

24th November, 1994

MINUTES OF SPECIAL CONVOCATION

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

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Blue, Brennan, Campbell, Curtis, Elliott, Epstein, Goudge, Graham, Hickey, Kiteley, Moliner, Richardson, Scott, Thom, Topp and Weaver.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Ross HAINSWORTH - Edmonton

The Secretary placed the matter before Convocation.

Mr. Thom did not participate in this matter.

Mr. Michael Brown appeared for the Society and Mr. Frank Marrocco appeared for the solicitor who was present.

Mr. Marrocco requested an adjournment to the January 1995 Convocation until Reasons from the September Convocation were received.

Convocation was reminded that the solicitor's undertaking not to practise would continue.

Mr. Brown did not oppose the adjournment.

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

It was moved by Mr. Epstein, seconded by Mr. Goudge that the testimony of Judge Otter be videotaped.

Mr. Epstein's motion was amended by adding the matter be adjourned to January and in the event there were problems with Judge Otter's schedule, arrangements would be made to take his evidence in advance.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision to adjourn the matter to the January 1995 Discipline Convocation and that arrangements be made to take Judge Otter's evidence in advance.

Counsel and solicitor retired.

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Re: William Donald GRAY - Toronto

The Secretary placed the matter before Convocation.

Messrs. Scott and Thom and Ms. Graham did not participate in this matter.

Mr. Michael Brown appeared for the Society. The solicitor appeared on his own behalf.

Mr. Brown requested an adjournment on consent to the next Discipline Convocation in January 1995 so that the solicitor could complete his Factum.

An adjournment was granted to the January 1995 Discipline Convocation.

Counsel and solicitor retired.

Re: John William NICHOLSON - Hamilton

The Secretary placed the matter before Convocation.

Messrs. Scott and Thom and Ms. Moliner did not participate in this matter.

Mr. Michael Brown appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Counsel for the Society requested an adjournment on consent to the January 1995 Discipline Convocation. The Society had received a letter from the solicitor's doctor who advised that Mr. Nicholson was medically unfit to attend Convocation. The solicitor was not practising law.

An adjournment was granted to the January 1995 Discipline Convocation.

Counsel retired.

Re: George STRUK - Brampton

The Secretary placed the matter before Convocation.

Messrs. Scott and Thom and Ms. Moliner did not participate in this matter.

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

Ms. Budweth requested an adjournment on consent to the January 1995 Discipline Convocation as the solicitor had filed a Notice of Disagreement and needed time to prepare the documents for Convocation. Ms. Budweth further advised that the solicitor had given an Undertaking not to practice and also met with the Staff Trustee.

An adjournment was granted to the January 1995 Discipline Convocation.

Counsel and solicitor retired.

Re: Lee Edward WARD - Carleton Place

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. Weaver did not participate in this matter.

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Ms. Christina Budweth appeared for the Society. Mr. Mark Edwards, Duty Counsel, appeared on behalf of Mr. Neville, Mr. Ward's counsel. The solicitor was not present.

Ms. Budweth advised that the solicitor needed time to prepare a Factum as a result of a Notice of Disagreement filed by the Society.

Mr. Edwards also advised that the solicitor was scheduled to be in court during the week of the next Discipline Convocation in January and requested that if the solicitor was unable to attend the Discipline Convocation then the matter proceed at Regular Convocation.

An adjournment was granted to the Discipline or Regular Convocation in January 1995 or Regular Convocation.

Counsel retired.

Re: Jeffrey Martin NEIMAN - Toronto

The Secretary placed the matter before Convocation.

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

Ms. Christina Budweth appeared for the Society and Mr. M. Tufman appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd September, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th October, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th November, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Samuel Lerner, Q.C., Chair
Carole Curtis
Nora Richardson

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

Christina Budweth
for the Society

JEFFREY MARTIN NEIMAN
of the City
of Toronto
a barrister and solicitor

M. Tufman
for the solicitor

Heard: May 11, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 2, 1994, Complaint D419/93 was issued against Jeffrey Martin Neiman alleging that he was guilty of professional misconduct.

The matter was heard in public on May 11, 1994 before this Committee composed of Samuel Lerner, Q.C., Chair, Carole Curtis and Nora Richardson. The Solicitor was present at the hearing and was represented by M. Tufman. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D419/93

2. a) He has breached an Order of Convocation by continuing to practise while under suspension during the period June 1, 1993 until June 16, 1993.
- b) He has breached an Order of Convocation by continuing to practise while under suspension during the period May 1, 1993 until May 7, 1993.
- c) He has breached an Order of Convocation by continuing to practise while under suspension during the period December 1, 1992 until December 10, 1992.

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 D419/93 and is prepared to proceed with a hearing of this matter on May 11, 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 Complaint D419/93 and this Agreed Statement of Facts with his counsel, Marek Tufman, and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 8, 1987 and is 35 years of age. He practices as a sole practitioner.

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Particular 2(a)

Breach of an Order of Convocation by continuing to practise while under suspension during the period June 1, 1993 until June 16, 1993.

5. By notice dated April 1, 1993 and by final notice dated May 3, 1993, the Solicitor was advised of his failure to remit the errors and omissions levy. In the final notice the Solicitor was advised that failure to remit the levy by May 31, 1993 might result in the suspension of his right to practise by Convocation.

6. By registered mail dated June 1, 1993 (Document Book, Tab 1), the Law Society advised the Solicitor that his rights and privileges had been suspended by Order of Convocation as a result of his failure to pay his Errors and Omissions Insurance Levy. The Society's June 1, 1993 letter was signed for on June 7, 1993.

7. On June 16, 1993 the Solicitor paid the Errors and Omissions Insurance Levy and the suspension was terminated (Document Book, Tab 2).

