

21st March, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 21st March, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Banack, Carpenter-Gunn, Cole, Copeland, Crowe, DelZotto, Gottlieb, MacKenzie, Marrocco, O'Connor, Puccini, Sealy, Swaye, Thom, Topp and Wright.

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IN PUBLIC

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Mr. Brown, Senior Counsel - Discipline introduced Mr. Glenn Hainey who would be acting as Duty Counsel.

DISCIPLINE COMMITTEE

Re: Bert JACQUES - Markham

The Secretary placed the matter before Convocation.

Messrs. Topp and Banack withdrew for this matter.

Ms. Georgette Gagnon 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 4th January, 1996, together with an Affidavit of Service sworn 10th January, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th January, 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

Heather Ross, Chair
Larry Banack
Nora Angeles

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

Audrey Cado
For the Society

21st March, 1996

BERT JACQUES
of the City
of North York
a barrister and solicitor

Not Represented
For the solicitor

Heard: October 11, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 19, 1995, Complaint D21/95 was issued against Bert Jacques alleging that he was guilty of professional misconduct.

The matter was heard in public on October 11, 1995 before this Committee comprising Heather Ross, Chair, Larry Banack and Nora Angeles. 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 D21/95

2. a) He failed to reply to the Law Society's requests that he provide a response to two inadequacies discovered during an examination of his books and records on August 26, 1992, specifically, to correct inactive trust ledger amounts and overdrawn trust ledger amounts, despite letters dated August 16, 1994, September 26, 1994, October 25, 1994 and November 29, 1994;
- b) 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 Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint D21/95 and is prepared to proceed with a hearing of this matter on September 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 D21/95 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 8, 1976. He practised as a sole practitioner. He was suspended on December 2, 1994 as a result of his failure to pay his Errors and Omissions Levy.

Particular 2(a)
Failure to reply to the Law Society

5. A Law Society examiner commenced an examination of the Solicitor's books and records on August 26, 1992. The examination was completed on September 8, 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 September 8, 1992 report.

6. On September 8, 1992, the Solicitor executed an Acknowledgement in which he acknowledged receipt of the Law Society's September 8, 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.

7. By letter dated October 20, 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) 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;
- 2) he had not been making monthly the trust comparison as required by subsection 1(h) of section 15 of the Regulation. The Solicitor was requested to remit to the Law Society within 20 days of the effective date of his trust comparison, copies of the listing of trust obligations, the trust bank reconciliation and the trust bank statement for each month ended August 31, 1992 to January 30, 1993 inclusive;

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- 3) he had allowed one or more trust cheques to be made payable to cash or bearer in contravention of subsection 10(a) of section 14 of the Regulation. The Solicitor was requested too ensure, in the future, that he strictly complied with that subsection of the Regulation.

The Solicitor was requested to acknowledge receipt of the Law Society's October 20, 1992 letter and confirm that he had taken the necessary action to correct the deficiencies in order to comply with the Regulation.

8. By letter dated November 27, 1992, the Solicitor acknowledged receipt of the Law Society's October 20, 1992 letter and forwarded to the Law Society a copy of his trust bank statements, trust bank reconciliation and trust list for the months of August 1992, September 1992 and October 1992. The Solicitor indicated that he had taken the necessary action to correct all deficiencies revealed in the examiner's September 8, 1992 report.

9. By letter dated January 6, 1993, the Solicitor forwarded to the Law Society a copy of his trust bank statement, trust bank reconciliation and trust list for the month ended, November 1992.

10. By letter dated February 19, 1993, the Solicitor forwarded to the Law Society a copy of his trust bank statement, trust bank reconciliation and trust list for December, 1992. The Solicitor advised that the delay in responding was caused by the CIBC branch, where his accounts were located, having closed in mid-January.

11. By letter dated March 10, 1993, the Solicitor forwarded to the Law Society a copy of his trust bank statement, trust bank reconciliation and trust list for January, 1993.

12. By letter dated March 22, 1993, the Law Society acknowledged receipt of the Solicitor's February 19, 1993 and March 10, 1993 letters and advised him of the following:

- i) he had allowed a number of inactive trust ledger accounts to continue to have balances that remained unchanged over long periods. The Solicitor was requested 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;
- ii) he had allowed overdrawn trust ledger accounts to exist uncorrected over a period in excess of one month. The Solicitor was requested to provide comments as to why the overdrawn trust ledger accounts were permitted to remain uncorrected over a period in excess of one month.

No reply was received.

13. By letter dated April 20, 1993, the Law Society forwarded to the Solicitor a copy of its March 22, 1993 letter and requested a written response forthwith.

14. By letter dated April 27, 1993, the Solicitor responded to the Law Society's March 22, 1993 letter:

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- i) With respect to the inactive trust ledger accounts that continued to have balances that remained unchanged over long periods, the Solicitor advised that he had mailed out many cheques, but clients had either changed addresses or not cashed the trust monies. The Solicitor inquired if there were a Law Society department that deals with unclaimed trust monies.
- ii) With respect to the overdrawn trust ledger accounts, the Solicitor was advised that he usually corrected the problem as soon as it was brought to his attention by his bookkeeper due to bank errors, and minor errors by himself, however, some clerical errors were bound to occur.

15. By letter dated June 17, 1993, the Law Society acknowledged receipt of the Solicitor's March 10, 1993 and April 27, 1993 letters. The Law Society advised that upon reviewing the Solicitor's trust listing as at January 31, 1993, three overdrawn trust ledger account balances were noted. The Solicitor was requested to forward to the Law Society a copy of his trust comparison for March 31, 1993 confirming that these accounts had been cleared. With respect to the inactive trust ledger accounts, the Solicitor was advised of three options: he could continue to carry the amounts indefinitely on his books and records, pay the funds into Court or wait for the passage of the Unclaimed Intangible Property Act, by which the holder of trust funds is to remit same to the Public Trustee.

16. By letter dated July 9, 1993, the Solicitor forwarded to the Law Society his trust summary list for April 30, 1993, advised that he had cleared up the overdrawn trust accounts and acknowledged the Law Society's recommendations with respect to the inactive trust balances.

17. By letter dated August 24, 1993, the Law Society acknowledged receipt of the Solicitor's July 9, 1993 and advised the Solicitor that several inactive trust ledger accounts remained. The Solicitor was again requested to review his trust ledger accounts 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 and the date of last entry on each account. No reply was received.

18. By letter dated September 20, 1993, the Law Society forwarded to the Solicitor a copy of its August 24, 1993 letter and requested a written response forthwith.

19. By letter dated September 27, 1993, the Solicitor forwarded to the Law Society a copy of his trust list for the month ended July 31, 1993.

20. By letter dated November 25, 1993, the Law Society acknowledged receipt of the Solicitor's September 27, 1993 letter. The Law Society advised that upon reviewing the Solicitor's trust comparison for the month ended July 31, 1993, four overdrawn accounts were noted. The Solicitor was requested to correct same forthwith and forward to the Law Society copies of the listing of trust obligations, the trust bank reconciliation and the trust bank statement for the month ended November 30, 1993, evidencing the corrections. The Solicitor was advised that several inactive trust ledger accounts remained. He was requested to review his trust ledger accounts so that instructions could be given to close

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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 and the date of last entry on each account.

21. By letter dated January 25, 1994, the Solicitor forwarded to the Law Society copies of his trust list, trust bank reconciliation and trust statement for the month ended November 30, 1993 and the trust list for the month ended December 31, 1993.

22. By letter dated March 24, 1994, the Law Society acknowledged receipt of the Solicitor's February 1, 1994 letter. The Solicitor was advised that three account balances had remained overdrawn since July 31, 1993 and was requested to correct these accounts forthwith. The Solicitor was requested to provide comments as to why the overdrawn trust ledger accounts were permitted to remain uncorrected over a period in excess of one month and to forward to the Law Society copies of the listing of trust obligations, the trust bank reconciliation and the trust bank statement for the month ended March 31, 1994, evidencing his corrections. No reply was received.

23. By letter dated May 30, 1993, the Law Society forwarded to the Solicitor a copy of its March 24, 1994 letter and requested a written response forthwith.

24. By letter dated June 5, 1994, the Solicitor forwarded to the Law Society a copy of the trust list, trust bank reconciliation and trust bank statement for the month ended March 31, 1994. The Solicitor advised that his delay in responding was due to financial constraints which prevented him from settling his bookkeeper's account.

25. By letter dated August 16, 1994, the Law Society acknowledged receipt of the Solicitor's June 8, 1994 letter. The Solicitor was advised that upon review of his March 31, 1994 trust comparison, the following was noted:

- i) The trust listing indicated that there were sixteen inactive trust ledger accounts whose balances had remained unchanged over long periods. The Solicitor was requested to continue reviewing those balances in order to determine if they were funds owing to him for earned fees on monies that were due to clients.
- ii) The client trust list revealed three overdrawn trust ledger accounts in the amount of \$106.37 for Ali Rasheed & Bebe - PSE, Hamblett, N & G - PSE and Ipema & James - PSE which were permitted to exist uncorrected over a period in excess of one month. The Solicitor was requested to confirm correction of those overdrawn trust ledger accounts and to explain how they became overdrawn.
- iii) Four outstanding, stale-dated trust cheques existed as reconciling items. The Solicitor was requested to determine why these cheques had not been cashed, stop payment, reverse them and reinstate the trust obligation in the clients' trust ledger for the client involved.

A copy of the Law Society's August 16, 1994 letter is attached as Exhibit "A" to this Agreed Statement of Facts. No reply was received.

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26. By letter dated September 26, 1994, the Law Society enclosed a copy of its letter of August 16, 1994 and requested a written response forthwith. A copy of the Law Society's September 26, 1994 letter is attached as Exhibit "B" to this Agreed Statement of Facts.

27. By letter dated September 26, 1994, the Solicitor forwarded to the Law Society list of his overdrawn trust ledger accounts and trust summary for the month ended November 30, 1993. The Solicitor advised that he thought he had provided this information with his June 5, 1994 letter. The Solicitor advised that the delay in responding was due to his having spent a lot of time out of town attempting to secure alternative employment. A copy of the Solicitor's September 26, 1994 letter is attached as Exhibit "C" to this Agreed Statement of Facts.

28. By letter dated October 25, 1994, the Law Society forwarded to the Solicitor a copy of its August 16, 1994 and September 26, 1994 letters and requested a written response forthwith. A copy of the Law Society's October 25, 1994 letter is attached as Exhibit "D" to this Agreed Statement of Facts. No reply was received.

29. By registered letter dated November 29, 1994, the Law Society forwarded to the Solicitor a copy of its September 26, 1994 and October 25, 1994 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 November 29, 1994 letter was signed for and delivered on or about December 23, 1994. A copy of the Law Society's November 29, 1994 letter is attached as Exhibit "E" to this Agreed Statement of Facts. No reply was received.

Particular 2(b)

Failure to file for the fiscal year ended April 30, 1994

30. 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.

31. A Notice of Default in Annual Filing, dated November 30, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "F" to this Agreed Statement of Facts.

32. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated December 14, 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 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 December 23, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "G" to this Agreed Statement of Facts.

33. The late filing fee began to accrue on December 28, 1994.

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34. By letter dated January 12, 1995, the Solicitor forwarded to the Society's annual filing department, a copy of his January 12, 1995 letter to the admissions department. In his letter to the admissions department, the Solicitor advised that during 1994 he had experienced a dramatic decline in the volume of his business and his financial situation deteriorated to the point where he was forced to engage the assistance of a Trustee-in-Bankruptcy. The Solicitor stated that the Trustee-in-Bankruptcy had suggested a Consumer Proposal in order that the impact would be minimal on his ability to continue in the practice of law. The Solicitor further advised that as some of the creditors had objected to the proposal and that he expected to file for bankruptcy. The Solicitor stated that in the circumstances, he felt that he had no other choice than to discontinue the practice of law and that he was seeking permission to resign. The Solicitor stated that he had already made arrangements for another solicitor to assume carriage of his active file. The Solicitor advised the annual filings department that he was attempting to arrange financial assistance in order to retain an accountant to prepare his filing. The Solicitor stated that he expected to have this matter cleared up within the next thirty days. A copy of the Solicitor's January 12, 1995 letter to the admissions department and a copy of his January 12, 1995 letter to the annual filings department is attached as Exhibit "H" to this Agreed Statement of Facts.

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

V. DISCIPLINE HISTORY

36. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$1,000.00 on April 27, 1993 with respect to his having practised law while under suspension during the periods March 6, 1992 to March 17, 1992 and June 5, 1992 to June 30, 1992; and his failure to maintain books and records. The Solicitor also provided the Law Society with an undertaking, dated April 27, 1993, to participate and co-operate with the Practice Review Program of the Professional Standards Department and to implement the recommendations of the practice review.

37. The Solicitor was found guilty of professional misconduct and suspended for three months on October 18, 1994 with respect to his breach of duty to a client and issuance of a false report. The Solicitor was suspended by Convocation on January 26, 1995 for a period of three months.

DATED at Toronto this 29th day of August, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Bert Jacques be suspended for a period of three months immediately following the current administrative suspension and that the suspension continue thereafter until the Solicitor has:

1. replied in a manner satisfactory to the Law Society, to inadequacies discovered during an examination of his books and records on August 26, 1992, specifically, to correct inactive trust ledger amounts and overdrawn trust ledger amounts; and
2. completed all filings required by the Law Society including filing for the fiscal year ended April 30, 1994; and
3. paid costs to the Law Society in the amount of \$450.

REASONS FOR RECOMMENDATION

The Committee reviewed the complaint, the Agreed Statement of Facts filed, and a letter sent by the Solicitor dated October 1st, 1995. The Committee concluded, as agreed and admitted by the Solicitor, that the particulars of the complaint constitute professional misconduct.

With respect to the question of penalty, the Committee carefully considered the submissions of Counsel for the Society. The Committee, however, expresses serious concern with respect to the Solicitor's prior discipline history as acknowledged by him and admitted in the Agreed Statement of Facts.

It is the recommendation of the Committee that following the termination of the Solicitor's administrative suspension with respect to non-payment to date, that he be suspended for a period of three months definite and, thereafter, from month to month until he has provided the Law Society with the responses required with respect to paragraph 2(a) of the complaint and that he has completed the requisite filings as set out at paragraph 2(b) of the complaint and any subsequent filings that may then be timely and required pursuant to the Law Society Act and Regulations.

The Committee further recommends as a condition to the Solicitor's reinstatement that he pay the Society's costs fixed in the amount of \$450.00.

The Solicitor has a prior discipline history and was found guilty of professional misconduct, reprimanded in Committee and ordered to pay costs of \$1,000.00 on April 27th, 1993, with respect to his having practised law while under suspension during two periods in 1992 and his failure to maintain proper books and records. The Solicitor had also provided the Law Society with an Undertaking dated April 27, 1993 to participate and co-operate with the practice review programme of the Professional Standards Department and to implement the recommendations of practice review. In addition, the Solicitor was found guilty of professional misconduct and suspended for three months on October 18th, 1994 with respect to a breach of duty to a client in the issuance of a false report. The Solicitor was suspended by Convocation on January 26th, 1995 for a period of three months.

Bert Jacques was called to the Bar on April 8th, 1976.

ALL OF WHICH is respectfully submitted

DATED this 4th day of January, 1996

Heather J. Ross
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 3 months following the current administrative suspension and thereafter until the solicitor completed his filings, replied to the Society concerning his books and records and pay costs in the amount of \$450.

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

Carried

Counsel retired.

Re: Alan Douglas KURTZ - Toronto

The Secretary placed the matter before Convocation.

Mr. Swaye withdrew for this matter.

Ms. Rhonda 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 25th October, 1995, together with an Affidavit of Service sworn 24th November, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd November, 1995 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C., Chair
Tamara K. Stomp
Robert B. Aaron

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

Audrey Cado
For the Society

ALAN DOUGLAS KURTZ
of the City
of Toronto
a barrister and solicitor

Not Represented
For the solicitor

Heard: September 19, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

REPORT

On May 4, 1995 Complaint D52/95 was issued against Alan Douglas Kurtz alleging that he was guilty of professional misconduct. On consent this complaint was withdrawn and replaced by Complaint D52a/95 issued on June 28, 1995.

The matter was heard in public on September 19, 1995 before this Committee comprising Gerald A. Swaye, Q.C., Chair, Tamara K. Stomp and Robert B. Aaron. The Solicitor did not attend the hearing nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D52a/95

2. a) He failed to file with the Law Society since his call to the Bar on June 25, 1993, a certificate in the form prescribed by the Rules and/or a report completed by a public accountant and signed by the member in the form prescribed by the rules pursuant to Section 16(2) or 16(3) of Regulation 708 made pursuant to the Law Society Act.

Evidence

The evidence before the Committee contained the following Agreed Statement of Facts. Paragraphs 1 and 3 should refer to Complaint D52a/95.

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D52/95 and is prepared to proceed with a hearing of this matter on August 2, 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 D52/95 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 June 25, 1993. He practises as a sole practitioner.

5. The Solicitor advised the Law Society by telephone on November 16, 1993 that he would commence active practice on November 17, 1993.

6. By letter dated January 9, 1995, the Solicitor advised the Law Society that he practised law as a partner with Kurtz & Nayduk until December 1, 1994.

7. By letter dated January 25, 1995, the Solicitor advised the Law Society that he was resuming practise as a sole practitioner.

8. As the Solicitor did not advise the Law Society of his fiscal year end, the Law Society assumed his day of call, June 25th, as his year end. The Solicitor has not filed since his call to the Bar on June 25, 1993.

9. 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.

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10. 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 February 14, 1995. 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.

11. By telephone on February 15, 1995, the Solicitor left a message for a Law Society staff employee in the Annual Filings section of the Law Society. The Solicitor advised that he would call again. No further call was received. The Law Society's handwritten note is attached as Exhibit "C" to this Agreed Statement of Facts.

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

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

V. DISCIPLINE HISTORY

14. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of August, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends to Convocation that should the Solicitor file by the time the matter reaches Convocation, that he be reprimanded in Convocation. Should he not file by the time the matter reaches Convocation, that he be suspended for one month and thereafter until the filing is made. The Solicitor is to pay the Society's costs of \$250.

REASONS FOR RECOMMENDATION

By the Agreed Statement of Facts, the Solicitor admits the Complaint and the particulars contained therein and that they constitute professional misconduct.

The essence of the offence is that the Solicitor did not file his Form 2 or Form 3 within six months after the ending of his fiscal year. He has not filed to date. The Solicitor did not appear in person, although signing the Agreed Statement of Facts entered as Exhibit 2 in the proceedings. The Solicitor does not have a discipline history.

The penalty recommended is the standard one for misconduct in the nature of administrative filing as established by precedents and this Committee sees nothing to take it out of the ordinary situation.

The Committee recognizes the importance of filing with the Society the forms required and the penalty reflects the gravity of the misconduct.

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Alan Douglas Kurtz was called to the Bar on the 25th day of June, 1993.

ALL OF WHICH is respectfully submitted

DATED this 25th day of October, 1995

Gerald A. Swaye, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings were completed and if his filings were not completed that he be suspended for a period of 1 month and thereafter until the filings were completed and pay the Society's costs of \$250.

Ms. Cohen advised that the filings had not been completed. She further advised that the solicitor supported the penalty recommended by the Discipline Committee.

It was moved by Mr. Topp, seconded by Mr. Gottlieb that the solicitor be suspended for a period of 1 month, the suspension to continue thereafter until the filings were completed and that the requirement to pay costs be deleted.

Carried

Counsel retired.

Re: Stanley Charles EHRlich - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Copeland withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 4th March, 1996, together with an Affidavit of Service sworn 8th March, 1996 by Christine Shaw that she had effected service on the solicitor personally on 8th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st March, 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:

21st March, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

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

Rhonda Cohen
for the Society

STANLEY CHARLES EHRLICH
of the City
of Toronto
a barrister and solicitor

Lawrence Shapiro
for the solicitor

Heard: December 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

REPORT

On July 17, 1995, Complaint D441/94 was issued, on August 18, 1995, Complaint D221/95 was issued and on November 9, 1995, Complaint D340/95 was issued against Stanley Charles Ehrlich alleging that he was guilty of professional misconduct.

The matter was heard in public on December 12, 1995 before this Committee composed of Harriet E. Sachs, Chair, Robert B. Aaron and Gordon Z. Bobesich. The Solicitor attended the hearing and was represented by Lawrence Shapiro. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D441/94

2. a) He failed to serve his clients, Ronald and Barbara Bunn, in connection with their mortgage re-financing on a property municipally known as Part Lot 21 Concession F Township of Medora now Township of Muskoka Lakes in a conscientious, diligent and efficient manner in that:
- i) he failed to obtain discharges of pre-existing mortgages in a timely manner; and
 - ii) he failed to provide a report in writing respecting the re-financing of their property;

21st March, 1996

Complaint D221/95

- a) he failed to serve his client, R. Laurent Carrier, in a conscientious, diligent and efficient manner, in that:
 - i) he failed to proceed with his client's civil action against Colonial Woods Development Inc. in a timely manner;
 - ii) he failed to answer reasonable requests from the client for information; and
 - iii) he failed to account for monies entrusted to him by the client in the sum of \$1,000.00 in a timely manner;
- b) he failed to provide a meaningful reply to the Law Society regarding a complaint by R. Laurent Carrier, despite letters to him dated January 31, 1995 and April 10, 1995;
- c) he failed to reply to the Law Society regarding a complaint by Douglas James, despite letters to him dated January 31, 1995 and April 10, 1995; and
- d) he breached his Undertaking to the Law Society dated February 3, 1995 in that he failed to provide full and complete responses to the above letters from the Law Society within three weeks from the date of these letters.

Complaint D340/95

2. a) he misled the Law Society with respect to the status of an action, by advising that he filed a Notice of Discontinuance with court, when in fact, this was not the case.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D441/94, D221/95 (as amended) and D340/95 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 in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D441/94, D221/95 and D340/95 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 19, 1985. He practices as a sole practitioner.

Complaint D441/94

Particular 2a) He failed to serve his clients, Ronald and Barbara Bunn, in connection with their mortgage re-financing on a property municipally known as Part Lot 21 Concession F Township of Medora now Township of Muskoka Lakes in a conscientious, diligent and efficient manner in that:

- i) he failed to obtain discharges of pre-existing mortgages in a timely manner; and
- ii) he failed to provide a report in writing respecting the re-financing of their property;

5. In April 1988, the Solicitor was retained by Ronald and Barbara Bunn to prepare and register a new mortgage to the Toronto Dominion Bank as mortgagee on their property described as Part Lot 21, Concession F, Township of Muskoka Lakes (the "Property"). Ronald and Barbara Bunn advise that the purpose of this new mortgage was to consolidate their debts and the Solicitor was instructed to use the new advance to pay off all previous mortgages on the Property.

6. On June 24, 1988, the new mortgage was registered in favour of the Toronto-Dominion Bank as instrument number 219179. A copy of this registered mortgage is contained at Tab 1 of the Document Book.

7. The Solicitor did not report on this mortgage transaction to Ronald and Barbara Bunn.

8. In April of 1992, Ronald and Barbara Bunn retained J.W. Cruickshank to arrange a new mortgage with the Toronto-Dominion Bank. Mr. Cruickshank discovered that there were three mortgages on title, being:

- i) a first mortgage in favour of Anne Floyd, Phyllis Cumming, Violet Smith and Herbert Bunn, registered as instrument number 182858 on July 12, 1984;
- ii) a \$10,000 second mortgage in favour of Herbert Bunn, registered as instrument number 184471 on September 24, 1984; and
- iii) a third mortgage in favour of the Toronto-Dominion Bank, registered as instrument number 219179 on June 24, 1988.

