.

Re: Kenneth Ross BRUCE - Kingston

The Secretary placed the matter before Convocation.

Mr. Gottlieb withdrew for this matter.

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

Mr. Maclure addressed the issue of the service of the Report.

Convocation had before it the Report of the Discipline Committee dated 27th February, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 8th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd April, 1996 (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

Clayton C. Ruby, Chair  
Gary L. Gottlieb, Q.C.  
Nancy L. Backhouse

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

Allan Maclure  
for the Society

KENNETH ROSS BRUCE  
of the City  
of Kingston  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: November 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

---

On March 24, 1995 Complaint D26/95 was issued and on September 27, 1995 Complaint D89a/95 was issued against Kenneth Ross Bruce alleging that he was guilty of professional misconduct.

The matter was heard in public on November 8, 1995 before this Committee comprising Clayton Ruby, Chair, Nancy Backhouse and Gary Gottlieb. The Solicitor did not attend the hearing, nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

---

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

Complaint D26/95

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

Complaint D89a/95

2. a) He failed to reply to the Law Society's requests that he provide a response to issues arising from an examination of the member's books and records on November 19, 1993, despite letters dated November 28, 1994, January 5, 1995 and February 6, 1995.

Service

We are satisfied that although the Solicitor has not appeared and may well not know of this proceeding, that nonetheless, it is appropriate that the case proceed to hearing. The Society, on the evidence before us, has served him in compliance with the relevant statute at his last known address according to the records of the Society but was unable to effect service at that address.

The Society went further. It checked with the motor vehicle branch, obtained an address there and attempted service at that address, again without success. Thereafter, personal service by the Sheriff's office in Kingston was attempted. Although they had seen the Solicitor wandering about, apparently drunk, they were unable to effect service on him at that time or later.

In those circumstances, it is appropriate to proceed.

Finding

Complaint D89a/95

With respect to Complaint D89a/95, the Society came to understand that there had been some \$12,000 in the Solicitor's trust account for a period of greater than one year in connection with an estate. The Society was concerned that the estate matter was not being dealt with appropriately or promptly and that during this lengthy period, no interest was accruing from the amount of money in the trust account.

23rd May, 1996

It sought information and after getting some information, on November 28th, the Society sought more information and personally delivered to the Solicitor a letter asking for it. (See Attachment A.)

The Solicitor clearly had knowledge of the letter of November 28th, although he may not have had any knowledge of the letters of January 5, 1995 and February 6th, 1995, which followed.

The Society does know that a staff trustee has been engaged in winding up the Solicitor's practice, which appears to have been abandoned. There are matters which are suspicious surrounding the circumstances of the practice, but none of that is germane to the narrow charges before us.

Accordingly, we find on the evidence that the Solicitor failed to reply in accordance with the allegation.

#### Complaint D26/95

Respecting Complaint D26/95, the Solicitor was notified of his obligation to file, which exists separate and apart from any notification in any event. The evidence establishes that he failed to file in accordance with the terms of the particulars of professional misconduct furnished against him. We find that count established.

#### RECOMMENDATION AS TO PENALTY

---

The Committee recommends that Kenneth Ross Bruce be suspended for one month and from month to month thereafter until he has satisfied the following conditions:

1. completed all annual filings to the satisfaction of the Law Society examiners;
2. produced for inspection all books and records pertaining to the practice of law in which he has been engaged and responded satisfactorily to any questions from the Law Society examiners which may arise from that inspection;
3. responded satisfactorily to the letter requesting information, dated November 28, 1994 and delivered to him on November 30, 1994, by the Law Society;
4. paid the outstanding costs order in the amount of \$450 from a previous disciplinary hearing.

#### REASONS FOR RECOMMENDATION

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With respect to penalty, in these circumstances, the protection of the public is paramount.

The Solicitor was found guilty on November 30, 1994 of failure to file for the fiscal year ended May 31, 1993 and failure to reply to the Law Society. He was reprimanded in Committee and ordered to pay costs of \$450.00. It is appropriate therefore to recommend to Convocation that the Solicitor be suspended for one month and from month to month thereafter until certain conditions are satisfied:

1. The Solicitor is to complete all annual filings to the satisfaction of the Law Society examiners.

23rd May, 1996

2. The Solicitor is to produce for inspection all books and records pertaining to the practice of law in which he has been engaged and the Solicitor is to respond satisfactorily to any questions from the Law Society examiners which may arise from that inspection.
3. The Solicitor must respond satisfactorily to the letter requesting information, dated November 28, 1994 and delivered to him on November 30, 1994, by the Law Society.
4. The Solicitor must pay the outstanding costs order in the amount of \$450 from a previous disciplinary hearing.

Kenneth Ross Bruce was called to the Bar on the 24th day of March, 1972.

ALL OF WHICH is respectfully submitted

DATED this 27th day of February, 1996

Clayton C. Ruby  
Chair

It was moved by Ms. Ross, seconded by Mr. MacKenzie that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for 1 month and from month to month thereafter until he had satisfied the conditions set out in the Report concerning his filings, books and records, respond to a letter from the Society and pay the outstanding costs from a previous discipline hearing.

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

Carried

The Acting Treasurer, being ineligible to sit on the following matter withdrew and Ms. Curtis took the Chair.

Re: Philip Gregory EVANS - Toronto

The Secretary placed the matter before Convocation.

Messrs. Epstein and Copeland withdrew for this matter.

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

Mr. Maclure addressed the issue of the service of the Report.

23rd May, 1996

Convocation had before it the Report of the Discipline Committee dated 11th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 8th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd April, 1996 (marked Exhibit 2), together with the Report and Affidavit of Service sworn on 21st May, 1996 by Michael Mitchell that he had effected service personally on 15th May, 1996 (marked Exhibit 3), together with the Report and Affidavit of Service sworn 22nd May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th May, 1996 (marked Exhibit 4). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C., Chair  
Kim A. Carpenter-Gunn  
Neil Finkelstein

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

Allan Maclure  
for the Society

PHILIP GREGORY EVANS  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: December 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

---

On September 8, 1995, Complaint D224/95 was issued and on September 27, 1995, Complaint D256/95 was issued alleging that Philip Gregory Evans was guilty of professional misconduct.

The matter was heard in public on December 6, 1995 before this Committee composed of Philip M. Epstein, Q.C., Chair, Kim A. Carpenter-Gunn and Neil Finkelstein. Mr. Evans was not present at the hearing nor was he represented. Allan Maclure appeared on behalf of the Law Society.

DECISION

---

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

Complaint D224/95

2.   a)   He failed to reply to the Law Society regarding a complaint by Dr. Ruth E. Smith despite letters dated March 30, 1995 and April 26, 1995 and telephone messages left for him on March 10, 1995, March 15, 1995, March 17, 1995, April 21, 1995 and April 24, 1995;
- b)   He failed to reply to the Law Society regarding a complaint by Susan Hughes despite letters dated March 10, 1995, April 10, 1995 and May 17, 1995 and telephone messages left for him on May 25, 1995 and May 30, 1995;
- c)   He failed to reply to the Law Society regarding a complaint by Inger Hansen despite letters dated March 30, 1995 and April 26, 1995 and telephone messages left for him on March 9, 1995, March 27, 1995, April 21, 1995 and April 24, 1995;
- d)   He failed to reply to David B. Himelfarb, another solicitor, despite letters dated September 19, 1994, December 28, 1994, January 26, 1995 and February 28, 1995;
- e)   He failed to reply to the Law Society regarding a complaint by David B. Himelfarb despite letters dated March 30, 1995 and April 26, 1995 and telephone messages left for him on April 21, 1995 and April 24, 1995;
- f)   He failed to serve his client, William D. Preston, in a conscientious, diligent and efficient manner in that he:
  - i)   failed to account for funds entrusted to him by his client in the amount of \$774.60; and
  - ii)   misled the client as to whether payment had been made by the Solicitor to the Ministry of Consumer & Commercial Relations following the return of the Solicitor's cheque for insufficient funds;
- g)   He failed to ensure the sufficiency of funds on deposit for a cheque written on behalf of his client, William D. Preston, in payment of a registration fee to the Ministry of Consumer & Commercial Relations;
- h)   He failed to reply to the Law Society regarding a complaint by William D. Preston despite letters dated February 17, 1995 and March 15, 1995 and telephone messages left for him on March 9, 1995 and March 13, 1995;
- i)   He failed to forward a release executed by his client, Maureen Murray to the insurers, Lumbermens Mutual Casualty Company until approximately six months after receipt of funds, despite numerous requests to do so and despite terms of settlement requiring that the insurers receive the release within two weeks of the Solicitor receiving funds;
- j)   He failed to reply to the Law Society regarding a complaint by R. Walkden of Lumbermens Mutual Casualty Company, despite letters dated February 17, 1995 and March 20, 1995 and telephone messages left on March 15, 1995 and March 16, 1995;
- k)   He failed to reply to the Law Society regarding a complaint by Dr. Judith Rosenberg Ben-Israel despite letters dated March 20, 1995 and April 18, 1995 and telephone messages left on April 12, 1995 and April 13, 1995;

- 1) He failed to reply to the Law Society regarding a complaint by Wesley R. Dodd despite letters dated January 10, 1995 and February 8, 1995 and telephone messages left on February 1, 1995 and February 6, 1995.

Complaint D256/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending 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.

Finding of the Committee

In light of the findings of professional misconduct and in light of the absence of any explanation by the solicitor for his conduct, it appears to the committee that the solicitor is in fact ungovernable and is a serious danger to the public. There may be some explanation for this extremely unusual and unprofessional conduct, but it has not been put forward.

Accordingly, the committee has no alternative but to recommend to Convocation that the solicitor be disbarred and it will do so.

On October 16th, 1995, Miss Cameron appeared for the Society. The solicitor did not appear and Miss Cameron advised the committee at that time that she had been unable to speak to him. Complaints D256/95 had been picked up. There was no information as to whether Complaint D224/95 had been picked up but the committee found that that complaint had been served on the solicitor in accordance with the rules.

The matter was then adjourned to December 5th and 6th, 1995 to proceed. Accordingly, on December 6th, 1995, the committee convened to deal with this matter. The solicitor again did not appear. Counsel for the Society advised us that various messages were left with the solicitor. Counsel was not able to speak to the solicitor and an answering machine indicated that the call was being received by the law office of Philip Gregory Evans and accordingly, messages were left that the matter was proceeding today.

In light of that and in light of the very serious complaints and serious potential further risk to the public, the committee proceeded in the solicitor's absence.

The evidence of the various complainants was put to the committee by way of affidavit pursuant to section 33 (9) of the Law Society Act. There was no evidence to the contrary and the committee accepts the evidence proffered by Society's counsel. Those affidavits and supporting documents are exhibit number 3 of the document brief.

There is a consistent pattern of the solicitor failing to respond to reasonable enquiries of his clients and of the Society. The complaints are great in number and indicate that the solicitor is not remotely responding to the needs of his clients.