8. The Solicitor continued to practice law during the period of June 1, 1993 to June 16, 1993 thereby contravening Convocation's order as evidenced by the following:

- + Trust transactions detailed in a bank statement from National Trust, dated June 30, 1993 regarding the Solicitor's trust account 04-26283 (Document Book, Tab 3):
 - two deposits and one withdrawal on June 1, 1993
 - two withdrawals on June 2, 1993
 - two withdrawals on June 4, 1993
 - six withdrawals on June 7, 1993
 - four withdrawals on June 8, 1993
 - one withdrawal on June 10, 1993
 - one deposit and one withdrawal on June 16, 1996
- + Solicitor's trust deposit book from National Trust Company for account 04-26283 (Document Book, Tab 4):
 - deposits of \$174,750. and \$6,000. on June 1, 1993
 - deposit of \$100. on June 14, 1993
- + Cashed cheques written on the Solicitor's trust account (Document Book, Tab 5):
 - cheque payable to Sam Smulevitch, dated June 4, 1993 in the amount of \$108.59
 - cheque payable to Victor Grape, dated June 10, 1993 in the amount of \$36.87
 - cheque payable to Treasurer of Ontario, dated June 1, 1993 in the amount of \$1,493.96
 - cheque payable to the Treasurer of Ontario, dated June 7, 1993, in the amount of \$17.00
 - cheque payable to 711219 Ontario Limited, dated June 1, 1993, in the amount of \$259.95
 - cheque payable to 711219 Ontario Limited, dated June 1, 1993, in the amount of \$151.50
 - cheque payable to 711219 Ontario Limited, dated June 1, 1993, in the amount of \$274.60

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- + Solicitor's trust cash book for June, 1993 (Document Book, Tab 6):
 - receipt of \$174,750. and \$6,000. on June 1, 1993
 - payment of \$172,566.45, \$1,493.96, \$151.50, \$259.95 and \$274.60
 - payment of \$525.59 on June 3, 1993
 - payment of \$603.50, \$108.59, \$38.78 and \$10.00 on June 4, 1993
 - payment of \$17.00 on June 7, 1993
 - payment of \$4,000. and \$36.87 on June 10, 1993
 - payment of \$1,000.00 on June 11, 1993
 - payment of \$535.00 on June 16, 1993
 - receipt of \$1,000.00 on June 16, 1993
- + Solicitor's memorandum to 711219 Ontario Limited dated June 9, 1993 (Document Book, Tab 7) regarding Gruszka vs. Stan Vine in which he requests that 711219 attend at the Land Registry' Office for the City of York and register a Document General and Order. Solicitor provided 711219 with his general cheque in the amount of o\$27. payable to the Treasurer of Ontario
- + By letter dated June 11, 1993 to Levine Morris Silver and Lewis (Document Book, Tab 8) the Solicitor confirmed his attendance in court on June 7, 1993 to obtain an order providing for the dismissal of an action and counterclaim, and vacating both he Claim for Lien and the Certificate of Action.

9. On September 23, 1993, a Law Society examiner attended at the Solicitor's office to review his books and records. At that time the Solicitor advised the Society, in writing, (Document Book, Tab 9) that upon receipt of the Law Society's December 6, 1992 notice requesting payment of his errors and omissions levy, he did not pay the same as he was not in receipt of the funds. He stated that he was hoping to be able to make the payment upon receipt of the second notice. Upon receipt of the Law Society's second notice, dated April 1, 1993, the Solicitor advised that he was still not in receipt of the funds to pay the levy. He was hoping that he would be able to pay the levy upon receipt of the third notice. Upon receipt of the Law Society's third notice, dated May 3, 1993, the Solicitor advised that he still was not in receipt of funds to pay the levy. He was hoping he would be in receipt of funds prior to the date of suspension. Upon receipt of the Law Society's June 1, 1993 letter advising him he was suspended, the Solicitor was still unable to pay the levy. The Solicitor advised the examiner that he thought he could provide his services should a client be in the position of being prejudiced as a result of his suspension and that, in those instances, his practising under suspension would be excused. The Solicitor stated that he knew that the other implication of practising under suspension would be that he would be disciplined for his actions. The Solicitor further acknowledged to the examiner that he does read the Ontario Reports, he did see his name on the list of suspended members and colleagues of his had brought his suspension to his attention.

Particular 2(c)

Breach an order of Convocation by continuing to practice while under suspension during the period of May 1, 1993 to May 7, 1993

10. By notice dated December 15, 1992, the Solicitor was advised of his failure to pay the second instalment of his annual fee. By final notice dated March 18, 1993, the Solicitor was advised that the failure to pay the annual fee by April 30, 1993 might result in his suspension on May 1, 1993. The Solicitor was also advised by way of the final notice:

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Again this year, the Special Committee Deferral of Fees and Levies will consider submissions by members for whom the payment of Annual Fees would pose severe financial hardship.

11. The Solicitor did not contact the Society to discuss a deferral of fees.
12. By registered mail dated May 4, 1993 (Document Book, Tab 10), the Law Society advised the Solicitor that his rights and privileges had been suspended by Order of Convocation as a result of his failure to pay the second instalment of his annual fee. The Society's May 4, 1993 letter was signed for on May 7, 1993.
13. On May 7 the Solicitor paid the second instalment of his annual fee and the suspension was terminated (Document Book, Tab 11).
14. By registered mail, dated May 31, 1993 (Document Book, Tab 12), the Law Society advised the Solicitor that his cheque in payment of the second instalment of his annual fee was returned marked "insufficient funds". The Solicitor was advised that should he fail to provide the Society with a certified cheque in the amount of \$567.00, which included a service charge of \$15, his name would go before Convocation on June 25, 1993 for suspension of his rights and privileges. The Solicitor provided the Law Society with a certified cheque on June 1, 1993.
15. The Solicitor continued to practice law during the period of May 1, 1993 to May 7, 1993 thereby contravening Convocation's order as evidenced by the following:
 - + Trust transactions detailed in a bank statement from National Trust, dated May 31, 1993 regarding the Solicitor's trust account 04-26283 (Document Book, Tab 13):
 - two withdrawals on May 3, 1993
 - one deposit and one withdrawal on May 4, 1993
 - one deposit and one withdrawal on May 7, 1993
 - + Cashed cheques written on the Solicitor's trust account (Document Book, Tab 14):
 - cheque payable to the Treasurer, City of Vaughan, dated May 3, 1993 in the amount of \$45.00
 - cheque payable to York Regional Condominium Corporation, No. 812, dated May 3, 1993, in the amount of \$53.50
 - + Solicitor's trust cash book for May, 1993 (Document Book, Tab 15):
 - receipt of \$300.00 on May 4, 1993
 - payment of \$53.50, \$45.00 and \$27.50 on May 4, 1993
 - receipt of \$400.00 on May 7, 1993
 - + By letter dated May 3, 1993 to Townsgate I Limited (Document Book, Tab 16), the Solicitor advised that he was acting on behalf of Sam and Frances Smulevitch. The Solicitor requested Townsgate I Limited provide him with certain information and enclosed his trust cheque in the amount of \$53.50.
 - + By letter dated May 3, 1993 (Document Book, Tab 17), the Solicitor advised the Tax Department of the City of Vaughan that he was acting on behalf of Sam and Frances Smulevitch. The Solicitor requested the City of Vaughan provide him with certain information and enclosed his trust cheque in the amount of \$27.50.