9. In May of 1992, Mr. Cruickshank advised the Solicitor of these three outstanding mortgages and inquired why the two earlier mortgages had not been discharged at the time instrument number 219179 was registered. The Solicitor told Mr. Cruickshank that instrument number 182858 had been discharged and that the Solicitor was waiting for a discharge for the mortgage registered as instrument number 184471 from the executrix of Herbert Bunn's estate.

10. Herbert Bunn was a cousin of Ronald Bunn and the former employer of the Solicitor. Herbert Bunn had acted for Ronald Bunn until his retirement in April of 1988 and had acted for Ronald Bunn in registering instrument number 182858. Herbert Bunn also registered instrument number 184471.

11. By letter dated September 28, 1992 (Tab 2, Document Book), the Solicitor advised Mr. Cruickshank that the mortgage registered as instrument number 184471 represented security for fees and disbursements owing to Bunn and Associates for present and future legal services. The Solicitor further advised Mr. Cruickshank that if Herbert Bunn's estate would not provide a discharge, he had the necessary documentation to make an application to the court to obtain an order pursuant to the *Mortgages Act* vacating and discharging the outstanding encumbrance.

12. The Solicitor prepared an Affidavit for Ronald Bunn's signature in November of 1992, a copy of which is contained at Tab 3 of the Document Book. By letter dated November 19, 1992 (Tab 4, Document Book), Mr. Cruickshank advised the Solicitor that his clients had reviewed the Affidavit and indicated that they had no knowledge of signing a mortgage for \$10,000.00 to secure further legal fees. The Solicitor was asked to amend the Affidavit.

13. In January of 1993, the Solicitor again advised that he would bring the necessary application to discharge the mortgage. This was not done. Mr. Cruickshank forwarded the Solicitor a Direction dated September 14, 1993 from Ronald and Barbara Bunn requesting that their files be forwarded to Messrs. Stuart, Cruickshank & Beatty. A copy of the Direction is contained at Tab 5 of the Document Book.

14. By letter dated June 7, 1993 (Tab 6, Document Book), Ronald and Barbara Bunn made a complaint to the Law Society.

15. By letter dated June 29, 1993 (Tab 7, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ronald and Barbara Bunn's letter dated June 7, 1993 and requested his comments within two weeks. On August 12, 1993 (Tab 8, Document Book), the Law Society again wrote to the Solicitor requesting his response to the complaint within fourteen days. By registered mail dated August 30, 1993 (Tab 9, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on September 1, 1993. On September 24, 1993, the Solicitor advised that he would provide his response by the following week. A copy of the handwritten notes of the telephone conversation with the Solicitor is contained at Tab 10 of the Document Book.

16. By letter dated October 12, 1993 (Tab 11, Document Book), the Solicitor advised the Law Society that since March of 1991, he had spoken with David Jones, solicitor for the estate, numerous times to try to obtain a discharge from the widow and executrix of Herbert Bunn's estate. The Solicitor further advised that Ronald Bunn had not made any payment on this mortgage and that the estate had never sought to enforce the mortgage. He further advised that the only remedy would be to bring an application under the *Mortgages Act* to obtain an order vacating the old instrument from title. The Solicitor indicated that Ronald or Barbara Bunn would have to swear an affidavit to be filed with the court.

17. By letter dated December 9, 1993 (Tab 12, Document Book), Mr. Cruickshank advised the Law Society that his clients were agreeable to signing an affidavit providing it was accurate.

18. By letters dated December 20, 1993 and January 10, 1994 (Tabs 13 and 14, Document Book), the Solicitor was asked to comment on Mr. Cruickshank's letter dated December 9, 1993. The Solicitor did not respond.

21st March, 1996

19. By registered mail dated February 3, 1994 (Tab 15, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on February 8, 1994.

20. By registered mail dated April 29, 1994 (Tab 16, Document Book), the Solicitor was reminded to respond to Mr. Cruickshank's letter dated December 9, 1993 and the Law Society's letters dated December 20, 1993, January 10, 1994 and February 3, 1994. The Solicitor was advised that if his response was not received by May 3, 1994, the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee. The Law Society's letter was delivered and signed for on May 2, 1994.

21. By letter dated May 11, 1994 (Tab 17, Document Book), the Law Society confirmed its telephone advise to the Solicitor that the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee if the Solicitor did not provide documentary evidence that the mortgage had been discharged prior to June 1, 1994.

22. By letter dated September 19, 1994 (Tab 18, Document Book), the Solicitor was again advised that the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee.

23. By letter dated September 27, 1994 (Tab 19, Document Book), the Solicitor advised the Law Society that he had attempted to obtain the assistance of David Jones, solicitor for the estate, to obtain a discharge from the executrix of the estate. The Solicitor advised that his efforts were unsuccessful. A copy of the Solicitor's letters to Mr. Jones dated May 10, 1994 and September 20, 1994 are contained at Tab 20 of the Document Book.

24. On September 28, 1994, the Solicitor called the Law Society advising that he prepared an Affidavit but that Mr. Cruickshank did not get back to him with revisions. The Law Society advised the Solicitor that he had 14 days to obtain the order vacating the mortgage. On November 1, 1994, the Law Society called Mr. Cruickshank's office and was advised that a discharge had not been received. A copy of the handwritten notes of the telephone conversation with the Solicitor is contained at Tab 21 of the Document Book

25. On December 12, 1994, the Solicitor advised the Law Society that he had commenced an application for the discharge and sent an affidavit to Ronald Bunn for signing. The Solicitor advised that upon receipt of the executed affidavit the application would be put before the court. A copy of the handwritten notes of the telephone conversation with the Solicitor is contained at Tab 22 of the Document Book.

26. By letter dated January 11, 1995 (Tab 23, Document Book), Mr. Cruickshank advised the Law Society that his clients had reviewed the affidavit prepared by the Solicitor and that the new affidavit did not address the concerns expressed in his letter dated November 19, 1992, which were essentially that Ronald and Barbara Bunn had no knowledge of, nor had they consented to, the mortgage to Herbert Bunn.

27. On January 16, 1995, the Solicitor advised the Law Society by telephone that he was sending an amended affidavit and that the first available court date was March 23, 1995. The Solicitor indicated his concern about not hearing from counsel for the estate, David Jones, concerning instructions from his client. The Law Society advised the Solicitor that Mr. Jones' client was not prepared to do what the Solicitor requested. A copy of the handwritten notes of the telephone conversation is contained at Tab 24 of the Document Book.

21st March, 1996

28. On January 20, 1995, the Law Society spoke to Mr. Jones who advised that he had attempted to obtain instructions from his client, but his client did not want anything to do with the Solicitor. Mr. Jones agreed to send copies of his file notes regarding this matter. A copy of the handwritten notes of the telephone conversation with Mr. Jones is contained at Tab 25 of the Document Book.

29. By letter dated January 25, 1995 (Tab 26, Document Book), the Law Society wrote to Mr. Jones requesting copies of any correspondence or notes relating to this matter.

30. By letter dated January 25, 1995 (Tab 27, Document Book), the Law Society wrote to the Solicitor requesting a copy of the affidavit and amended affidavit within seven days. The Solicitor did not respond.

31. The within Complaint was sworn by the Law Society on July 17, 1995.

32. Subsequent to the Law Society swearing the within Complaint the Solicitor, by way of explanation, not excuse, advised the Law Society of the following:

- (a) the reason he did not respond to the Law Society's letter dated January 25, 1995, was because he was awaiting receipt of a sworn copy of the affidavit before delivering same to the Law Society;
- (b) although it was the Solicitor's initial intention to cause the discharge of the mortgage, the Solicitor's secretary failed to prepare the necessary discharge documentation and the Solicitor did not adequately follow-up. By the time the Solicitor's secretary prepared the necessary documentation, Herbert Bunn had become mentally incompetent and thereafter a committee was appointed for him. By that time however, Herbert Bunn had passed away and the Solicitor had to wait until Letters Probate had been taken out by the Bunn Estate. Thereafter, for two years, the Solicitor attempted to communicate with the solicitor for Herbert Bunn's estate, but to no avail. Finally, on September 5, 1995, the Solicitor, on behalf of Ronald and Barbara Bunn, commenced an application under the *Mortgages Act*. The application was returnable October 2, 1995, but was, and remains, adjourned to allow for cross-examinations on conflicting affidavit evidence. (Tab 27A, Document Book).

33. The affidavit of Ronald Bunn was executed and the application under the *Mortgages Act* was commenced approximately one month following the swearing of the within Complaint.

Complaint D221/95

Particular 2a) He failed to serve his client, R. Laurent Carrier, in a conscientious, diligent and efficient manner, in that:

- i) he failed to proceed with his client's civil action against Colonial Woods Development Inc. in a timely manner;
- ii) he failed to answer reasonable requests from the client for information; and
- iii) he failed to account for monies entrusted to him by the client in the sum of \$1,000.00 in a timely manner.

Particular 2b) He failed to provide a meaningful reply to the Law Society regarding a complaint by R. Laurent Carrier, despite letters to him dated January 31, 1995 and April 10, 1995.

34. On November 30, 1987, R. Laurent Carrier commenced an action against Colonial Woods Development Inc. He was initially represented by Patricia Conway who completed discoveries and motions for preliminary matters. The Solicitor was retained in January 1991. By letter dated January 18, 1991 (Tab 28, Document Book), Mr. Carrier provided the Solicitor with a copy of the pleadings and the agreement of purchase and sale. The Solicitor was asked to call Mr. Carrier to discuss the matter with him.

35. By letter dated March 21, 1991 (Tab 29, Document Book), Mr. Carrier advised the Solicitor that he had called his office and left messages for him to return his calls to discuss his case. The Solicitor was asked to contact Mr. Carrier.

36. By letter dated January 13, 1992 (Tab 30, Document Book), Mr. Carrier advised the Solicitor that he had called at least once a month since the summer of 1991 and had not heard from the Solicitor or anyone from his office.

37. By letter dated December 18, 1992 (Tab 31, Document Book), Mr. Carrier wrote to the Solicitor inquiring whether the Solicitor had taken the steps discussed, namely, filing an amended reply and defence to counterclaim, setting the action down for trial and obtaining the defendant's outstanding undertakings. The Solicitor was asked whether the above had been completed and whether a date for a pre-trial had been set.

38. By letters dated January 22, 1993, February 16, 1993 and April 6, 1993 (Tabs 32, 33 and 34, Document Book), Mr. Carrier requested that the Solicitor provide him with a status report. The Solicitor did not respond.

39. By letter dated May 27, 1993 (Tab 35, Document Book), Mr. Carrier again wrote to the Solicitor requesting a status report regarding his case. The Solicitor was advised that if he did not receive a response, Mr. Carrier would contact the Law Society. The Solicitor did not respond.

40. By letter dated August 27, 1993 (Tab 36, Document Book), Mr. Carrier made a complaint to the Law Society.

41. By letter dated September 27, 1993 (Tab 37, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Carrier's letter dated August 27, 1993 and requested his comments within two weeks.

42. On November 19, 1993, a Law Society employee spoke with the Solicitor who advised that he would respond by December 3, 1993. A copy of the handwritten notes of this telephone conversation is contained at Tab 38 of the Document Book. On December 1 and December 2, 1993, a Law Society employee called the Solicitor and left messages reminding him that his response was due on December 3, 1993. On December 3, 1993, the Solicitor called requesting an extension to respond. The Solicitor was given until December 13, 1993 to respond to the Law Society. A copy of the handwritten notes of these telephone conversations with the Solicitor is contained at Tab 39 of the Document Book.

43. By registered mail dated December 8, 1993 (Tab 40, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received by December 13, 1993, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on December 10, 1993.

44. By letter dated December 13, 1993 (Tab 41, Document Book), the Solicitor advised the Law Society that he was retained by Mr. Carrier in January 1991 at which time he requested the entire file. The Solicitor advised that he was not provided with the file until months later. The Solicitor further advised that he met with Mr. Carrier on at least two occasions to discuss the case. He advised further that upon reviewing the file, he determined that the case was not appropriate for a motion for summary judgment and he had concerns about the strength of the case if it proceeded to trial. The Solicitor advised that he intended to contact Mr. Carrier to advise him of his recommendation. A copy of the Solicitor's letter was sent to Mr. Carrier by the Law Society.

45. By letter dated March 11, 1994 (Tab 42, Document Book), Mr. Carrier advised the Law Society that the Solicitor did not address the main issue of his complaint, being, that he did not respond to him despite numerous telephone calls and letters requesting a status report. Mr. Carrier further advised that despite the Solicitor's letter to the Law Society dated December 13, 1993 advising that he would contact his client, Mr. Carrier had not heard from the Solicitor.

46. By letter dated April 27, 1994 (Tab 43, Document Book), Mr. Carrier requested that the Solicitor release his file and return his retainer in the sum of \$1,000.00. The Solicitor was asked to contact Mr. Carrier when the file was ready for pick up.

47. By letter dated May 20, 1994 (Tab 44, Document Book), the Solicitor was requested to provide an explanation to the Law Society within thirty days regarding the delay in communicating with his client.

48. By letter dated June 29, 1994 (Tab 45, Document Book), Mr. Carrier requested the Law Society's assistance in obtaining his file and the return of his retainer.

49. On October 13, 1994 and November 2, 1994, a Law Society employee called the Solicitor and left messages for him to return her calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages is contained at Tab 46 of the Document Book.

50. By registered mail dated November 16, 1994 (Tab 47, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Discipline Committee.

51. On November 22, 1994 and November 23, 1994, the Solicitor advised the Law Society that he would be forwarding the file to Mr. Carrier shortly and that he would be responding to the Law Society. A copy of the handwritten notes of these telephone conversations is contained at Tab 48 of the Document Book.

52. In or about December, 1994, the Solicitor returned Mr. Carrier's file to him together with an accounting.

53. By letter dated January 9, 1995 (Tab 49, Document Book), the Solicitor advised the Law Society that given Mr. Carrier was a solicitor himself, the Solicitor assumed that he knew what was required of him, particularly with respect to outstanding undertakings. The Solicitor advised that Mr. Carrier had agreed to obtain the information needed to answer the undertakings at which time, the Solicitor was to set the matter down for trial. The Solicitor advised that Mr. Carrier did not complete the outstanding undertakings. The Solicitor advised that he had returned the file to Mr. Carrier.

21st March, 1996

54. By letter dated January 31, 1995 (Tab 50, Document Book), the Law Society asked the Solicitor to provide an accounting for the \$1,000.00 retainer provided by Mr. Carrier within seven days. The Solicitor did not respond.

55. By registered mail dated April 10, 1995 (Tab 51, Document Book), the Solicitor was asked to provide an accounting for the monies within two weeks, failing which the matter would be referred to the Chair of the Discipline Committee. This letter was delivered and signed for on April 13, 1995.

56. By letter dated June 19, 1995 (Tab 52, Document Book), the Solicitor was advised by the Law Society that the matter had been considered by the Chair and Vice-Chairs of the Discipline Committee and had been referred to Discipline Counsel. By letter dated August 4, 1995 (Tab 53, Document Book), the Solicitor advised that he had resolved the matter directly with Mr. Carrier and requested that the referral to Discipline be withdrawn.

57. By letter dated August 15, 1995 (Tab 54, Document Book), Mr. Carrier, at the Solicitor's request, advised the Law Society that the Solicitor had provided a statement of account dated November 25, 1994, and had settled the assessment of the account by agreeing to return the \$1,000.00 retainer.

58. Subsequent to the Law Society swearing the within Complaint, the Solicitor returned the \$1,000.00 retainer to Mr. Carrier. (Tab 54A, Document Book)

Particular 2c) He failed to reply to the Law Society regarding a complaint by Douglas James, despite letters to him dated January 31, 1995 and April 10, 1995.

59. The Solicitor was retained by Douglas E. James on the purchase of a condominium in Brampton, which transaction closed on February 28, 1990. Mr. James called the Solicitor several times in December of 1993 and was finally able to reach him just before Christmas, 1993. He asked the Solicitor to provide a final account for the transaction. The Solicitor advised that he would send the account to Mr. James by the end of December 1993. Despite follow up telephone calls by Mr. James in January of 1994, the Solicitor did not provide the final account.

60. By letter dated January 24, 1994 (Tab 55, Document Book), Mr. James made a complaint to the Law Society requesting assistance in obtaining a final account and wills belonging to Mr. James and his wife, Irene James.

61. By letter dated March 18, 1994 (Tab 56, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. James' letter dated January 24, 1994 and requested his comments within two weeks. The Solicitor did not respond.

62. On April 5, 1994, a Law Society employee called the Solicitor and left a message asking him to return the call. The Solicitor returned the call that day and advised he would be responding by the following week. A copy of the handwritten notes of the telephone communications with the Solicitor is contained at Tab 57 of the Document Book.

63. On April 12, 1994, a Law Society employee called the Solicitor and left a message on his answering machine asking him to return her call. On April 21, 1994, the Solicitor called the Law Society and left a voice mail message indicating that he wished to speak to Sharon Jansz, the Complaints Officer investigating the matter. Ms. Jansz called the Solicitor and left a message on his answering machine. Copies of the handwritten notes of the telephone messages are contained at Tabs 58 and 59 of the Document Book.

64. By registered mail dated April 22, 1994 (Tab 60, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on April 25, 1994.

65. On May 3, 1994, the Solicitor called and left a message on Ms. Jansz's voice mail. On May 5, 1994, Ms. Jansz returned the Solicitor's call and left a message for him requesting his written comments. On May 5, 1994, the Solicitor advised that he was faxing his response to the Law Society right away. A copy of the handwritten notes of the telephone communications with the Solicitor is contained at Tab 61 of the Document Book.

66. By letter dated May 5, 1994 (Tab 62, Document Book), the Solicitor advised the Law Society that he had acted for Mr. James and his wife regarding the sale of their home in 1988 and the condominium purchase which closed on March 1, 1990. The Solicitor advised that he prepared and mailed to Mr. James a reporting letter, supporting documentation and an account for services rendered on or about March 1, 1990. The Solicitor advised that Mr. James misplaced his reporting letter and called the Solicitor in January of 1994 requesting another copy for his records. The Solicitor advised that he was involved in a trial at the time and could not spare the time to retrieve the file from storage. The Solicitor provided a copy of his reporting letter to Mr. James.

67. By letter dated June 16, 1994 (Tab 63, Document Book), the Law Society wrote to the Solicitor requesting a copy of the statement of adjustments on the condominium purchase. The Solicitor did not respond.

68. By letter dated December 5, 1994 (Tab 64, Document Book), Mr. James advised the Law Society that he did not misplace the material and had never received the documentation in the first place. Mr. James further advised that the wills would be updated so there was no need to make any further requests for them from the Solicitor.

69. By letter dated January 31, 1995 (Tab 65, Document Book), the Solicitor was again requested to provide the statement of adjustments within seven days. The Solicitor did not respond.

70. By registered mail dated April 10, 1995 (Tab 66, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

71. Subsequent to the Law Society swearing the within Complaint the Solicitor, by way of explanation, not excuse, advised the Law Society that the reason he did not respond to Mr. James' and the Law Society's repeated requests for a copy of the Statement of Adjustments was because he believed that Mr. James had received the Statement under cover of letter dated March 1, 1990, and that the Law Society had received a copy of same on May 5, 1994.

72. Two weeks ago, by letter dated December 1, 1995, the Solicitor provided the James' with a copy of the Statement of Adjustments. (Tab 66A, Document Book)

Particular 2d) He breached his Undertaking to the Law Society dated February 3, 1995 in that he failed to provide full and complete responses to the above letters from the Law Society (excluding the letter dated June 16, 1994) within three weeks from the date of those letters.

21st March, 1996

73. By failing to respond to the Law Society regarding the complaints of R. Laurent Carrier and Douglas James, the Solicitor has failed to comply with his Undertaking to the Law Society dated February 3, 1995 to provide full and complete responses, in future, to any written request from the Law Society within a period of not more than three weeks from the date of the Law Society's written correspondence. A copy of the Solicitor's Undertaking dated February 3, 1995 is contained at Tab 67 of the Document Book.

Complaint D340/95

Particular 2a) He misled the Law Society with respect to the status of an action, by advising that he filed a Notice of Discontinuance with court, when in fact, this was not the case.

74. The Solicitor represented Keith Wardle in an action for damages arising out of a motor vehicle accident which occurred on November 21, 1989. On August 21, 1992, Monnex Insurance Management Inc. ("Monnex") forwarded a settlement cheque to the Solicitor in trust. Monnex asked the Solicitor to provide a final release and a Notice of Discontinuance. The Solicitor did not provide either document to Monnex and by letter dated February 4, 1994 (Tab 68, Document Book); Joanne Orr of Monnex made a complaint to the Law Society.

75. By letter dated March 18, 1994 (Tab 69, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Orr's letter dated February 4, 1994 and requested his comments within two weeks.

76. On April 5, 1994, a Law Society employee called the Solicitor and left a message asking him to return the call. The Solicitor returned the call that day and advised he would be responding by the following week. A copy of the handwritten notes of the telephone communications with the Solicitor is contained at Tab 70 of the Document Book

77. On April 12, 1994, a Law Society employee called the Solicitor and left a message on his answering machine asking him to return her call. On April 21, 1994, the Solicitor called the Law Society and left a voice mail message indicating that he wished to speak to Sharon Jansz, the Complaints Officer investigating the matter. Ms. Jansz called the Solicitor and left a message on his answering machine. Copies of the handwritten notes of these telephone messages are contained at Tabs 71 and 72 of the Document Book.

78. By registered mail dated April 22, 1994 (Tab 73, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

79. By letter dated April 28, 1994 (Tab 74, Document Book), the Solicitor advised the Law Society that the matter had been settled and that he had filed a Notice of Discontinuance with the court. The Solicitor advised that his client had not yet attended at the Solicitor's office to execute a release.

80. On May 10, 1994, the Solicitor called the Law Society and advised that the releases would be signed. A copy of the message slip is contained at Tab 75 of the Document Book.

81. On June 21, 1994, Ms. Orr called the Law Society and left a message advising that a Notice of Discontinuance had not been filed as of May 4, 1994. A copy of the transcribed and handwritten notes are contained at Tab 76 of the Document Book

21st March, 1996

82. By letter dated June 23, 1994 (Tab 77, Document Book), Ms. Orr advised the Law Society that a search of the court file indicated that no Notice of Discontinuance had been filed between May 4, 1994 and May 11, 1994.

83. By letter dated July 26, 1994 (Tab 78, Document Book), the Law Society wrote to the Solicitor inquiring when the Solicitor had filed the Notice of Discontinuance and requested a copy within two weeks.

84. On September 23, 1994 and October 3, 1994, a Law Society employee called the Solicitor and left messages asking him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages is contained at Tab 79 of the Document Book.

85. By registered mail dated October 14, 1994 (Tab 80, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. This letter was signed for and delivered on October 18, 1994.

86. On November 23, 1994, the Solicitor called the Law Society and left a message indicating that he expected to complete this matter within two days. Copies of the transcribed and handwritten notes of the telephone messages are contained at Tab 81 of the Document Book.