We find that the complaints of professional misconduct have been fully made out and find the solicitor guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

---

The Committee recommends that Philip Gregory Evans be disbarred.



23rd May, 1996

REASONS FOR RECOMMENDATION

The solicitor has not tendered any explanation whatsoever for his very serious professional misconduct. Notwithstanding the serious nature of these complaints, the solicitor has chosen not to appear. It appears to the committee that the solicitor is ungovernable and is a very serious risk to the public.

In the absence of any explanation, the committee has no alternative but to recommend to Convocation that the solicitor be disbarred and we so recommend.

Philip Gregory Evans was called to the Bar on March 22, 1991.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1996

Philip M. Epstein, Q.C.  
Chair

It was moved by Ms. Eberts, seconded by Ms. Ross that the Report be adopted.

Carried

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

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

There were brief submissions by the Society's counsel.

The recommended penalty was adopted.

Re: Roderick Grant MACGREGOR - Clarington

The Secretary placed the matter before Convocation.

Messrs. Wilson and Swaye withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 28th March, 1996, together with an Affidavit of Service sworn 23rd April, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 18th April, 1996 (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

23rd May, 1996

REPORT AND DECISION

R. C. Wilson, Q.C., Chair  
G. A. Swaye, Q.C.  
J. Harvey

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

Glenn Stuart  
for the Society

RODERICK GRANT MACGREGOR  
of the Municipality  
of Clarington  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: January 31, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On March 24th, 1995, Complaint D17/95 was issued, on October 20th, 1995, Complaint D244/95 was issued against Roderick Grant MacGregor alleging that he was guilty of professional misconduct.

The matters were heard in public on January 31st, 1996 before this Committee composed of R.C. Wilson Q.C., Chair, G.A. Swaye Q.C., and J. Harvey. Mr. MacGregor was not present at the hearing and was unrepresented. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D17/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 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.

Complaint D244/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.
- b) He failed to fulfil a financial obligation owing to his client, Compton Simon, as result of an Assessment Hearing on September 23, 1994.

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- c) He failed to reply to the Law Society regarding a complaint by Compton Simon despite letters dated November 14, 1994, December 20, 1994, January 10, 1995 and April 4, 1995.
- d) He failed to reply to the Law Society regarding a complaint by Joseph J. Menczel despite letters dated April 6, 1995 and May 11, 1995.

#### SERVICE

The Solicitor did not attend the hearing.

The Committee examined the issue of appropriate service with great care and are satisfied that all reasonable efforts to locate the solicitor have been undertaken and that the requirements for service have been satisfied.

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Roderick Grant MacGregor be disbarred.

#### REASONS FOR RECOMMENDATION

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The solicitor was called to the Bar in 1979. In 1992 he received his first reprimand in convocation for failure to reply and meet financial obligations. In January of 1993 he was suspended for five months from practising while under suspension. In the period of 1989 to 1994 he had ten administrative suspensions and he is clearly guilty of five additional charges including a breach of undertaking. The Committee is satisfied that this represents a persistent theme of failure to accept professional responsibilities. An ultimate act of professional misconduct was his disappearance and failure to notify the Society of his new address. In the opinion of the Committee he is clearly ungovernable.

Note: see amendment below

In addition, the client, Simon, complained that there was a \$5,000.00 payment to the Solicitor which was not properly accounted for.

Roderick Grant MacGregor was called to the Bar on the 5th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1996

R.C. Wilson Q.C.  
Chair

Mr. Maclure asked that an amendment be made to page 3 of the Report under the heading Reasons for Recommendations, third and fourth sentences should read:

"In January of 1993 he was suspended for five months from practising while under suspension. In the period of 1989 to 1994 he had ten administrative suspensions and he is clearly guilty of five additional charges including a breach of undertaking."

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It was moved by Mr. Wright, seconded by Ms. Ross that the Report as amended be adopted.

Carried

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

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

Carried

The Acting Treasurer withdrew from Convocation and Mr. Copeland took the Chair.

Re: Douglas Edward ROLLO - Toronto

The Secretary placed the matter before Convocation.

Messrs. Epstein and MacKenzie and Ms. Puccini and Ms. Angeles withdrew for this matter.

Ms. Janet Brooks appeared for the Society. Ms. Davies, Duty Counsel appeared on behalf of the solicitor who was present.

Ms. Davies requested an adjournment on behalf of the solicitor in order that the solicitor have more time to file medical evidence and character letters. The solicitor advised he would file a financial brief by June 27th failing which he would consent to disbarment. If the financial material was provided by June 27th the solicitor would provide supporting documents 2 weeks before the September Convocation. In addition he undertook to continue not to practise.

The Society made submissions opposing the adjournment.

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

It was moved by Mr. Carey, seconded by Mr. Gottlieb that the matter be adjourned to the June Convocation if the financial brief was not filed and if the financial brief was filed by June 27th that he provide the supporting documents 2 weeks before the September Convocation.

Lost

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

Convocation had before it the Report of the Discipline Committee dated 18th April, 1995, together with an Affidavit of Service sworn 6th June, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 12th May, 1995 (marked Exhibit 1). The Report of the Discipline Committee dated 8th November, 1995, together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 30th November, 1995 (marked Exhibit 2). Copies of the Reports having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

23rd May, 1996

REPORT AND DECISION

Maurice C. Cullity, Q.C., Chair  
Donald H.L. Lamont, Q.C.  
Stuart Thom, Q.C.

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

Stephen Foster and Janet Brooks  
for the Society

DOUGLAS EDWARD ROLLO  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: March 2, 1994  
March 17, 1994  
March 28, 1994  
March 31, 1994  
April 7, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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Complaint D116/93 was issued on March 18, 1992 alleging that Douglas Edward Rollo was guilty of professional misconduct.

Note: Amendment, see page 176

The matter was heard on March 2, March 17, March 28 and March 31, 1994 before the Committee composed of Maurice C. Cullity, Q.C., Chair, Donald H. Lamont, Q.C. and Stuart Thom, Q.C. The Solicitor attended the hearings and was not represented by counsel. Stephen Foster appeared on behalf of the Law Society.

The Committee released its decision and reasons on the issues of professional misconduct on May 2, 1994 and heard further evidence and submissions on the question of penalty on April 7, 1995. On that occasion, Janet Brooks appeared on behalf of the Law Society. The Solicitor attended and made submissions without representation by counsel.

DECISION

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

2(a)(ii) Between April 28, 1988 and February 28, 1990 he misappropriated the sum of \$3,768.18 from Mona Benini and Giulio Benini;

2(a)(iv) Between May 31, 1990 and January 11, 1991 he misappropriated the sum of \$5,872.66 from Chris Billard and Susan Billard;

2(b)(i) He failed to serve his client, G. Earle Willis, in a conscientious, diligent and efficient manner in respect of a matrimonial matter between August 30, 1988 and July 1, 1989;

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2(b)(viii) He failed to serve his clients, Chris Billard and Susan Billard, in a conscientious, diligent and efficient manner in respect of their purchase of a property at R.R. No. 9, Picton, Ontario between May 31, 1990 and January 11, 1991;

2(b)(iv) He failed to serve his client, Joan Stephensen, in a conscientious, diligent and efficient manner in respect of legal services in connection with a land development project in Muskoka, Ontario, commencing in March 1986;

2(c) He issued cheques from his trust account payable other than to himself or as a legitimate disbursement for a client in contravention of section 14(8) of Regulation 573 under the Law Society Act, as follows:

Cheque No. 2101	-	June 1, 1990 Penthouse Management \$633.41
Cheque No. 2119	-	June 11, 1990 Granger and Tower \$1,132.00
Cheque No. 2125	-	August 1, 1990 Penthouse Management \$900.00

2(d) He failed to comply with the Order on Assessment confirmed on Appeal to repay \$10,623.68 together with costs of \$8,135.10 with interest, to his client, Joan Stephensen.

In addition to the above particulars which were found to have been established, the Committee found that the evidence with respect to particular 2(a)(i) established that the Solicitor had failed to serve his client, Vito Santoro, in a conscientious, diligent and efficient manner with respect to his account for amounts received on behalf of that client.

#### THE HEARING

There was no agreed statement of facts. The Committee heard evidence from the Solicitor's clients, Chris Billard, G. Earle Willis, Giulio Benini and Vito Santoro. Evidence was also given by Michael Vear, an Investigation Auditor for the Law Society and Denise Ashby and Heather Werry, lawyers on the staff of the Law Society.

The hearing was held in public with the exception of the evidence of Ms. Ashby in connection with the particulars relating to Joan Stephensen. This evidence was heard in camera.

#### DECISION

##### Particulars 2(a)(i): Vito Santoro

The Law Society alleged that between July 12, 1987 and October 31, 1989 the Solicitor misappropriated \$1,316.66 from Santoro. The particulars arose out of a claim by Santoro for damages for personal injuries suffered in a motor vehicle accident in 1985. The Solicitor had previously acted for Santoro in attempting to obtain an increase in a workers' compensation award made as a consequence of

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an injury he had received in the course of his employment in 1969. This matter was still continuing at the time that the Solicitor was retained to assist Santoro in negotiating a settlement with the defendant's insurer in respect of the motor vehicle accident. In 1987, the Solicitor obtained a settlement in the amount of \$5,300 plus \$825 for costs and \$291.66 for prejudgment interest. A cheque dated July 3, 1987 was issued by the insurer to the Solicitor for \$6,416.66. This cheque was deposited in the Solicitor's trust account on July 12, 1987.

Santoro gave evidence that, in response to a telephone call from the Solicitor, he attended at the Solicitor's office and signed a release dated August 1, 1987. The Solicitor was not present. Santoro stated that the effect of the release was not explained to him and that no dollar amount had been inserted. However, Santoro's initials appear to have been placed opposite the amount of \$6,416.66 on the release. Santoro told the Committee that he understood that he was to receive an interim payment of \$1,555.00. The Solicitor gave evidence that he thought that his secretary, Ms. Khan, who witnessed Santoro's signature on the release, would have explained the release to him.

On September 15, 1987, the Solicitor forwarded his account to Santoro for fees of \$795 representing 15% of the settlement amount of \$5,300. A cheque for \$1,555 of the same date was also delivered to Santoro.

The Solicitor was authorized to use part of the funds from the insurance settlement for the purpose of obtaining a medical report in connection with the workers' compensation matter, for legal fees for services already rendered in that matter and for the costs of a further appeal. These amounts, together with his legal fees of \$795 with respect to the insurance claim and the amount of \$1,555 paid to Santoro amounted in the aggregate to \$5,300.

By October 15, 1987, the full amount of \$6,416.66 had been withdrawn from the Solicitor's trust account.

On January 5, 1989, Santoro, with the assistance of his daughter, wrote to the Solicitor asking for documentation with respect to the settlement of the insurance claim. He did not receive a reply and wrote another letter on July 26, 1989 asking for a final statement of account from the date of the previous statement of September 15, 1987.