- + By letter dated May 3, 1993 (Document Book, Tab 18), the Solicitor advised the Building Department of the City of Vaughan that he was acting on behalf of Sam and Frances Smulevitch. The Solicitor requested the City of Vaughan provide him with certain information and enclosed his trust cheque in the amount of \$45.00.

16. On September 23, 1993, a Law Society examiner attended at the Solicitor's office to review his books and records. At that time the Solicitor advised the Society, in writing (Document Book, Tab 19), that upon receipt of the Law Society's December 15, 1992 notice requesting payment of his annual fee, he did not pay the same as he was not in receipt of the funds. He stated that he was hoping to be able to make the payment upon receipt of the second notice. Upon receipt of the Law Society's second notice, dated March 12, 1993, the Solicitor advised that he was still not in receipt of funds to pay the fee. He was hoping that he would be able to pay the fee upon receipt of the third notice. Upon receipt of the Law Society's third notice, May 4, 1993, the Solicitor advised that he still was not in receipt of funds to pay the fee. He was hoping he would be in receipt of funds prior to the date of suspension. Upon receipt of the Law Society's May 1, 1993 letter advising him he was suspended, the Solicitor was still unable to pay the fee. The Solicitor advised the examiner that he thought he could provide his services should a client be in the position of being prejudiced as a result of his suspension and that, in those instances, his practising under suspension would be excused. The Solicitor stated that he knew that the other implication of practising under suspension would be that he would be disciplined for his actions. The Solicitor further acknowledged to the examiner that he does read the Ontario Reports, he did see his name on the list of suspended members and colleagues if his had brought his suspension to his attention.

Particular 2(c)

Breached an order of Convocation by continuing to practice law while under suspension during the period December 1, 1992 until December 10, 1992

17. By notice dated July 13, 1992, the Solicitor was advised of his failure to make the first instalment of his annual fee for the 1992/93 year. The notice advised the Solicitor of the possibility of the suspension of his right to practise for failure to make the payment within four months after the day on which it was due. By further notice dated October 13, 1992, the Solicitor was reminded of his failure to remit the annual fee.

18. By final notice dated November 16, 1992, the Solicitor was reminded of his failure to pay the first instalment of the annual fee. Again, the notice set out the provisions of Section 36 of the Law Society Act regarding the possibility of suspension for failure to make the payment.

19. By registered mail dated December 2, 1992 (Document Book, Tab 20), the Law Society advised the Solicitor that his rights and privileges had been suspended by Order Convocation as a result of his failure to pay his annual fee. The Society's December 2, 1992 letter was signed for on December 10, 1992.

20. On December 10, 1993 the Solicitor paid his annual fee and the suspension was terminated.

21. The Solicitor continued to practice law during the period of December 1, 1992 to December 10, 1992 thereby contravening Convocation's order as evidenced by the following:

- * Trust transactions detailed in a bank statement from National Trust, dated December 31, 1992 regarding the Solicitor's trust account 04-26283 (Document Book, Tab 21):

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- one withdrawal on December 1, 1992
- one withdrawal on December 2, 1992
- one withdrawal on December 3, 1992
- two deposits and three withdrawals on December 4, 1992
- one deposit on December 9, 1992
- one deposit on December 10, 1992

- * Solicitor's trust deposit book from National Trust Company for account 04-26283 (Document Book, Tab 22):
 - deposits of \$400. and \$500. on December 4, 1992
 - deposit on \$100. on December 9, 1992

- + Cashed cheques written on the Solicitor's trust account (Document Book, Tab 23):
 - cheque payable to Dr. Lawrence Freedman, dated December 8, 1992, in the amount of \$500.00

- + Solicitor's trust cash book for December, 1992 indicates the following activity (Document Book, Tab 24):
 - payment of \$55.00 and \$16.00. on December 1, 1992
 - payment of \$312. on December 2, 1992
 - payment of \$26. on December 3, 1992
 - receipt of \$400. and \$500. on December 4, 1992
 - payment of \$500. and \$133. on December 4, 1992
 - payment of \$500. on December 8, 1992
 - receipt of \$100. on December 9, 1992
 - receipt of \$220. on December 10, 1992
 - payment of \$170. on December 10, 1992

22. On September 23, 1993, a Law Society examiner attended at the Solicitor's office to review his books and records. At that time the Solicitor advised the Society, in writing (Document Book, Tab 25), that upon receipt of the Law Society's July 13, 1992 notice requesting payment of his annual fee, he did not pay the same as he was not in receipt of the funds. He stated that he was hoping to be able to make the payment upon receipt of the second notice. Upon receipt of the Law Society's second notice, dated October 8, 1992, the Solicitor advised that he was still not receipt to pay funds to pay the fee. He was hoping that he would be able to pay the fee upon receipt of the third notice. Upon receipt of the Law Society's third notice, November 7, 1992, the Solicitor advised that he still was not in receipt of funds to pay the fee. He was hoping he would be in receipt of funds prior to the date of suspension. Upon receipt of the Law Society's December 2, 1992 letter advising him he was suspended, the Solicitor was still unable to pay the fee. The Solicitor advised the examiner that he thought he could provide his services should a client be in the position of being prejudiced as a result of his suspension and that, in those instances, his practising under suspension would be excused. The Solicitor stated that he knew that the other implication of practising under suspension would be that he would be disciplined for his actions. The Solicitor further acknowledged to the examiner that he does read the Ontario Reports, he did see his name on the list of suspended members and colleagues of his had brought his suspension to his attention.

V. DISCIPLINE HISTORY

23. The Solicitor does not have a discipline history.

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VI. JOINT SUBMISSION ON PENALTY

24. The Society and the Solicitor will jointly submit that the Solicitor be suspended for a period of twenty (20) days and be required to pay the Society's costs in the amount of \$200.00

DATED at Toronto this 11th day of May, 1994."

RECOMMENDATION AS TO PENALTY

The majority of the Committee accepted the joint submission that the Solicitor be suspended for a period of twenty days and be required to pay the Society's costs in the amount of \$200.00.

REASONS FOR RECOMMENDATION

The joint submission with respect to penalty is a recommendation for a very modest penalty. However, the Solicitor's practice is currently fragile. He has approximately 30 to 40 active files. He is renting space on Bay Street, and cannot make an adequate living where he is now. It is his plan to move his practice following the imposition of this penalty. His practice is about 80% dependent on Legal Aid, and the delay in payment that lawyers are currently experiencing from Legal Aid is making it very difficult for the Solicitor at present. However, his filings are up-to-date as are his dues, as of the date of the hearing.

The suspension of more than 20 days would result, effectively, in the end of the Solicitor's practice. The Solicitor does currently have clients, but his practice is fragile.