87. On November 29, 1994, the Solicitor advised the Law Society that he would follow up on this matter by the following week. Copies of the transcribed and handwritten notes are contained at Tab 82 of the Document Book.

88. On January 18, 1995, the Solicitor advised the Law Society that he would send it a copy of the Notice of Discontinuance by January 23, 1995. Copies of the transcribed and handwritten notes of the telephone message are contained at Tab 83 of the Document Book

89. On February 8, 1995, Ms. Orr called the Law Society requesting a status report. She advised that she would have the court file checked and determine whether the Notice of Discontinuance had been filed.

90. On July 24, 1995, Ms. Orr called the Law Society and confirmed that the court file revealed that the Notice of Discontinuance had not been filed. Copies of the transcribed and handwritten notes are contained at Tab 84 of the Document Book.

91. On August 22, 1995, the Solicitor called the Law Society and indicated that he would attend to the filing of the Notice of Discontinuance. Copies of the transcribed and handwritten notes of the telephone conversation with the Solicitor are contained at Tab 85 of the Document Book.

92. On August 24, 1995, Ms. Orr faxed a copy of the results of the court search dated July 21, 1995 (Tab 86, Document Book) which indicated that there was no Notice of Discontinuance in the court file.

93. On September 7, 1995, the Solicitor called the Law Society advising that the client received the funds but the Notice of Discontinuance had not been filed with the court. The Solicitor advised that he had not intended to mislead the Law Society. The Solicitor was advised that this matter would be referred to the Chair and Vice-Chairs of the Discipline Committee. Copies of the transcribed and handwritten notes of the telephone conversation with the Solicitor are contained at Tab 87 of the Document Book.

21st March, 1996

94. By letter dated September 8, 1995 (Tab 88, Document Book), the Solicitor was advised that the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee.

95. On September 12, 1995, the Solicitor called the Law Society advising that he forwarded the Notice of Discontinuance to Ms. Orr and to the court the previous day. Copies of the transcribed and handwritten notes are contained at Tab 89 of the Document Book.

96. By letter dated September 12, 1995 (Tab 90, Document Book), the Solicitor confirmed his telephone conversation with the Law Society and provided a copy of his letter to Ms. Orr together with the Notice of Discontinuance. (Tab 91, Document Book).

V. DISCIPLINE HISTORY

42. The Solicitor does not have a discipline history.

DATED at Toronto this 8th day of December, 1995."

FINDING OF THE COMMITTEE

Based on the admissions contained in the Agreed Statement of Facts, and a careful review of the Statement, it is our finding that the particulars of the Complaints and the Agreed Facts which support them constitute professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Member be suspended for a period of two months and pay costs to the Law Society in the amount of \$500. The Member is also to honour and abide by the terms of his Undertaking (set out below), including his continued participation in and co-operation with the Practice Review Program. He is also to pay the costs of the Professional Standards Department determined at a rate of \$50 per hour.

REASONS FOR RECOMMENDATION

The recommendation as to penalty is based on a joint submission by the Member and counsel for the Society. Although it is not binding on the Committee, we feel that the suspension, and the payment of costs, combined with an onerous undertaking on the part of the Member, are appropriate in the circumstances of this case.

The Member has provided to the Society the following undertaking:

UNDERTAKING

WHEREAS I, STANLEY CHARLES EHRLICH, am a member of the Law Society of Upper Canada, and,

WHEREAS, the Law Society swore each of Complaints D441/94, D221/95 and D340/95, and

WHEREAS, a hearing in the above-noted Complaints is scheduled to proceed on December 12 and 13, 1995, and,

21st March, 1996

WHEREAS, I have executed an Agreed Statement of Facts in respect of each of Complaints D441/94, D221/95 and D340/95, and have admitted that the particulars therein supported by the facts therein constitute professional misconduct,

THEREFORE in consideration of the Law Society joining in a submission to the Discipline Committee that the penalty, if any, recommended by the Discipline Committee be a suspension for a period of two(2) months together with costs in the amount of \$500.00,

I, STANLEY CHARLES EHRlich, hereby undertake as follows:

1. To respond to written communications from the Law Society within ten (10) days of the receipt of such communications and to respond to telephone communications from the Law Society within two (2) business days thereof;
2. To respond to written communications from fellow solicitors and clients within ten (10) days of the receipt of such communications and to respond to telephone communications from fellow solicitors and clients within two (2) business days thereof;
3. To continue my participation in the Practice Review Program as run by the Professional Standards Department, and henceforth to cooperate fully with the Professional Standards Department and to implement the recommendations made by the Practice Review Program as directed by same;
4. To henceforth pay the costs of the service provided by the Professional Standards Department which, I understand, are determined at a rate of \$50.00 per hour;
5. To remit to the Law Society within 60 days of the date of this Undertaking the expenses incurred by or on behalf of the Law Society in the investigation and hearing of the aforesaid Complaints fixed in the amount of \$500.00; and
6. In satisfaction of my outstanding debt to Ms. Belah King, to remit, within seven (7) days of the date of this Undertaking, to Ms. Belah King, or as she directs, twelve (12) cheques, each in the amount of \$271.05 payable on the first day of each month commencing on January 1, 1996. It is further understood that should any of the above cheques be returned "NSF" or otherwise be non-negotiable (hereinafter "default") I will forthwith satisfy any penalty charge resulting therefrom and shall, within ten (10) days of receiving notice of such default replace the said cheque with a negotiable cheque. It is further understood that the necessity, if any, to replace any cheque more than once will be a breach of this Undertaking. It is further understood that should the terms of this clause (6) be honoured by me, the complaint of Alfred Herman, on behalf of Ms. Belah King, that I failed to honour a decision of an Assessment Officer, will not be referred to the Chair and Vice Chair of the Discipline Committee for authorization.

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.

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

21st March, 1996

A strong message must go out to the profession in general and the real estate bar in particular that it is unacceptable and may be professional misconduct if a member:

- ▶ fails to obtain discharges of pre-existing mortgages in a timely manner;
- ▶ fails to ensure that mortgage funds are not advanced unless and until the Member is in a position to fully discharge all prior encumbrances to give the new security the appropriate priority;
- ▶ fails to provide a written reporting letter of a conveyancing transaction in a timely fashion;

It is also unacceptable and may be professional misconduct to:

- ▶ fail to proceed with a civil action in a timely manner;
- ▶ fail to answer reasonable and repeated requests from the client for information;
- ▶ fail to account for retainers in a timely manner, and on request;

It is also misconduct to fail to reply to the Society's letters, and worse, to mislead the Society as to the status of an action.

The actions of the Member in these matters could easily have led to a finding of ungovernability. Had the Solicitor not co-operated with the Society at or indeed after the very last moment in each matter, and executed the Undertaking cited above, he might well be facing a recommendation for a penalty much harsher than that to which we have agreed.

We are satisfied that the public interest and the interests of general deterrence will be served by the penalty imposed.

Stanley Charles Ehrlich was called to the Bar on April 19, 1995.

ALL OF WHICH is respectfully submitted

DATED this 4th day of March, 1996

Robert B. Aaron
for the Committee

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 2 months and pay costs in the amount of \$500 and honour the conditions of his undertaking set out in the Report.

The solicitor made submissions on the commencement date of the suspension.

The following documents were filed as Exhibits:

Exhibit 3 - letter from Mr. F. T. Pujolas, Staff Lawyer to the solicitor dated January 29, 1996 re: Practice Review Programme;

Exhibit 4 - letter from Jay Chauhan dated March 15, 1996 re: Tenancy at 330 Highway 7 East, Richmond Hill.

21st March, 1996

The solicitor advised that he had been suspended administratively since January 1st, 1996 and did this in anticipation of the matter coming on before Convocation in January. The solicitor had not practised for 3 months and paid the costs of the Society and amount owing to his client.

Counsel for the Society made submissions on the issue of whether the suspension should be prospective or retroactive and made reference to the decision in the Rovet matter.

The solicitor made submissions in reply.

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

It was moved by Mr. Swaye, seconded by Mr. Gottlieb that the commencement date of the suspension be January 18th, 1996 and that costs be paid in the amount of \$500.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 2 months commencing January 18th, 1996 and pay costs in the amount of \$500.

Counsel and solicitor retired.

Re: Richard Michael ITTLEMAN - Richmond Hill

The Secretary placed the matter before Convocation.

Messrs. Banack and Crowe withdrew for this matter.

Ms. Georgette Gagnon appeared on behalf of the Society. The solicitor appeared on his own behalf assisted by Mr. Hainey, Duty Counsel.

Convocation had before it the Report of the Discipline Committee dated 4th January, 1996, together with an Affidavit of Service sworn 10th January, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th January, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st March, 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

Heather Ross, Chair
Larry Banack
Nora Angeles

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

Audrey Cado
For the Society

21st March, 1996

RICHARD MICHAEL ITTLEMAN
of the Town
of Richmond Hill
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 11, 1995.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 5, 1995, Complaint D359/94 was issued against Richard Michael Ittleman alleging that he was guilty of professional misconduct.

The matter was heard in public on October 11, 1995 before this Committee comprising Heather Ross, Chair, Larry Banack and Nora Angeles. The Solicitor attended the hearing and represented himself. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D359/94

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 Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D359/94 and the Discipline Committee having refused the Solicitor's request for an adjournment, is prepared to proceed with a hearing of this matter on October 11, 1995.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will bring a Motion to have the matter heard in camera pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D359/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 11, 1980. He practises as a sole practitioner.

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 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. A copy of the Society's Second Notice 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. By registered mail, the Law Society forwarded to the Solicitor a Third notice of Default in Annual Filing, dated January 11, 1995. 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. The Society's Third Notice was signed for and delivered on January 13, 1995. A copy of the Society's Third Notice and Acknowledgement of receipt of a registered item card is attached as Exhibit "C" to this Agreed Statement of Facts.

10. By letter dated February 24, 1995, the Solicitor forwarded to the Law Society a cheque in the amount of \$1,500.00 in payment of his late filing fee.

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

V. DISCIPLINE HISTORY

12. On July 13, 1994, the Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$500.00 with respect to his failure to file for the fiscal year ended January 31, 1993, his failure to maintain sufficient trust funds on hand to meet his client liabilities and his failure to reply to the Law Society.

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

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Michael Ittleman be Reprimanded in Convocation if his filings have been completed and he has paid costs in the amount of \$450.00 by the time this matter is considered by Convocation, failing which, that he be suspended for one month and thereafter until his filings have been completed.

The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$450.

REASONS FOR RECOMMENDATION

The Committee reviewed the complaint, the Agreed Statement of Facts filed, and concluded that the particulars of the complaint constitute professional misconduct.

With respect to the question of penalty, the Committee carefully considered the submissions of Counsel for the Society. The Committee, however, expresses serious concern with respect to the Solicitor's prior discipline history as acknowledged by him and admitted in the Agreed Statement of Facts.

The Committee heard testimony from the Solicitor concerning difficulties which he had encountered in his personal life since 1993. The Committee was sympathetic to the Solicitor and found the Solicitor candid in his submissions. The Committee, however, did not find the circumstances in mitigation as provided by the Solicitor as being sufficient to affect an appropriate penalty. The Solicitor did not fulfil his administrative obligations to the Law Society and the Committee found that the explanations he provided for such failure were not significant enough to affect the penalty.

The Solicitor has a previous discipline history involving a failure to file in the fiscal year immediately following the fiscal year which forms the subject of the complaint. The Committee, although not ruling on the issue, was also advised that the 1995 filing has not been completed, which raised concerns for the Committee.

Having considered all the facts, including the mitigating circumstances testified to by the Solicitor, it is the recommendation of the Committee that the Solicitor be reprimanded in Convocation provided his filings are complete and current when the matter comes before Convocation and the Law Society's costs of \$450.00 have been paid. If the Solicitor has failed to fulfil these conditions when the matter comes before Convocation, it is the recommendation of the Committee that the Solicitor shall be suspended for a period of one month, continuing month to month thereafter until all filings are complete and current and the costs of the Law Society are paid in full.

Richard Michael Ittleman was called to the Bar on April 11th, 1980.

ALL OF WHICH is respectfully submitted

DATED this 4th day of January, 1996

Heather J. Ross
Chair

21st March, 1996

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings had been completed, failing which he was to be suspended for 1 month and thereafter until his filings were completed and pay costs in the amount of \$450.

Ms. Gagnon advised that the solicitor made completed his filings and costs had been paid.

Mr. Hainey made brief submissions on behalf of the solicitor.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be reprimanded in Convocation.

Carried

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Re: Harry Judah LEVINSON - Toronto

The Secretary placed the matter before Convocation.

Ms. O'Connor and Mr. Marrocco withdrew for this matter.

Mr. Allan Mclure appeared on behalf of the Society. The solicitor appeared on his own behalf assisted by Mr. Hainey, Duty Counsel.

Convocation had before it the Report of the Discipline Committee dated 15th February, 1996, together with an Affidavit of Service sworn 21st February, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 19th February, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st March, 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

Heather J. Ross, Chair
Jane Harvey
Shirley O'Connor

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

HARRY JUDAH LEVINSON
of the City
of Toronto
a barrister and solicitor

Allan Maclure
for the Society

Not Represented
for the solicitor

Heard: January 4, 1996

21st March, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 13, 1995 Complaint D345/95 was issued against Harry Judah Levinson alleging that he was guilty of professional misconduct.

The matter was heard in public on January 4, 1996 before this Committee comprising Heather J. Ross, Chair, Jane Harvey and Shirley O'Connor. The Solicitor attended the hearing and represented himself. Allan Maclure appeared on behalf of the Law Society.

DECISION

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

Complaint D345/95

2. a) he failed to serve his client, Agnes Acquah, by improperly withdrawing his representation of his client in a situation which resulted in serious prejudice to the said client.

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 and is prepared to proceed with a hearing of this matter on January 4, 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 D345/95 and this agreed statement of facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1987. He carries on the private practice of law in the City of Toronto.

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5. The Solicitor had been retained by Agnes Acquah in June 1992 for the purposes of representing her in a hearing before an Immigration Adjudicator and a member of the Immigration & Refugee Board pursuant to the Immigration Act.
6. The hearing pertained to Ms. Acquah's remaining in Canada as an immigrant or as a refugee. Immigration Canada took the position that Ms. Acquah failed to satisfy the relevant requirements of the Immigration Act. (Document Book, Tab 1, at p.2, lines 67-69 and p.3, lines 5-47)
7. The hearing began on March 16, 1992. Ms. Acquah appeared in person and provided to the adjudicator the Solicitor's letter requesting that the hearing be adjourned to September 21, 1992 so as to allow for his attendance. The adjournment was granted. (Document Book, Tab 1, at p.2, lines 22-37)
8. On September 21, 1992, the Solicitor appeared at the hearing together with Ms. Acquah. He became counsel of record. The hearing was adjourned for continuation on November 16, 1992. (Document Book, Tab 2, at p.1, line 37-42; p.2, lines 50-52, 65-67)
9. The tribunal heard evidence on November 16, 18 and 26, 1992. The Solicitor was in attendance on each of these days, both examining and cross examining witnesses. (Document Book, Tabs 3,4 and 5 respectively)
10. At the conclusion of evidence on November 26, 1992, the hearing was adjourned to December 21, 1992 for submissions and decision. By his own estimate, the Solicitor advised the adjudicator that his submissions would be no more than one hour, including time needed for translation. (Document Book, Tab 5 at p.17, lines 23-31, 62-66)
11. The hearing continued on December 21, 1992. The Solicitor did not appear on behalf of Ms. Acquah. The solicitor states that he had advised Ms. Acquah to request an adjournment. The Adjudicator heard submissions from the Case Officer of Immigration Canada supporting Ms. Acquah's exclusion from Canada. Ms. Acquah did not request an adjournment. She responded only briefly and without reference to the evidence heard by the panel. The hearing was adjourned to December 23, 1992 for the delivery of the decision of the tribunal. (Document Book, Tab 6)
12. On December 23, 1992 Ms. Acquah appeared before the Hearing Panel. The Solicitor was not in attendance. He had, however, provided Ms. Acquah with a letter for the Adjudicator dated December 21, 1992. (Document Book, Tab 7)
13. Ms. Acquah presented the Solicitor's letter to the adjudicator who entered the letter as an exhibit and read it into the record. The adjudicator refused to adjourn the hearing notwithstanding the Solicitor's assertion that an adjournment was necessary so as to allow Ms. Acquah the benefit of counsel in making submissions and representing her in the event the hearing were to continue. (Document Book, Tab 8, p.1, lines 60-68, p.2, lines 5-30)
14. The tribunal adjudicator proceeded to render the finding of the panel that Ms. Acquah did not meet the requirements of the relevant sections of the Immigration Act and he ordered that she be excluded from Canada. The adjudicator also ordered that she be detained in custody until such time that she could post bond. The hearing was at an end. (Document Book, Tab 8, p.2-7)

21st March, 1996

15. Ms. Acquah subsequently retained new counsel who commenced on her behalf in the Federal Court of Canada an Application for Judicial Review of the Tribunal's decision. On July 5, 1994, Mr. Justice Rothstein found that Ms. Acquah had been denied her right to procedural fairness because she had not had the benefit of counsel in the latter stages of the Inquiry. He quashed the decision of the Tribunal and remitted the matter for a new hearing. (Document Book, Tab 9)

16. Mr. Justice Rothstein also considered the conduct of the Solicitor in withdrawing his representation of Ms. Acquah. He found that: "counsel did desert the applicant at a critical stage of her credible basis hearing and left her in a position of disadvantage and peril". Document Book, Tab 9, p.7)

17. On December 1, 1994 the Registrar of the Immigration and Refugee Board, Joyce Budnark wrote to the Law Society and she complained about the Solicitor's conduct in withdrawing his representation of Ms. Acquah. (Document Book, Tab 10)

18. On January 4, 1995 the Solicitor provided the Law Society with his written response to the complaint of Ms. Budnark. The Solicitor described in detail the circumstances of his retainer by Ms. Acquah, the decision of the Ontario Legal Aid Plan not to fund her representation at the hearing and Ms. Acquah's failure during the three (3) weeks prior to the resumption of the hearing to provide him with monies refreshing his retainer. In these circumstances the solicitor was of the view that he was not obligated to appear before the tribunal on December 21, 1992. (Document Book, Tab 11)

19. The Solicitor has advised the Law Society that he had thought that his letter to the Adjudicator, dated December 21, 1992 Document Book, Tab 7) would have been sufficient for the purposes of securing the adjournment of the hearing so as to allow Ms. Acquah to retain new counsel or otherwise refresh his retainer.

20. In hindsight, the Solicitor acknowledges that his reliance on his letter of December 21, 1992 left Ms. Acquah in a vulnerable position in the event that the Tribunal refused to adjourn the hearing. The Solicitor further acknowledges that it was his responsibility as Ms. Acquah's counsel of record to appear before the Tribunal for the purposes of requesting the adjournment or making submissions as to the merits of Ms. Acquah's case in the event the matter proceeded.

21. In hindsight, the Solicitor acknowledges that his decision to withdraw his services occurred at a critical juncture in the proceedings and deprived Ms. Acquah of his knowledge of her circumstances, legal expertise and advocacy in addressing matters relevant to the Tribunal's deliberations.

IV. DISCIPLINE HISTORY

22. The Solicitor does not have a prior discipline record.

"DATED at Toronto this 4th day of January, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Harry Judah Levinson be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The facts constituting the complaint are set forth in the Agreed Statement of Facts. The Solicitor admitted that the facts alleged in the Agreed Statement of Facts were true and constituted professional misconduct, and the Committee so found.

The Solicitor was retained by Agnes Acquah in June 1992 for the purpose of representing her in a hearing before an Immigration Adjudicator and a member of the Immigration and Refugee Board pursuant to the Immigration Act. The hearing began on March 16th, 1992. Ms. Acquah appeared in person, and provided to the Adjudicator, the Solicitor's letter requesting that the hearing be adjourned to September 21, 1992 to allow for his attendance. The adjournment was granted.

On September 21st, 1992 the Solicitor appeared at the hearing with Ms. Acquah and became counsel of record. The hearing was adjourned for continuation on November 16th, 1992.

The Tribunal heard evidence on November 16, 18 and 26, 1992. The Solicitor attended on each of these days, examining and cross-examining witnesses. At the conclusion of evidence on November 26, 1992 the hearing was adjourned to December 21, 1992 for submissions and decision. By his own estimate the Solicitor advised the adjudicator that his submissions would be no more than one hour including time needed for translation.

The hearing continued on December 21, 1992. The Solicitor did not appear on behalf of Ms. Acquah. The Solicitor states he had advised Ms. Acquah to request an adjournment. At the return of the matter on December 21, 1992 Ms. Acquah did not request an adjournment, responded only briefly, and without reference to the evidence heard by the panel. The case was adjourned to December 23, 1992 for the delivery of the decision of the Tribunal. On December 23, 1992 Ms. Acquah appeared before the hearing panel. The Solicitor was not in attendance. He had, however, provided Ms. Acquah with a letter for the Adjudicator dated December 21, 1992. The Solicitor's letter dated December 21, 1992 addressed to the Adjudicator read as follows:

"My client has informed me that you have requested a letter confirming the reason for my absence at the resumption of her hearing on December 21, 1992. As my client explained, the Ontario Legal Aid Plan has not authorized me to represent her any further. This decision is being appealed on an urgent basis by Mrs. Nyame. Until I am in receipt of a further authorization from the Ontario Legal Aid Plan I am not in a position to represent Mrs. Nyame further. In the circumstances an adjournment of her hearing is necessary in order that she have counsel to make submissions on her behalf and represent her at the resumption of her enquiry should that be necessary."

signed by Yahouda Levinson.

(Nyame was Agnes Acquah's married name.)

On December 23, 1992, Ms. Acquah presented the Solicitor's letter to the Adjudicator who entered the letter as an exhibit and read it into the record. The Adjudicator refused to adjourn the hearing, notwithstanding the Solicitor's assertion that an adjournment was necessary, so as to allow Ms. Acquah the benefit of counsel in making submissions and representing her, in the event the hearing were to continue.

The Tribunal proceeded to render the finding of the panel that Ms. Acquah did not meet the requirements of the relevant sections of the Immigration Act, and he ordered that she be excluded from Canada. The Adjudicator also ordered that she be detained in custody until such time as she could post bond. The hearing was concluded.

Ms. Acquah subsequently retained new counsel, who commenced on her behalf in the Federal Court of Canada, an application for judicial review of the Tribunal's decision. On July 5, 1994, Mr. Justice Rothstein found that Ms. Acquah had been denied her right to procedural fairness because she had not had the benefit of counsel in the latter stages of the enquiry. He quashed the decision of the Tribunal and remitted the matter for a new hearing. In his Reasons For Order Justice Rothstein also considered the conduct of the Solicitor in withdrawing his representation of Ms. Acquah. He stated as follows:

"It is clear that counsel did desert the applicant at a critical stage of her credible basis proceeding and left her in a position of disadvantage and peril. At the least, counsel should have assisted the applicant by contacting the panel in advance or in writing to advise of the difficulty and try to arrange to provide the panel with information that could persuade it to grant an adjournment. That was not done, and at least *prima facie* it appears that counsel's conduct was not consistent with the requirements of Rule 8."

Rule 8 of the Rules of Professional Conduct, and in particular Commentary 5 and 7 provide guidance to solicitors in situations where they wish to withdraw their services for non-payment of their fees. Rule 8 provides as follows:

Rule 8 - Withdrawal of Services

The lawyer owes a duty to the client not to withdraw services except for good cause and upon notice appropriate in the circumstances.