On August 22, 1989, the Solicitor replied that he had just moved his office and that it might take some time to locate the old files. On August 31, 1989, Santoro wrote again and said that he would give the Solicitor until September 15, 1989 to provide a full accounting.

On October 31, 1989, the Solicitor finally provided an analysis of the receipts and disbursements in connection with the claim together with a statement of his account in the amount of \$1,500 in respect of the workers' compensation matter.

On November 27, 1989, Santoro wrote to the Solicitor pointing out that he had not received the amount of \$291.66 representing prejudgment interest on the insurance claim or an amount of \$200 representing the excess of the amount withheld as a reserve for obtaining the medical report in the workers' compensation matter over the actual cost of the report. It appeared also that the legal costs of \$825 included in the settlement of the insurance claim had been retained by the Solicitor and that no account had been rendered to Santoro with respect to those costs.

Having received no response from the Solicitor, Santoro contacted the Law Society and, on April 24, 1990, he wrote to the Complaints Department of the Society asking for assistance and referring to the "countless telephone calls" he made to the Solicitor in an attempt to obtain the amounts owing.

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Correspondence then ensued between the Society and the Solicitor and the Society and Santoro. On September 20, 1990, the Solicitor, wrote to Santoro stating that the \$200 remaining from the reserve of \$700 retained for the medical report was more than offset by an account for \$325 rendered by an orthopaedic surgeon. The letter erroneously stated that a cheque for the \$291 prejudgment interest was enclosed.

On October 22, 1990, Santoro wrote to the Society providing evidence that he had given the Solicitor a cheque for the orthopaedic surgeon's account on April 24, 1987 and stating that he had still not received the \$291 for prejudgment interest.

The Solicitor told the Committee that the amounts of \$291 for prejudgment interest and the excess \$200 on the reserve for the medical report had simply escaped his attention and that they should have been paid to Santoro. He told the Committee that it was always his understanding that the \$825 of costs did not have to be accounted for to the client. The Solicitor said he had no intention of misappropriating the amount of \$4912. He said it was simply a mistake on this part that had not been brought to his attention for two and a half years. He said he was quite prepared to resolve these matters by paying the amounts. The Law Society took the position at the conclusion of the hearing that it was alleging only a misappropriation of the amounts of \$200 and \$291 and it was not relying on the Solicitor's failure to account for the costs of \$825.

The Committee does not believe that the evidence is sufficiently strong to warrant a finding of misappropriation of the amounts of \$200 and \$291. The evidence that the Committee heard with respect to the Solicitor's lax supervision of his trust accounts and of his bookkeeping makes it more likely that these amounts had simply escaped his attention.

On the other hand, the Committee has no doubt that the Solicitor's omission to deal with these amounts, his failure to account to his client for a period of two and a half years, his withdrawals from his trust account before bills were rendered, his delays in responding to Santoro's requests for an accounting and his delay in paying the small outstanding amount of \$491 after it had come to his attention do justify a finding of professional misconduct on the ground that he failed to serve Santoro in a conscientious, diligent and efficient manner in the performance of his financial obligations to the client.

Particulars 2(a)(iv) and 2(b)(iii): Chris and Susan Billard

Misappropriation

Particular 2(a)(iv) alleges that the Solicitor misappropriated \$5,872.66 between May 31, 1990 and January 11, 1991.

Early in 1990, the Solicitor was retained by the Billards in respect of the sale of their residence in Scarborough and the purchase of a new residence in Picton. The house in Scarborough was to be sold for \$220,000 and the Picton home was to be purchased for \$139,500. Under the agreement of purchase and sale, the closing date for each of the transactions was originally May 31, 1990. The closing of the purchase of the Picton residence was subsequently postponed until June 1, 1990.

On June 1, 1990, the Solicitor deposited an amount of \$210,090.16 in respect of the sale of the house in Scarborough in his trust account to the credit of the Billards.

Between June 1 and August 14, 1990, the Solicitor made authorized disbursements from the trust account and rendered accounts for his fees and other disbursements in connection with the transactions. His total withdrawals of funds credited to the Billards in his trust account in that period exceeded the



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total of the authorized disbursements and the accounts rendered by \$8,372.64. Virtually all of this excess amount represented withdrawals in favour of the Solicitor and transfers of two amounts of \$4,075 and \$3,690.16 to the credit of two other clients - McDonald and Davies Ltd. and Blue Jay Courier Service - in the Solicitor's trust account. McDonald and Davies Ltd. was owned by friends of the Solicitor and Blue Jay Courier Service was owned by the Solicitor's wife. The amounts credited to those clients were subsequently withdrawn in amounts payable, for the most part, to the Solicitor. Three of the cheques drawn on the accounts were made to discharge the Solicitor's obligations to pay rent in respect of the premises in which he conducted his practice and in respect of his family residence (see Particular (c) below). In January 1991, the Solicitor deposited \$2,500 in the trust account to the credit of Mr. and Mrs. Billard. This reduced the deficit in the account to \$5,872.64.

The Solicitor's explanation of the deficit in the account was that he had transferred the amounts of \$4,075 and \$3,690.16 to the credit of McDonald and Davies Ltd. and Blue Jay Courier Service to replace funds that had been stolen by a Mr. W. Barry who had worked for him as a paralegal and who had subsequently disappeared.

The Solicitor testified that Barry had failed to make deposits totalling approximately \$7,000 into the McDonald and Davies Ltd. and Blue Jay Courier Service accounts in June. The Solicitor admitted that he was not entitled to make the transfers from the Billards account to remedy the deficiency in the other accounts but said that he did not intent to misappropriate the funds. he stated that he was always prepared to put the money back and that only intervening litigation with the Billards that will be referred to below prevented him from doing this.

The Solicitor testified that he did not discover that the funds were missing from the McDonald and Davies Ltd. and Blue Jay Courier Service accounts until the period July 8 - July 10, 1990 when he received and reviewed the bank statements for the trust accounts for the month of June.

As the Solicitor issued a cheque to Barry on July 17, 1990 from the Billards' trust account, Barry must have been accessible at that date. The Solicitor said that he believes that he confronted Barry about the missing funds but that, at the time, he did not know "how deep" the matter was. He stated that he didn't pay attention to the problem until approximately July 20 and then he found that Barry had disappeared. He stated that he had phoned Barry's number more than once without obtaining any reply. He testified that he did not know Barry's address.

The Solicitor made no official complaint to the police although he said that he had mentioned the matter to acquaintances in the police force. He made no report to the Law Society and did not inform his clients of the transfer of the funds or the theft by Barry. He initially told the Committee that he believed he had made a claim under a theft insurance policy by, when asked to provide documentary evidence of such claim, he subsequently told the Committee that he had previously been confused and that he had no such policy.

The Solicitor testified that he did collections for McDonald and Davids Ltd. and Blue Jay Courier Service.

The Society submitted that the Solicitor's story of the theft by Barry was not credible as his trust account ledgers showed that the money had been transferred from the Billard account to the accounts of McDonald and Davies Ltd. and Blue Jay Courier Service in June whereas the Solicitor had stated that he did not discover the thefts until July 8 - July 10. The Solicitor attempted to explain this discrepancy between the dates by saying that his bookkeeper would have done his books for July at some time after July 10 and must have back-dated the transfers to the month of June.

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In challenging the Solicitor's credibility, the Society also relied upon the fact that the Solicitor did not report the theft to the Law Society or to the Billards and made no official report to the police. The Society submitted further that, even if the Solicitor's explanation were to be accepted, the transfers from the Billard trust accounts constituted misappropriations by the Solicitor.

The conclusion of the Committee is that, even if the Solicitor's testimony with respect to the theft by Barry is accepted, the evidence establishes that the Solicitor misappropriated the amounts transferred from the Billards' accounts to the accounts of McDonald and Davies Ltd. and Blue Jay Courier Service. In the view of the Committee, a Solicitor who, without authority, deliberately appropriates funds held in trust for one client to replace money allegedly stolen by a third party from another client is guilty of misappropriation, at least when, as here, the amounts are subsequently withdrawn from the trust account. As will be referred to in connection with particular (c) below, some of the amounts transferred to the credit of MacDonald and Davies Ltd. and Blue Jay Courier Service were subsequently withdrawn to discharge the Solicitor's obligations to pay rent to the landlords of his business premises and his personal residence by cheques drawn in their favour.

#### Failure to Serve

Particular 2(b)(iii) alleges that the Solicitor failed to serve the Billards in a conscientious, diligent and efficient manner in connection with the purchase of their new residence in Picton. The Billards moved into the Picton home the day before the closing of the purchase. Shortly thereafter they found that there were vehicles moving across the property. Chris Billard testified that he spoke to the Solicitor about this but that, as he didn't seem "too clear", Billard eventually went to the registry office and found out that the two adjoining properties had a right of way through the Billard's property. Billard testified that he subsequently spoke to the Solicitor who said that he didn't think it was "much of a problem" but agreed to see to see what could be done about it. Billard said that the Solicitor subsequently did nothing.

The Billards subsequently issued a statement of claim against the Solicitor alleging, among other things, a failure to account properly, a failure to adequately search, or conduct a subsearch of, the title, a failure to review the closing documents and, generally, a breach of his retainer, negligence, breach of fiduciary duty and breach of trust. The proceedings were settled on the basis that the Solicitor would pay \$6,500 to the Billards on receipt of a release. No release has been given and the settlement amount has not been paid.

The Solicitor testified that, on May 2, 1990, he wrote to William M. Martin who was the solicitor for the vendor of the Picton property. In the letter he informed Martin that he was acting for the Billards and requested information that would allow him to do a search of the title. He wrote again to Martin on May 23, 1990 repeating his requests. On May 30, 1990 - the day before the original date of closing - Martin sent the Solicitor a draft deed that did not disclose the existence of any right of way.

Until May 31, the title to the Picton property was in the name of someone other than the vendor and there was an undischarged mortgage on the title. The Solicitor did not make requisitions or ask questions about these matters although he testified that he knew of the undischarged mortgage. On the morning of May 31, 1990, Martin registered the necessary documents to remove the problems with respect to the vendor of the property, to discharge the mortgage and to register the right of way on title.

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At approximately 4:40 on Friday, June 1, the Solicitor arrived at Martin's office. Martin showed the Solicitor the deed for the conveyance which clearly indicated that the transfer was subject to the right of way. Martin did not draw this to the attention of the Solicitor and the Solicitor did not notice it. It was too late in the day to register the transfer of title. The Solicitor gave Martin a certified cheque for \$139,500 and a blank trust cheque for disbursements which Martin subsequently filled in on Monday, June 4, 1990 when he registered the transfer of title at the Solicitor's request. He said that the Solicitor appeared to be uninterested in the transaction and that he was surprised that he had received no requisitions with respect to the title not being in the vendor's name and the undischarged mortgage.