The Committee was mindful of the principals articulated in MacGregor and in Ellison. The approach used in these cases requires the application of a rather strict mathematic formula, which approach was abandoned by the Solicitor's counsel and the Law Society counsel. The Solicitor's breach of the Law Society's requirements was directly related to his inability to pay the fees. The consequences of this behaviour has been very severe for the Solicitor. However, the Solicitor has been co-operative with the Law Society. The Solicitor has been experiencing stress reactions from the discipline proceedings, and is rather sympathetic.

The Committee recognizes the need to find a penalty, appropriate to these circumstances, which does not visit further economic consequences on the Solicitor who is already in a difficult economic situation. A discipline process should not be responsible for the demise of a solicitor's practice through economic distress, particularly when economic distress was the reason the Solicitor got into this situation to begin with. In the Committee's view, the recommended penalty is appropriate to ensure the protection of the public, the general deterrence of the profession from this kind of conduct, and the specific deterrence of this Solicitor from this kind of conduct.

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Jeffrey Martin Neiman was called to the bar on the 8th day of April, 1987.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of September, 1994

Carole Curtis

Nora Richardson

THE LAW SOCIETY OF UPPER CANADA

DISSENT

REASONS FOR RECOMMENDATION

The acknowledgement by the Solicitor that he knew he was under suspension during the period set out, and if he failed to comply with the Society's request for payment of dues and levies, he would be suspended, is commendable.

His books and records appear to have been in order, there is no indication or evidence that he had acted dishonestly as far as solicitor-client relationship was concerned. He just was broke - and to say the least - he did not succumb to a course of conduct adopted by many other members of the Society.

The Solicitor, from the evidence, is living from hand to mouth - but honestly. The periods in which he conducted his practice are brief. But he had no right to do so. He felt that if it would affect a client, he had a responsibility greater than the power of the Order of Convocation. His conflict of loyalties is acceptable - particularly since there is no indication of evidence he received any fees for completing the transactions.

As there have been no previous disciplinary proceedings with respect to this member - and, under ordinary circumstances, I would accept and adopt the joint submission as to penalty. I feel that that would only be adding to his problems. Therefore, I think it would be more appropriate, in the circumstances, that he be reprimanded in Convocation.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of September, 1994

Samuel Lerner, Q.C.
Chair

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

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Counsel for the Society advised that the Report should be amended on page 5 by changing the heading to read "Particular 2(b)" instead of "2(b)".

The Report was adopted.

It was moved by Mr. Brennan, seconded by Mr. Campbell that the Recommendation as to Penalty be adopted that is, that the solicitor be suspended for a period of 20 days and pay costs in the amount of \$200.

Ms. Budweth made submissions in support of the majority recommendation.

Mr. Tufman argued for the minority recommendation of a reprimand in Convocation.

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

It was moved by Mr. Topp, seconded by Mr. Hickey that the minority recommendation of a reprimand be adopted.

Lost

It was moved by Ms. Weaver but failed for want of a seconder that the solicitor be suspended for a period of 63 days.

It was moved by Ms. Kiteley but failed for want of a seconder that the period of suspension commence on December 15th, 1995.

The majority Recommendation was adopted.

Counsel, the solicitor, the reporter and the public were recalled and advised of Convocation's decision that the solicitor be suspended for a period of 20 days and pay costs in the amount of \$200.

Convocation consented to counsel for the solicitor's request for the suspension to commence on December 10th, 1994.

Counsel and the solicitor retired.

ADMISSIONS AND MEMBERSHIP COMMITTEE

Application for Readmission

Re: Asgarali Mohamed MANEK - Stoney Creek

The Secretary placed the matter before Convocation.

Mr. Michael Brown appeared for the Society and Mr. Brian Greenspan appeared for the applicant. The applicant was not present.

An adjournment was requested on consent to the January 1995 Discipline Convocation in order that counsel for the applicant could respond to Mr. Brown's Notice of Disagreement.

An adjournment was granted to the Discipline Convocation in January 1995.

Counsel retired.

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DISCIPLINE COMMITTEE

Re: Stephen Lorne MCDONALD - Sudbury

The Secretary placed the matter before Convocation.

Mr. Scott, Ms. Moliner and Ms. Curtis did not participate in this matter.

Mr. Topp withdrew for this matter.

Mr. Brown appeared for the Society on behalf of Mr. Neil Perrier and Mr. Greenspan appeared on behalf of the solicitor. The solicitor was not present.

Mr. Brown advised that Mr. Perrier was on vacation and would like to attend before Convocation on this matter. An adjournment on consent was requested to the Discipline Convocation in January 1995 in order that Mr. Perrier could attend.

An adjournment was granted to the Discipline Convocation in January 1995.

Counsel retired.

Re: Thomas Holyoake BOX - Aurora

The Secretary placed the matter before Convocation.

Messrs. Scott, Topp, Brennan and Hickey withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 17th October, 1994, together with an Affidavit of Service sworn 16th November, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 21st October, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th November, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Lloyd Brennan, Q.C., Chair
Patricia J. Peters, Q.C.
Michael G. Hickey, Q.C.

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

THOMAS HOLYOAKE BOX
of the Town
of Aurora
a barrister and solicitor

Christina Budweth
for the Society

Not Represented
for the solicitor

Heard: February 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 5, 1993, Complaint D7/93 was issued, on April 16, 1993, Complaint D95/93 was issued and on November 15, 1993 Complaint D339/93 was issued against Thomas Holyoake Box alleging that he was guilty of professional misconduct.

The matters were heard in public on February 9, 1994 before this Committee composed of Lloyd Brennan, Q.C., Chair, Patricia J. Peters, Q.C., and Michael G. Hickey, Q.C. The Solicitor was present and was represented by W. Fox. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D7/93

2. a) He failed to provide a reply to the Law Society regarding a complaint by Carl and Patricia Jensen despite letters dated August 31, 1992 and October 9, 1992 and telephone requests on September 30, 1992, October 5, 1992 and October 7, 1992.
- b) He failed to comply with his Undertaking to the Law Society dated March 8, 1989 by failing to reply to letters from the Law Society dated August 31, 1992 and October 9, 1992 within ten days of receipt.
- c) During the period September 14, 1990 to December 13, 1990 he misappropriated \$4,360.00 from his general mixed trust account.

Complaint D95/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending May 31, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 573 made pursuant to the Law Society Act;
- b) He failed to comply with his undertaking to the Law Society dated March 8, 1989 by failing to file his Form 2/3 for the fiscal year ended May 31, 1992 within the time period prescribed by Section 16 of Regulation 573 of the Law Society Act.