Commentaries 1 and 2 provide the guiding principles with respect to termination or withdrawal of services by a lawyer as follows:

COMMENTARY

1. *Although the client has the right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having accepted professional employment the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship.*

2. *In all situations the lawyer who withdraws from employment should act so as to minimize expense and avoid prejudice to the client, and should do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.*

Commentaries 5, 7 and 8 provide guidance regarding the withdrawal of services for non-payment of fees and the type of notice that should be provided to the client, together with the duty of the lawyer following withdrawal of services.

21st March, 1996

The Solicitor abandoned his client at a critical stage in her hearing. He represented her through the substantive portion of the hearing when the evidence was adduced, but abandoned her at the final phase of the hearing, when he was to make submissions on her behalf, based on the evidence and the law. The Solicitor had only given Ms. Acquah three weeks notice prior to the resumption of the hearing on December 21, 1992, requiring a retainer when the Ontario Legal Aid Plan declined to issue a certificate for the immigration hearing. In these circumstances, the Solicitor was of the view that he was not obligated to appear before the Tribunal on December 21, 1992. The Solicitor's misconduct in this case is analogous to a lawyer representing a client throughout a trial and then abandoning the client prior to making submissions on the last day of trial.

Ms. Acquah was from Ghana, and although she spoke some limited English a translator was used at the hearing held in November 1992. The panel was provided with a transcript of the Immigration and Refugee Board Adjudication Division Minutes of Enquiry held at Toronto on December 23, 1992, when the decision to exclude Ms. Acquah from Canada was made. In addition, a detention Order was also made, until such time as Ms. Acquah was able to find a suitable bondsperson, who was prepared to post a performance bond in the sum of \$3,000 without cash deposit. There was no evidence before this Committee as to the length of Ms. Acquah's detention.

In hindsight, the Solicitor acknowledged that his decision to withdraw services occurred at a critical stage in the proceedings, and deprived Ms. Acquah of his knowledge of her circumstances and his legal expertise in advocacy, in addressing matters relevant to the Tribunal's deliberations.

The Committee was presented with a joint submission as to penalty in which it was recommended that the Solicitor be Reprimanded in Committee. The Committee rejected the joint submission and instead recommends a Reprimand in Convocation.

The Solicitor withdrew his services three weeks prior to the date for submissions, from a client who was disadvantaged in many respects. Ms. Acquah is a person for whom English is a second language and who required the assistance of a translator at her hearing. The Legal Aid Certificate was declined, not because Ms. Acquah did not meet financial eligibility criteria, but because the Area Director made a determination that her enquiry and request to remain in Canada was without merit. The lawyer withdrew his services solely on the grounds that he was not likely to be paid by the Ontario Legal Aid Plan when, on the basis of his own estimate, he only had approximately one hour of work to perform on behalf of Ms. Acquah at the submission stage of the enquiry. Notwithstanding the refusal of the certificate by the Ontario Legal Aid Plan, the Solicitor was under a positive duty not to withdraw from employment if to do so would prejudice his client, which in this case it clearly did.

The Solicitor also failed to do all that reasonably could be done to facilitate the orderly transfer of the matter to a successor lawyer. Instead, he sent a linguistically disadvantaged lay person into a critical stage of the hearing without prior notice to the Tribunal, a letter to the Tribunal or alternately the Solicitor himself, or an agent on his behalf, appearing to speak to the adjournment for Ms. Acquah on December 21, 1992. Non-payment of his fees by the Ontario Legal Aid Plan, or otherwise, was not justifiable cause for terminating the lawyer-client relationship three weeks before the submission stage of the hearing. The interval between the withdrawal of services by the Solicitor and the conclusion of the enquiry some three weeks later was not sufficient time to enable the client to obtain another lawyer, and allow such other lawyer adequate time for preparation.

For all of these reasons it is the Committee's recommendation that the Solicitor be Reprimanded in Convocation.

21st March, 1996

The Solicitor does not have a prior discipline record.

Harry Judah Levinson was called to the Bar on the 13th day of April, 1987.

ALL OF WHICH is respectfully submitted

DATED this 15th day of February, 1996

Heather J. Ross
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation.

Both counsel and Duty Counsel made brief submissions in support of the joint submission made at the hearing before the Discipline Committee that the solicitor be reprimanded in Committee.

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

It was moved by Mr. Topp, seconded by Mr. MacKenzie that the joint submission made at the hearing that the solicitor be reprimanded in Committee be adopted.

Lost

The recommended penalty of the Discipline Committee was voted on and adopted.

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

The Treasurer administered the reprimand.

Convocation took a brief recess at 10:30 a.m. and resumed at 10:45 a.m.

Re: Morris Calvin ORZECH - Scarborough

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Ms. Elizabeth Cowie appeared for the Society. The solicitor appeared on his own behalf assisted by Mr. Hainey, Duty Counsel.

Convocation had before it the Report of the Discipline Committee dated 8th March, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st March, 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:

21st March, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Eleanore A. Cronk

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

Elizabeth Cowie
for the Society

MORRIS CALVIN ORZECH
of the City
of Scarborough
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 7, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 9, 1995 Complaint D75/95 was issued against Morris Calvin Orzech alleging that he was guilty of professional misconduct.

The matter was heard in public on March 7, 1996 before a single Bencher Panel of the Discipline Committee. Elizabeth Cowie appeared as Counsel on behalf of the Law Society. The Solicitor, Morris Calvin Orzech, appeared in person and was not represented at the Hearing by Counsel.

At the outset of the Hearing, in addition to the filing of a copy of Complaint D75/95 as Exhibit 1, a form of written Consent completed by Elizabeth Cowie on behalf of the Law Society and by the Solicitor, dated March 7, 1996, was filed with the Committee as Exhibit 2. Pursuant to the Consent, the Solicitor and the Law Society consented to this Complaint being heard by me as a single Bencher Panel of this Committee. This consent was given by both parties taking into account the fact that I had acted as the pre-hearing conference Bencher on February 9 and February 26, 1996, respectively, in this matter.

DECISION

Particulars of the alleged professional misconduct were set out in Exhibit 1, Complaint D75/95. In addition, a Statement of Facts was filed as Exhibit 4 at the Hearing. In paragraph 3 of the Statement of Facts the Solicitor indicated that:

- (1) he admitted that the witnesses available to the Law Society, if called, would testify in accordance with the Statement of Facts; and
- (2) he intended to tender no evidence and make no submissions on the issue of professional misconduct other than to admit that the conduct described in the Statement of Facts would constitute professional misconduct.

21st March, 1996

Attached to this Report and Decision: as Appendix "A", is a copy of Complaint D75/95 (Exhibit 1); as Appendix "B", is a copy of the Statement of Facts (Exhibit 4); as Appendix "C", is a copy of the written Consent of the Law Society and the Solicitor (Exhibit 2); and, as Appendix "D", is a copy of a written Memorandum of Agreement dated March 1, 1996, signed by Elizabeth Cowie as Counsel for the Law Society and the Solicitor setting out the agreement of the parties as a result of the pre-hearing conference held on February 9 and 26, 1996, respectively (Exhibit 3). All of these materials were filed with the Committee on consent of both parties.

Counsel for the Law Society also filed, as Exhibits 5 and 6, two Briefs of Documents relevant to the allegation of professional misconduct in this matter. These documents were also received on consent of both parties.

Counsel for the Law Society submitted that the facts outlined in the Statement of Facts established professional misconduct. The Solicitor confirmed to the Committee that he agreed with this position by the Law Society, he did not wish to tender any evidence relating to the allegation of professional misconduct and he admitted that the conduct described in the Statement of Facts constituted professional conduct.

In the circumstances, and having regard to the nature of the matters set out in the Statement of Facts and the admission of professional misconduct made by the Solicitor, the Committee concluded that the Solicitor is guilty of professional misconduct as alleged in Complaint D75/95 in accordance with the facts outlined in the Statement of Facts.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Morris Calvin Orzech be granted permission to resign his membership in the Law Society, such resignation to be submitted by April 15, 1996, failing which the Committee recommends that Morris Calvin Orzech be disbarred.

REASONS FOR RECOMMENDATION

At the request of the Solicitor and with the consent of Counsel for the Law Society, the Committee received as Exhibit 7 two medical reports relating to the medical condition of the Solicitor, dated February 9 and February 12, 1996, respectively. The Solicitor requested that the contents of Exhibit 7 be considered by the Committee *in camera*. Counsel for the Law Society did not object to this request and the Committee was satisfied that the contents of the two medical reports should be considered by it in closed session. Exhibit 7 was therefore considered by the Committee *in camera*. The balance of the Hearing was conducted in public.

Counsel for the Law Society and the Solicitor jointly submitted that the appropriate penalty in this case, in the circumstances, was a recommendation that the Solicitor be granted permission to resign his membership in the Law Society, such resignation to be delivered by April 15, 1996, failing which the Solicitor should be disbarred.

Counsel for the Law Society argued, in support of the joint submission concerning penalty, that if one considered in this case only the matters set out in the Statement of Facts, the appropriate penalty would be disbarment. However, Ms. Cowie submitted that there were certain mitigating factors which should be taken into account, as follows:

21st March, 1996

- (1) the Solicitor was called to the Bar in 1962 and practises as a sole practitioner. He does not have a discipline history. Thus, for more than thirty years, his conduct as a barrister and solicitor had not given rise to disciplinary action;
- (2) as established by the two medical reports filed with the Committee by the Solicitor as Exhibit 7, the Solicitor is in ill health and has been for some time;
- (3) extensive pre-hearing negotiations and meetings had been held in this case between the Law Society and the Solicitor resulting, ultimately, in an agreement between the Law Society and the Solicitor as documented in the Memorandum of Agreement filed as Exhibit 3;
- (4) had the Law Society been required to proceed with the calling of oral evidence at this Hearing, Counsel for the Law Society estimated that the Hearing would have lasted approximately two to three weeks and that it may have been necessary for the Law Society to call approximately thirty-five witnesses. The cooperation of the Solicitor in entering into the Memorandum of Agreement and in admitting that the facts set out in the Statement of Facts constituted professional misconduct, obviated the necessity for a lengthy Hearing and considerable inconvenience to a large number of witnesses;
- (5) the Solicitor has indicated that he does not wish to practise law in the future;
- (6) the Solicitor had agreed with the Law Society that the Report and Decision of this Committee should be placed before Convocation at the March, 1996 Convocation. The Solicitor had agreed in this regard to waive his right to have the matter proceed before Convocation at a later date; and
- (7) the Solicitor had agreed to deliver his resignation by no later than April 15, 1996 if the joint submission of the parties was accepted by this Committee and by Convocation.

The Solicitor confirmed to the Committee that he was in agreement with the joint position on penalty outlined above, and that he had no other further submissions which he wished to make concerning penalty. The Solicitor also confirmed to the Committee that he had had an opportunity to seek legal advice concerning this matter.

The matters set out in the Statement of Facts in this case are most serious and the conduct of the Solicitor spanned several years of his practice of law. The Committee agreed with Counsel for the Law Society that if one were to consider only the matters set out in the Statement of Facts there would be no alternative but to recommend disbarments as the appropriate penalty in the circumstances.

However, the Committee also agreed with Counsel for the Law Society that there are several important mitigating circumstances to be taken into account in this case. Having regard to the submissions made by Ms. Cowie, noted above, and to the medical information and evidence provided by the Solicitor in Exhibit 7, it is clear that the Solicitor is not in good health at the present time and has not been in good health for a considerable period. The fact that the Solicitor has been practising at the Bar for thirty years without a prior discipline history is a very significant mitigating factor to be taken into account in determining an appropriate penalty in this case.

21st March, 1996

In addition, in the view of the Committee, the Solicitor's cooperation at this stage of the proceeding, both by his admission contained in the Statement of Facts and confirmed directly to the Committee and his voluntary agreement to resign his membership by April 15, 1996, if this is in accord with Convocation's final determination in this matter, is also a matter appropriately to be taken into account in assessing penalty.

Further, the Solicitor's cooperation at this stage of the proceeding has made unnecessary a lengthy Hearing and considerable inconvenience to a large number of witnesses. That too, in the Committee's view, is a proper factor to be taken into account in assessing penalty.

Most importantly, both the Law Society and the Solicitor confirmed to the Committee that there have been extensive pre-hearing discussions, conferences and negotiations in this matter, spanning numerous months, and that only as a result of that process, joint submissions concerning penalty were made possible. In this Committee's view, joint submissions concerning penalty should not lightly be disregarded by the Committee, particularly when they are the outcome of an extended period of discussions and negotiations through the pre-hearing conference process. Where joint submissions concerning penalty are wholly inappropriate having regard to the nature of the conduct involved then such joint submissions can and should be disregarded; however, when the joint submissions are not inappropriate and when they are responsive both to the type of conduct established and the particular circumstances of the Solicitor, it is the Committee's view that only in rare circumstances and with considerable caution should the Committee disregard such joint submissions concerning penalty.

For all of these reasons, and placing particular emphasis on the fact that the Solicitor has no prior discipline history, has cooperated with the Law Society during this part of its proceedings, his current and past health and medical condition and the process engaged in by the Solicitor and the Law Society which culminated in joint submissions regarding penalty, the Committee determined that the appropriate recommendation to be made in this case was in accordance with the joint submissions regarding penalty and the Committee so recommends to Convocation.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1996

Eleanore A. Cronk

There were no submissions and the Report was voted on and adopted.

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

Both counsel made submissions in support of the recommended penalty.

The solicitor made submissions to have Convocation receive the medical evidence in camera.

The public withdrew as Convocation went in camera with both counsel, the solicitor and reporter present.

The solicitor made further brief submissions in support of his medical history being received in camera.

Counsel, the solicitor and the reporter withdrew as Convocation deliberated.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the medical evidence be received in public.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision to receive the medical evidence in public.

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

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be granted permission to resign, such resignation to be received by the Law Society by April 15th, 1996.

Carried

Counsel and solicitor retired.

Re: Moshe TELLER - Scarborough

The Secretary placed the matter before Convocation.

Mr. Copeland withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 15th February, 1996, together with an Affidavit of Service sworn 21st February, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 19th February, 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

Heather J. Ross, Chair
Paul D. Copeland
Robert B. Aaron

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

Audrey Cado
For the Society

MOSHE TELLER
of the City
of Scarborough
a barrister and solicitor

Not Represented
For the solicitor

Heard: February 6, 1996

21st March, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 27, 1995 Complaint D371/95 was issued against Moshe Teller alleging that he was guilty of professional misconduct.

The matter was heard in public on February 6, 1996 before this Committee comprising Heather J. Ross, Chair, Paul D. Copeland and Robert B. Aaron. The Solicitor did not attend the hearing, nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D371/95

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

Evidence

The 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 D371/95 and is prepared to proceed with a hearing of this matter on February 7, 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 D371/95 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1984. He practises as a sole practitioner.

21st March, 1996

5. The Solicitor's fiscal year end is January 31st. The Solicitor did not file his Form 2 and 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.

6. 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 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 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 \$1,5000.00. 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 and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts.

8. A Law Society staff employee spoke with the Solicitor by telephone on or about October 10, 1995. The Solicitor advised that he would attempt to complete the filing by the following day. A copy of the Law Society's telephone transaction form is attached as Exhibit "C" to this Agreed Statement of Facts.

9. The Solicitor advised the Law Society by telephone on November 2, 1995 that he would make his outstanding filing by November 8, 1995. A copy of the Law Society's telephone transaction form, dated November 2, 1995 is attached as Exhibit "D" to this Agreed Statement of Facts.

10. To date, the Solicitor has not made the outstanding filing.

V. DISCIPLINE HISTORY

11. The Solicitor does not have a discipline history.

DATED at Toronto this 6th day of February, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Moshe Teller be Reprimanded in Convocation if his filing has been completed when this matter is considered by Convocation, failing which, that he be suspended for one month, and month to month thereafter, until his filing has been completed. The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$400.

REASONS FOR RECOMMENDATION

The Solicitor admitted that the facts contained in the Agreed Statement of Facts were true and constituted professional misconduct and the Committee so found.

21st March, 1996

The Solicitor did not file his Form 2 and Form 3 within six months of his fiscal year ending January 31, 1995. Notices of Default in Annual Filing were sent to the Solicitor on August 16, 1995 and September 18, 1995. On or about October 10, 1995, the Solicitor advised Law Society staff by telephone that he would attempt to complete the filing by the following day, and on November 2, 1995 he again advised the Law Society by telephone that he would make his outstanding filing by November 8, 1995. The Solicitor has still not made the outstanding filing.

The Solicitor did not attend the hearing.

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

ALL OF WHICH is respectfully submitted

DATED this 15th day of February, 1996

Heather J. Ross
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings were completed failing which he was to be suspended for 1 month and month to month thereafter until his filings were completed and pay the Society's costs in the amount of \$400.

Ms. Cowie advised that the filings were not made.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be suspended for 1 month continuing until the filings were completed and pay the Society's costs in the amount of \$400.

Carried

Counsel retired.

Re: Joseph Nathan SOLOMON - Toronto

The Secretary placed the matter before Convocation.

Mr. Neil Perrier appeared for the Society and Mr. William Trudell appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 19th June, 1995, together with an Affidavit of Service sworn 2nd August, 1995 by Ronald Hoppie that he had effected service on the solicitor by registered mail on 30th June, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor 5th July, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mary Weaver, Chair
Rino Bragagnolo, Q.C.
Netty Graham

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

Stephen Foster and Christina Budweth
For the Society

JOSEPH NATHAN SOLOMON
of the City
of Toronto
a barrister and solicitor

William Trudell and M. B. Ingram
for the Solicitor

Heard: June 22, 1994, March 22, 1995
March 24, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 9, 1993, Complaint D305/93 was issued, on January 13, 1993, Complaint D7/94 was issued, on January 13, 1994, Complaint D8/94 was issued and on July 7, 1994, Complaint D203/94 was issued against Joseph Nathan Solomon alleging that he was guilty of professional misconduct.

The matter was heard in public on June 22nd, 1994, March 22, 1995 and March 24, 1995 before this Committee composed of Mary Weaver, Chair, Rino Bragagnolo, Q.C. and Mrs. Netty Graham.

The solicitor was present at the hearing and was represented by W. M. Trudell and M. B. Ingram. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D305/93

2. a) He misapplied funds from the Estate of Myer Murray Goldstein by investing funds in other than first mortgages contrary to the provisions of the deceased's Will as follows:
 - i) \$30,000 second mortgage on 186 Pinevalley Crescent, Woodbridge, Ontario;
 - ii) \$55,000 third mortgage on 438 Ontario Street, Toronto, Ontario;

21st March, 1996

- iii) \$22,000 on 3669 Baird Court, Mississauga, Ontario;
 - iv) \$18,500 on 24 O'Hara Avenue, Toronto, Ontario;
 - v) \$125,000 on Parts of Lots 27 and 28, concession 1, Huntsville, Ontario.
- b) He acted in a conflict of interest contrary to Rule 5 of the Rules of Professional Conduct by acting for the mortgagors and mortgagee in transactions ii), iii), and iv);
 - c) He preferred the interests of a client, Mr. Helperin, over the interests of his client, the estate, in respect of transaction iv) above;
 - d) he borrowed money from his client, Mrs. Edna Sterner, by arranging for her to invest \$108,000 in a second mortgage on a property at 500 Eglinton Avenue West, Toronto, in which he had a one-third ownership interest;
 - e) He has failed to provide a complete reply to the Law Society regarding a complaint by Robert Phillips despite a letter dated December 4, 1992 and telephone requests on March 26, April 15, April 19 and May 3, 1993;
 - f) He has failed to honour an Undertaking to promptly and meaningfully reply to the Law Society.

Complaint D7/94

- 2. a) He breached his fiduciary duty to the following clients:
 - i) Charles P. Lapelle, in respect of a \$282,225.24 mortgage loan on 483 Ontario Street, Toronto, made on or about October 25, 1990;
 - ii) Alfred Rosenmann, in respect of a \$7,000 mortgage loan on 483 Ontario Street, Toronto, made on or about March 27, 1991;
 - iii) Mr. and Mrs. Brown, in respect of a \$100,000 mortgage given to Pathway Mortgage Investment Corp. in June, 1992;
 - iv) Alfred Rosenmann, in respect of a \$65,200 mortgage loan on 55-61 King Street E., Cobourg, made in October and November, 1991;
 - v) Charles Mixon, Edwina Simpson and Alfred Rosenmann, in respect of a \$14,000 mortgage on 137 Annette Street, Toronto, entered into on or about January 14, 1992;
- b) From December, 1992 to March, 1993 he operated his practise through his trust account in contravention of the Regulations made pursuant to the Law Society Act.

Complaint D8/94

2. a) He breached his Undertaking given to the Law Society on November 17, 1992 to promptly and meaningfully reply to communications from the Law Society, in that:
 - i) he failed to reply to Law Society letters dated May 11, 1993 and June 23, 1993 and telephone calls made June 4, 1993 and June 16, 1993 requesting a response to a complaint made by Murray E. Lightman on behalf of his client, Mrs. Edna Sterner;
 - ii) he failed to reply to Law Society letters dated February 5, 1993 and March 23, 1993 and telephone calls made March 1, 11, and 16, 1993 requesting a response to a complaint by Earl S. Heiber;
 - iii) he failed to reply to Law Society letters dated March 1, 1993 and April 15, 1993 and telephone calls made March 23, 1993, April 1, 1993 and April 7, 1993 requesting a response to a complaint made by Maxwell Gottlieb;
- b) He failed to provide a reply to the Law Society regarding the complaint made by Murray E. Lightman on behalf of his client, Mrs. Edna Sterner, despite Law Society letters dated May 11, 1993 and June 23, 1993 and telephone calls made June 4, 1993 and June 16, 1993.

Complaint 203/94

2. a) He failed to comply with his Undertaking to the Law Society dated November 17, 1992 by failing to reply promptly and meaningfully to letters to him dated March 30, 1994 and May 20, 1994 within one week and telephone requests on April 27, 1994, April 29, 1994, May 16, 1994 and May 18, 1994 within two business days with respect to a complaint by Bernard H. Noik;
- b) He failed to reply to the Law Society regarding a complaint by Bernard H. Noik despite letters to him dated March 30, 1994 and May 20, 1994 and telephone requests on April 27, 1994, April 29, 1994, May 16, 1994 and May 18, 1994;
- c) As solicitor and co-executor of the estate of Andrew White, the Solicitor failed to answer with reasonable promptness letters to him dated December 4, 1991, January 3, 1992 and October 22, 1993 from Ian Thompson, a fellow solicitor, that required a reply;
- d) He failed to comply with a Citation To Executors to Bring in and Pass Accounts dated January 11, 1994 with respect to the estate of Andrew White;
- e) He failed to comply with an Order dated March 25, 1994 to pass the accounts within 30 days of the date of the Order with respect to the estate of Andrew White.

EVIDENCE

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

"Agreed Statements of Facts D305/93, D7/94, D8/94

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D305/93, D7/94, and D8/94 and is prepared to proceed with a hearing of this matter on June 22, 1994.

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 D305/93, D7/94, and D8/94 and admits the particulars contained therein. The Solicitor also 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 in March, 1971. He practises as a sole practitioner and conducts a general practice.

