

MINUTES OF SPECIAL CONVOCATION

Thursday, 22nd April, 1993
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Bellamy, Bragagnolo, Brennan, Campbell, Copeland, Cullity, Elliott, Feinstein, Hickey, Hill, Howie, Kiteley, Lamek, McKinnon, O'Brien, Palmer, Pepper, Peters, Richardson, Ruby, Scott, Somerville, Strosberg, Thom and Weaver.

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IN PUBLIC

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ADMISSIONS COMMITTEE

Re: ANN K. LAMBERT - APPLICATION FOR ADMISSION

The Treasurer spoke to the above matter and advised that there was a request for an adjournment on consent to allow the Attorney General more time to look into the constitutional issue.

The Application was adjourned to the May Convocation.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: GERALD GRUPP, North York

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Bragagnolo, O'Brien and Ms. Kiteley did not participate.

22nd April, 1993

Mr. Gavin MacKenzie appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 17th March, 1993 together with the Affidavit of Service sworn 13th April, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 29th March, 1993 (marked Exhibit 1). Copies of the Report having been forwarded to the members 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

Rino C. Bragagnolo, Q.C., Chair
Brendan O'Brien, Q.C.
Frances Kiteley

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

Gavin MacKenzie
for the Society

GERALD GRUPP
of the City
of North York
a barrister and solicitor

Andrea Tuck-Jackson
for the solicitor

Heard: December 15, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 27, 1992, Complaint D172/92 was issued against Gerald Grupp alleging that he was guilty of professional misconduct.

The matter was heard in public on December 15, 1992 before this Committee composed of Rino C. Bragagnolo, Q.C., Chair, Brendan O'Brien, Q.C. and Frances Kiteley. The Solicitor did not attend the hearing. He was represented by Andrea Tuck-Jackson. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D172/92

2. a) Between November, 1989, and June, 1992, inclusive, he misappropriated the sum of \$685,500, more or less, from clients of his law practice and clients of a mortgage brokerage company, Sunfunding Limited, which he controlled.

22nd April, 1993

Evidence

The evidence before the Committee contained the statement of Gerald Grupp as follows:

"STATEMENT OF GERALD GRUPP

I Gerald Grupp of 120 Carlton Street, Suite 302, Ontario hereby admit that from 1989 to 1992 I misappropriated approximately \$685,500.00 from clients of either my law practice or my mortgage brokerage company, Sunfunding Limited.

These clients and the approximate amount misappropriated are as follows:

529095 Ontario Limited	\$330,500.00
Saul and Fay Grupp	100,000.00
Barbara Grupp	30,000.00
John Nomikos	70,000.00
Betty and Samuel Rose	50,000.00
Burger Lighting Products Ltd	25,000.00
Mannie Strul	25,000.00
Bea McCartney	20,000.00
Erica Cherney	17,000.00
Antonia Ardizzi	15,000.00

\$685,500.00

I misappropriated the \$330,500.00 from 529095 Ontario Limited by withdrawing funds from the company's bank account and depositing the funds into my personal bank account. I had the company's cheque book in my office and I either forged the signatures of the two signing officers on the cheques or the cheques had been signed in blank.

I misappropriated John Nomikos' funds from a bank account over which I had signing privileges. Mr. Nomikos lives in Greece.

I misappropriated the other funds by falsely representing to the clients that they were investing in mortgages. Most of the cheques were payable to Sunfunding Limited and I altered the cheques so that the funds were payable to Gerald Grupp and Sunfunding Limited. These funds were deposited into my personal bank account. I still made mortgage payments during the currency of some of these false mortgages.

I used the funds I misappropriated primarily to cover expenses on bad business deals and secondarily for personal purposes.

The facts set out in this statement are true, to the best of my knowledge and belief.

Toronto, Ontario 1992"

RECOMMENDATION AS TO PENALTY

The Committee recommends that Gerald Grupp be disbarred.

22nd April, 1993

REASONS FOR RECOMMENDATION

The Solicitor has admitted misappropriating the sum of \$685,500.00 from clients of his law practice and clients of a mortgage brokerage company, Sunfunding Limited, which he controlled.

The Solicitor has admitted that he used the misappropriated funds primarily to cover expenses on bad business deals and for personal expenses. The Solicitor has not made restitution nor is he in a financial position to make restitution to the clients.

Under the circumstances, the Committee is unanimously of the view that the Solicitor must be disbarred.

Gerald Grupp was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 22nd day of March, 1968.