Complaint D339/93

2. a) He has breached Orders of Convocation by continuing to practise while under suspension during the periods September 27th 1991 until March 26th 1992, June 5th 1992 until June 25th 1992, and from June 25th 1993 to present.

24th November, 1994

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D7/93 and D95/93 and is prepared to proceed with a hearing of these matters on November 16 and 17, 1993.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D7/93 and D95/93 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1984. He practices as a sole practitioner with an emphasis on criminal law and civil litigation. The Solicitor has been suspended since June 25, 1993 for nonpayment of the late filing levy.

Complaint D7/93

Particular 2(a) Failure to Reply to the Society
(b) Failure to honour undertaking to the Society

5. By letter dated August 12, 1992 (Exhibit 1, Document Book), Patricia Jensen and Carl Jensen filed a complaint with the Law Society against the Solicitor. Carl Jensen retained the Solicitor in late 1990 to represent him with respect to injuries he sustained in a motor vehicle accident. The Jensens complained about the lack of communication that they have received from the Solicitor concerning the status of Mr. Jensen's case.

6. By letter dated August 31, 1992 (Exhibit 2, Document Book), the Law Society forwarded to the Solicitor a copy of the Jensens' letter of complaint. The Solicitor was requested to provide his comments to the same within two weeks. No response was received.

7. On September 30, 1992, a Law Society staff employee telephoned the Solicitor and left a message on his answering machine for him to return the call. No response was received.

8. On October 5, 1992, a Law Society staff employee telephoned the Solicitor and left a message on his answering machine for him to return the call. No response was received.

9. On October 7, 1992, a Law Society staff employee placed a further call to the Solicitor and left a message on his answering machine for him to return the call. No response was received.

24th November, 1994

10. By registered mail dated October 9, 1992 (Exhibit 3, Document Book), the Society forwarded to the Solicitor a copy of its August 31, 1992 letter. The Solicitor was reminded of his obligation to reply. The Solicitor advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. The letter was returned marked "unclaimed".

11. By failing to respond to the Society's August 31, 1992 and October 9, 1992 letter, the Solicitor has failed to honour his undertaking to the Society of March 8, 1989 (Exhibit 4, Document Book), which reads as follows:

I, Thomas Holyoake Box, hereby undertake
to the Law Society of Upper Canada to:

- (4) Reply within a period of ten days from
the date of my receipt of all correspondence
from the Law Society.

Particular 2(c) Misappropriation of the sum of \$4,360.00

12. An audit was performed by the Society's Audit and Investigation department on the Solicitor's practice on June 19, 1991. As a result of the findings of the auditor, an audit brief was prepared on March 4, 1992.

13. During the audit, the auditor discovered an overdraft in the Solicitor's trust account in the amount of \$4,360.00 (Exhibit 5, Document Book). This overdraft results from 15 transactions of a personal nature by the Solicitor during the period September 14, 1990 to December 13, 1990. Copies of the trust cheques (Exhibit 6, Document Book) disclosed that the cheques were payable to the Solicitor personally. The Solicitor appropriated these monies from his trust account for personal expenditures. At the time that the Solicitor drew the trust cheques, he was in an overdraft position in both his general and personal accounts (Exhibit 7, Document Book).

Complaint D95/93

Particular 2(a) Failure to file for year ended May 31, 1992

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

15. A Notice of Default in Annual Filing, dated December 4, 1992 (Exhibit 8, Document Book) was forwarded to the Solicitor by the Law Society.

16. By registered letter dated January 11, 1993 (Exhibit 9, Document Book), the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file.

17. The late filing fee began to accrue on January 25, 1993.

24th November, 1994

18. By registered mail, a Third Notice of Default in Annual Filing, dated May 28, 1992 (Exhibit 10, Document Book), was forwarded to the Solicitor by the Law Society. The Law Society advised the Solicitor that his name would go before Convocation on June 25, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on June 24, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. No response was received.

19. By registered letter dated June 28, 1993 (Exhibit 11, Document Book), the Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended on June 25, 1993 for his failure to pay the late filing penalty. The letter was returned marked "unclaimed".

20. To date, the Solicitor has not yet submitted the required forms.

21. By failing to make his annual filings for the fiscal year ended May 31, 1992, the Solicitor has failed to honour his March 8, 1989 undertaking to the Society, which reads, in part, as follows:

I, Thomas Holyoake Box, hereby undertake to
the Law Society of Upper Canada to:

- (2) Make the filings as required by Section
16 of Regulation 573 under the Law Society Act
within the time period prescribed by that
section.

V. DISCIPLINE HISTORY

22. On March 8, 1989, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society; and failing to maintain proper books and records. The Solicitor was reprimanded in Committee and gave an undertaking to the Society 9 (see Exhibit 4, Document Book).

23. On May 8, 1991, March 25, 1992 and January 17, 1992, complaints were heard regarding the Solicitor's failure to make his annual filings for the years ended May 31, 1989 and May 31, 1990; failure to submit trust bank reconciliations for his trust account; failure to honour a financial obligations; and practising law while under suspension. On June 25, 1992, Convocation ordered that the Solicitor's rights to practise be suspended for 3 months effective August 1, 1992. A copy of the Report and Decision of the Discipline Committee is attached as Exhibit 12, Document Book.

24. On June 2 and 3, 1993, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society. The recommendation of the Committee was that the Solicitor be suspended for 2 months. A copy of the Report and Decision of the Discipline Committee is attached as Exhibit 13, Document Book. The matter is pending Convocation on November 25, 1993.

DATED at Toronto this 11th day of November, 1993."

"AGREED STATEMENT OF FACT

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D339/93 and is prepared to proceed with a hearing of this matter on February 9, 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 Complaint D339/93 and this agreed statement of facts with his counsel, Walter Fox, and admits the particular contained therein with the exception of that portion of the particular which alleges his practise during the period August 1, 1992 to November 1, 1992. The Solicitor admits that the particular detailed in the complaint supported by the facts as hereinafter stated constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 10, 1984. He is a sole practitioner with offices in the Town of Markham and Newmarket.

5. The Solicitor was suspended by order of Convocation on June 25, 1993 as a result of his failure to pay the late filing levy. The Solicitor continued to practise law after that date. On October 20, 1993, he gave an undertaking to the Society to cease practise until the conclusion of all outstanding discipline matters. A copy of the undertaking is attached as Exhibit 1 to this agreed statement of facts.

September 27, 1991 to March 26, 1992

6. The Solicitor's fiscal year end is May 31. The Solicitor failed to file his forms 2/3 for the fiscal year ended May 31, 1991.