Complaint D305/93 - Particulars 2(a), (b) and (c)

Misapplied Funds From Goldstein Estate

5. Myer Murray Goldstein died on July 14, 1987. His will named the Solicitor as executor and trustee of the estate. A copy of the will is attached at Tab 1 of the Book of Documents.

6. Mr. Goldstein left specific bequests to friends and relatives and provided that the residue (consisting of monies, insurance policy returns and investments) was to be invested in investments authorized by the Ontario Trustee Act for a period of ten years. After the ten year period, the proceeds were to be paid to the children of Mr. Goldstein's cousins, all resident in England.

7. The Solicitor invested the Estate assets in mortgages. A copy of the Solicitor's trust ledger for the Goldstein Estate is attached at Tab 2 of the Book of Documents.

8. Five of the mortgages remain outstanding and they do not meet the requirements of the Ontario Trustee Act which provides for investment in first mortgages only (Section 26(b)). A summary of the mortgages is as follows:

	Address	Rank of Mortgage	Amount invested from Goldstein Estate	Amount Improperly Invested
1.	186 Pinevalley Crescent, Woodbridge, Ontario	second	\$30,000.00	\$30,000.00
2.	438 Ontario Street, Toronto, Ontario	third	55,000.00	55,000.00
3.	3669 Baird Court, Mississauga, Ontario	third	22,000.00	6,000.00
4.	24 O'Hara Avenue, Toronto, Ontario	second	18,500.00	18,500.00
5.	Part of Lots 27 and 28, Concession 1, Huntsville, Ontario	second	125,000.00	125,000.00
	TOTAL		<u>\$250,500.00</u>	<u>\$234,500.00</u>

9. The monies respecting mortgages 1, 2, 3, and 4 were lost. The Huntsville property, mortgage 5, has not yet been sold but the Law Society's examiner questions whether the Solicitor will recover any of the \$125,000.00.

10. On mortgages 2, 3, and 4, the Solicitor had acted for the mortgagors previously as well as the mortgagees. He acted for both sides on these transactions but arranged for the mortgagors to obtain independent legal advice from other lawyers who were, at the time, tenants of the Solicitor. Because of the landlord-tenant and other relationships (see below), the advice may be seen as not truly independent.

11. As well, the funds in mortgage 4 were advanced to a Mr. Helperin who was a relative of the Solicitor's wife. The Solicitor states that Mr. Helperin was a long time client for whom the Solicitor had done more than 200 mortgage transactions. The mortgage given to secure this advance was a second mortgage which had been held by the Solicitor's wife and was technically in default at the time of the advance. The Solicitor states that this mortgage was a construction mortgage and it was the intention that the mortgage, both principal and interest, was to be repaid upon the sale of the property or upon the arrangement of takeout financing.

12. The details of the five mortgages in question are as follows:

186 Pinevalley Crescent, Woodbridge, Ontario -
\$30,000.00 investment from Goldstein Estate

13. This property was transferred to 865605 Ontario Inc. (Tab 3 of the Book of Documents), and the transfer was registered on November 3, 1989 (Tab 4 of the Book of Documents). The purchase price was \$1,200,000.00. The transferee's solicitor was John J. Andriano.

14. A first mortgage was registered on the property in the amount of \$650,000.00 on November 3, 1989 (Tab 5 of the Book of Documents). The mortgagee was Maurice Stekel in Trust. He was represented by the Solicitor.

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15. A second mortgage was also registered on same day in the amount of \$120,000.00 (Tab 6 of the Book of Documents). The mortgagee was Solomon, Joseph Nathan in trust. \$90,000.00 of this mortgage was assigned to Minnie Blumenthal on November 27, 1989 (Tabs 7 and 8 of the Book of Documents). The other \$30,000.00 came from the Meyer Goldstein Estate (Tab 9 of the Book of Documents).

16. A third mortgage was registered on the property in the amount of \$150,000.00 on April 26, 1990. The mortgagee is Shnier, Robert in trust and he was represented by Savage, Shnier & Swanick (Tab 10 of the Book of Documents).

17. The Statement of Account (Tab 11 of the Book of Documents) and the client ledger (Tab 12 of the Book of Documents) show the flow of funds for the first and second mortgages as follows:

18. The flowchart above discloses and the Solicitor acknowledges that he benefited from placing these mortgages by collecting legal fees in the amount of \$7,634.00 and by paying two of his companies inspection and lenders fees totalling \$1,000.00. However, the fees do not appear unreasonable given the size of various transactions.

19. The Solicitor used this account to deposit mortgage payments collected for the second mortgagees and then to disburse them accordingly. For example, \$1,700.00 per month was deposited in the mixed trust account and then \$1,275.00 was paid to Minnie Blumenthal by cheque and \$425.00 was transferred to the Goldstein Estate ledger. The Solicitor states that the mortgage performed for approximately 9 months before going into default.

20. The mortgage payments stopped around June or July 1990 (Tab 13 of the Book of Documents).

21. The Solicitor issued a Notice of Sale Under Mortgage on about October 10, 1990 (Tab 14 of the Book of Documents).

22. The property was sold for \$505,000.00 and the transfer was registered on November 14, 1991 (Tabs 15 and 16 of the Book of Documents). There were no funds available for the second mortgagees.

23. The Solicitor admits that he invested \$30,000.00 from the estate of Myer Murray Goldstein in an investment that was not authorized by the Ontario Trustees Act. These funds have since been lost.

438 Ontario Street, Toronto, Ontario -
\$55,000.00 investment from Goldstein Estate

24. The property was purchased by Dukic Decor Renovation Co. Ltd. and the transfer was registered on September 28, 1989 (Tabs 17 and 18 of the Book of Documents). Mr. Dukic is a client of the Solicitor and ostensibly received independent legal advice from Mr. Gora (Tab 19 of the Book of Documents).

25. John L. Z. Gora, Barrister and Solicitor, rents office space from the Solicitor. His Form 2 Certificate certifies that he has been an associate of Solomon and Solomon since June 30, 1987 and the General Member Records screen on the Society computer system confirms this. He has been using the Solicitor's trust account since 1987 pursuant to an Order by Convocation that he deposit all trust money into the trust account of Joseph Solomon and not to change this arrangement without approval of the said Society (Tab 20 of the Book of Documents).

26. The Solicitor in the past sent many of his clients to Mr. Gora for independent legal advice and /or representation. Although the Solicitor believed they all obtained proper advice, in view of the close professional relationship between Gora and the Solicitor, that is landlord-tenant relationship, the Solicitor agrees that it does not appear that Mr. Gora is truly independent.

27. There were many mortgages placed on this property. The financing exceeded the purchase price of the property but the Solicitor states that any deficit was covered by value added to the property by renovations done on the property. The mortgage that involves the Goldstein Estate is a syndicated third mortgage registered on January 2, 1990 in the amount of \$150,000.00. The mortgagee is Solomon, Joseph Nathan, In Trust (Tab 21 of the Book of Documents). This mortgage is made up of the following investors:

\$ 20,000.00 - Goldstein Estate December 29, 1989
\$ 35,000.00 - Goldstein Estate January 17, 1990
\$ 20,000.00 - DeBattista January 18, 1990
\$ 25,000.00 - Melville Raskin February 5, 1990
\$100,000.00

28. The client trust ledger (Tab 22 of the Book of Documents) shows the flow of funds for this mortgage as follows:

29. After the fourth advance to the mortgagor, the Solicitor ceased to advance any more funds (total advances - \$100,000.00). The Solicitor stated to the Law Society's auditor that he didn't remember why he stopped at \$100,000.00 but it could have been that Mr. Dukic did not need any more money or that the Solicitor realized at this point that it was a bad investment. The Solicitor states that this was a construction mortgage and the practise is that often the face amount of these mortgages exceeds the total amount needed to do the work.

30. On February 5, 1991, \$500.00 in cash was received from Mr. Dukic (Tab 23 of the Book of Documents). On the same day a \$500.00 interest payment was made to Mr. Raskin (Tab 24 of the Book of Documents). There are no interest payments to the Goldstein estate on this mortgage.

31. The Solicitor told the Law Society's auditor that at the time he had not prepared a statement of account and did not take any legal fees for his work on this mortgage for which he intended to bill upon the sale of the property.

32. The Solicitor issued a Notice of Sale Under Mortgage on October 22, 1991 as the result of a default in payment (Tab 25 of the Book of Documents).

33. The Solicitor stated to the Law Society's auditor that the property has not been sold yet and there is no hope of any recovery for these investors (including Mr. Raskin).

34. On May 27, 1993, the Solicitor registered two postponements on this property moving the Goldstein investment back into third position (it had been moved into second position on December 12, 1990). This was done in order to move Mr. Lapelle's mortgage into a position that was as close to first as possible as this mortgage was originally intended to pay out and replace the existing first mortgage. Mr. Lapelle is a client of the Solicitor. He put in a claim to Errors and Omissions regarding this mortgage. Errors and Omissions advised the Solicitor to get instructions in order to be able to move Mr. Lapelle's mortgage into first position. This was done subsequent to the commencement of the audit department's investigation. The Solicitor states that he registered the two postponements in response to the Law society's adjuster's request.

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35. The Solicitor admits that he has invested \$55,000.00 from the estate of Myer Murray Goldstein in an investment that was not authorized by the Ontario Trustees Act. There is no hope of any recovery of these funds.

36. The Solicitor acted for both sides on this transaction but arranged for the mortgagors to obtain advice from Mr. Gora.

3669 Baird Court, Mississauga, Ontario -
\$22,000.00 investment from Goldstein Estate

37. This property was purchased by Laura Angelillo and the transfer was registered on September 18, 1987 (Tab 26 of the Book of Documents). Ms. Angelillo is a client of the Solicitor and ostensibly received independent advice from Richard Ranieri, one of the tenants in the Solicitor's office (Tab 27 of the Book of Documents).

38. There were many mortgages placed on this property including a mortgage to M & S Solomon Family Holdings Limited. The one that involves the Goldstein estate is a third mortgage registered on May 22, 1990 in the amount of \$22,000.00 (Tab 28 of the Book of Documents). The mortgagee is Solomon, Joseph Nathan in trust.

39. The client trust ledger (Tab 29 of the Book of Documents) shows the flow of funds for this mortgage as follows:

40. The Solicitor originally transferred \$22,000.00 from the Goldstein estate to this ledger and then on the same day, he reduced the loan to \$6,000.00 by returning \$16,000.00 to the Estate. The Solicitor stated to the Law Society's auditor that he cannot remember why he did this.

41. The Solicitor took \$136.00 in legal fees and this was part of the \$9,000.00 cheque attached at (Tab 30 of the Book of Documents). However, the Solicitor provided the Law Society's auditor with a Statement of Account (Tab 31 of the Book of Documents) (it does not balance with the client ledger) and this suggests fees of \$3,500.00 on the first mortgage. The Solicitor states that this amount was not his legal fees entirely as there were brokerage fees and that his legal fees were about \$800.00 to \$1000.00.

42. The Solicitor stated to the Law Society's auditor that no interest was paid to Goldstein on this mortgage.

43. The property sold under power of sale for \$299,000.00 and there were no funds available for the Goldstein estate (Tab 32 of the Book of Documents).

44. The Solicitor admits that he invested the proceeds of the estate in an investment that was not authorized by the Ontario Trustees Act. The property sold under Power of Sale and the remaining \$6,000.00 was lost.

45. The Solicitor also admits that he acted for both sides on this transaction but that he sent the mortgagors to Mr. Ranieri for advice.

24 O'Hara Avenue, Toronto, Ontario -
\$18,500.00 investment from Goldstein Estate

46. The property transfer to Paul DeBattista was registered on August 22, 1989 (Tabs 33 and 34 of the Book of Documents). Mr. DeBattista was represented by the Solicitor.

47. A first mortgage in the amount of \$200,000.00 was registered on the same day as the transfer (Tab 35 of the Book of Documents). The mortgagee is N. S. Management Inc.

48. The Solicitor stated to the Law Society's auditor that Mr. DeBattista arranged to borrow this money from N.S. Management Inc. and that this company is owned by a firm of accountants who did some work for Mr. DeBattista. The Solicitor represented N.S. Management Inc. on the first mortgage.

49. A second mortgage in the amount of \$25,000.00 was also registered on this property on the same day as the transfer (August 22, 1989) (Tab 36 of the Book of Documents). The mortgagee is Maureen Solomon (the Solicitor's wife). The Solicitor represented his wife on this mortgage and sent Mr. DeBattista to John L. Z. Gora, a tenant in the Solicitor's office, for independent legal advice (Tab 37 of the Book of Documents).

50. A reporting letter to Mr. DeBattista is attached at Tab 38 of the Book of Documents.

51. The client ledger (Tab 39 of the Book of Documents) and the Statement of Account and Statement of Adjustments (Tab 40 of the Book of Documents) show the flow of funds for the above mortgages as follows:

52. No payments of principal or interest were ever made to either the first or second mortgagees.

53. On February 5, 1991, \$18,500.00 was transferred from the Goldstein Estate ledger to another DeBattista ledger re: 22 O'Hara Avenue, Toronto (Tab 2, page 8 and Tab 43, page 2). This property was sold in October 1989 but funds had to be held back until Mr. DeBattista proved he had paid all of his creditors. The funds that were held back belonged to a Mr. Helperin, the relative of the Solicitor's wife, and the second mortgagee on 22 O'Hara Avenue. The Solicitor invested these funds from October 1989 to February 1991, at which time Mr. DeBattista had proven that he had paid all of his creditors, but the funds owing to Mr. Helperin had diminished due to real estate investments that did not pay off. Therefore, more funds were needed to pay Mr. Helperin and a portion of these funds came from the Goldstein estate.

54. In exchange for the funds being transferred from the Goldstein estate to Mr. Helperin, Mrs. Solomon signed a declaration of trust on February 1, 1991 stating that she held the second mortgage on 24 O'Hara Avenue in trust for the Estate of Myer Goldstein (Tab 41 of the Book of Documents). However, this mortgage was already in technical default. The Solicitor states that this mortgage was a construction mortgage and it was the intention that the mortgage, both principal and interest, was to be repaid upon the sale of the property or upon the arrangement of takeout financing.

55. On April 15, 1992 the Solicitor issued a Notice of Sale under Mortgage (Tab 42 of the Book of Documents) on 24 O'Hara Avenue. The Solicitor stated to the Law Society's auditor that the property has not sold yet and there is no hope of recovering any funds for the second mortgagee.

56. The Solicitor also stated that he did not take fees from the 24 O'Hara Avenue mortgages. However, he did take fees for the 22 O'Hara mortgages (Tab 43 of the Book of Documents).

57. The Solicitor admits that he acted for both sides on this transaction and that Mr. Gora does not appear to be independent.

58. The Solicitor also admits that he invested \$18,500.00 from the estate of Myer Murray Goldstein in an investment that was not authorized by the Ontario Trustees Act. There is no hope of any recovery of these funds.

Part of Lots 27 and 28, Concession 1, in the Town of Huntsville - \$125,000.00 investment from Goldstein Estate

59. Moe Wortzman (a mortgage broker and an investor) originally purchased this farm for \$800,000.00 (Tabs 44 and 45 of the Book of Documents). Mr. Wortzman owns 703141 Ontario Limited.

60. The vendors (Jones) took back a first mortgage for \$610,000.00 (Tab 46 of the Book of Documents). Mr. Wortzman then sold this property to 681666 Ontario Limited (Tab 47 of the Book of Documents).

61. 681666 Ontario Limited assumed the first mortgage to Jones and Mr. Wortzman took back a second mortgage in the amount of \$515,000.00 (Tab 48 of the Book of Documents) and registered it on August 4, 1989.

62. On September 13, 1989, \$125,000.00 of the second mortgage to Wortzman was assigned to Solomon, Joseph Nathan, Executor, Goldstein, Myer, Estate of (Tab 49 of the Book of Documents).

63. The Solicitor stated to the Law Society's auditor that he has misplaced the files on this property. Also, the client ledgers for this property have been purged from the Solicitor's computer and the Solicitor says that he cannot locate a hard copy. Therefore, it is almost impossible to trace the flow of funds for this property. However, Tab 2 of the Book of documents, page 6, shows \$125,000.00 being transferred from the Goldstein account to the XACT account (the company owned by Mr. Wortzman).

64. Mortgage payments in the amount of \$1,666.67 began on October 13, 1989 and ended on September 6, 1990.

65. On May 16, 1991, the Solicitor issued a Notice of Sale Under Mortgage as the result of a default in payment (Tab 50 of the Book of Documents).

66. According to the Solicitor, this property has not been sold yet and he is hoping to recover some of the Goldstein estate funds.

67. This position may not be supportable considering the property was purchased at the peak of the real estate market and that real estate values have decreased substantially since then. The first and second mortgages total \$1,125,000.00.

68. The Solicitor admits that he invested \$125,000.00 from the estate of Myer Murray Goldstein in an investment that was not authorized by the Ontario Trustees Act. These funds may not be recoverable.

Complaint D305/93 - Particular 2(d)
Borrowed Money From Client Sterner

69. The Solicitor acted for Mrs. Edda Sterner's family for many years. The Solicitor was the executor of the late Mr. Sterner's estate and approached Mrs. Sterner about investing the proceeds of the estate. Mrs. Sterner states that she was told that some of the funds would be invested in a mortgage and that the borrowers would be the Solicitor and two of his business partners. Mrs. Sterner states that the Solicitor said he would be 100% behind the mortgage and she assumed it was a first mortgage. The Solicitor states that he told Mrs. Sterner that the funds would be invested in a second mortgage.

70. In fact, the Solicitor invested \$108,000.00 of Mrs. Sterner's money into a second mortgage on a property at 500 Eglinton Ave.

71. This property was transferred to DeBortoli, Zanchin and Solomon each as to 1/3 share for \$715,000.00 and registered on January 2, 1990 (Tabs 51 and 52 of the Book of Documents).

72. The Solicitor acted for the transferees as set out in his reporting letter, a copy of which is attached at Tab 53 of the Book of Documents).
73. A first mortgage in the amount of \$500,000.00 was registered on the same day as the transfer. The mortgagee is Royal Trust Corp. (Tab 54 of the Book of Documents).
74. The second mortgage in the amount of \$108,000.00 was registered on January 17, 1990. The mortgagee is Edda Sterner (Tab 55 of the Book of Documents).
75. The Solicitor acted for Mrs. Sterner and prepared the mortgage document. As the Solicitor was already acting for the transferees in this transaction, he sent Mrs. Sterner to Mr. John L.Z. Gora for independent legal advice (see reporting letter Tab 56 of the Book of Documents).
76. Mrs. Sterner states that Mr. Gora did not discuss the investment with her and that he just witnessed her signature on one of the documents she had to sign and that no independent advice was given. The Solicitor states that he believed that she was receiving independent legal advice.
77. Mrs. Sterner claims that she did not know this was a second mortgage until she received her reporting letter. Mrs. Sterner claims she was not told that it was a second mortgage by either the Solicitor or Mr. Gora. The Solicitor states that he had advised Mrs. Sterner that the funds would be invested in a second mortgage.
78. According to the Solicitor this property is a retail store with an apartment on the second floor. The property was vacant while the three partners owned it. They tried to lease it but were unable to do so.
79. The Solicitor told the Law Society's auditor that Mr. DeBortoli is a mortgage broker with Antar Financial Systems Inc. They met about seven or eight years ago on opposite sides of a transaction. Mr. Zanchin is a business associate of Mr. DeBortoli. Apparently this is the only business deal the three partners were ever involved in together.
80. The Solicitor also stated that all partners (including the Solicitor) stopped making mortgage payments to Royal Trust and Mrs. Sterner and just abandoned the project.
81. The property was then sold under power of sale by Royal Trust for \$360,000.00 (Tab 57 of the Book of Documents). Therefore there were no funds for the second mortgagee.
82. Subsequently Mrs. Sterner received from Mr. Zanchin 15 post-dated cheques in the amount of \$6,666.00 each in repayment of her investment. As of the date hereof, 5 of the cheques have come due and been cashed.
83. The Statement of Account (Tab 58 of the Book of Documents) and the client ledger (Tab 59 of the Book of Documents) show the flow of funds for the mortgages as set out in the FlowChart and Exhibits prepared by the Law Society's auditor, a copy of which is attached at Tab 60 of the Book of Documents.

Complaint D305/93 - Particular e)

Failure to reply to complaint by Robert Philips

84. Robert B. Philips wrote to the Law Society on March 31, 1992 complaining about the Solicitor's delay and failure to communicate with respect to the Estate of Myer Goldstein. Mr. Philips is the legal guardian of a beneficiary of the Estate.

85. The Solicitor is the executor for the Estate.
86. The Law Society contacted the Solicitor but the Solicitor did not reply.
87. The Solicitor's failure to reply to the Society resulted in disciplinary proceedings in November, 1992. The Solicitor was found guilty of professional misconduct, and was reprimanded in Committee on the basis of his Undertaking to reply promptly and meaningfully to the Society. A copy of his Undertaking is attached at Tab 61 of the Book of Documents.
88. The Solicitor then provided the Law Society with a copy of his response to Mr. Philips dated November 16, 1992.
89. Neither the Society nor Mr. Philips were satisfied with the information provided and the Society endeavoured to obtain a further reply.
90. On December 4, 1992, the Law Society wrote to the Solicitor requesting a response to the complaint and reminding him of his Undertaking to reply to the Society. A copy of the Law Society's letter is attached at Tab 62 of the Book of Documents.
91. The Solicitor did not respond.
92. On March 26, 1993, the Solicitor undertook to forward his response by March 29 or 30, 1993.
93. The Solicitor did not provide his response as agreed.
94. On April 15, 1993, the Law Society telephoned the Solicitor and a message was left asking him to return the call.
95. The Solicitor did not reply.
96. On April 19, 1993, the Law Society telephoned the Solicitor and he undertook to forward a response by Friday, April 23, 1993.
97. The Solicitor did not respond as agreed.
98. On May 3, 1993, the Law Society telephoned the Solicitor who confirmed that he was working on several replies which the Law Society would receive within the next few days.
99. No reply was received.

Complaint D8/94 - Particular 2(a)(ii)
Earl S. Heiber

100. Earl S. Heiber wrote to the Law Society on behalf of two of his clients complaining about monies paid to the Solomon & Solomon in Trust. Money paid to the Solicitor was apparently investment money and neither Mr. Heiber nor his clients have yet to hear from or receive any information from the Solicitor.
101. A copy of Mr. Heiber's letter of complaint is attached at Tab 63 of the Book of Documents.
102. On February 5, 1993, the Law Society wrote to the Solicitor requesting a response to the complaint. A copy of the Law Society's letter is attached at Tab 64 of the Book of Documents.
103. The Solicitor did not reply to the correspondence.

104. On March 1, March 11, and March 16, 1993, the Law Society made telephone calls to the Solicitor and was advised by the Solicitor on each occasion that his response would be received within a few days.

105. The Solicitor did not reply to the Law Society.

106. On March 23, 1993, the Law Society sent a registered letter to the Solicitor enclosing another copy of the complaint and advising that the matter would be referred to discipline in seven days if a reply was not received.

107. The Solicitor did not reply.

Complaint D8/94 - Particular 2(a)(iii)
Maxwell Gottlieb

108. Maxwell Gottlieb wrote to the Law Society on behalf of certain beneficiaries (located in England) of the Estate of Myer Goldstein who died in July, 1987.