ALL OF WHICH is respectfully submitted

DATED this 17th day of March, 1993

"R. Bragagnolo"
Rino C. Bragagnolo, Q.C., Chair

The Report and Recommendation of the Committee was accepted by Convocation for the reasons stated in the Report and Recommendation of the Committee.

It was moved by Mr. Strosberg, seconded by Mr. Scott that the Report and Recommendation as to Penalty that is, that the solicitor be disbarred, be adopted.

Carried

Counsel retired.

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Re: FRANCIS LEWIS REILLY, St. Catharines

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Scott and Thom withdrew.

Mr. Neil Perrier appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Counsel for the Society advised that there had been no communication from the solicitor.

Convocation had before it the Report of the Discipline Committee dated 16th February, 1993 together with the Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail 17th March, 1993 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation the reading of it was waived.

22nd April, 1993

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Stephen T. Goudge, Q.C. Chair
Stuart Thom, Q.C.
Mrs. Netty Graham

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

Neil Perrier
for the Society

FRANCIS LEWIS REILLY
of the City
of St. Catharines
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 29, 1992
February 3, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 1, 1992, Complaint D89/92 was issued and on September 2, 1992, Complaint D148/92 was issued against Francis Lewis Reilly alleging that he was guilty of professional misconduct.

The matter was heard in public on September 29, 1992 and February 3, 1993, before this Committee composed of Stephen T. Goudge, Q.C., Chair, Stuart Thom, Q.C. and Mrs. Netty Graham. The Solicitor attended the hearing and was not represented. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D89/92

2. a) He failed to reply to the Law Society regarding a complaint by Audrey Davies, despite letters dated February 13, 1992, March 20, 1992 and April 14, 1992, and telephone requests on April 1, 1992 and April 7, 1992.
- b) He failed to meet a financial obligation to Audrey Davies incurred in relation to his practice of law.

Complaint D148/92

2. a) He failed to produce to the Law Society for inspection, the books and records relating to his law practice, despite appointments to do so on April 6, 1992, April 13, 1992 and June 5, 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 Complaints D89/92 and D148/92 and is prepared to proceed with a hearing of these matters on September 29, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D89/92 and D148/92 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was call to the Bar on April 9, 1976. He practices as a sole practitioner.

Complaint D89/92 - Particular 2b)

5. The Complainant, Audrey Davies, commenced her employment with the Solicitor in February of 1991 as a full-time secretary. In the middle of June, 1991, Ms. Davies' pay cheques from the Solicitor began to be returned by the bank marked "non-sufficient funds". By the time Ms. Davies terminated her employment with the Solicitor during the Fall of 1991, the Solicitor owed her seven weeks of pay.

6. To date, Ms. Davies has not received any funds from the Solicitor towards her outstanding pay.

Complaint D89/92 - Particular 2a)

7. By letter dated January 27, 1991, Ms. Davies advised the Law Society of the Solicitor's nonpayment for seven weeks of services rendered by her as a full-time secretary. A Copy of the letter of complaint is attached as Exhibit "A" to this Agreed Statement of Facts.

8. By letter dated February 13, 1992, the Law Society forwarded to the Solicitor, at 15 King Street, Suite 304B, St. Catharines, a copy of the letter of complaint. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received. A copy of the Society's February 13, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts.

22nd April, 1993

9. The Audit Department of the Law Society provided the Complaints Department with a new address for the Solicitor, being 174 Russell Avenue, St. Catharines, Ontario L2R 1W6.

10. By letter dated March 20, 1992, the Law Society forwarded to the Solicitor a copy of its February 13, 1992 letter. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received. A copy of the Society's March 20, 1992 is attached as Exhibit "C" to this Agreed Statement of Facts.

11. A Law Society staff employee spoke with the Solicitor by telephone on April 1, 1992. The Solicitor advised that he would send his response "early next week". No reply was received.

12. By registered mail, dated April 14, 1992, the Law Society forwarded to the Solicitor copies of its February 13, 1992 and March 20, 1992 letter. The Solicitor as reminded of his obligation to reply to correspondence from the Society. The Solicitor was advised that should a reply not be received within seven days from the date of this letter, the matter would be referred to the Discipline Committee. No reply was received. A copy of the Society's April 14, 1992 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

13. The Solicitor has not, as of this date, requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

Complaint D148/92

14. Marie Morley, an Examiner - Audit & Investigation, attempted to commence an examination of the Solicitor's books and records pursuant to section 18 of Regulation 573 of the Law Society Act on March 6, 1992. Upon attending at the Solicitor's office, she discovered the door to be locked and several notes, messages and cards tape to the door from various people requesting that the Solicitor call them. The Examiner left a card with a written request that the Solicitor call her. The Solicitor did not call the Examiner.