7. On March 6, 1991, the Society forwarded to the Solicitor a Notice of Default in Annual Filings. The Solicitor did not make the filing. The Society sent further notices on April 5, 1991 and April 15, 1991. The Solicitor did not make the filing.

8. By letter dated September 17, 1991, the Society notified the Solicitor that a recommendation would be put before Convocation on September 27, 1991 that he be suspended for failure to make the annual filing and for his failure to pay the late filing levy. A copy of the Society's September 17, 1991 letter together with letters dated March 6, 1991, April 5, 1991 and April 15, 1991 are attached collectively as Exhibit 2 to this agreed statement of facts.

9. The Solicitor admits that he received the Society's March 6, April 5, August 15 and September 17, 1991 letters and notices.

10. The Solicitor was suspended by Order of Convocation on September 17, 1991 for his failure to pay the late filing levy. A copy of the letter advising the Solicitor of his suspension dated September 30, 1991 is attached as Exhibit 3 to this agreed statement of facts.

11. During this period of suspension, the Solicitor continued to engage in active practise as is evidenced by the following:

DATE	EVENT
September 30th, October 1st, 15th, 16th and 20th, November 7th 1991	Acted for fifty-six clients as per Form 12 #11219142 filed with Legal Aid
October 2nd, 4th, 21st, 24th and November 7th 1991	Acted for fifteen clients as per Form 12 #11219025 filed with Legal Aid
October 16th, 17th, November 7th, 12th, December 10th, 17th, 31st 1991 and January 3rd, 29th, March 23rd and 24th 1992	As per fee billing to Legal Aid Re: Certificate #47-167560
October 22nd and 28th 1991	As per fee billing to Legal Aid Re: Certificate #47-167510
October 22nd, 23rd 30th, November 6th and 7th 1991	As per fee billing to Legal Aid Re: Certificate #31-190136
October 23rd and December 5th 1991	As per fee billing to Legal Aid Re: Certificate #47-165016
November 13th, 14th, 20th, 22nd, 25th and 27th 1991	Acted for forty-eight clients as per Form 12 #11219142
November 21st 1991	As per fee billing to Legal Aid Re: Certificate #47-165297
November 22nd 1991	As per fee billing to Legal Aid Re: Certificate #47-166800
November 29th 1991	As per fee billing to Legal Aid Re: Certificate #47-167065
January 6th 1992	As per fee billing to Legal Aid Re: R. Certificate #47-166092
February 10th 1992	As per fee billing to Legal Aid Re: Certificate #47-166464
February 10th 1992	As per fee billing to Legal Aid Re: Certificate #47-168859
March 9th to 13th 1992	As per fee billing to Legal Aid Re: C. Certificate #47-169559
March 12th 1992	As per fee billing to Legal Aid Re: Certificate \$37-198433

Attached as Exhibit 4, collectively, are copies of the Solicitor's fee billings to Legal Aid.

12. The Solicitor was reinstated on March 26, 1992.

Second Suspension - June 5, 1992 to June 25, 1992

13. By letter dated June 1, 1992, the Society advised the Solicitor that he had been suspended by Order of Convocation for failure to pay his errors and omissions levy effective June 5, 1992, a copy of the Society's June 1, 1992 letter is attached as Exhibit 5 to this agreed statement of facts.

24th November, 1994

14. The Solicitor continued to practice during the period of suspension by acting as duty counsel for eighteen clients on June 15 and June 19, 1992 as evidenced by his billing to Legal Aid, a copy of which is attached as Exhibit 6 to this agreed statement of facts.

15. The Solicitor was reinstated on June 15, 1992.

Third Suspension - August 1, 1992 to November 1, 1992

16. On June 25, 1992, the Solicitor was suspended by Order of Special Convocation for a period of three months to commence August 1, 1992. The suspension resulted from a finding of misconduct respecting a complaint, a copy of which is attached as Exhibit 7 to this agreed statement of facts.

17. The Society alleges that on August 14, 1992, the Solicitor acted in respect of a criminal matter. The Society would offer as evidence in support of this fact a copy of the Legal Aid account attached as Exhibit 8 to this agreed statement of facts. The Solicitor does not admit that he was practising while under suspension during this period. The Solicitor would give evidence that the August 14 date was a scheduled court date which he did not attend as a result of the work previously performed on behalf of the client which led to a withdrawal of the charge by the Crown on that date in the absence of the Solicitor and his client.

18. The Solicitor was reinstated on November 1, 1992.

Fourth Suspension - June 25, 1993 to Present

19. The Solicitor's fiscal year end is May 31. The Solicitor failed to make the filing for the fiscal year end dated May 31, 1992.

20. The Solicitor was suspended by Order of Convocation on June 25, 1993 for non-payment of the late filing levy. The Solicitor was notified of his suspension by letter dated June 28, 1993, a copy of which is attached as Exhibit 9 to this agreed statement of facts.

21. The Solicitor continued to practice in July 1993 as evidenced by the following:

DATE	EVENT
June 29th 1993	As per fee billing to Legal Aid Re: M. Certificate #47-174693
July 6th 1993	As per fee billing to Legal Aid Re: C. Certificate #47-170902
July 7th 1993	As per fee billing to Legal Aid Re: D. Certificate #54-002734
July 9th 1993	As per fee billing to Legal Aid Re: E. Certificate #47-175410
July 12th 1993	As per fee billing to Legal Aid Re: W. Certificate #51-137929

22. Copies of fee billings rendered to Legal Aid in connection with services rendered on behalf of clients during this period are attached as Exhibit 10 to this agreed statement of facts.

24th November, 1994

23. During a telephone conversation on October 26, 1993, between the Solicitor and a Society auditor, the Solicitor admitted that he was aware he had been suspended since June 25, 1993.

V. PRIOR DISCIPLINE

24. On March 8, 1989, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society; and failing to maintain proper books and records. The Solicitor was reprimanded in committee and gave an undertaking to the Society.

25. On May 8, 1991, January 17, 1992 and March 25, 1992, complaints were heard regarding the Solicitor's failure to make his annual filings for the years 1989 and 1990; failure to submit trust bank reconciliations for his trust account; failure to honour a financial obligation; and practising law while under suspension. On June 25, 1992, Convocation ordered that the Solicitor's rights to practise be suspended for three months effective August 1, 1992. A copy of that complaint is attached as Exhibit 11 to this agreed statement of facts.

26. On June 2 and 3, 1993, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society. The recommendation of the committee was that the Solicitor be suspended for two months. This matter is still pending before Convocation.

DATED at Toronto this 9 day of February, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Thomas Holyoake Box be granted permission to resign.