109. Mr. Gottlieb met with the Solicitor in February, 1993 to discuss the status of the Estate for which the Solicitor was the executor.

110. The Solicitor stated at that meeting that the majority of the funds from the Estate had been lost in investments that failed. He also stated that he had no details whatsoever regarding these investments.

111. Mr. Gottlieb became concerned at this as the Solicitor had purportedly made these investments. Mr. Gottlieb had since heard nothing from the Solicitor, and his clients instructed him to write to the Law Society. A copy of Mr. Gottlieb's letter of complaint is attached at Tab 65 of the Book of Documents.

112. On March 1, 1993, the Law Society wrote a letter to the Solicitor requesting a response to Mr. Gottlieb's complaint. A copy of the letter is attached at Tab 66 of the Book of Documents.

113. The Solicitor did not reply to this correspondence.

114. On March 23, April 1, and 7, 1993, the Society telephoned the Solicitor and on all three occasions was advised by him that his response would be received in a few days.

115. The Solicitor did not reply to the Law Society.

116. On April 15, 1993, the Law Society sent the Solicitor a registered letter enclosing another copy of the complaint and advising him that the matter would be referred to discipline in seven days if there was no reply.

117. The Solicitor did not reply.

Complaint D8/94 - Particular 2(a)(i) and (b)
Murray E. Lightman

118. Mr. Lightman wrote to the Law Society on April 20, 1993 on behalf of his client, Edda Sterner, complaining that the Solicitor had misled Mrs. Sterner with regard to mortgage investments.

119. On May 11, 1993, the Law Society sent a letter to the Solicitor requesting his response to Mr. Lightman's complaint. A copy of the Society's letter is attached at Tab 67 of the Book of Documents.

120. The Solicitor did not reply.

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121. On June 4, 1993, the Law Society telephoned the Solicitor and he advised that he "would be putting something together in the next couple of days".

122. The Solicitor did not reply.

123. On June 16, 1993, the Society telephoned the Solicitor and left a message with his secretary to have him call.

124. The Solicitor did not reply.

125. On June 23, 1993, the Society sent a registered letter to the Solicitor enclosing a second copy of the complaint and advising that the matter would be referred to discipline in seven days if the Solicitor did not reply.

126. The Solicitor did not reply.

Complaint D7/94 - Particular 2(a)(i)
Breach of Fiduciary Duty to Lapelle - 438 Ontario Street

127. Dukic Decor Renovation (a renovation company owned by a Mr. Dukic) purchased 438 Ontario Street, Toronto, for \$250,000.00 in October of 1989.

128. A first mortgage in the amount of \$160,000.00 was obtained from BPS Management Limited.

129. Copies of the reporting letter to Mr. Dukic and the client ledger are attached at Document Book "A" - Tab 3 and Document Book "A" - Tab 4 and an abstract on the property is attached as Document Book "A" - Tab 5.

130. The Solicitor acted on behalf of Mr. Dukic.

131. On October 17, 1989, the Solicitor registered a second mortgage in the amount of 200,000.00 on 438 Ontario Street (Document Book "A" - Tab 6). The chargee was Joseph Nathan Solomon in trust. The reporting letter to Mr. Dukic regarding this second mortgage is attached as Document Book "A" - Tab 7.

132. Mr. Dukic received independent legal advice from Richard Ranieri (Document Book "A" - Tab 8). Mr. Ranieri was one of the tenants in the Solicitor's office.

133. In January, 1990, the Solicitor assigned his interest in the second mortgage to various parties as follows:

\$ 95,000.00 to Chantal Beauregard
48,000.00 to Alfred Rosenmann
32,000.00 to J. Martin
15,000.00 to Tough's Natural Foods Inc.
10,000.00 to E. Simpson
\$200,000.00

Document Book "A" - Tabs 9 and 10

134. The Solicitor acted on behalf of all of the above parties.

135. Attached as Document Book "A" - Tab 11 is the client ledger for this second mortgage.

136. \$95,000.00 can be seen coming in from Chantal Beauregard.

137. The balance is from Xact Capital Corp., the mortgage brokerage firm owned by Moe Wortzman. The Solicitor stated to the Law Society's auditor Mr. Wortzman arranged this mortgage and instructed the Solicitor to register the mortgage in the names of the various parties mentioned above.

138. In January, 1990, the Solicitor registered a third mortgage on 438 Ontario Street in the amount of \$150,000.00. The mortgagee on this third mortgage was also Joseph Nathan Solomon in Trust. He held this mortgage for the Estate of Meyer Goldstein and other investors.

139. On February 7, 1990 the Solicitor registered a fourth mortgage on the property in the amount of \$250,000.00. Again, the mortgagee was Joseph Nathan Solomon in Trust.

140. The Solicitor states that no monies were advanced on this mortgage as it was collateral security for another property owned by Dukic on 212 Carlton Street. According to the Solicitor, the mortgagee on 212 Carlton was his wife, Maureen Solomon.

141. Finally, on October 25, 1990, a fifth mortgage was registered on this property in the amount of \$282,225.24 (Document Book "A" - Tab 12). The mortgagee was a Mr. Charles Paul Lapelle.

142. The Solicitor represented Mr. Lapelle.

143. Attached at Document Book "A" - Tabs 13, 14 and 15 are the statement of account, the reporting letter and the client ledger for this mortgage. Funds from this mortgage were used to pay out the first mortgage to BPS Management, pay down the second mortgage and pay some mortgage arrears.

144. The \$72,000.00 mentioned on the statement of account that went to pay down the second mortgage was issued to Pathway, a company owned by Mr. Wortzman. The Solicitor stated to the Law Society's auditor that he just took instructions from Mr. Wortzman and was not sure what happened to the funds ie. which client it went to pay down if at all. According to the Solicitor, Mr. Wortzman no longer operates Pathway or Xact Investments Limited. The Law Society's auditor was not able to get in touch with Mr. Wortzman.

145. Mr. Dukic received independent legal advice from Lubomir Poliacik with respect to this fifth mortgage (Document Book "A" - Tab 16).

146. Attached at Document Book "A" - Tab 17 is a letter from Mr. Lapelle asking that his funds be secured by a first mortgage on this property. The letter is dated October 23, 1990.

147. The reporting letter to Mr. Lapelle from the Solicitor dated November 16, 1990 (Document Book "A" - Tab 14) states that Mr. Lapelle has a first mortgage on the property.

148. In fact, Mr. Lapelle had a fourth mortgage on the property.

149. On November 6, 1990 the Solicitor registered a postponement of Charge postponing the second mortgage (which had become a first when Mr. Lapelle's mortgage went on) to Mr. Lapelle's mortgage (Document Book "A" - Tab 18). However, he did not have the authority to do this as he had assigned all of the interest to the various parties mentioned above. Also, he did not postpone any of the other mortgages to Mr. Lapelle's mortgage.

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150. When the Law Society's auditor asked the Solicitor why he postponed without the authority to do so, he said that he didn't realize that the assignment to the various parties had been registered. However, it was the Solicitor who had prepared the document and his office registered it.

151. The Solicitor also stated that Mr. Wortzman had invested the original second mortgage funds as a second mortgage and he intended it to remain this way with Mr. Lapelle's mortgage being in first position.

152. The Solicitor also stated that when this problem first became apparent (ie. when he first realized that the assignment had been registered and he had made a mistake by trying to postpone with his signature) he called Mr. Wortzman and asked him to get in touch with the mortgagees to obtain their permission to postpone - he did not attempt to contact his clients.

153. A legal proceeding has now been commenced by Mr. Lapelle (plaintiff) against Solomon and Solomon and Joseph Nathan Solomon (defendant) (Document Book "A" - Tab 19)

154. Mr. Lapelle claims that the Solicitor knew or ought to have known that Mr. Lapelle's mortgage was not a first mortgage and as a result, the Solicitor committed a fraud against Mr. Lapelle and/or was negligent and/ or breached the contract with Mr. Lapelle in not ensuring that the mortgage was a first mortgage rather than a fourth.

155. Mr. Lapelle has instituted power of sale proceedings and according to the Solicitor, whichever mortgagee is found to be in second position, stands to lose everything.

156. On May 27, 1993, the Solicitor registered two postponements in order to postpone the second and third mortgages to Mr. Lapelle's mortgage. The Solicitor states that he was advised to do this by Errors and Omissions.

Complaint D7/94 - Particular 2(a)(ii)
Breach of Fiduciary Duty to Rosenmann - 438 Ontario Street

157. Mr. Rosenmann (Mr. Wortzman's father-in-law) states that on March 27, 1991, he transferred \$7,000.00 from his SDRRSP to the Solicitor's trust account.

158. These funds were to buy out Esther Wortzman's interest in the second mortgage mentioned above (Document Book "A" - Tab 9). Mrs. Wortzman had purchased a \$46,700.00 interest in this mortgage on May 13, 1991.

159. Mrs. Wortzman did not receive the \$7,000.00 until November, 1991.

160. When Mr. Rosenmann searched title on this property he could not find a registered assignment of his interest in the mortgage.

161. The assignment was later registered on March 1, 1993 (Document Book "A" - Tab 20). This is almost two years after Mr. Rosenmann's funds were advanced.

162. The \$7,000.00 that was advanced to the Solicitor on March 27, 1991 (Document Book "A" - Tab 21) was posted to the Solicitor's trust account on April 1, 1991 (Document Book "A" - Tab 11) and immediately paid out to Xact Capital Corp. on the same day (Document Book "A" - Tab 22).

163. Then on November 4, 1991, these funds came back into the Solicitor's trust account from Pathway (Document Book "A" - Tab 11) and were again immediately paid out to Mrs. Wortzmann (Document Book "A" - Tab 23).

164. The Law Society's auditor asked the Solicitor why the payment to Mrs. Wortzman was delayed and he said he did not know, that he just took instructions from Mr. Wortzman and he had no idea what Mr. Wortzman did with the funds in the meantime.

Complaint D7/94 - Particular 2(a)(iv)
Breach of Fiduciary Duty to Rosenmann -
55 / 61 King Street East, Cobourg, Ontario

165. There is a large hotel at 55 & 61 King Street, Cobourg, Ontario. A partial copy of the abstract on this property is attached at Document Book "A" - Tab 24a.

166. The abstract shows that numerous mortgages were placed on this property, many involving Xact Capital Corp, Pathway, and some of the Solicitor's clients mentioned above.

167. Mr. Rosenmann complained that some funds from his RRSP were paid to the Solicitor's trust account in order to buy out a portion of a mortgage on the hotel. This portion belonged to Jacques Gauthier. According to Mr. Rosenmann, Mr. Gauthier was not paid until six months later. Also, Mr. Rosenmann complained that title to the property did not disclose that an interest was ever transferred to him.

168. The Law society's auditor found that two sums of money were transferred from Mr. Rosenmann's RRSP at the Laurentian Bank. The first sum is in the amount of \$13,900.00 and was transferred in October, 1991 and the second sum is in the amount of \$51,300.00 and was transferred in November, 1991. These sums were posted to the Solicitor's trust ledgers (Document Book "A" - Tab 24).

169. The \$13,900.00 was added to \$11,400.00 received from another client and this was also paid to Pathway (Document Book "A" - Tab 26).

170. The \$51,300.00 was added to an existing balance of \$20,000.00. From this \$71,300.00, \$33,504.58 was paid out to Equitable Life Insurance Co. of Canada (the first mortgagee - the first mortgage was in default at this time) and the balance of \$37,795.52 was paid to Pathway Investment Corp. (Document Book "A" - Tab 25).

171. Document Book "A" - Tab 24 shows that on May 4, 1992, \$65,000.00 was received back from Pathway and then paid to Laurentian Bank on the same day (Document Book "A" - Tab 27). This was to finally pay out Jacques Gauthier for his share of a mortgage (Document Book "A" - Tab 28).

172. The assignment of this mortgage interest was not registered until February 15, 1993 and Mr. Solomon did not report to Mr. Rosenmann. The Solicitor states that the reports were prepared and given to Mr. Wortzman to deliver to Mr. Rosenmann.

173. The Law Society's auditor asked the Solicitor what happened to Mr. Rosenmann's funds for six months and he said he paid the money to Mr. Wortzman (owner of Pathway) and it was Mr. Wortzman's responsibility. She also asked the Solicitor why he would take so long to register the assignment and he said that it was Mr. Wortzman's responsibility to let him know what to register and when, not his.

21st March, 1996

Complaint D7/94 - Particular 2(a)(v)

137 Annette Street -

Breach of Fiduciary Duty to Mixon, Simpson and Rosenmann

174. On January 24, 1992, the Solicitor registered a second mortgage on 137 Annette Street, Toronto (Document Book "A" - Tabs 29 and 30).

175. This mortgage was in the amount of \$50,000.00 and the mortgagee was Pathway Investment Corp. The property was owned by "Peters - Morris" Investments Ltd. - two realtors. The letter of account is attached at Document Book "A" - Tab 31.

176. The May, 1992 payment on the second mortgage was not made. The Solicitor states that he was not aware of the default as the practise was that Mr. wortzman did the mortgage collections and made payments to the investors.

177. In June, 1992, Pathway transferred all but \$1,000.00 of it's interest in this mortgage to Charles Mixon (\$35,000.00) and Edwina Simpson (\$14,000.00) (Document Book "A" - Tab 32).

178. Due to a default on the first mortgage, Royal Trust's (first mortgagee) solicitors issued a Notice of Sale on or about July 13, 1992 (Document Book "A" - Tab 33). Unless the mortgage was brought into good standing by August 22, 1992, Royal Trust stated that they would sell the property.

179. The amount required to bring the mortgage current was \$13,316.87 (Document Book "A" - Tab 34). Apparently the owners had not made a payment since April, 1992.

180. The Solicitor enclosed a trust cheque to cover this amount with a letter to Royal Trust's solicitors (Document Book "A" - Tab 35). Royal Trust's solicitors then confirmed that the mortgage was brought into good standing (Document Book "A" - Tab 36).

181. These funds were obtained from Pathway, the second mortgagee (Document Book "A" - Tab 37, page 2). Pathway also provided funds to payout Edwina Simpson's interest in the second mortgage (\$14,000.00) at the same time.

182. On September 19, 1992, \$15,000.00 was then transferred from Alfred Rosenmann's trust ledger #5646 (Document Book "A" - Tab 38) to the Annette Street ledger and a cheque in the same amount was issued to Pathway in order to purchase Edwina Simpson's (\$14,000.00) and Pathway's (\$1,000.00) interest in the second mortgage (Document Book "A" - Tab 37, page 2).

183. One month earlier, on August 7, 1992, the Solicitor wrote to Mr. Rosenmann confirming that he had advanced \$15,000.00 on the 137 Annette Street premises (Document Book "A" - Tab 39). There is no mention of the Notice of Sale or the fact that the first mortgage had not been paid since April, 1992 or that the second mortgagees were planning to bring it into good standing. the Solicitor states that he only became aware of the power of sale proceedings when Mr. Wortzman brought this to his attention and that he cannot recollect when that occurred.

184. Mr. Rosenmann's interest was then registered on October 22, 1992 (Document Book "A" - Tab 40).

185. The Solicitor then reported to Mr. Rosenmann on November 4, 1992 (Document Book "A" - Tab 41), stating that the first mortgage to Royal Trust was in good standing and that there were no arrears at that time. the Solicitor admits that he knew or should have known about the power of sale proceedings and defaults at this time. The Solicitor states that the letter was wrong.

21st March, 1996

186. In fact, this mortgage was in arrears from May until August, 1992 (when it was paid up by Pathway) and then from September, 1992 to the present time.

187. Another Notice of Sale under Mortgage was issued by Royal Trust's solicitors on May 11, 1993 (Document Book "A" - Tab 42). According to this Notice of Sale under Mortgage, there were no other payments made on the first mortgage since the one made by Pathway in August 1992. The Solicitor did not inform his client, Mr. Rosenmann, of this. The Solicitor states that he was dealing with Mr. Wortzman and that he informed him.

188. The Solicitor wrote to Mr. Wortzman on November 12, 1992 stating that the account was in the hands of a collector for Royal Trust (Document Book "A" - Tab 43).

189. According to the ledger (Document Book "A" - Tab 37, page 2), mortgage payments were made to Mr. Rosenmann until January, 1993. These funds were collected from Pathway and Pathway collected rents from the tenants in the Annette Street property.

190. The owners of this property were given 100% financing. Two appraisals, both dated July 6, 1992 (Document Book "A" - Tab 44) value the property between \$366,000.00 and \$380,000.00. The first mortgage had principal owing at July 13, 1992 of approximately \$325,000.00 and the second mortgage was in the amount of \$50,000.00. This comes to a total of \$375,000.00.

191. The Solicitor also reported to Edwina Simpson that at June 5, 1992, the first mortgage on the property was in good standing and there were no arrears at that time (Document Book "A" - Tab 45). This was not true as the owner missed the May, 1992 payment to Royal Trust. The Solicitor states that he had not been advised by Mr. Wortzman of the default.

192. At the time of the assignment of Pathway's interest to Charles Mixon and Edwina Simpson, June, 1992, the first mortgage was in default.

193. When the Law Society's auditor questioned the Solicitor about all of this, he stated that his job was just to register the assignments and let the mortgagees know that they had a second mortgage. He said he only checks whether a mortgage is in good standing when the original mortgage is set up, after that, when there are assignments, he just registers them and does not check anything else. The Solicitor states that he relied upon Mr. Wortzman.

194. The property sold under power of sale on November 2, 1993 for \$320,000.00 and it appears that there are no funds available for the second mortgagees (Document Book "A" - Tab 46).

Complaint D7/94 - Particular 2(a)(iii)
Breach of Fiduciary Duty to Browns - R.R. #4 Orillia

195. R.R. #4, Orillia is owned by a Mr. and Mrs. Brown. According to the Solicitor, the Browns have a home and a factory on this property.

196. A third mortgage in the amount of \$100,000.00 was registered on this property in June, 1992 (Document Book "A" - Tab 47). Pathway Mortgage Investment Corp. was the chargee. No monies were advanced at this time to the Brown's from Pathway.

197. In August, 1992 funds were advanced to the Browns. These funds came from Mr. and Mrs. Rosenmann and the Solicitor. Attached at Document Book "A" - Tab 48 is the client ledger showing the flow of funds.

198. The ledger shows that \$40,000.00 was received by the Solicitor from Mr. and Mrs. Rosenmann (Document Book "A" - Tabs 48 and 48a) and \$18,000.00 from the Solicitor's RRSP (Document Book "A" - Tab 49).

199. Of this \$58,000.00 approximately \$40,000.00 went to the Browns - \$16,000.00 was wired to them on June 22, 1991 (Document Book "A" - Tab 50) and \$22,000.00 was transferred by wire on August 24, 1992 (Document Book "A" - Tab 51) and there were some legal fees deducted. The Solicitor's accounting to the Brown's is attached at Document Book "A" - Tab 52.

200. The balance of the \$58,000.00 (\$18,000.00) was paid by cheque to Pathway (Document Book "A" - Tab 53).

201. In February, 1993, the Solicitor registered an assignment transferring Pathway's interest to Mr. and Mrs. Rosenmann and the Solicitor (Document Book "A" - Tab 54). This assignment states that \$58,000.00 has been advanced to the Brown's.

202. The Law Society's auditor asked the Solicitor if Pathway had paid the Brown's this \$18,000.00 and he said no. She also confirmed this with Mr. Brown. She then asked the Solicitor what happened to their \$18,000.00 and he said that Mr. Wortzman asked for this money because he needed it to "tide him over" and he would advance the \$18,000.00 to the Browns in a couple of weeks. The Solicitor states that the Browns consented to this.

203. Mr. Wortzman never did advance this money.

204. The Solicitor discussed the \$18,000.00 with Mr. Brown and states that he told Mr. Brown that he only owed \$40,000.00 on this mortgage. The Solicitor stated to the Law Society's auditor that when the mortgage came due, he would only ask for the balance owing to the Rosenmann's and would not ask the Browns for his \$18,000.00 - he would take the loss. The Browns do not make payment on the \$18,000.

205. The Solicitor admits that he represented the Brown's, Mr. Lapelle, Pathway and the Rosenmann's in regard to these matters.

Complaint D7/94 - Particular 2(b)
Operating Practice out of Trust Account

206. The Solicitor reported to the Law Society's auditor that he used a general bank account until about December 1992. He said that Revenue Canada was after funds in this account for "amounts owing for employee deductions and maybe personal". As a result of this, the Solicitor decided not to use this account any more and he began to use his trust account for general transactions.

207. He set up a ledger called "Temporary General Account" to keep track of these transactions (Document Book "A" - Tab 59).

208. Subsequent to commencement of our investigation (March 1993), the Solicitor was informed that this practice must be stopped as it breached Regulation 708, Section 14. It was at this time that the Solicitor opened a general account in the name of Mel Raskin, the Solicitor's employee, which also was not appropriate. When this was noted the Solicitor was asked to close this account, as it was his practice, not his employee's.

209. The Solicitor has since set up another general account called Solomon and Solomon at another bank.

DATED at Toronto this 22nd day of June, 1994."

"Agreed Statement of Facts - D203/94

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D203/94 and is prepared to proceed with a hearing of this matter on March 22, 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 D203/94 and this Agreed Statement of Facts with his counsel, William Trudell, and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

Background:

4. The Solicitor was called to the Bar in March, 1971. He practices as a sole practitioner and conducts a general practice.

5. Andrew White died on or about April 1, 1982, having appointed the Solicitor and Murray Finkleman co-executors of his Estate, under a Will dated September 4, 1974. The Solicitor also acts as the solicitor for the Estate.

6. Under the Will, the income of the Estate is to be distributed to the testator's widow, Edna White, with rights of encroachment.

7. Bernard Noik is the solicitor for Murray Finkleman and Ian Thompson is the solicitor for Edna White.

Particular 2(c)

Failed to Reply to a Fellow Solicitor

8. By letter dated December 4, 1991, a copy of which is attached as Exhibit 1 to this Agreed Statement of Facts, Ian Thompson, solicitor for Edna White, wrote to the Solicitor, outlined previous attempts to contact him, and requested that the Solicitor provide an up-to-date accounting of the Estate of Andrew White and an explanation as to why no funds had been paid to Edna White since June 1991. The Solicitor received the letter but failed to reply to it.

9. By letter dated December 24, 1991, the Solicitor wrote Ian Thompson and provided a copy of a mortgage registered on June 4, 1990, as instrument #LT677885 from Alfred and Alvina Cassiani to Joseph Nathan Solomon in Trust. He also advised that the mortgagor had defaulted on July 1, 1991, and enclosed a Notice of Sale and Statement of Claim in respect of same. No up-to-date accounting was provided with the letter as requested in Ian Thompson's letter of December 4, 1991. A copy of the Solicitor's December 24, 1991 letter complete with enclosures is attached as Exhibit 2 to this Agreed Statement of Facts.

10. By letter dated January 3, 1992, a copy of which is attached as Exhibit 3 to this Agreed Statement of Facts, Ian Thompson reiterated his request that the Solicitor provide him with an up-to-date accounting with respect to the Estate. He further requested that he be kept advised of significant developments with respect to the Estate. The Solicitor received the letter but failed to reply to it.