15. The Examiner telephoned the Solicitor on March 16, 1992. The Solicitor advised that he was in the process of moving and that he expected to have his outstanding bills, etc., cleared up in approximately two weeks. An appointment was arranged for an examination of the Solicitor's books and records on April 6, 1992, at his new office address.

16. The Solicitor cancelled the April 6, 1992 appointment with the Examiner on April 3, 1992, advising the he had mistakenly written April 16th into his appointment book; and that he had been in court for the last two weeks and therefore, had not completed his move. A new appointment was arranged for the examination of the Solicitor's books and records on April 13, 1992.

17. The Solicitor cancelled the April 13th appointment with the Examiner on April 10, 1992, advising that his former landlord would not permit him access to his old office where 90% of his books and records were located. The Solicitor requested the Examiner forward to him a letter demanding to see the books and records so that the Solicitor could provide the same to his former landlord and obtain access to his old office.

18. By letter dated April 14, 1992, the Examiner advised the Solicitor that she had received instructions to make an examination of his books and records. The Solicitor was advised that should satisfactory arrangements not be made for the examination on or before April 28, 1992, the matter would be referred to the Discipline Committee. No reply was received. A copy of the Examiner's April 14, 1992 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

22nd April, 1993

19. The Examiner spoke to the Solicitor by telephone on May 4, 1992. The Solicitor advised that he had not received the Examiner's letter dated April 14, 1992, but that he would check his mail again and advise the Examiner by telephone on May 5, 1992. The Solicitor did not return the call.

20. The Examiner left a telephone message for the Solicitor on his answering machine on May 8, 1992, requesting he return the call. The Solicitor did not return the call.

21. The Examiner spoke with the Solicitor by telephone on May 22, 1992. An appointment was arranged for an examination of the Solicitor's books and records on June 5, 1992. The Solicitor advised that he would contact the Examiner by telephone on May 29, 1992 should the appointment need to be changed.

22. The Solicitor did not call the Examiner on May 29, 1992.

23. The Examiner attended at the Solicitor's office, a residence, on June 5, 1992 and discovered the door locked. There was no answer when the Examiner knocked. The Examiner left her card at the door with a request that the Solicitor contact her. The Solicitor did not contact the Examiner.

V. DISCIPLINE HISTORY

24. On July 14, 1992, the Solicitor received a reprimand in committee plus ordered to pay costs of \$1,000.00 within six months with respect to his failure to reply to the Society.

DATED at Toronto this 29th day of September, 1992."

Finding

Having regard to the admissions made by the Solicitor, the Committee made a finding of professional misconduct against Mr. Reilly on September 29, 1992, determining that the particulars referred to above were established. The Committee adjourned the matter of penalty in order to permit the Solicitor a further opportunity to produce his books and records to the Law Society for inspection.

The Committee reconvened on February 3, 1993, at that time the Committee was informed that the Solicitor's books and records had still not been produced for inspection. The Solicitor had made an appointment for production but had cancelled it and despite telephone calls and a registered letter soliciting a response from the Solicitor no contact was made by the Solicitor with the Society to attempt to discharge his obligation to produce his books and records for inspection. The Solicitor's only explanation for this was that he felt he had to put his books and records into "pristine" condition before producing them for inspection.

In the interim between the hearings, the Solicitor did nothing to reply to the Law Society regarding the complaint by Audrey Davies.

On February 3, 1993, the Committee was advised that on January 14, 1992 the Solicitor received a reprimand in Committee and was ordered to pay costs of \$1,000.00 within six months with respect to his failure to reply to the Society in another matter.

22nd April, 1993

RECOMMENDATION AS TO PENALTY

After having considered the facts and the submissions of counsel, your Committee decided to recommend to Convocation that Francis Lewis Reilly be suspended for one month and that this suspension continue thereafter until:

- (a) the Solicitor has fulfilled his obligation to produce for inspection to the Law Society his books and records; and
- (b) the Solicitor provides a response to the Society regarding the complaint by Audrey Davies.

In addition, your Committee recommends that the Solicitor pay forthwith the costs of the Society in investigating and prosecuting these complaints in the amount of \$1,000.00.