REASONS FOR RECOMMENDATION

This is a dismal history of failure to comply with the most fundamental requirements of the profession. It was apparent to us that Mr. Box is not able to be a lawyer. He is not governable, whether due to wilful disregard for the rules which govern us, or due to incapacity to govern his own behaviour in conformity with those rules.

On the admitted facts of these complaints, and on the history of his prior misconduct, his membership in the Society must come to an end. He acknowledged that before us. The question for us was whether to expel him from the profession by disbarment or allow him to resign, as he asked.

His conduct has been such as to warrant the rebuke of his fellow lawyers. We enjoy the great privilege of practising our profession, at the modest price of conforming to the requirements of our governing body. When a lawyer refuses to conform, refuses to respond to Law Society communications, neglects the complaints of clients, ignores the regulations which allow us to hold our clients' money in trust, the public is entitled to be protected. The public and fellow lawyers rightly expect the offender to be deprived of the privilege of practice.

24th November, 1994

We considered this expectation carefully. Against it we weighed the evidence presented in support of his request for permission to resign.

Mr. Box has now acknowledged that he is incapable of accepting the administrative requirements of practice. He has embarked on a program of treatment for a condition which is not a major mental illness, but which we find is a factor in his sad history of failure to accept authority. He has the support of his family, and has faced the reality that he cannot continue in the profession.

It was apparent from the testimonial evidence presented to us that he was industrious and conscientious in serving his clients in the criminal courts. He was well regarded by the judges in those courts, where he focused his practice. His colleagues thought well of him. He acted frequently on legal aid certificates and as legal aid Duty Counsel. We heard nothing that persuaded us that he had acted maliciously or made any personal gain at the expense of his clients. He is not among the worst of those who must leave the profession.

We do not suppose that Mr. Box's transgressions are minor. They are very serious. He cannot continue in the profession. But having in mind that disbarment is the ultimate penalty, that it is imposed on the worst offenders for the worst of transgressions, and that Mr. Box's resignation will protect the public and relieve the Society, we accept that Mr. Box should be permitted to resign.

Thomas Holyoake Box was called to the Bar on the 10th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 17th day of October, 1994

Lloyd Brennan, Q.C.
Chair

Convocation had before it the Report of the Discipline Committee dated 13th April, 1993, together with an Affidavit of Service sworn 25th May, 1993 by Ronald Hopple that he had effected service on the solicitor by registered mail on 11th May, 1993 (marked Exhibit 3), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th June, 1993 (marked Exhibit 4). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Roger Yachetti, Q.C., Chair
Kenneth E. Howie, Q.C.
David W. Scott, Q.C.

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

Christina Budweth
for the Society

24th November, 1994

THOMAS HOLYOAKE BOX
of the Town
of Markham
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 2, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 17, 1992, Complaint D7/92 was issued against Thomas Holyoake Box, alleging that he was guilty of professional misconduct.

The matter was heard in public on June 2, 1992, before this Committee composed of Roger Yachetti, Q.C., Chair, Kenneth E. Howie, Q.C. and David W. Scott, Q.C. Mr. Box attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

Complaint D7/92

2. a) He failed to reply to the Law Society regarding a complaint by Douglas Wood, despite letters dated October 15, 1991 and November 22, 1991 and telephone requests on November 5, 1991, November 8, 1991 and November 13, 1991.
- b) He breached his undertaking to the Law Society dated March 8, 1989 by failing to reply within ten days from the date of receipt of correspondence from the Law Society, with respect to a complaint from Douglas Wood.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D7/92 and is prepared to proceed with a hearing of this matter on May 13, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D7/92 and this agreed statement of facts and admits the particulars contained therein. The Solicitor admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 10, 1984. He is a sole practitioner with offices in the Town of Markham and Newmarket.

5. On March 8, 1989, the Solicitor gave an undertaking to the Law Society to, among other things:

"4. Reply within a period of ten days from the date of my receipt of all correspondence from the Law Society.

6. Reply to communications from clients in a prompt manner and in particular, reply to telephone calls from clients by the end of the second working day that I am in the office and reply to written communications from my clients within one week of my receipt of those communications.

This undertaking will remain in force until such time as it is expressly waived or amended in writing by senior counsel, discipline or Convocation.

I understand and agree that this undertaking may be tendered in evidence in any future disciplinary proceeding."

A copy of the undertaking is attached as Exhibit 1 to this agreed statement of facts.

6. By letter dated October 3, 1991, delivered to the Society, the complainant, Douglas Wood, complained of the Solicitor's conduct of a litigation matter on his behalf. The letter of complaint alleged that Mr. Wood had retained the Solicitor to act in respect of a motor vehicle accident and that the Solicitor's inaction in the matter ultimately resulted in a judgement being rendered against Mr. Wood. A copy of Mr. Wood's letter of complaint is attached as Exhibit 2 to this agreed statement of facts.

7. The Society corresponded with Mr. Box by letter dated October 15, 1991 in respect of the complaint. A copy of the Society's October 15, 1991 correspondence is attached as Exhibit 3 to this agreed statement of facts.

8. After the expiry of the two week period for reply outlined in Exhibit 3, a staff member of the Society called the Solicitor's office to inquire as to when the Society could expect a reply. Messages were left for the Solicitor to contact the Society on November 5, 1991, November 8, 1991 and November 13, 1991. The Solicitor did not return these calls.

9. A second letter was sent to the Solicitor, by registered mail, on November 22, 1991. In that letter the Solicitor was reminded of his obligations pursuant to Rule 13 and advised that the matter would be referred to discipline if a reply was not received within seven days. The post office acknowledgement of receipt card indicates that the registered letter was claimed on November 25, 1991. Copies of the Society's November 22 letter and acknowledgement receipt card are attached collectively as Exhibit 4.

10. The Society has not, to date, received a reply to any of the aforesaid communications.

DATED at Toronto this 13 day of May, 1992."

"SUPPLEMENTARY AGREED STATEMENT OF FACTS"

1. PRIOR DISCIPLINE

1. On March 8, 1989, the Solicitor was found guilty of professional misconduct and reprimanded in committee for his persistent failure to reply promptly to Law Society correspondence and for his failure to maintain books and records for his practice during the period June, 1987 to September, 1988. The undertaking of March 8, 1989 referred to above, arose out of the circumstances.

2. The Solicitor was found guilty of professional misconduct in respect of complaints D219/90 and D47/91 on May 8, 1991. In those instances the Solicitor's misconduct consisted of failing to make his requisite year end filings for the fiscal year ended August 31, 1989 and August 31, 1990; failing to submit monthly trust bank reconciliations to the Law Society for the period April 30, 1989 to January 31, 1990, inclusive; failing to reply to letters from the Society dated October 16, 1989, December 22, 1989 and February 9, 1990; failing to respond to inquiries of a Law Society examiner; engaging in the practice of law during numerous periods during which his right to practice had been suspended; failing to reply to the Society respecting a complaint arising from his practice despite numerous letters and telephone calls; and, failing to meet a financial obligation of his practice.