21st March, 1996

11. By letter dated March 25, 1992, a copy of which is attached as Exhibit 4 to this Agreed Statement of Facts, Bernard Noik, solicitor for Murray Finkelman (co-executor of the Estate), wrote to the Solicitor and outlined that the Solicitor had failed to respond to Mr. Finkleman's request that he provide an accounting of the estate of Andrew White. Bernard Noik requested that the Solicitor provide an accounting. The Solicitor received the letter but failed to reply to it.

12. By letter dated April 14, 1992, a copy of which is attached as Exhibit 5 to this Agreed Statement of Facts, and as a result of the Solicitor's failure to respond to Mr. Finkleman's and Bernard Noik's requests for an accounting, Mr. Noik wrote the Law Society and requested that the matter be investigated.

13. By letter dated April 30, 1992, the Law Society wrote to the Solicitor and requested that he respond in writing within two weeks to the complaint of Bernard Noik. The Solicitor received the letter but failed to reply to it. A copy of the Society's April 30, 1992 letter, complete with enclosures is attached as Exhibit 6 to this Agreed Statement of Facts.

14. On May 20, 1992, Law Society staff telephoned the Solicitor and left a message at his office that he return the Law Society's telephone call. The Solicitor received the message but did not return the call.

15. On May 26, 1992, Law Society staff contacted the Solicitor by telephone. The Solicitor advised that he would respond to the April 30, 1992 letter by May 29, 1992. The Solicitor did not provide the Law Society with a response as he had advised.

16. On June 4, 1992, Law Society staff contacted the Solicitor by telephone. The Solicitor advised that the response to the Law Society's correspondence of April 30, 1992 had yet to be sent out and assured the staff person that the response would go out the following day. A copy of the Law Society staff's notes with respect to the telephone message and conversations set out in paragraphs 10, 11 and 12 to is attached as Exhibit 7 of the Agreed Statement of Facts.

17. On June 12, 1992, the Solicitor replied to the April 30, 1992 correspondence of the Law Society to the satisfaction of the Society; but he did not reply to the letters from Ian Thompson dated December 4, 1991, January 3, 1992 or October 22, 1993. A copy of the said reply is attached as Exhibit 8 to this Agreed Statement of Facts.

18. By letter dated October 22, 1993, a copy of which is attached as Exhibit 9 to this Agreed Statement of Facts, Ian Thompson wrote to the Solicitor again requesting that he advise him as to the status of the mortgage to Alfred and Alvina Cassiani, the outcome of the Power of Sale proceedings and the action commenced and referred to in paragraph 17 above. Ian Thompson further requested that the Solicitor provide an accounting of the funds of the Estate which were invested in the mortgage loan to Alfred and Alvina Cassiani. He also requested an accounting of \$ 19,000.00 which the Solicitor had assured Edna White would be invested in a new mortgage. Ian Thompson stated that he expected satisfactory answers to the above cited requests within fourteen days. He then went on to express his concern with respect to lack of information the Solicitor was providing Edna White regarding the status of her affairs and the fact that he was not providing her with any income earned in accordance with the terms of the Will of her deceased husband. Accordingly, Ian Thompson requested that the Solicitor provide him with a copy of the accounting he had been requested to send to Bernard Noik, which request was made by letter dated March 25, 1992, and that the Solicitor provide him a full accounting of all the assets and debts of the Estate and all receipts and all expenses within thirty days. The Solicitor received the letter but failed to reply to it.

Particular 2(d)

Failed to Comply With Citation to Executors to Bring in and Pass Accounts

19. On January 11, 1994, upon the Application of Edna White, the Court ordered that the Executors of the Last Will and Testament of Andrew White, namely Joseph Solomon and Murray Finkleman, bring in a true and perfect inventory and accounting of all dealings of the Estate of Andrew White and obtain an appointment to have the accounts passed and audited within thirty days. A copy of the said Citation is attached as Exhibit 10 to this Agreed Statement of Facts.

20. The Solicitor failed to comply with the Citation to bring in and pass accounts dated January 11, 1994 as stipulated in the Citation.

Particular 2(e)

Failed to Comply With Order to Pass Accounts

21. By letter dated February 3, 1994, Bernard Noik, solicitor for Murray Finkleman wrote the Law Society requesting information regarding the Solicitor and advising that Murray Finkleman would be making an Application to remove himself as co-executor of the Estate. Mr. Finkleman's Application was heard on March 25, 1994, at which time the Court ordered his resignation as Executor and Trustee of the Estate be effective as of June 1, 1991. The Court further ordered that the Solicitor pass the accounts with respect to the Estate of Andrew White within 30 days of the date of the Order. A copy of the February 3, 1994 letter complete with the March 25, 1994 Order of Mr. Justice Gibson is attached as Exhibit 11 to this Agreed Statement of Facts.

22. The Solicitor failed to comply with the Order to pass the accounts as stipulated in the March 25, 1994 Order.

Particulars 2(a) and (b)

Failure to Comply With Undertaking and Failure to Reply to the Law Society.

23. On November 17, 1992, in discipline proceedings in relation to Complaint D152/92 the Solicitor gave an Undertaking wherein he undertook:

- 1) to promptly and meaningfully reply to written communications from the Law Society within one week of the receipt of the letter and to respond to the telephone communications from the Law Society within two business days.

A copy of the said Undertaking is attached as Exhibit 12 to this Agreed Statement of Facts.

24. By letter dated March 30, 1994, a copy of which is attached as Exhibit 13 to this Agreed Statement of Facts, and further to the receipt of information provided by Bernard Noik, and in an attempt to ascertain the Solicitor's accounting with respect to the Estate of Andrew White, the Law Society wrote to the Solicitor and requested that he advise of the arrangements made to comply with the Order of Mr. Justice Gibson, dated March 25, 1994, which ordered, *inter alia*, the Solicitor to pass accounts of the Estate of Andrew White within 30 days. The Solicitor received the letter but failed to reply to it.

25. On April 27, 1994, Law Society staff telephoned the Solicitor and left a message at his office that he return the Law Society's telephone call as soon as possible. The Solicitor received the message but did not return the call.

21st March, 1996

26. On April 29, 1994, Law Society staff contacted the Solicitor by telephone. The Solicitor advised that he had been granted a one week extension by Ian Thompson, solicitor for Edna White, to comply with the March 25, 1994 Order of Mr. Justice Gibson. The Solicitor agreed to confirm this information in writing to the Law Society. The Solicitor did not confirm the information provided over the phone to the Law Society as agreed.

27. On May 16, 1994, Law Society staff contacted the Solicitor by telephone. The Solicitor advised that the response to the Law Society's correspondence of March 30, 1994, would be sent out that day. No reply was sent to the Law Society.

28. On May 18, 1994, Law Society staff contacted the Solicitor by telephone. Again, the Solicitor advised that his response to the Law Society's correspondence of March 30, 1994, would be sent out that day. No reply was sent to the Law Society. A copy of the Law Society staff's notes with respect to the message and conversations set out in paragraphs 10, 11, 12 and 13 is attached as Exhibit 14 of the Agreed Statement of Facts.

29. By registered letter dated May 20, 1994, a copy of which is attached as Exhibit 15 to this Agreed Statement of Facts, the Law Society wrote to the Solicitor and summarized his lack of response to various requests for information which had been made of him. The Solicitor was advised that the Law Society had been informed that he had yet to comply with the Order of Mr. Justice Gibson and that should he fail to provide a written response to the March 30, 1994 correspondence within a week, the matter would be referred to the Discipline Committee. The Solicitor received the letter but failed to reply to it.

30. To date, the Solicitor has not provided the Law Society with a written response to the March 30, 1994 letter.

Recent Developments

31. The Solicitor has retained counsel to apply to court for the passing of accounts for the estate of Andrew William White.

The Solicitor, through counsel, has advised that the accounts and application have been prepared. Again, through counsel, the Solicitor has advised that the application has been filed in Barrie where the letters of probate were issued and the application will be served upon the beneficiaries.

V. DISCIPLINE HISTORY

32. The Solicitor was found guilty of professional misconduct on November 17, 1992 with respect to his failure to reply to the Law Society. The Solicitor was reprimanded in committee and ordered to pay costs of \$ 500.00.

DATED at Toronto this 21st day of March, 1995."

In relation to penalty, vive voce evidence was heard from the solicitor, Judge Linden and the solicitor's brother Robert Solomon, a member of the Law Society. The solicitor also filed materials in support including documents from the Society's file concerning the solicitor's participation in the Practice Review Program and a voluminous and impressive book of letters in support including a letter from the Honourable Chief Judge F. D. Linden and numerous supportive letters from lawyers, clients, friends, and family members.

PRIOR DISCIPLINE HISTORY

The solicitor was found guilty of professional misconduct on the 17th of November, 1992 with respect to a failure to reply to the Law Society. The solicitor was reprimanded in Committee and ordered to pay costs of \$500.00.

At the commencement of the hearing in June of 1994, the solicitor asked for an adjournment in order to prepare submissions as to penalty. The Committee granted the adjournment on condition that the solicitor give an undertaking not to engage in the practice of law effective immediately until the final disposition of complaints D305/93, D7/94, and D8/94 by Convocation or until further order of the Discipline Committee whichever shall occur first.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Joseph Nathan Solomon be disbarred.

REASONS AS TO RECOMMENDATION

There were four complaints before the Committee, each consisting of multiple particulars. The particulars were each comprised of a number of individual acts of professional misconduct of a very serious nature. The misconduct took place over a period extending beyond four years. One occurrence of misconduct that cries out for a remedy and was outstanding on the date of the hearing is his failure to account in the White estate, notwithstanding the citation granted to the beneficiaries in February 1994.

Particular D305/93 in part took place in the context of the solicitor's role as executor and solicitor for the estate of Myer Murray Goldstein. The residue of the estate was to be invested for ten years and thereafter devised amongst beneficiaries. All of the beneficiaries reside in England. The solicitor invested the estate trust funds totalling \$250,000 in second and third mortgages. All of the funds advanced under four of these mortgages were lost. The fifth mortgage in the amount of \$125,000 was outstanding at the date of the hearing. From the evidence, it is unlikely that any amount whatsoever will be recovered from the investment in the amount of \$125,000.00. All of these transactions were in breach of the terms of the Trustee Act, notwithstanding that the will of the deceased specifically restricted investments to those authorized under the Trustee Act. The mortgages were arranged through one of the solicitor's clients who was a mortgage broker. The solicitor acted as solicitor for the syndicate and used the estate trust funds for syndicate investments. He was the sole trustee. He purported to deal with the conflict by having his borrower clients attend at the office of a solicitor who was one of his tenants in the building which he owned and partly occupied. The borrowing clients, who were, indeed, intent on proceeding in any event, received advice of a very perfunctory nature. This conduct pays lip service only to his conflict of interest obligations and disregards completely his fiduciary duty to the beneficiaries of the estate. It is another aggravating feature of the solicitor's misconduct.

Additional conduct admitted in particular D305 also included a variety of acts of professional conduct including acting in a conflict of interest and preferring the interests of one client over the interests of others, borrowing from a client and investing the funds in a second mortgage on a property in which he had a one-third interest, and failing to satisfy the client that the mortgage was a second mortgage when she believed it to be a first, failing to reply to a complaint of a client and failing to honour his undertaking to reply to the Law Society.

21st March, 1996

Complaint D7/94 continues with a litany of misconduct arising from the solicitor's activity as a mortgage broker. The solicitor in evidence stated that he had been very successful in arranging mortgages on behalf of his clients for a period of about ten years. It is apparent that a substantial portion of his business related to his activities as a mortgage broker or financial advisor and were not confined to providing legal service. When the real estate market was in recession, a substantial number of investments became worthless and he was in severe financial difficulty. It was at this time that he operated his practice through his trust account contrary to the Rules of Professional Conduct.

A new complaint D203/94 and a new agreed statement of facts was filed and dealt with by the Committee on March 22nd, 1995. The most serious and aggravating particulars of that complaint occurred in the solicitor's administration of the estate of Andrew White who died April 1st, 1982. He was solicitor and co-executor of the estate. His co-executor has been seeking an accounting from the solicitor since December 4th, 1991. The co-executor retained counsel and obtained a citation order against the solicitor on January 11th, 1994. The solicitor has failed to complete the accounting to the date of the hearing. In submissions, it was stated that the solicitor was now in the process of preparing accounts which would be completed in the near future. This particular of professional misconduct has continued for a considerable period of time which extends through the issuance and hearing of the other complaints and has not been remedied to the date of the hearing. The order was dated March 25, 1994 and required the solicitor to pass accounts within 30 days from that date. This is a repetition of the delay and misapplication of funds which characterized the misconduct in Complaint D305/93 involving the Goldstein Estate in which he was also a trustee.

In his vive voce evidence, the solicitor stated that by reason of the falling real estate market, his world was collapsing. His billings were eroded. He became unable to cope. He was paralysed and his condition of paralysis worsened. It was at that time that he failed to respond to letters from the Law Society, clients, and solicitors, breached his undertaking with the Law Society and operated his practice from his trust account.

He is now seeing a psychiatrist and states that he is not ready to practice at this time. His brother and his good friend Mr. John Weigast believe that in due course he will be able to practice under supervision. Mr. John Weigast gave evidence in support and submitted two letters, one of which indicates that he is prepared to co-sign any trust accounts and to monitor the solicitor's practice in the event that he is able to resume practice. The viva voce evidence of Mr. Weigast is that he does not practice Real Estate Law.

The solicitor indicated to the Committee that he is truly remorseful. He cooperated in the preparation and execution of Agreed Statement of Facts.

The mitigating factors are:

1. His counsel indicated that he has recently entered into an agreement with the counsel for the beneficiaries of the Goldstein estate to accept payment in the amount of \$250,000.00 in satisfaction of the beneficiaries' claims.
2. Some portion of the funds for restitution are now available and he is expected to obtain the funds to satisfy the settlement agreement.
3. He is also making partial restitution to his client Edda Sterner.
4. His evidence that he is truly remorseful.
5. He is obtaining psychiatric counselling .

6. The supporting material and documents.

The Committee very carefully reviewed the very positive and supportive letters filed on behalf of the solicitor. It is noted however that in his evidence Mr. Winegast indicated that he had not read the particulars of the complaint at the time that he had written the letters. He only read the agreed statement of facts just prior to the hearing. A number of the letters confirm that the authors have read the agreed statement of facts. It is not clear that all of the authors were fully aware of the nature and extent of the solicitor's conduct.

In assessing the weight to be given to the solicitors evidence of remorse, we find his conduct related in the last complaint D203/94 lessens its effect. As executor and solicitor of the White estate, he has failed to account to his co-executor despite the efforts of the co-executor that have been ongoing since 1991 and in the face of a court citation order now unsatisfied for more than one year.

It was submitted in mitigation that he has been penalized by reason of the undertaking he gave not to practice pending the outcome of the hearing. However, his activities in relation to his practice during that period offset any mitigation that might follow if the undertaking had much practical effect. From his evidence, we find that his practice has been continued under the supervision of his associate in the same premises. He is in the office just about daily and is performing services such as doing subsearches and doing clerical work. He is not receiving pay for this work. To an ordinary observer his practice continues without interruption. One wonders if his presence in his office gives clients a false impression as to his ability to practice or as to the very serious nature of the pending discipline hearings.

The penalty of disbarment is not restricted to instances where the solicitor is guilty of misappropriation. In this case the solicitor has repeatedly misapplied funds. The investments were forbidden by the Trustee Act. Each advance of funds was a serious breach of his fiduciary duty. The solicitor gave no satisfactory explanation for this conduct. The Solicitor did not receive a direct payment of funds from most of the misapplications of trust funds. The benefit was to build and maintain his client base and increase his own income through his activities as a mortgage broker and to assist his clients who were engaged in the business of syndicating mortgages. The fact that he had access to trust monies to provide mortgage funds was an enhancement to his practice. There was some direct benefit to the Solicitor from the misapplication of funds. One mortgage advance of the misapplied funds was used to pay off a mortgage held by a relative of the Solicitor's wife. The mortgage was originally to the Solicitor's wife and was transferred to her relative. At the time of the advance the mortgage that was paid out was technically in arrears. Some of the funds were used to pay inspection and lenders' fees to a company owned by the Solicitor. It cannot be said that the Solicitor received no benefit from his misapplication of funds.

In order to impose an appropriate penalty, the mitigating evidence must be balanced against the loss, frustration, anger and aggravation suffered by the clients, beneficiaries, solicitors and others who were the victims of the solicitor's various acts of professional misconduct. The solicitor's evidence of contrition and acts of restitution became a factor in the proceedings just prior to the commencement of the hearing. He has been getting psychiatric treatment only recently. The acts of restitution have not yet been finalized.

We were not completely satisfied that all of the persons who wrote letters of support were fully apprised of the totality of the solicitor's misconduct.

21st March, 1996

We considered the submissions of counsel referring to decisions of committees and convocation included in two volumes of Books of Authorities. In the case of Norman Roy, the acts of misconduct were somewhat similar to the ones before us. No misappropriation was alleged but the solicitor was disbarred. The fact situation in the Leon Stanley Wickham complaint is in many respects similar to the situation of the solicitor encompassing numerous particulars of failing to reply to the Law Society, failing to serve clients in a conscientious, diligent, and efficient manner. There was no misapplication of funds. The Committee recommended a suspension subject to conditions. Convocation ordered that the solicitor be disbarred.

In making our recommendation as to penalty the committee was guided by the principles in the reported decision Bolton vs the Law Society (CA).

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the solicitor's disciplinary tribunal."

In dealing with the elements of penalty, the court of appeal states "A penalty may be visited on a solicitor who has fallen below the standards required of the profession in order to punish him for what he has done and to deter any other solicitor tempted to behave the same way. Those are the traditional objects of punishment. The second purpose is the most fundamental of all, to maintain the reputation of the solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and to sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied permission."

"Dealing with essential issue is the need to maintain among members of the public a well-founded confidence that any solicitor who may instruct may be a person of unquestionable integrity, probity, and trustworthiness."

The conduct of the solicitor offended the principles set out in the above decision. We also believe that our recommendation is necessary as a matter of deterrence.

The solicitor, his counsel and supporters join in the proposition that the mental state of the solicitor is such that at this time he is unable to practice law and in the future will require strict supervision.

We conclude that because of the number of very serious misapplications and breaches of trust as well the number and variety of other serious acts of misconduct and the period of time over which they occurred, the appropriate penalty is disbarment.

Joseph Nathan Solomon was called to the Bar on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED this 19th day of June, 1995

Mary P. Weaver
Chair

21st March, 1996

There were no submissions and the Report was voted on and adopted.

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

Both counsel made joint submissions in support of the solicitor being granted permission to resign in light of the developments since the hearing regarding payments made by the solicitor.

The medical reports were filed as Exhibit 3.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the joint submissions made by counsel be accepted and that the solicitor be granted permission to resign.

Carried

The Treasurer withdrew from Convocation and Mr. Topp took the Chair.

Re: Frederick Arthur HELSON - Halton Hills

The Secretary placed the matter before Convocation.

Messrs. Thom and Copeland and Ms. Sealy withdrew.

Mr. Perrier appeared for the Society and Mr. Michael Birley appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 18th April, 1995, together with an Affidavit of Service sworn 14th June, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 13th June, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 8th December, 1995 (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

Susan E. Elliott, Chair
Stuart Thom, Q.C.
Netty Graham

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

FREDERICK ARTHUR HELSON
of the City
of Halton Hills
a barrister and solicitor

Neil Perrier
for the Society

Michael Birley
for the solicitor

Heard: November 11, December 8, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 22, 1994 Complaint D292/93 was issued against Frederick Arthur Helson alleging that he was guilty of professional misconduct.

The matter was heard in public on November 11, and December 8, 1994 before this Committee composed of E. Susan Elliott, Chair, Netty Graham and Stuart Thom, Q.C. The Solicitor was present at the hearing and was represented by Michael C. Birley. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D292/93

2. a) He had a direct or indirect interest in syndicated mortgages with various clients against a property owned by David Cook, contrary to Rule 23 of the Rules of Professional Conduct;
- b) He acted in a conflict of interest when he rendered legal services to various clients pertaining to syndicated mortgages registered against a property owned by David Cook, contrary to Rule 5 of the Rules of Professional Conduct;
- c) He failed to provide reporting letters to mortgagee clients in a timely manner, after the close of a mortgage financing transaction on David Cook's property contrary to Rule 2 of the Rules of Professional Conduct;
- d) He failed to provide declarations of trust to client mortgagees, on a timely basis, for mortgages which he held in trust for such clients, in connection with mortgages from David Cook;
- e) While acting as executor for the Vanatter estate, he breached the Trustees' Act when he loaned funds to David Cook without ensuring that the loans were secured by first mortgages;
- f) In connection with the mortgage loans to David Cook, he failed to disclose to various mortgagees the fact that Mr. Cook was not maintaining the payments on the existing mortgages;
- g) He improperly signed the name of his mortgagee client, Mr. William McGowan, to partial cessation of a \$25,000 mortgage, being registered as instrument #218696 against three condominiums in Halton, intending that it would be used or acted on as genuine, and subsequently caused the said partial cessation to be registered on title to the condominiums;

- h) In relation to particular (g), he knowingly swore a false Affidavit Of Subscribing Witness in connection with the preparation and registration of partial cessation of charge document #218696.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICES

1. The Solicitor admits service of Complaint D292/93 and is prepared to proceed with a hearing of this matter of June 8, 1994.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed this Agreed Statement of Facts and admits the particulars contained therein.

IV. BACKGROUND FACTS

4. The Solicitor was called to the Bar on June 27, 1957. He carries on a general practice as a partner in the law firm of Helson, Kogon, Ashbee & Schaljo in Halton Hills, Ontario. The Solicitor has practised in Georgetown since 1957. He is seventy-two years old.

5. An audit was instructed as a result of a complaint made by David Cook against the Solicitor. The essence of the complaint was that the Solicitor had reneged on his promise to ensure that there would be sufficient mortgage funds available to Mr. Cook to complete the financing of the construction of his personal residence located at R.R. #1, Alton, Ontario, and that the Solicitor had failed to report to him on various mortgages registered against his property between 1985 and 1989 and had likewise failed to account to him for funds held in trust by the Solicitor during this period.

6. In addition, a further complaint was received from William McGowan against the Solicitor. The essence of Mr. McGowan's complaint was that the Solicitor had forged Mr. McGowan's signature on the discharge documents, in connection with two partial discharges in favour of Frekar Developments Limited.

7. An audit was conducted on the Solicitor's practice pursuant to Section 18 of the Regulation.

8. The solicitor's books and records were found to be in a deficient condition in respect of the handling of mortgages for third parties. At the recommendation of the Law Society, the Solicitor retained the accounting firm, Peat, Marwick in order to rectify the problems. The accounting firm has completed its assignment. The Solicitor cooperated throughout the Law Society's investigation.

V. FACTS

Complaint of David Cook

9. In 1983, the Cooks, purchased a vacant plot of approximately 2.5 acres of property generally known as R.R. #1, Bolton, Ontario (the "Property"). The purchase price of the Property was \$38,400.00. The transaction closed on November 18, 1983. At the time, a first mortgage was placed on the Property in the sum of \$25,400.00. The solicitor did not act for the Cooks with respect to that transaction.

10. From 1985 through 1989, the Solicitor acted for Mr. Cook and various mortgages in arranging mortgage financing for the construction of Mr. Cook's home. By June 2, 1989 the Solicitor had arranged approximately \$2,000,000.00 in mortgage financing. The mortgage security arranged by the Solicitor ranked as low as tenth in priority. Attached as Appendix "A" is a chart setting out the chronology of mortgage security registered against the Property. The solicitor has a interest in 286868 Ontario Limited, one of the syndicated mortgages.