REASONS FOR RECOMMENDATION

The Committee's reasons for making these recommendations are as follows:

- (a) This is a second offence for the Solicitor in a very short period of time. It is clear that the reprimand administered in Committee in July of 1992 did not have any perceptible effect. It is essential that it be brought home to the Solicitor that his obligations, which have been breached in this case, must be carried out fully and promptly if the Society is to properly discharge its regulatory obligations to the public.
- (b) The Solicitor did nothing between September 29, 1992 and February 3, 1993 to produce his books and records for inspection, although the proceedings were adjourned specifically for that purpose. No satisfactory explanation for this was offered.
- (c) The Committee was advised that not only did the prior reprimand have no effect, but that the requirement to pay costs which was placed upon the Solicitor in July of 1992 remains undischarged.

While the Committee had concerns about the manner in which Mr. Reilly might be carrying on his practice, and recommended that he attend at the practice advisory service, this consideration did not play a part in the determination of the recommended penalty.

Francis Lewis Reilly was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 16th day of February, 1993

"S. Goudge"
Stephen T. Goudge, Q.C., Chair

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Report of the Discipline Committee be adopted.

Carried

22nd April, 1993

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Recommendation as to Penalty that is, that the solicitor be suspended for 1 month commencing April 22, 1993 and pay costs, be adopted.

Carried

Mr. Strosberg did not participate nor did he vote.

Counsel retired.

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Re: WILLIAM PALAMAR, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Cullity and Thom withdrew.

Mr. Neil Perrier appeared for the Society and Mr. T. George Gorrie appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 2nd March, 1993 together with the Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th March, 1993 (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

Maurice C. Cullity, Q.C., Chair
Stuart Thom, Q.C.
Mrs. Netty Graham

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

WILLIAM PALAMAR
of the City
of Toronto
a barrister and solicitor

Neil Perrier
for the Society

T. George Gorrie
for the solicitor

Heard: September 15, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 1, 1992, Complaint D87/92 was issued against William Palamar alleging that he was guilty of professional misconduct.

The matter was heard in public on September 15, 1992 before this Committee composed of Maurice C. Cullity, Q.C., Chair, Stuart Thom, Q.C. and Mrs. Netty Graham. Mr. Palamar attended the hearing and was represented by T. George Gorrie. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D87/92

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending June 30, 1991, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the regulation made pursuant to the Law Society Act.

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 D87/92 and is prepared to proceed with a hearing of this matter on September 15, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D87/92 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 26, 1953. He practices as a sole practitioner.
5. The Solicitor's fiscal year end is June 30. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending June 30, 1991, as required by S.16(2) of Regulation 573 under The Law Society Act.

22nd April, 1993

6. A Notice of Default in Annual Filing, dated January 4, 1992 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 dated February 4, 1992, 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 applied on filings made after their due dates and on defaults in filings. The fee began to accrue on February 19, 1992. When this levy amounted to \$1,500.00 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 may be brought before the Discipline Committee for failure to file. A copy of the Society's February 4, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts.

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

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

V. DISCIPLINE HISTORY

10. The Solicitor received a reprimand in committee on December 20, 1983 regarding his failure to maintain books, records and accounts regarding his practice; and his failure to file for the fiscal years ended October 31, 1974, October 31, 1975, October 31, 1976, October 31, 1977, October 31, 1978, October 31, 1979, October 31, 1980 and October 31, 1981.

11. The Solicitor received a reprimand in committee on July 26, 1984 regarding his failure to maintain books, record and accounts; his failure to reply; his failure to report to clients; and his breach of an undertaking to the Society regarding his trust account.

12. The Solicitor received a conditional one month suspension on April 30, 1987 regarding his failure to reply and his failure to file.

13. The Solicitor received a reprimand in committee on November 14, 1990 regarding his failure to file for the fiscal year ended June 30, 1989.

DATED at Toronto this 15th day of September, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that William Palamar be reprimanded in Convocation and be ordered to pay costs in the amount of \$500.00.

REASONS FOR RECOMMENDATION

The Committee was persuaded by Counsel for the Law Society that the aggravating circumstances of this matter outweigh the mitigating circumstances. The Solicitor's previous three reprimands in Committee for like offences have had no effect whatsoever, and he has four prior discipline records. We are very concerned that none of these has been a deterrent to him for the future.

22nd April, 1993

The mitigating circumstances in this case, are that the Solicitor has been a member for 39 years and that this complaint, together with his prior record, can be characterized as administrative misconduct dealing with the Law Society only, as opposed to dealing with the honesty of the Solicitor, or dealing with a complaint from a member of the public.

However, this misconduct must be seen to be a serious matter in light of the obvious ineffectiveness of the previous dispositions, and it is for these reasons that we strongly recommend that the matter be resolved by way of a reprimand in Convocation, together with the payment of costs in the amount of \$500.00.