The Solicitor testified that Barry had told him that he had searched the title of the Picton property. He said that his journey from Toronto to Picton on the Friday afternoon had taken much longer than would normally have been the case and that he was very tired. As the land registry office was closed by the time he arrived at Martin's office, he had been unable to do a subsearch.

In the view of the Committee, the Solicitor was grossly negligent in either not searching the title or, of a title search had been made, in not making requisitions with respect to the name of the vendor and the undischarged mortgage and that he was similarly guilty of gross negligence in not carefully reviewing the deed when he attended in Martin's office and in not arranging for a subsearch. We believe that the degree of negligence was sufficient to constitute professional misconduct on the ground of a failure to serve the Billards in a conscientious, diligent and efficient manner.

Particulars 2(a)(ii) and 2(b)(i): G. Earle Willis

The Society has alleged that the Solicitor's conduct in the course of representing Willis in matrimonial proceedings involved a misappropriation of \$2,620.86 between August 30, 1988 and July 1, 1989 together with a failure to serve Willis in a conscientious, diligent and efficient manner.

The Committee is not prepared to find that the facts establish that the Solicitor was guilty of misappropriating funds belonging to Willis but it does find that the evidence established a failure to serve him in a conscientious, diligent and efficient manner.

Mr. Willis engaged the Solicitor to represent him in matrimonial proceedings. His wife had obtained an order for support and had garnisheed his wages to enforce her rights. She had enlisted the help of the Support and Custody Enforcement Branch of the Minister of the Attorney General and support payments of \$950.00 a month were to be made to the Ministry.

Willis paid the Solicitor an amount of \$7,500.00 initially as a lump sum payment to discharge the garnishee. Between October 1988 and May 1989 he made seven payments of \$950.00 to the Solicitor who undertook to make payments to the Ministry. The Solicitor made some payments to the Ministry of varying amounts at different times with significant delays. The Solicitor also made numerous withdrawals from the trust account, debited to Willis' ledger, in his own favour. On one occasion his cheque to the Ministry on behalf of Willis was returned NSF and a garnishee was reimposed.

The Society's Investigation Auditor, Mr. Vear, had difficulty in reconciling all of the entries in the trust accounts because the Solicitor had two clients named Willis and the entries in the accounts had become confused. However, the total amounts debited to Willis exceeded the payments made to the Ministry and the amounts covered by accounts for the Solicitor's fees that Mr. Vear examined. The difference was \$2,620.86 and the Society alleged that this amount was misappropriated by the Solicitor.

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Some of the invoices the Solicitor had rendered for fees were rejected by Willis on the ground that he did not believe that the work had been done. Willis also made a number of complaints about the quality of the legal services he received from the Solicitor and statement that on two occasions the Solicitor had failed to turn up in court to Willis' detriment. Ultimately, Willis' wife received an equalizing payment under the Family Law Act and Willis terminated the Solicitor's retainer. It was agreed between them that the Solicitor was not liable to make any further payments with respect to disbursements or costs.

In order to explain the discrepancy of \$2,620.86, the Solicitor relied on additional invoices which, he stated, were sent to Willis. He stated that he treated the account as a "running account" and that Willis knew and acquiesced in, or accepted, this.

At the hearing, the Law Society ultimately accepted that the additional invoices were rendered by submitted that, whether or not the Solicitor was entitled to treat the account as a running account, there was one payment made by Willis for \$800.00 that was made specifically to pay for a valuation of his interest in a pension plan. This amount was never paid and the Law Society submitted that the Solicitor must have misappropriated it for his own purposes. The Society's submission was that, whether or not the Solicitor was entitled to operate a running account with respect to the monthly payments of \$950.00, the evidence that the amount of \$800.00 was to be paid only for the pension valuation and could not be taken by Willis in payment of his fees.

Note: Amendment, see page 176

The Society did not rely on any differences between the times that amounts were debited on Willis' ledger and the times that accounts were rendered. The Committee accepts the Solicitor's evidence that he was authorized to operate a running account and is not satisfied that any significant distinction can be drawn between the amounts of \$800 for the pension valuation and the seven amounts of \$950. As the Society ultimately accepted that invoices sufficient to cover the deficit in the account identified by Mr. Vear were rendered by the Solicitor, the Committee is not prepared to make a finding of misappropriation of amounts held in trust for Willis.

With respect to the allegation that the Solicitor failed to serve Willis in a conscientious, diligent and efficient manner, it is clear that Willis was not satisfied with the quality of the services he received. It also appears that the Solicitor did not provide any adequate accounting to Willis with respect to the amounts received and disbursed from the trust account. The Solicitor's response was that Willis was a bad loser who had insisted on going to trial on his wife's application for an equalization payment contrary to the Solicitor's advice. At the trial the wife was successful in obtaining half of the value of Willis' pension interest.

The Law Society relied mainly on the fact that there were delays between the receipts and disbursements of the monthly payments, the fact that, because of the NSF cheque, a second garnishee was imposed upon Willis' wages and the fact that the Solicitor had not paid the fee for the pension valuation. The Solicitor's response with respect to the NSF cheque was that, on another matter, an employee had issued a larger cheque than she had been instructed to cut and the payee immediately had the cheque certified so that the subsequent cheque to the Ministry was returned NSF. The Solicitor stated that the \$800 he received to cover the fee for the pension valuation had been applied in payment of the accounts he had rendered for legal services and that, when his retainer was eventually terminated by Willis, it had been agreed that he would not be responsible for making any further payments on Willis' behalf. Willis and the Solicitor were eventually sued for the failure to pay the evaluation fee and the Solicitor was ordered to make the payment. Willis was out of pocket in an amount of \$337.42 as a consequence of these proceedings.

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The Society did not specifically rely upon the advice the Solicitor had given with respect to the equalization payment; nor did the Law Society rely on Mr. Willis' statement that the Solicitor had not turned up in court on two occasions.

The Solicitor conceded that the entries in Willis' trust account ledger and that of his other client with the same name had become confused. Nor is there any doubt that there were significant delays in the Solicitor's payments to the Ministry on behalf of Willis and that his failure to supervise his bookkeeping and his employees led to the imposition of a second garnishee on Willis' wages.

Even though the Committee has concluded that Willis either agreed to, or acquiesced in, the Solicitor's treatment of the account as a "running account", Willis was entitled to expect that payments to the Ministry would be paid fully and promptly and that no deficiencies would be created in the account. He was also entitled to be kept informed as to the balance in the account and the fact that, after the payment of legal fees, there were insufficient funds to pay the pension valuation fee. The Committee accepts Willis' evidence that, to this day, he does not know how some of the funds he provided to the Solicitor were disbursed. In the Committee's view, Willis did not receive from the Solicitor the degree of conscientiousness, diligence and efficiency that he was entitled to expect in connection with the Solicitor's handling of his trust funds. On that ground, the Committee finds that particulars (b)(i) have been established and makes a finding of professional misconduct on that basis.

Particulars 2(a)(iii) and 2(b)(ii) - Mona and Giulio Benini

The Law Society's charges of misappropriation [2(a)(iii)] and a failure to serve the Beninis conscientiously, diligently and efficiently [2(b)(ii)] arise out of the Solicitor's conduct with respect to a sale of the Benini's residential condominium in Scarborough in 1988.

Misappropriation

The Society's position with respect to the charge of misappropriation is, in essence, that, as the Solicitor's withdrawals of the proceeds of sale from his trust account exceeded the aggregate of the authorized disbursements and fees billed by him to the Beninis by an amount of \$3,768.18, he is guilty of misappropriating that amount.

The Solicitor did not challenge the evidence of the Society's Investigation Auditor, Mr. Vear, that:

- (a) on the closing of the sale on May 28, 1988, the Solicitor had received, in the aggregate, an amount of \$59, 138.84 from the Beninis and from the purchasers of the condominium;
- (b) the Solicitor had received from the Beninis a cheque dated August 17, 1988 for an additional amount of \$2,799.34;
- (c) the authorized disbursements in respect of the sale and the purchase of a new residence in Brampton amounted to \$55,688.50;
- (d) accounts for legal fees rendered by the Solicitor to the Beninis amounted to \$2,481.50; and
- (e) between April 30, 1988 and October 12, 1988, the Solicitor had withdrawn amounts of \$6,249.68 in the aggregate from the Benini account for his own purposes or for other purposes not related to the transactions in which he was representing the Beninis.

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In the course of a subsequent dispute (referred to below under Failure to Serve the Clients) with the real estate agent who acted for the Beninis in respect of the sale, the Solicitor received an additional amount of \$3,200 from the Beninis by cheque dated February 26, 1990. The Law Society accepted that this amount was covered a payment of \$1,700 made by the Solicitor on behalf of the Beninis and legal fees in the amount of \$1,500 properly charged by, or allowed to, the Solicitor in connection with the dispute.

The Solicitor did not deny that there was a discrepancy of \$3,768.18 between the legitimate disbursements from the accounts and fees billed, on the one hand, and his actual withdrawals from the accounts. He testified that he had no intention to misappropriate funds, that he did not feel indebted to the Beninis and that, if he was so indebted, he would pay what was owing. His position, was in general terms, that he had done sufficient work and undertaken sufficient personal liability on behalf of the Beninis in the course of the transactions and the subsequent dispute to more than justify his withdrawals from the trust account. He relied, in particular, upon a personal undertaking he had given to indemnify the purchasers with respect to the cost of any work required to comply with "applicable municipal and provincial regulations" relating to the condominium, an interim account of August 1988 in the amount of \$1,250, an account to Mrs. Benini in the amount of \$750 and his personal cheque for \$2,000 that he had drawn up in favour of the purchaser of the condominium. The Solicitor admitted that he could find no evidence that the interim account or the account addressed to Mrs. Benini had ever been delivered to the clients and he stated that the cheque for \$2,000 had never been collected from his office by the purchaser's solicitor.

The position of the Law Society was that, whether or not the Solicitor's explanations were accepted, the facts in and by themselves constitute misappropriation. By June 16, 1988, all amounts credited to the trust account from or on behalf of the Beninis had been withdrawn. When the additional amount of \$2,799.34 was received by cheque dated August 17, 1988 and credited to the account, this amount was withdrawn completely by October 12, 1988 by cheques payable to the Solicitor transfers for his benefit. The Solicitor admitted that he had been paid twice for his legal fees of \$2,481.50 which had been withdrawn from the account prior to his receipt of the additional cheque for \$2,799.34 and then withdrawn again. He stated that this was a mistake of inadvertence. At all times mentioned above, including the times when there were no remaining funds credited to the Benini's in the trust account, the real estate agent's commission in connection with the sale of the condominium had not been paid.