11. The Solicitor admits that he did not provide reporting letters to Mr. Cook and in seven out of sixteen mortgagee files examined, there was no solicitor's report and no accounting for trust funds received and disbursed provided to the clients. The Solicitor also admits that he did not provide declarations of trust to investors in nine out of sixteen mortgage files examined in respect of mortgages held in trust by 286868 Ontario Limited.

12. These two problems have since been corrected by the Solicitor.

13. In an undertaking dated May 11, 1989 (the "Undertaking") (Appendix "B"), the Solicitor agreed to deliver a complete accounting for trust funds handled on behalf of David Cook to his client and to provide a copy of that accounting to the Law Society by not later than June 12, 1989.

14. At a meeting on or about June 2, 1989, the Solicitor told the Law Society auditor that there was approximately \$2,000,000.00 in mortgage security registered against the Property which he had placed on behalf of himself, his spouse and various other clients of his firm. The Solicitor was not able to tell the Law Society the actual amount secured by these mortgages.

15. The Undertaking was not fulfilled by the Solicitor, as prior to June 12, 1989, the auditor concluded that the Solicitor's books and records were in such a state of disarray, that it was necessary to have co-signing controls placed over the Solicitor's trust accounts.

16. The Solicitor had not maintained appropriate records for such mortgages for which he was responsible for the collection and distribution of payments on behalf of the mortgagees.

17. The Solicitor also stated that Mr. Cook had been in default of making mortgage payments and that he was having to personally inject funds in order to keep the mortgage payments current.

18. The Solicitor's mortgagee clients were not advised to obtain independent legal representation in connection with their mortgage loans to Mr. Cook. The Solicitor states that he did disclose to the various mortgagee clients the fact that he and his spouse had an interest in the mortgages on title to the Property.

19. The syndicated mortgages registered by the Solicitor against the Property were held in the name of 286868 Ontario Limited.

21st March, 1996

20. When the work was nearing completion, Mr. Cook approached the Solicitor with a proposal to finance the enlargement of the home and asked him to find approximately \$250,000.00 in further funds to complete the expansion.

21. The Solicitor arranged the financing for Mr. Cook in exchange for security through three mortgages totalling \$230,000.00:

- (a) Mortgage document #752582 (#3 on chart) for \$50,000.00 registered on May 21, 1986 in favour of 286868 Ontario Limited in trust for David Williams. This mortgage ranked 5th in priority. After Mr. Williams was repaid, this mortgage was used to secure a \$50,000.00 loan from the Vanatter Estate;
- (b) Mortgage #763321 (#4 on chart) for \$100,000.00 registered on August 5, 1986 in favour of 286868 Ontario Limited in trust for various parties. This mortgage ranked 6th in priority;
- (c) Transfer of mortgage document #732719 (#2 on chart) for \$80,000.00 to Norman Sinclair on August 7, 1986 under assignment of mortgage document #763816. This mortgage ranked 2nd in priority.

22. The investors in the mortgages set out in paragraph 21 were all clients of the Solicitor's firm.

23. The Solicitor's spouse, M.E. Helson, had also loaned Mr. Cook money, which debt was secured by mortgage instrument #781441 (#5 on chart), registered on December 16, 1986. This mortgage ranked 6th in priority. As at May 31, 1992, Mrs. Helson was still owed \$80,000.00 plus accrued interest, in connection with this mortgage transaction.

24. Mr. Cook needed further funding and the Solicitor arranged for a further loan of \$100,000.00 from various clients. In connection with these loans the Solicitor caused to be registered a syndicated mortgage document #781442 (#7 on chart), in the sum of \$100,000.00, on December 16, 1986 in favour of 286868 Ontario Limited, in trust, for various clients. This mortgage ranked 7th in priority.

25. Mr. Cook again decided to further enlarge the house in the spring of 1987. Mr. Cook informed the Solicitor that the estimated costs would be an additional \$450,000.00. The Solicitor agreed to arrange further financing for Mr. Cook.

26. The Solicitor arranged for two further mortgage loans for Mr. Cook, the first in April of 1987 in the sum of \$100,000.00. The Solicitor caused to be registered mortgage document #795921 (#6 on chart) for \$100,000.00 on April 23, 1987 in favour of John Kerby. This mortgage was paid off in full on July 30, 1987.

27. The next mortgage loan was for \$600,000.00. In connection with this loan transaction, the Solicitor caused to be registered mortgage document #806947 (#8 on chart) for \$600,000.00 on July 2, 1987 in favour of 286868 Ontario Limited in trust for various clients. This mortgage ranked 8th in priority.

28. The Solicitor and the Solicitor's spouse's company 404899 Ontario Limited, had an interest in this mortgage as at February 28, 1990 in the sum of \$283,950.00 in principal plus accrued interest.

29. In addition, the Solicitor as executor of the Vanatter Estate, lent \$157,000.00 of estate funds to David Cook, secured by mortgage #806947. This loan, which has since been repaid, was a breach of the Trustees' Act, which precludes investment in other than first mortgages.

30. The contractor, Neucon Mechanical, encountered financial difficulties and in June of 1987, it ceased work on the house. Mr. Cook took over construction until the fall of 1988.

31. The Solicitor stated that according to the estimates of Neucon Mechanical, it would have then taken about \$50,000.00 to complete the job.

32. The Solicitor arranged further financing in August of 1987, after Neucon Mechanical ceased work, as follows:

(a) Mortgage document #814011 (#9 on chart) for \$218,000.00 registered August 20, 1987 in favour of Carretal Ltd. This mortgage ranked 3rd in priority;

(b) Mortgage document #814012 (#10 on chart) for \$400,000.00 registered August 20, 1987 in favour of 286868 Ontario Limited, in trust, for various clients. This mortgage ranked 9th in priority.

33. The solicitor stated that Mr. Cook did not follow his recommendations and that when he was away during the month of October, 1988, Mr. Cook proceeded to tear the house apart both inside and out.

34. On December 12, 1988, the Solicitor arranged for a further mortgage loan to Mr. Cook which was secured by mortgage document #877117 (#11 on chart) for \$300,000.00 in favour of 286868 Ontario Limited, in trust, for various clients. This mortgage ranked 10th in priority.

35. In addition to the above, as at February 28th, 1990, Mr. & Mrs. Helson have provided Mr. Cook with unsecured loans totalling the sum of \$239,360.18.

36. A Dominion Appraisal Limited report dated December 28, 1988 (Appendix "C") appraises the estimated completed value of the property at between \$2,000,000.00 and \$2,400,000.00.

37. In connection with the mortgage loans to David Cook, the Solicitor failed to disclose to various of the client mortgagees that Mr. Cook was not maintaining the payments on the existing mortgages. The Solicitor said that such disclosure was made to some of the clients, but he was not able to specify which the clients had received such disclosure.

38. An Appraisal Services limited report dated February 15, 1990 (Appendix "D") estimated that the completed value would be between \$825,000.00 and \$925,000.00 which represented a substantial difference when compared to the earlier appraisal of between \$2,000,000 and \$2,500,000.00.

39. As at February 28, 1990 the total secured liabilities on the Property was the sum of \$1,900,000.00 principal and interest, leaving a shortfall of \$1,100,00.00 more or less in the value of the property to cover these mortgage liabilities, based on the Appraisal found at Appendix "D".

40. As of this date, the Solicitor has personally paid down the mortgages so that there is approximately \$600,000.00 of his clients' funds invested in the property which are now secured by a first and second mortgage. This amount is fully secured by the value of the property.

41. No client has lost any money as a result of any of the transactions referred to herein. The Solicitor has personally kept these mortgages current.

42. Neither the Solicitor nor his firm charged any fees or disbursements to Cook or to the mortgagee for these mortgages.

Complaint of William McGowan

43. In 1983, the Solicitor acted for William McGowan, the mortgagee, and Frekar Developments Limited ("Frekar"), the mortgagor, to register mortgage document #206774 (Appendix "E") in the amount of \$25,000.00 in favour of William McGowan against three condominiums known as Units 2, 3 and 4, Level 3, Halton Condominium Corporation No. 93. This security was for a loan of \$25,000.00 from Mr. McGowan to Frekar.

44. The Solicitor was not able to provide the Law Society with a copy of the accounting records for this transaction.

45. On October 3, 1993, Frekar sold Unit 2 to Amy Mitchell. In connection with the closing of this transaction on October 6, 1983, the Solicitor caused to be registered a partial cessation of charge document #212572 (Appendix "F"), being a partial discharge of mortgage #206774.

46. On February 1, 1984, Frekar sold Unit 4 to Nicola and Teodora Hubanow. In connection with the closing of this transaction on February 1, 1984, the Solicitor caused to be registered a parties cessation of charge document #218698 (Appendix "G"), being a partial discharge of mortgage #206774.

47. The Solicitor signed Mr. McGowan's name to document #218698 and the Affidavit As to Legal Age. The Solicitor admitted that as a consequence of the above that he had knowingly commissioned a false Affidavit of Subscribing Witness in connection with this charge of mortgage transaction.

48. On June 16, 1986, the Solicitor issued trust cheque #8304 for \$25,130.21 payable to W.J. McGowan, thereby discharging his loan to Frekar. The client received full payment for his loan, and lost no money.

49. On October 31, 1986, Frekar sold Unit 3 to Raymond Eckert and Jennifer Armstrong. In connection with this transaction, the Solicitor prepared a discharge of charge for mortgage #206774 (Appendix "H"). The Solicitor signed Mr. McGowan's name to this discharge.

50. The solicitor did not report the results of the discharge transactions to Mr. McGowan.

VI. PRIOR DISCIPLINE

51. The Solicitor has had no prior discipline.

DATED at Toronto this 25th day of August, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Frederick Arthur Helson be suspended for a period of one month.

REASONS FOR RECOMMENDATION

1. Counsel for the Society and the Solicitor made a joint recommendation that the appropriate penalty in this case was a reprimand in Committee. The Committee is very mindful of the Society's position in connection with joint submissions as to penalty and deliberated a considerable length of time on the issue of penalty. The hearing itself extended over a period of three different days while the Committee grappled with the joint submission and the evidence in support of it. It was submitted by both counsel that the range in this case was a reprimand - either in Committee or in Convocation. On all of the facts, we could not agree that the joint submission fell within the range of penalties which are reasonable in the circumstances.

Note: Amendment, see page 89

2. The misconduct herein consists of several breaches, to many rules, over a lengthy period of several years, with many different parties. The Committee therefore rejected the argument that the conduct was an aberration/isolated incident.

3. The agreed statement of facts indicated the following misconduct, all of which was also supported by Mr. Helson's viva voce evidence:

- a. Mr. Cook received no reporting letters. (par. 11)
- b. There was no trust accounting in 7 of 16 files. (par. 11)
- c. There was no Declaration of Trust in 9 of 16 files. (par. 11)
- d. The Solicitor's books and records were in total disarray and required an accounting firm to put them right, at an expense of \$45,000 to \$50,000. (Par. 8, 15 and 16 and viva voce evidence of Mr. Helson)
- e. The Solicitor did not tell his investor/mortgagee clients that his client/mortgagor, Mr. Cook was not making mortgage payments. (par. 17 and 37)
- f. The Solicitor did not advise his investor/mortgagee clients to obtain independent legal representation. (par. 18)
- g. The Solicitor advised some, but not all of his investor/mortgagee clients that he had personal funds invested in the mortgages. (par. 18 and viva voce evidence of Mr. Helson)
- h. The Solicitor breached the *Trustee Act* by investing estate funds in other than a first mortgage. (par. 29)
- i. The Solicitor forged his client's signature to a discharge of mortgage in January of 1984 and again in October of 1986. (par. 47 and 49 and Appendices "G" and "H").
- j. The Solicitor swore a false affidavit of subscribing witness as to the forged signature. (par. 47)
- k. The Solicitor did not report to Mr. McGowan, the client whose signature he forged. (par. 50)

4. Although not contained in the agreed statement of facts through an oversight, the solicitor admitted his actions constituted professional misconduct and this was supported by the evidence. The hearing proceeded on the issue of penalty only. Both counsel submitted a lengthy list of mitigating circumstances and indicated there were no aggravating ones. The Committee finds there are aggravating circumstances and also accepts the mitigating ones, as set out below.

Years of Practice and No Prior Discipline Record

5. It was submitted that the Solicitor's thirty-seven (37) years of practice without a discipline record was a mitigating factor. The Committee accepts this is true.

6. However, the Committee also observes that after thirty-seven years of practice, in a small town, in a general practice, the Solicitor should know better than to deal with these matters in such a sloppy manner. He was not a beginning lawyer who did not know the importance of what he was doing. He had a full appreciation of his actions and he had the trust of his clients. He did not record in their files basic information, saying he was "not good at details". Yet, he testified he kept the details of his clients investments in his head. He should know the provisions of the *Trustee Act*; he should realize the importance of accurate books and records; he ought to realize the importance of reporting to clients and keeping them fully informed. Especially after thirty-seven years of practice.

7. Much of the Errors and Omissions crisis the Society finds itself in today is a direct result of precisely this conduct - a Solicitor engaged in mortgage brokering, without adequately informing his clients. These are aggravating factors which the Committee feels offset the mitigation of the Solicitor's long record.

No Dishonest Conduct or Personal Benefit, Full Restitution, Clients did not Complain

8. The Committee was also asked to take into account that the Solicitor did not personally benefit from the transactions. In the end result, he lost one million dollars by bailing out his clients from the mortgages in which he had placed them. None complained except Mr. Cook and Mr. McGowan, who are respectively the borrower and the client whose signature was forged, but who was not out any money.

9. Repaying his clients is an admirable, honourable action on the part of the Solicitor. The Society certainly wishes to encourage lawyers to protect their client's and act in a financially responsible manner with them. However, the Solicitor's conflict of interest and failure to arrange independent legal representation seriously jeopardized those same clients. He acted for both lenders and the borrower. His failure to report to his mortgagee clients about the transactions and his client Mr. Cook's nonpayment of the mortgages had the effect of hiding from his clients the seriousness of the matter. One can also appreciate that it would not be prudent to report to a client that they had a good and valid 9th, 10th or 11th mortgage. It is only because the Solicitor acted on all sides of these various mortgages that he got away with that. It was not dishonesty in the sense of personal financial benefit (he often did not even bill out the files and never charged a mortgage brokering fee) but it was also not behaviour which honestly kept his clients fully informed of their investments and the risks they faced.

10. The misconduct in particular 2(f), that his client was not making mortgage payments, is very serious. The Solicitor was placing mortgages on title, investing his client's money when he knew the borrower had not made any payments on the existing mortgages, ever. This was not disclosed to the investors. Mr. Helson's evidence was that Mr. Cook never made any payments and that the new mortgages were used to pay off the prior ones. He felt however that at all times there was adequate security between the house and lands and that the project was worthwhile at the time. Nonetheless, with the mortgagor making no payments, Mr. Helson was jeopardizing his clients' funds without their knowledge or consent. When considered with the fact that the Solicitor did not keep proper records on these numerous transactions, it was incredible to hear his evidence that he had it all "in his head". He testified he did not register discharges of mortgages when he could have because he was afraid he might have some "residual" money left, in which case he wanted the security in place. One may question therefore his confidence in his ability to keep it all in his head.

11. Paragraphs 47 and 49 of the agreed statement of facts set out most serious conduct which goes directly to the integrity of the profession. The Committee was especially concerned that it appeared the joint submission by counsel did not acknowledge that knowingly commissioning a false affidavit and signing a client's name to documents is conduct which merits, on the face of it, a more severe penalty than that which was being recommended in total for all the offences committed by Mr. Helson.

12. Mr. Helson's evidence was that Mr. McGowan was a client of some 20 or 25 years who spent six months each winter out of the country. The Solicitor gave an undertaking to partially discharge one of Mr. McGowan's mortgages and, when he could not reach his client, after 3 or 4 months the Solicitor signed the discharge. He had no specific authority to do so, simply a "general" authority, he testified. He had no power of attorney for Mr. McGowan. While it was three years after the fact that Mr. McGowan complained to the Society, complain he did.

13. The Solicitor apparently felt it so important to fulfill his undertaking that he signed his client's name rather than try other ways of either contacting the client or discharging the mortgage. He chose expediency over compliance with the rules of professional conduct, just as he did with the recording of mortgage details in his head instead of in the files. Perhaps the undertaking should not have been given if it could not be fulfilled.

Factors Considered in Assessing Penalty

14. In his book *Lawyers & Ethics Professional Responsibility and Discipline*, Carswell, 1993, former senior discipline counsel Gavin MacKenzie sets out at page 40 that:

"It may be entirely appropriate that a lawyer who has proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded if the discipline hearing panel and Convocation are reasonably satisfied that the likelihood of recurrence is minimal in the latter case."

He also points out that the extent of injury, the lawyer's prior discipline record, penalties previously imposed for similar misconduct and any restitution made by the lawyer are all relevant factors, as well as the length of time the lawyer has been in practice. Restitution is always relevant and is more compelling if made prior to discovery by the Society of the lawyer's misconduct according to Mr. MacKenzie. Here, the likelihood of recurrence is minimal to non-existent and the restitution which has taken place occurred both before and after the investigation by the Society as, for example, the Trustee Act violation was unknown to the Solicitor until the Society investigator told the Solicitor, whereupon he promptly made good the error.

15. In the end therefore a complex mix of factors, unique to each case, influences the discipline hearing panel. When these factors are coupled with the panel member's own experience and the submissions of counsel (joint or otherwise), a recommended penalty is arrived at which it is hoped is suitable to redress the misconduct and serve the goals of both general and specific deterrence as well as protecting the public and preserving the integrity of the profession in the eyes of the public. In this case the Committee accepts that the public means a well informed, reasonable member of the public. The task of imposing penalty also involves not devastating a lawyer who otherwise, as in this case, has been an upstanding, honourable, respected member of the profession but who has, for whatever reason, run afoul of the rules of professional conduct.

16. This Committee struggled throughout the hearing to accept the joint submission of counsel. We were mindful of their reevaluating their positions, at our request, and still making the joint submission they did. We were mindful of Convocation's policy on joint submissions. We took into account the mitigating factors and balanced them against what we viewed as aggravating factors.

17. Mr. Helson's counsel quite rightly pointed out that the Committee had had trouble accepting the joint submission from when it first read the agreed statement of facts and that that was every counsel's nightmare - that the deal which had been negotiated would not be accepted by the tribunal. This is all true and is one of the risks of a joint submission, of which all parties are acutely aware, including the Committee. We understand that negotiations are part of an agreed statement of facts and that admissions of misconduct may be exchanged in consideration for concessions from the Society on other matters. We do not wish to discourage such a practice but merely to keep a vigilant eye on it.

18. In the end we could not accept the joint submission of a reprimand in Committee; it simply was outside the range of penalties which the members of the Committee believe to be acceptable, having applied the factors enunciated and given the breadth and depth of the misconduct.

Mr. Helson's Penalty

19. Having said that we are unable to accept the joint submission, the Committee was however persuaded by counsel and the evidence that the Solicitor should receive a penalty at the more modest end of the overall range of penalties. He made restitution at tremendous personal expense and sacrifice; he has continued to cooperate with the society and with the defence counsel assigned by the insurance plan; instead of heading into his retirement with substantial assets and a spotless record of service and performance in his community he now faces financial devastation and a tarnished image; he acted honourably with his clients and offered no excuses to the Society for his conduct; he did not personally benefit from his actions, which were not motivated by greed or avarice.

20. The Solicitor's counsel indicated the Solicitor deserved mercy and compassion, not punishment. The Committee gave every opportunity to both counsel to present evidence which would supplement the agreed statement of facts and would show that the joint submission was appropriate. Although more evidence was received, both in writing and *viva voce* it did not persuade the Committee that the lowest of all possible penalties was appropriate in the circumstances of this case but it did move the Committee to a lesser penalty than they had originally contemplated.

21. The Committee heard from the Solicitor and from five witnesses called to give character evidence, two of whom are currently Justices in the Ontario Court, General Division. In addition five letters were received as character evidence from local lawyers and business people. The character evidence was consistent and persuasive. It showed that this Solicitor cares for his clients, has been a pillar of society in his community, is completely trusted by others and continues to be so trusted, and has served as a role model for many lawyers in his area. None question the Solicitor's honesty or ethics and all viewed the activities in question as an aberration.

22. While the character evidence was very helpful and persuasive with the Committee in speaking to mitigation of the Solicitor's conduct, it did not serve to reduce the penalty out of the range of a suspension. It certainly was a factor in the Committee's recommendation that the suspension be for a period of only one month, as were the other factors such as restitution. Much of the oral character evidence was from people who had known and practised with the Solicitor in the late 1960's and early 1970's and as such was about twenty years old, although the parties had "kept in touch" over the years. The Committee was concerned that the activity which formed the substance of the complaints took place in the mid- 1980's and so some of this character evidence was not current enough to be helpful. Overall, the Committee believes the Solicitor to be what the character evidence said he is. How then is he to be punished and what is the appropriate penalty?

23. The Committee at the outset listed the reasons why the mitigation was offset by other aggravating factors. We have looked at the totality of evidence and agree that the Solicitor is to be commended for his actions since "discovering" with the downturn of the market that he had put his clients in such severe jeopardy. We cannot condone his original actions, his sloppy practices and his initial disregard for his client's well being. Both the public and the profession would expect that a Solicitor who:

- a. violated rule 23 (interest in syndicated mortgages);
- b. violated rule 5 (conflict of interest);
- c. violated rule 2 by failing to provide reporting letters in a timely fashion;
- d. breached the Trustees' Act while acting as an Executor;
- e. improperly signed the name of his client to discharge documents;
- f. knowingly swore a false affidavit after signing his client's name.

would receive a significant and lengthy penalty. That the Committee is recommending a one month suspension and is making no order as to costs is a reflection of the totality of the evidence, the restitution made at great personal sacrifice and the Solicitor's thirty-seven year history as an exemplary member of the bar and of his community.

24. The Committee approves of the statement in *Bolton v. Law Society*, [1994] 1 W.L.R. (C.A.) 512 at 519 that:

"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before a tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. . . . All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. . . . The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

21st March, 1996

Frederick Arthur Helson was called to the Bar on the 27th day of June, 1957.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

E. Susan Elliott
Chair

Mr. Perrier asked that the following amendment be made to the Report:

- page 12 of the Report under the heading Reasons for Recommendation - the words "three different days" be changed to "two different days".

The Report as amended was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be suspended for a period of 1 month.

Both counsel made submissions in support of the joint submissions made at the hearing before the Discipline panel that the solicitor be reprimanded in Committee.

There were questions from the Bench.

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

It was moved by Mr. Cole, seconded by Mr. Gottlieb that Convocation accept the joint submissions made at the Committee hearing that the solicitor be reprimanded in Committee.

Lost

It was moved by Mr. Wright, seconded by Mr. Swaye that the recommended penalty be adopted.

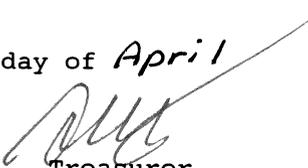
Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month.

Convocation granted April 1st, 1996 as the commencement of the suspension.

CONVOCATION ROSE AT 12:30 p.m.

Confirmed in Convocation this *26* day of *April*, 1996


Treasurer