3. The misconduct aspect of complaints D47/91 and D219/90 were heard on March 25, 1992. The penalty aspect of complaints D47/91 and D219/90 were heard on March 25, 1992. On May 8, 1991 and again on March 25, 1992, the Society and the Solicitor presented a joint submission that a two month suspension of the Solicitor's practice was the appropriate penalty. The committee has not yet rendered a decision in the matter.

4. The Solicitor has been suspended by Convocation pursuant to Section 36 of the Law Society Act on a number of occasions for failing to pay certain fees and levies as required. The Suspension dates, reinstatement dates and reasons for suspension are as follows:

<u>Date Suspended</u>	<u>Date Reinstated</u>	<u>Reasons</u>
May 26, 1989	October 6, 1989	E & O Levy
Februaury 23, 1990	March 22, 1990	Annual Fee
September 28, 1990	October 16, 1990	Late Filing Penalty
November 23, 1990	February 20, 1991	E & O Levy
September 27, 1991	March 26, 1992	Late Filing Penalty

DATED at Toronto this 13th day of May, 1992."

Given the Solciitor's admission as contained in both Agreed Statements of Fact, and having heard submissions from counsel for the Law Society and from the Solicitor, we conclude that the professional misconduct alleged in Complaint D7/92 is established.

RECOMMENDATION AS TO PENALTY

Your Committee recommends that the Solicitor be suspended for a period of two months, and be ordered to pay the costs of the Law Society in the sum of \$500.00.

REASONS FOR RECOMMENDATION

The Solicitor is 37 years of age, a married man, and the father of two children. He was called to the Bar in April, 1984, and, at the time of hearing, practised largely in the field of criminal law from two offices in the Towns of Markham and Newmarket. At the hearing, the Solicitor indicated that at that time he was representing approximately 120 accused persons, accounting for 95% of his practice.

His discipline history, as well as his suspension history are detailed on pages four and five of this report.

The Solicitor indicated that he was not suffering from any particular physical or mental disorder, but did indicate that, at one point in time, he had attended five or six counselling sessions arranged through the Law Society's L.I.N.K. programme.

Counsel for the Law Society suggested that this finding of professional misconduct should result in a penalty of suspension for a period of two months, together with an Order for the payment of costs in the sum of \$500.00. The Solicitor, who represented himself, responded to that submission in the following say:

"She's [Ms. C. Budweth] absolutely right. I should be suspended and I hope you will suspend me because quite frankly, that's the only way it's going to make an impression on me that in addition to my professional obligations to my clients, and I think I do a very good job of that, mr. Woods' letter notwithstanding, I do not or appear to understand my obligation to the Society and it has to be brought home to me. I agree with her. I have to be suspended because otherwise, I'll think I can get away with it. See, you have to suspend me. That imposes economic hardship on me, but if I were in her shoes, I'd say exactly the same things. So, how can I disagree with her? She's right."

Frankly, the penalty proposed is on the light side, considering the Solicitor's history and his misconduct as found in this matter. However, although your Committee was somewhat concerned with the Solicitor's eagerness for punishment, we were also somewhat impressed with his intelligence and candour. Accordingly, we do accept the submission of counsel for the Law Society, and the acquiescence of the Solicitor, and impose a penalty of a suspension for a period of two months, as well as an Order requiring the Solicitor to pay the costs of the Law Society in the sum of \$500.00.

Considering the nature and extent of the Solicitor's criminal practice, we also recommend to Convocation that the Solicitor be allowed some reasonable length of time in which to arrange his affairs and the affairs of his clients before commencement of the period of suspension.

Thomas Holyoake Box was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 13th day of April, 1993

Roger D. Yachetti, Q.C.
Chair

24th November, 1994

It was moved by Ms. Elliott, seconded by Mr. Campbell that the Reports be adopted.

Ms. Kiteley raised the issue that she had sat on a prior hearing of the solicitor. Counsel for Mr. Box did not object to her sitting on this matter.

Counsel for the Society raised the issue of a preliminary matter that criminal charges had been made against the solicitor and the preliminary trial was scheduled in December. Both counsel made submissions that the matter proceed and that the issue outstanding could be dealt with in a future readmission application.

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

It was moved by Mr. Goudge, seconded by Ms. Graham that the matter proceed.

Carried

Counsel, the solicitor, the reporter and the public were recalled and advised that Convocation would proceed excluding the facts given on the upcoming trial.

An amendment was made on page 11 of the October 1994 Report at paragraph 15 by changing the date June 15th to "June 25th, 1992".

The Report was adopted.

It was moved by Ms. Graham, seconded by Mr. Campbell that the Recommendation as to Penalty in the October 1994 Report be adopted, that is, that the solicitor be permitted to resign.

Joint submissions by both counsel were made in support of the recommended penalty in the October 1994 Report.

There were questions from the Bench.

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

It was moved by Mr. Blue, seconded by Ms. Graham that the solicitor be disbarred.

Withdrawn

The recommended penalty in the October 1994 Report was adopted.

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

Counsel and solicitor retired.

Re: Dave Allen KLAIMAN - Thornhill

The Secretary placed the matter before Convocation.

Mr. Scott did not participate.

Ms. Christina Budweth appeared for the Society and Mr. Edwards, Duty Counsel appeared for the solicitor who was present.

Mr. Edwards requested an adjournment so that the solicitor could produce medical evidence to Convocation.

24th November, 1994

Counsel for the Society opposed the adjournment because the solicitor has had sufficient time to prepare.

Questions were taken from the Bench to both counsel.

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

It was moved by Mr. Epstein, seconded by Mr. Blue that the matter be put over to the January 1995 Discipline Convocation peremptory to the solicitor.

In addition any material that the solicitor wished to rely on must be filed 10 days prior to the Discipline Convocation.

Not Put

It was moved by Mr. Brennan, seconded by Ms. Moliner that the matter be put over to the March 1995 Discipline Convocation peremptory to the solicitor, that the materials be filed in advance and that no further adjournments would be given to counsel or for psychiatric evidence.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be adjourned to March, peremptory to the solicitor, that materials be filed in advance and no further adjournments would be given to counsel or for psychiatric evidence.

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CONVOCATION ROSE AT 11:45 A.M.

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Confirmed in Convocation this day of , 1994.

Treasurer