The Society's counsel also challenged the genuineness of the interim account in the amount of \$1,250 which wrongly referred to Mr. Benini as "Guido" Benini and was wrongly addressed. Counsel also pointed out that the private account addressed to Mrs. Benini in the amount of \$750 appeared to have been typed on two different machines and the top part was slanted away from the horizontal. The Solicitor was asked to look for any supporting documentation with respect to this account. The Solicitor subsequently reported that he could find nothing to confirm the genuineness of the account.

In the view of the Committee, the evidence, as in the case of the Billard's indicates a gross disregard of the Solicitor's obligations with respect to amounts held in trust rather than a dishonest taking of those amounts. The issue is whether his conduct should be characterized as reckless or wilful blindness to those obligations and, on that basis, as misappropriation. The Committee believes that a finding of misappropriation is justified on the evidence. In a reporting letter of June 24, 1988 to the Beninis, the Solicitor indicated that

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there were insufficient funds in the account to cover all of the legitimate disbursements including the payment of the real estate commission of \$3,710. It was clearly implicit in the letter and an account that accompanied it that, if an additional amount of \$2,899.34 was paid, there would be sufficient in the trust account to cover all of the disbursements including the real estate commission. When the Solicitor accepted Mrs. Benini's cheque for \$2,799.34, the Beninis were entitled to expect that funds sufficient to pay the real estate commission would be retained in the account. Instead, all of the additional funds were withdrawn for the Solicitor's purposes within two months.

The Committee does not accept the Solicitor's suggestion that the deficit in the account was more than covered by the interim account for \$1,250, the private account addressed to Mrs. Benini of \$750 and the cheque for \$2,000 that had been made out in favour of the purchaser of the condominium. The Committee does not believe that either of the purchasers were rendered to the Beninis or that they were ever intended to be rendered to them. Similarly, the fact that the Solicitor may have drawn a personal cheque for \$2,000 in favour of the purchaser of the condominium and the fact that he gave a personal undertaking, which he has not been called upon to honour, with respect to problems that had arisen on the closing do not in any way justify his conduct with respect to the trust account. The Committee finds that the Solicitor's conduct indicates a sufficiently high degree of recklessness with respect to his dealings with funds held in trust for the Beninis to require a finding of misappropriation.

#### Failure to Serve the Clients

The Law Society's position with respect to the allegation that the Solicitor had failed to serve the Beninis conscientiously, diligently and efficiently was based on the Solicitor's failure to pay the balance of the real estate commission in connection with the sale of the condominium. This led to a dispute with the real estate broker and, ultimately, to litigation in which the Beninis were successfully sued and incurred additional costs.

The dispute arose out of a requisition provided by the solicitor for the purchaser of the condominium in a letter dated March 14, 1988 addressed to the Solicitor. The requisition required production on, or before, closing of the consent of the condominium corporation to the construction of an apartment that was in the basement of the condominium together with a valid building permit from the City of Scarborough. No evidence was given at the hearing of any response or action taken by the Solicitor to deal with this requisition prior to the closing of the sale on April 28, 1988. On that date, having been informed that the purchaser's solicitor proposed to withhold part of the purchase price until the problem had been dealt with, the Solicitor gave his personal undertaking to pay whatever costs were required to obtain the necessary permits. The purchase price was paid to the Solicitor in full and, in his reporting letter of June 24, 1988 to the Beninis, he stated:

The sale of No. 98-201 Alexmuir Blvd., in Scarborough has been completed, subject to our resolving the problem with respect to plumbing in the lower level. This should be completed shortly. In addition, we have not as yet remitted the balance of real estate commission, which will be done when the plumbing problem is completed.

There was a crucial conflict between the evidence given by the Solicitor and that of Giulio Benini with respect to the discussions that ensued and the instructions given to the Solicitor with respect to the failure to pay the balance of the commission. The Solicitor testified that Benini had consistently instructed him not to pay it and had authorized him to defend the law suit that followed. Benini testified that he repeatedly insisted that the commission should be paid and that the Solicitor's failure to do so led to litigation that Benini did not want.

In giving his evidence in chief, and in his cross-examination, Benini was argumentative and evasive. He unconvincingly denied knowledge of the reason for the holdback of the commission until after he and his wife had received the statement of claim in January, 1989 and contrary to documentary evidence subsequently produced by the Solicitor, he denied authorizing, or receiving information with respect to, the defence of the action brought by the real estate broker. When shown a letter dated February 22, 1990 in which, contrary to his earlier testimony, he authorized the Solicitor to defend the action and issue a counterclaim, Benini stated that he had signed the letter under duress.

Despite the fact that, in the Committee's view, there was no plausible connection between the problem in the basement and the conduct of the real estate agent and no defence to the statement of claim, the Committee did not find Benini a credible witness and, with considerable hesitation, it believes that the Solicitor must be given the benefit of the doubt on this matter. In consequence, the Committee finds that the particulars with respect to his failure to serve the Beninis in a conscientious, diligent and efficient manner were not established at the hearing.

Particular 2(c): Contravention of sections 14(8) and 14(9) of Regulation 573

The Law Society alleged that the Solicitor issued the following cheques from his trust accounts in contravention of sections 14(8) and (9) of Regulation 573 (now 708) under the Law Society Act:

Cheque #2051:	March 5, 1990,	Penthouse Management	\$1,800.00
Cheque #2101:	June 1, 1990,	Penthouse Management	\$633.41
Cheque #2119:	June 11, 1990,	Granger and Tower	\$1,132.00
Cheque #2125:	August 1, 1990,	Penthouse Management	\$900.00

No evidence appears to have been given with respect to his withdrawal of March 5, 1990.

The withdrawals of June 1 and June 11, 1990 were made from funds held in trust for Blue Jay Courier Service, the business owned by the Solicitor's wife. The first of those cheques was made in favour of penthouse Management from whom the Solicitor leased the premises in which he conducted his practice. The second cheque was made in favour of Granger and Tower who were the landlords of the premises occupied by the Solicitor and his wife as their residence. The withdrawal of August 1, 1990 in favour of Penthouse management was made from funds held in trust for McDonald and Davies Ltd. McDonald and Davies Ltd. was owned by friends of the Solicitor. In each case, the funds withdrawn were part of the amounts improperly debited from the funds held in trust for the Billards.

It was the position of the Law Society that each of these withdrawals was made to discharge legal obligations of the Solicitor to pay rent and that the funds of the clients could only have been used for this purpose if he had first rendered accounts to them for services he had performed or after he had incurred expenses on their behalf for which he was entitled to be reimbursed.

The Solicitor's evidence was that these amounts payable to Penthouse Management were properly withdrawn on behalf of Blue Jay Courier Service and McDonald and Davies Ltd., respectively, in respect of rent for the premises from which he carried on business and from which, he said, Blue Jay Courier Service and McDonald and Davies Ltd. had also conducted part of their business. He said that the payment to Granger and Tower should not have been made.



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There was no suggestion that either of the clients had legal obligations to make the rental payments. Nor was there evidence that either client had authorized the withdrawals. On the contrary, the argument appears to have been merely that the withdrawals represented a fair estimate of what the Solicitor might have charged them for their use of the premises. In these circumstances, the cheques should have been made in favour of the Solicitor after he had rendered bills to Blue Jay Courier Service and McDonald and Davies Ltd. for services rendered or to reimburse him for expenses properly incurred by him on their behalf. The Solicitor acknowledged that he should not have made the payments and testified that these were the only occasions in which he had paid rent from funds held on trust for his clients.

Subsection 14(8) of Regulation 753 was as follows:

- (8) Money shall not be drawn from a trust account other than,
- (a) money properly required for payment to or on behalf of a client;
  - (b) money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;
  - (c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been delivered;
  - (d) money that is directly transferred into another trust account and held on behalf of a client;
  - (e) money that may by inadvertence have been paid into the trust account in contravention of this section,
- but in no case shall the money so drawn exceed the unexpended balance of the money held in the trust account for the client.

In the view of the Committee, the Solicitor contravened the provisions of section 14(8) when, for his own purposes, he withdrew funds held in trust for Blue Jay Courier Service on June 1 and June 11, 1990 and funds held in trust for McDonald and Davies Ltd. on August 1, 1990. In the opinion of the Committee, such contraventions of the provisions of the Regulation constitute professional misconduct.

DATED this 2nd day of May, 1994

Maurice C. Cullity  
Chair

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RECOMMENDATION AS TO PENALTY

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The Committee recommends that Douglas Edward Rollo be disbarred as a barrister and struck off the rolls of solicitors.

REASONS FOR RECOMMENDATION

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The Solicitor has been practising law for 39 years and has no prior discipline record.

He called no witnesses to testify to his character and the performance of his professional responsibilities in the past and he tendered no testimonials from other members of the profession or from members of the public. When the absence of such evidence was mentioned by counsel for the Society, the Solicitor's response was that the complaints related to facts that occurred in his office and involved his staff and himself. He said that he was embarrassed to be before the Committee, that he accepted responsibility for errors committed by his employees and that he was prepared to face the consequences. He testified that he was in good health at the relevant times and that he had no problems of substance abuse.

The Solicitor stated that he had not misappropriated funds with a dishonest intent and that the Committee had made no such finding. He referred to his years of practice with no prior discipline record and to his cooperation with the Society's investigation auditor. He stated that he intends to pay to the Billards, the Beninis and Mr. Santoro the amounts owing to them for which they have already been compensated out of the Society's Compensation Fund. He indicated that he hoped to negotiate some kind of settlement with respect to the outstanding costs and interests in connection with the assessment of his account to Ms. Stephenson.

The Solicitor submitted that, in view of the above circumstances, an appropriate penalty would be a suspension for a "substantial" period followed by restrictions with respect to the type or manner of his practice.

Counsel for the Society submitted that the appropriate penalty was disbarment. She argued that the findings with respect to the Solicitor's failure to serve his clients Willis, the Billards, Santoro and Ms. Stephenson in a diligent, conscientious and efficient manner together with the findings of misappropriation of amounts in excess of \$9,000 demonstrated a complete disregard of their interests. She referred to the absence of mitigating circumstances - apart from the Solicitor's clean discipline record - and his continuing failure to make restitution to his clients. She submitted that the Solicitor's conduct with respect to Ms. Stephenson was the most serious breach of the requirement to serve clients in a conscientious, diligent and efficient manner.

The Committee is in substantial agreement with the submissions of counsel for the Society. While the absence of any previous discipline record is obviously a factor to be considered, the evidence of the Solicitor's dealings with each of the clients referred to in the complaint demonstrated, at the best, a serious and reckless indifference to his financial, reporting and other obligations towards them. His conduct towards Ms. Stephenson was reprehensible and inexcusable in that he took advantage of her vulnerability for his own financial benefit.

Although the Committee has found that the Solicitor's misappropriation of funds belonging to the Beninis involved a reckless blindness to his obligations, his misappropriation of the funds belonging to the Billards was intentional and deliberate.

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The Committee has given the Solicitor the benefit of the doubt on a number of matters in which his testimony lacked plausibility but we are satisfied that he was not a completely truthful witness on other matters such as his accounting to the Beninis and his statement that he had made a claim under a theft insurance policy in respect of the alleged defalcations by Mr. Barry.

While viewed in isolation, the Solicitor's behaviour with respect to the Billards, the Beninis, Mr. Willis or Mr. Santoro would not call for disbarment, the totality of the evidence - and, in particular, his conduct towards Ms. Stephenson - demonstrates a pattern and an attitude towards his professional responsibilities that is, in our view, incompatible with membership of the Law Society.

We do not believe that, in the absence of other mitigating circumstances, the fact that the Solicitor has not previously been charged with professional misconduct is a sufficient reason for permitting him to resign from the Society.

Douglas Edward Rollo was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 18th day of April, 1995

Maurice C. Cullity  
Chair

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy Backhouse, Chair  
Nora Angeles  
Helene Puccini

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

Janet Brooks  
for the Society

DOUGLAS EDWARD ROLLO  
of the City  
of Toronto  
a barrsiter and solicitor

R. Donald Rollo  
for the solicitor

Heard: October 25, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On March 3, 1994, Complaint D456/93 was issued against Douglas Edward Rollo alleging that he was guilty of professional misconduct.

The matter was heard In Public (with a portion of the hearing heard In Camera) on October 25, 1995 before this Committee composed of Nancy Backhouse, Chair, Nora Angeles and Helene Puccini. Mr. Rollo attended the hearing and was represented by R. Donald Rollo. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D456/93

2. a) He breached an Order of Convocation by continuing to practise while under suspension during the period January 29, 1993 to April 14, 1993;
- b) He breached an Order of Convocation by continuing to practise while under suspension during the period March 6, 1992 to May 21, 1992;
- c) He breached an Order of Convocation by continuing to practise while under suspension during the period November 29, 1991 to January 13, 1992;
- d) He failed to file with the Society within six months of the termination of his fiscal year ending October 31, 1991 and October 31, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act;
- e) He failed to provide a reply to the Society regarding a complaint by his client, Amadeus Blazys, despite letters dated June 16, and July 15, 1993 and a telephone message left on June 29, 1993;
- f) he failed to honour a financial obligation arising from the Order of His Honour Judge Fitzpatrick made September 3, 1991 in the matter of Mega Leasing Inc. v. Douglas Edward Rollo wherein he was required to pay the sum of \$2,909.28 plus costs and pre-judgment interest at 10% per annum commencing November 29, 1990;
- g) He failed to comply with the Order of Mr. Justice Potts dated July 19, 1991 which required him to:
  - i) pay the sum of \$800 to William M. Mercer Limited;
  - ii) pay the Applicant, Margaret Kathleen Willis, costs in the amount of \$500; and
  - iii) pay the Respondent, George Earl Willis Sr., costs in the amount of \$500.

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 D456/93 and is prepared to proceed with a hearing of this matter on Monday, September 25, 1995.

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 D456/93 with his counsel R. Donald Rollo and admits particular 2(d) contained therein. The Solicitor further admits the facts as hereinafter set out. The Solicitor admits that particular 2(d) constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on September 20, 1956.

5. The Solicitor's last known address as shown on the records of the Law Society for the period from August 8, 1989 to the present is 121 Richmond Street West, Penthouse, Toronto, Ontario, M5H 2K1. A copy of the Solicitor's Change of Address letter and notice are attached at Tab 1 of the Document Book.

Particular 2(a)

Practised while suspended from January 29, 1993 to April 14, 1993

6. The Solicitor's Annual Membership Fees in the amount of \$1,230.50 were due on August 1st, 1992.

7. The Solicitor did not pay his annual Membership Fees due on August 1st, 1992 until April 14, 1993.

8. On or about July 11, 1992, the Solicitor's office received the Law Society's first Notice of Annual Membership Fees for the payment due August 1st, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the Notice as well as the relevant page of the Law Society's mailing list dated July 11, 1992 is attached at Tab 2 of the Book of Documents.

9. The first Notice cautioned the Solicitor that:

"Section 36 of the Law Society Act provides: 'If a member fails to pay any fee or levy payable to the Society within four months after the date on which payment is due, Convocation may by order suspend the person's rights and privileges as member for such time and on such terms as it considers proper in the circumstances.'"

10. On or about October 8, 1992, the Solicitor's office received the Law Society's second Notice of Annual Membership Fees due August 1st, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice as well as the relevant page of the Law Society's mailing list dated



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October 8, 1992 is attached at Tab 3 of the Book of Documents. This second Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

11. On or about November 17, 1992, the Solicitor's office received the Law Society's third and final Notice of Annual Membership Fees and the Solicitor would have seen it shortly thereafter. A sample copy of the third Notice as well as the relevant page from the Law Society's mailing list dated November 17, 1992 is attached at Tab 4 of the Book of Documents. This third Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

12. On January 29, 1993, the Solicitor's Annual Membership Fees due August 1st, 1992 remained outstanding. The Solicitor's rights and privileges as a member of the Law Society were suspended effective January 29, 1993 as ordered by Convocation pursuant to section 36 of the Law Society Act.

13. By registered letter dated February 1, 1993, the Law Society notified the Solicitor that his rights and privileges as member of the Law Society were suspended effective January 29, 1993 as ordered by Convocation pursuant to Section 36 of the Law Society Act. A copy of the Law Society's letter as well as the registered mail receipt from the Post Office are attached at Tab 5 of the Book of Documents.

14. On April 14, 1993 the Solicitor's rights and privileges as a member were reinstated as a result of his payment of his Annual Membership Fees due August 1st, 1992.

Particular 2(b)

Practised while suspended from March 6, 1992 to May 21, 1992

15. The Solicitor's Annual Membership Fees in the amount of \$1,166.30 were due on October 1st, 1991.

16. The Solicitor did not pay his Annual Fees due October 1st, 1991 until May 21, 1992.

17. On or about August 21, 1991, the Solicitor's office received the Law Society's first Notice of Annual Membership Fees due October 1st, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the first Notice as well as the relevant page of the Law Society's mailing list dated August 21, 1991 is attached at Tab 6 of the Book Documents.

18. The first Notice cautioned the Solicitor that:

"Section 36 of the Law Society Act provides: 'If a member fails to pay any fee or levy payable to the Society within four months after the date on which payment is due, Convocation may by order suspend the person's rights and privileges as member for such time and on such terms as it considers proper in the circumstances.'"

19. On or about November 8, 1991, the Solicitor's office received the Law Society second Notice of Annual Membership Fees due dated November 8, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice and the relevant page from the Law Society's mailing list dated November 8, 1991 are attached at Tab 7 of the Book of Documents. This second Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

20. On or about January 9, 1992, the Solicitor's office received the Law Society's third Notice of fees due dated January 9, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the third Notice and the relevant page from the Law Society's mailing list dated January 9, 1992 are attached at Tab 8 of the Book of Documents. This third Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

21. On or about February 18, 1992, the Solicitor's office received the Law Society's final Notice of Annual Fees due together with a letter from the Law Society dated February 14, 1992 and the Solicitor would have seen them shortly thereafter. A sample copy of the final Notice, a sample copy of the letter dated February 14, 1992 and the relevant page of the Law Society's mailing list dated February 18, 1992 are attached at Tab 9 of the Book of Documents. This final Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act. The Law Society's letter of February 14, 1992 cautioned the Solicitor that:

"On February 13th, 1992, your name appeared on a list of members who have not yet paid their annual fees, which was submitted to the Finance and Administration Committee. That list will be presented to Convocation on February 28, 1992 with the recommendation of the Finance and Administration Committee that your rights and privileges as a member be suspended on that day.

"Your suspension can be averted only if your payment is received on or before February 28th, 1992."

22. On March 6, 1992, the Solicitor's Annual Membership Fees due October 1st, 1992 remained outstanding. The Solicitor's rights and privileges as a member of the Law Society were suspended effective March 6, 1992 as ordered by Convocation pursuant to section 36 of the Law Society Act.

23. On or about March 6, 1992, the Solicitor's office received the Law Society's Suspension Notice dated March 2, 1992 and the Solicitor would have seen it shortly thereafter. A copy of the Suspension Notice as well as the registered receipt form the Post Office are attached at Tab 10 of the Book of Documents.

Particular 2(c)

Practised while suspended from November 29, 1991 to January 13, 1992

24. The Solicitor's Errors and Omissions Insurance Levy (hereinafter "E. & O." levy) in the amount of \$1,651.30 for the second instalment for the coverage period January 1, 1991 to December 31, 1991 was due on July 1, 1991. It was not paid until January 13, 1992.

25. On or about August 15, 1991 the Solicitor's office received the Law Society's second Notice of Errors and Omissions Insurance Levy and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice and the relevant page from the Law Society's mailing list are attached at Tab 11 of the Book of Documents. This second Notice cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

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26. On or about November 5, 1991, the Solicitor's office received the Law Society's final Notice dated November 5, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the final Notice and the relevant page from the Law Society's mailing list are attached at Tab 12 of the Book of Documents.

27. Payment of the Solicitor's Errors and Omissions levy was outstanding on November 29, 1991. On November 29, 1991, the Solicitor's rights and privileges were suspended as ordered by Convocation pursuant to section 36 of the Law Society Act.

28. The Solicitor's office received, by registered mail, a Suspension Notice dated December 2nd, 1991 and the Solicitor would have seen it shortly thereafter. A copy of the Suspension Notice as well as the registered receipt from the Post Office are attached at Tab 13 of the Book of Documents.

#### HISTORY OF SUSPENSIONS

29. The Solicitor has the following history of suspension for non-payment of fees:

Date of Suspension	Reason for Suspension	Date of Reinstatement
June 1st, 1993	Non-Payment of the E. & O. Levy.	June 24th 1993
January 29th 1993	Non-Payment of the Annual Fees.	April 14 1993
March 6th 1992	Non-Payment of the Annual Fees.	June 21st 1992
November 29th 1991	Non-Payment of the E. & O. Levy.	January 13th 1992
May 24th 1991	Non-Payment of the E. & O. Levy.	July 9th 1991
March 28th 1991	Non-Payment of the Annual Fees.	April 12th 1991
November 23rd 1990	Non-Payment of the E. & O. Levy.	December 5th 1990
May 25th 1990	Non-Payment of the E & O Levy.	June 1st 1990
February 23rd 1990	Non-Payment of the Annual Fees.	March 9th 1990
November 24th 1989	Non-Payment of the E. & O. Levy.	January 2nd 1990
February 23rd 1989	Non-Payment of the Annual Fees.	not available
May 27th 1988	Non-Payment of the E. & O. Levy.	June 2nd 1988

Date of Suspension	Reason for Suspension	Date of Reinstatement
November 22nd 1985	Non-Payment of the E. & O. Levy.	November 27th 1985
November 25th 1983	Non-Payment of the E. & O. Levy.	November 30th 1983

Particular 2(d)

Failure to file annual filings for fiscal years ending 1991 and 1992

30. The Solicitor's fiscal year ends on October 31st.

31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years which ended October 31st, 1991 and October 31st, 1992 as required by s. 16(2) of Regulation 708 under the Law Society Act.

32. The Solicitor's filing for the fiscal year ended October 31st, 1991 was due on or before April 30, 1992.

33. On May 4th, 1992, the Solicitor's office received the Law Society's Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. A copy of the Notice of Default in Annual Filing is attached at Tab 14 of the Book of Documents.

34. On or about June 8, 1992 the Solicitor's office received the Law Society's registered letter dated June 5, 1992 and the Solicitor would have seen it shortly thereafter. The letter advised that should his late filing fee not be paid by June 22nd, 1992, his name would go before Convocation for suspension of his rights and privileges. The Solicitor was advised that the payment of the late filing fee did not relieve him of his obligation to make annual filings. A copy of the registered letter and post office registration receipt is attached at Tab 15 of the Book of Documents.

35. On or about October 27, 1992, the Solicitor's office received the Law Society's registered letter dated October 22, 1992 and the Solicitor would have seen it shortly thereafter. The letter reminded the Solicitor that he may be suspended on November 27th, 1992 should payment of his late filing fee not be received by November 26, 1992. A copy of the registered letter and post office registration receipt is attached at Tab 16 of the Book of Documents.

36. On November 13, 1992, the Solicitor's office received the Law Society's letter dated November 13, 1992 and the Solicitor would have seen it shortly thereafter. The letter reminded the Solicitor again that he may be suspended on November 27th, 1992 should payment of his late filing fee not be received by November 26, 1992. A copy of the letter is attached at Tab 17 of the Book of Documents.

37. On or about December 29, 1992, the Solicitor's office received the Law Society's registered letter dated December 22, 1992 and the Solicitor would have seen it shortly thereafter. The letter advised that the Solicitor's cheque for \$1,500 was returned by the bank marked "N.S.F." The Law Society requested that the Solicitor submit a certified cheque in the amount of \$1,500 before January 28, 1993 to avoid suspension by order of Convocation. A copy of the registered letter and the post office registration receipt is attached at Tab 18 of the Book of Documents.

38. On or about January 15, 1993, the Solicitor's office received a letter from the Law Society dated January 15, 1993 and the Solicitor would have seen it shortly thereafter. The letter advised that as of January 29th, 1993, by order of Convocation made pursuant to section 36 of the Law Society Act, his rights and privileges will be suspended if payment of \$1,500 is not remitted by January 28, 1993. A copy of the letter is attached at Tab 19 of the Book of Documents.

39. On or about April 14, 1993, the Solicitor paid \$1,500 towards the outstanding late filing fee of \$3,000. A copy of the Law Society's letter dated April 14, 1993 confirming payment is attached at Tab 20 of the Document Book.

40. The Solicitor's filing for the fiscal year ended October 31, 1992 was due on or before April 30, 1993.

41. On or about May 6, 1993, the Solicitor's office received the Law Society's Notice dated May 6, 1993 and the Solicitor would have received it shortly thereafter. The Notice was respect to his default in filing for the fiscal periods ending October 31, 1991 and October 31, 1992. A copy of the Notice is attached at Tab 21 of the Book of Documents.

42. By letter dated June 3, 1993, to the Law Society, the Solicitor advised that he would be making the requisite filing shortly. A copy of the Solicitor's letter of June 3, 1993 is attached at Tab 22 of the Book of Documents.

43. On or about June 4, 1993 the Solicitor's office received the Law Society's Registered Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. The Notice advised that the late filing fee would begin to accrue on June 23rd, 1993. The Solicitor was advised that the payment of the late filing fee did not relieve him of his obligation to make annual filings. A copy of the Notice and the post office registered mail receipt are attached at Tab 23 of the Book of Documents.

44. On or about October 19, 1993, the Solicitor's office received a third Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. A copy of the Notice and the registered mail receipt are attached at Tab 24 of the Book of Documents.

45. On or about November 26, 1993, the Solicitor's office received the Society's registered letter of November 26, 1993 and the Solicitor would have seen it shortly thereafter. The letter advised that the Solicitor's rights and privileges were suspended as of November 26, 1993 for non-payment of the late filing fee. A copy of the letter and registered mail receipt are attached at Tab 25 of the Book of Documents.

46. On March 1, 1994, the Solicitor paid \$1,500 in payment of his outstanding late filing fee. The reinstatement fee was paid on or about March 16, 1994. Copies of the letters of March 2, 1994 and March 16, 1994 acknowledging receipt of those payments are attached at Tab 26 of the Book of Documents.

47. On August 12, 1994, the Solicitor filed Forms 2 and 3 for his fiscal years ending October 31, 1991 and October 31, 1992. Copies of the filings are at Tab 27 of the Document Book.

Particular 2(e)

Failed to reply to the Law Society

48. In January 1992, the Solicitor represented Amo Blazys in respect of a criminal charge of assault. Mr. Blazys had also laid criminal charges against the individual who had laid a charge of assault against Mr. Blazys. The charges and countercharges were withdrawn upon the parties entering into a peace bond and upon the payment of \$450.00 to Mr. Blazys for damages to his vehicle.

23rd May, 1996

49. By letter dated April 14, 1993, Mr. Blazys complained that the Solicitor had failed to forward to him the \$450.00 which the Solicitor had received on his behalf. Mr. Blazys stated that the funds had been provided to the Solicitor, in trust, and that although one year and three months had elapsed, the Solicitor had failed to forward payment to him. A copy of the letter is attached at Tab 28 of the Book of Documents.

50. By letter dated April 28, 1993, the Law Society requested the Solicitor's response to the letter of complaint of Mr. Blazys. The Solicitor did not respond to this letter. A copy of the Law Society's letter is attached at Tab 29 of the Book of Documents.

51. By letter to the Law Society dated received May 26, 1993, the Solicitor provided a response to the Law Society's letter of April 28, 1993. The Solicitor stated, *inter alia*,

"The agreement provided that \$450.00 would be paid to Mr. Blazys for damages to his vehicle provided the abided by the territorial agreement over a period of time.

Notwithstanding Mr. Blazys' understanding of the agreement I am awaiting the receipt of a release from the other side before the funds are released to him.

In the circumstances the matter can be resolved if Mr. Blazys provides an indemnity agreement."

A copy of the Solicitor's letter is attached at Tab 30 of the Book of Documents.

52. By registered letter dated June 16, 1993, the Law Society acknowledged the Solicitor's letter of May 26, 1993 and requested that the Solicitor:

- a. advise when he received the funds;
- b. provide a copy of his trust ledger;
- c. advise who was the opposing counsel; and
- d. provide documentation to support that the Solicitor had contacted opposing counsel to request the release.

A copy of the Law Society's letter and post office registration receipt are attached at Tab 31 of the Book of Documents.

53. On June 29, 1993, a Law Society staff member telephoned the Solicitor's office and left a message requesting a reply to the June 16, 1993 letter. The staff member's notes are attached at Tab 32 of the Book of Documents.

54. On July 15, 1993, the Law Society sent a further registered letter to the Solicitor advising that the fact of his failure to respond to the Law Society would be referred to the Discipline Committee within seven days if there was no reply. A copy of the Law Society's letter dated July 15, 1993 and enclosure together with registration receipt are attached at Tab 33 of the Book of Documents. The Solicitor did not reply to this correspondence.

55. Under cover of letter dated August 9, 1994, the Solicitor provided the Law Society with two draft letters, one addressed to the Law Society and one addressed to Mr. Blazys. The letters referred to payment of \$450.00 to Mr. Blazys. The Solicitor requested the Law Society's advice as to whether "it would be proper to complete and send them". A copy of the Solicitor's letter and the two draft letters are attached at Tab 34 of the Book of Documents.

23rd May, 1996

56. By letter dated August 19, 1994, the Law Society responded to the Solicitor's letter of August 9, 1994, indicating that it was unnecessary to obtain the Law Society's approval of either letter but indicating the preference of one of the two letters. A copy of the Law Society's letter and enclosure are attached at Tab 35 of the Book of Documents.

57. To date, the Solicitor has failed to provide the information requested in the Law Society's letter of June 16, 1993.

58. On August 1, 1995, a Law Society staff member was advised by Mr. Blazys that he had not received payment of \$450 from the Solicitor. A copy of the staff member's notes of the telephone conversation with Mr. Blazys is attached at Tab 36 of the Document Book.

Particular 2(f)  
Financial obligation

59. The Solicitor failed to honour a financial obligation to arising out of a lease of computer equipment from Mega Leasing Inc. On October 14, 1988, the Solicitor entered into a lease agreement with Mega Leasing Inc. The other lessees under the lease were the other solicitors of the Solicitor's former firm. The computer equipment was installed in the Solicitor's office premises. The lease provided for 42 rental payments of which only 10 were made. A copy of the Agreement is attached at Tab 37 of the Book of Documents.

60. On September 3, 1991, His Honour Judge Fitzpatrick of the Toronto Small Claims Court granted judgment against the Solicitor in the amount of \$2,909.28 plus costs and interest at 10% per annum commencing November 29, 1990 in respect of the outstanding payments under the lease. A copy of the Judgment is attached at Tab 38 of the Book of Documents.

61. By letter dated July 15, 1992, Mega Leasing Inc., complained to the Law Society that the Solicitor failed to pay the outstanding Judgment. A copy of the letter of complaint is attached at Tab 39 of the Book of Documents.

62. By letter dated October 6, 1992, the Solicitor advised the Law Society that he was aware of the claim against him by Mega Leasing but that he was unaware of the judgment. A copy of the Solicitor's letter is attached at Tab 40 of the Book of Documents.

63. By letter dated January 28, 1993, the Solicitor advised the Law Society that a motion and supporting material had been prepared for service and filing to set aside the judgment. The Solicitor enclosed a notice of pre-trial, an award of costs of \$50.00 against him and advised that the costs had been paid. A copy of the Solicitor's letter and enclosures are attached at Tab 41 of the Book of Documents.

64. By letter to the Law Society received May 26, 1993, the Solicitor advised that he intended to have the Judgment set aside and provided a Notice of Motion dated February 12, 1993 which had not yet been filed with the court. The Solicitor took the position that since Mr. Maharaj of Mega Leasing Inc. was not a client of the Solicitor or his former firm, the debt was not in relation to his practice. A copy of the letter and Notice of Motion are attached at Tab 42 of the Book of Documents.

65. By letter dated July 2, 1993, the Law Society acknowledged the Solicitor's letter of May 26, 1993. The Law Society confirmed that a debt in relation to a lease for a computer system for the Solicitor's office would be considered professional obligation within the meaning of Rule 13, Commentary 6 of the *Rules of Professional Conduct*. The Solicitor was requested to provide documentation to support that he had taken steps to set aside the judgment. A copy of the Law Society's letter is attached at Tab 43 of the Book of Documents.

66. The Solicitor failed to provide a reply to the Law Society's request for documentation.

67. To date, the Solicitor has not filed an application or any other document with the Court requesting an order setting aside the judgment.

68. To date, the judgment remains outstanding.

Particular 2(g) He failed to comply with the Order of Mr. Justice Potts dated July 19, 1991 which required him to:

- i) pay the sum of \$800 to William M. Mercer Limited;
- ii) pay the Applicant, Margaret Kathleen Willis, costs in the amount of \$500; and
- iii) pay the Respondent, George Earl Willis Sr., costs in the amount of \$500.

69. The Solicitor represented George Earl Willis Sr. in matrimonial proceedings in which Mr. Willis' wife, Margaret Kathleen Willis, sought *inter alia* support and an equalization of property.

70. The Solicitor obtained a valuation of a pension belonging to Mr. Willis for the purposes of the matrimonial proceedings. The valuation was prepared by William M. Mercer Limited.

71. As a result of the Solicitor's failure to pay the account of William M. Mercer Limited, an motion was brought by Margaret Kathleen Willis requiring either her husband or the Solicitor to pay William M. Mercer Limited the sum of \$1,240.00. A copy of the Notice of Motion, and Affidavits of Service of same together with the Motion Record are at Tab 44 of the Document Book.

72. The application was heard on July 19, 1991 before Mr. Justice Potts who ordered, *inter alia*: ...

2. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay to William M. Mercer Limited the sum of \$800.00.
3. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay the costs of this motion to the Applicant, fixed at \$500.00, forthwith.
4. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay the costs of the motion to the Respondent, fixed at \$500.00, forthwith.

A copy of the Order is at Tab 45 of the Document Book.

73. By letter dated October 6, 1992, the Solicitor provided a response to a complaint by counsel for Mrs. Willis, that the Solicitor had failed to make any payment to Mrs. Willis. The Solicitor's letter provided, *inter alia*, that he was not a party to the proceedings, that he did not attend the motion, that he was aware of the judgment and was retaining counsel to bring an application to set aside or vary the order. A copy of the Solicitor's letter is at Tab 46 of the Document Book.

74. To date, the Solicitor has not commenced proceedings to set aside or vary the order.



23rd May, 1996

75. To date, the Solicitor has not made payment to to William M. Mercer Limited, Margaret Kathleen Willis or George Earl Willis Sr. as required by the order.

DATED at Toronto, this 25th day of September, 1995."

#### Preliminary Issue

At the outset of the hearing, Counsel for the Solicitor asked to be removed from the record in order to give evidence on the Solicitor's behalf with respect to penalty. In order to ensure that the Solicitor was represented at the hearing, the Committee ruled that Counsel could act for the Solicitor at the first part of the hearing with respect to the issue of a finding of professional misconduct and, in addition, if necessary, testify on the Solicitor's behalf at the second part of the hearing with respect to penalty.

#### Reasons for Findings of Professional Misconduct

##### Practising under Suspension:

##### Particular 2(a) of the Complaint:

The Solicitor, while suspended, charged Legal Aid \$234.50 for preparing an opinion letter on January 29, 1993. The Solicitor testified that various drafts of the opinion letter may have been prepared prior to the period of suspension which commenced on January 29, 1993.

##### Particular 2(b):

While suspended, the Solicitor, on March 11, 1992 and March 18, 1992, represented a client on a landlord and tenant matter in court for which services he billed Legal Aid approximately \$400. On March 20, 1992 to April 21, 1992, he represented a client with respect to a criminal charge. The Solicitor testified that while he was entitled to represent both clients as an agent, he neither advised the clients nor the courts that he was suspended.

##### Particular 2(c):

From November 29, 1991 to December 12, 1991, while suspended, the Solicitor represented a client on a matrimonial matter, charging Legal Aid for services of approximately \$500.

#### Conclusion regarding Practising Under Suspension

The conclusion of the Committee is that the Solicitor was practising while under suspension during the three separate periods of suspension set out above.

##### Failing to File:

##### Particular 2(d) of the Complaint:

The Solicitor admitted in the Agreed Statement of Facts that he failed to file a statutory declaration and a report in the prescribed form for a period which exceeded 27 months for the 1991 filing and 15 months for the 1992 filing. The Solicitor admitted that this constituted professional misconduct. His explanation was that his accountant of some 30 years was retiring and had not attended to the filings. He further testified that he was not operating a trust account during either of these periods.

Failing to Reply to the Law Society:

Particular 2(e) of the Complaint:

On April 28, 1993, the Law Society wrote to the Solicitor requesting his comments regarding \$450 which a client claimed the Solicitor had received in trust on his behalf 15 months previously and failed to release to the client. By letter received by the Law Society on May 26, 1993, the Solicitor responded that he was awaiting the receipt of a release from the other side and that the matter could be resolved if the client provided an indemnity agreement. The Law Society wrote the Solicitor on June 16, 1993 requesting further information, including a copy of his trust ledger. This was followed up by a telephone message left for the Solicitor on June 29, 1993 and a further letter on July 15, 1993.

The Solicitor wrote the Law Society on August 9, 1994 requesting its approval with respect to two draft letters which dealt with paying the client the \$450 in issue. The Law Society gave the approval the Solicitor had sought while advising him that it was unnecessary to obtain approval.

The Solicitor has failed to provide the information the Law Society requested including a copy of his trust ledger. He has not paid the client his \$450 to the present time.

Conclusions regarding Failing to Reply

The conclusion of the Committee is that the Solicitor failed to provide the information requested by the Law society, thereby contravening Rule 13, Commentary 3 of the Rules of Professional Conduct.

Failure to Honour Financial Obligations:

Particular 2(f) of the Complaint:

Mega Leasing Inc.'s Judgment Against the Solicitor for Computer Lease

A judgment on September 3, 1991 was obtained against the Solicitor by Mega Leasing Inc. for \$2,909.28 plus costs and prejudgment interest. This related to computer equipment leased for his practice. At the latest, the Solicitor was aware of this judgment by October 6, 1992 when he responded to an inquiry from the Law Society stating that he had never received a notice of trial, that there was a good defence on the merits and that he would be moving to set aside judgment. Although a notice of motion was drafted to set aside the judgment, this was never proceeded with. The Solicitor's explanation for this was that he was waiting for enforcement proceedings to be brought against him by Mega Leasing. The judgment remains unpaid.

Order of Justice Potts:

Particular 2(g) of the Complaint:

On July 19, 1991, Justice Potts ordered the Solicitor to pay the sum of \$800 to William M. Mercer Limited, \$500 costs to Margaret Willis forthwith and \$500 costs to George Willis, his former client, forthwith. In responding on October 6, 1992 to the Law Society's correspondence regarding the Solicitor's failure to comply with the Order, he advised that he was presently retaining counsel to move to set it aside. At the time of hearing, no such motion had been brought. The Solicitor's explanation for this was that he was waiting for enforcement proceedings to be brought against him. The amounts remain unpaid.

Conclusion regarding Failure to Honour Financial Obligations

The conclusion of the Committee is that the Solicitor has failed to honour financial obligations arising from his practice in contravention of Rule 13, Commentary 16.

Finding of Professional Misconduct

The Committee finds that on the evidence the Solicitor is guilty of professional misconduct with respect to each of the particulars set out in the Complaint.

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Douglas Edward Rollo be granted permission to resign.

REASONS FOR RECOMMENDATION

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The Solicitor has been practising law for 39 years. A Report and Decision of a prior discipline Committee dated April 18, 1995 recommended that the Solicitor be disbarred. This Report has not yet gone before Convocation.

The Solicitor's son, Donald Rollo, a solicitor himself, testified that his father has been a member in good standing since 1956 but that he had had a problem with judgment since 1989 caused by alcoholism. He testified that after a bad accident in July, 1994 which was alcohol related, his father had stopped drinking. The Solicitor has not been practising since that time and is 66 years of age. Donald Rollo testified that his father had financial problems. He testified that his father was guilty of poor judgment rather than dishonesty and conceded that his father may have been ungovernable.

The Solicitor submitted that the appropriate penalty would be to grant him permission to resign.

Counsel for the Law Society submitted that the appropriate penalty was disbarment regardless of whether the Report and recommendation of the prior Discipline Committee was taken into account. She submitted that the totality of the Solicitor's conduct demonstrated ungovernability and a pattern and attitude incompatible with membership in the Law Society.

The Committee is of the view that as the Report and Decision of the prior Discipline Committee has not yet gone to Convocation, we should base our recommendation with respect to penalty on the facts before us without assuming that the prior Report and recommendations will be confirmed by Convocation.

While the matters before us are serious, they do not, considered by themselves, go so far as to establish ungovernability. There is no evidence of misappropriation of funds. There was evidence of some cooperation with the Law Society. The Solicitor has not been practising for over a year. Given his age and lengthy record with the Law Society without incident, we feel that the public interest will be sufficiently served if the Solicitor is permitted to resign.

Douglas Edward Rollo was admitted as a Solicitor and called to the Bar on the 29th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED at Toronto this 8th day of November, 1995

Nancy Backhouse  
Chair

Ms. Brooks asked the following amendments be made to the April Report:

- page 1 under the heading Report - 1st line - should read - Complaint D116/73 was issued on "June 24, 1993" not March 18, 1992.
- page 13 - 4th paragraph - 3rd line - should read - ....there was one payment made by the "solicitor" not Willis.
- page 223 (in camera portion) - 2nd paragraph - amount should be "\$2,325.00" not \$2,725.00

It was moved by Mr. Wilson, seconded by Ms. Ross that the April Report as amended and the November Report be adopted.

Carried

The recommended penalty of the Discipline Committee of the April Report was that the solicitor be disbarred and the recommended penalty of the November Report was that the solicitor be granted permission to resign.

Ms. Brooks made submissions concerning the in camera portion of the April Report advising that the client Ms. Stephenson wished it to be in public. Counsel for the Society also advised that Ms. Stephenson wanted to file a victim impact statement.

The Notice of Disagreement and Curriculum Vitae were filed as Exhibit 3.

The solicitor objected to the victim impact statement.

It was moved by Mr. Gottlieb, seconded by Mr. Carey that the matter be adjourned to the June Convocation peremptory to the solicitor.

Counsel, the solicitor, the reporter and the public withdrew to deliberate the adjournment motion.

Convocation agreed to adjourn the matter if the solicitor waived the seised committee requirement.

Counsel, the solicitor, the reporter and the public were recalled and advised the solicitor the matter would be adjourned to the June Convocation peremptory if the solicitor waived the seised committee requirement. In addition the victim impact statement would be considered at the June Convocation.

The solicitor consented.

The matter was adjourned.

23rd May, 1996

CONVOCATION ROSE AT 5:30 P.M.

Confirmed in Convocation this *28* day of *June*, 1996.

  
Treasurer