William Palamar was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 25th day of June, 1953.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of March, 1993

"N. Graham"

Netty Graham for the Committee

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Report of the Discipline Committee be adopted.

Counsel for the Society asked that the Report be amended at page 3, paragraph 9 stating that the solicitor did file the required forms for 1991 and 1992 on the day of the hearing.

There were no submissions by either counsel and the Report as amended was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Recommendation as to Penalty that is, that the solicitor be reprimanded in Convocation and pay the Society's costs of \$500, be adopted.

There were no submissions and counsel, the solicitor, the reporter and the public withdrew.

The Recommendation as to Penalty was adopted.

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

The Treasurer administered the reprimand.

Counsel and the solicitor retired.

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Re: ARTHUR CHUNG, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Scott withdrew.

22nd April, 1993

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

Convocation had before it the Report of the Discipline Committee dated 29th January, 1993 together with the Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 4th March, 1993 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd April, 1993 (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

Neil Finkelstein, Chair
Carole Curtis
Netty Graham

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

Christina Budweth
for the Society

ARTHUR CHUNG
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 5, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 3rd, 1992, Complaint D147/92 was issued against Arthur Chung alleging that he was guilty of professional misconduct.

The matter was heard in public on January 5, 1993, before this Committee composed of Neil Finkelstein, Chair, Carole Curtis and Netty Graham. The Solicitor attended the hearing and represented himself. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

22nd April, 1993

Complaint D147/92

- 2.(a) He failed to keep his books and records in accordance with Section 15 of Regulation 573 of the Law Society Act.
- (b) He failed to comply with his undertaking to the Law Society, dated September 13, 1990, to submit to the Audit Department of the Law Society monthly trust listings and reconciliations not later than the 25th day of each month.
- (c) He failed to comply with his undertaking to the Law Society dated September 13, 1990, to respond to a written communication from the Law Society within one week, by failing to reply to correspondence from the Law Society dated May 6, 1992 and June 11, 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 D147/92 and is prepared to proceed with a hearing of this matter on January 5 and 6, 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 Complaint D147/92 and admits the particular contained therein. The Solicitor also admits that the particular in the complaint together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1983. He practices as a sole practitioner.
5. The Solicitor was found guilty of professional misconduct with respect to the following particulars contained in Complaint D3/90 on September 13, 1990:
 - a) Since January, 1986 he has failed to produce all of the books and records of his practice of law thereby preventing the society from conducting a full audit examination.
 - b) He breached his written undertaking to the Law Society dated January 8, 1986 by continuing to accept trust monies in the following fashion:
 - 1) He deposited trust funds to his general bank account.
 - 2) He cashed trust cheques and thereafter purchased bank drafts but did not record these transactions in his books and records.

22nd April, 1993

- 3) He opened a fresh trust bank account in August, 1988.
- 4) He breached his written undertaking to the Society dated April 12, 1989, in that he failed to communicate with the Law Society by April 27, 1989 respecting a date for a further attendance by the Society's Audit Examiner.
- 5) He failed to file with the Law Society within six (6) months of the termination of his fiscal years ending December 31, 1987 and December 31, 1988, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the regulation made pursuant to the Law Society Act.

A copy of Complaint D3/90 is attached as Exhibit "A" to this Agreed Statement of Facts.

6. On September 13, 1990, the Solicitor provided the Law Society with a written undertaking whereby he agreed, inter alia:

6. To submit to the audit department of the Law Society monthly trust listings and reconciliations not later than the 25th day of each month commencing October, 1990 for a period of three years.

A copy of the Solicitor's undertaking, dated September 13, 1990, is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor failed to meet the requirements of paragraph 6 of the Undertaking with respect to the following list:

Trust Comparisons for the Month Ended	Due Date	Date Received	Delay Period
November 30/90	December 25/90	December 28/90	3 days
December 31/90	January 25/91	February 18/91	24 days
January 31/91	February 25/91	February 18/91	nil
February 28/91	March 25/91	May 3/91	39 days
March 31/91	April 25/91	May 3/91	8 days
April 30/91	May 25/91	January 23/92	243 days
May 31/91	June 25/91	January 23/92	212 days
June 30/91	July 25/91	January 23/92	182 days
July 31/91	August 25/91	January 23/92	151 days
August 31/91	September 25/91	October 3/91	8 days
September 30/91	October 25/91	January 23/92	90 days
October 31/91	November 25/91	November 29/92	4 days
November 30/91	December 25/91	February 11/92	48 days
December 31/91	January 25/92	February 19/92	24 days
January 31/92	February 25/92	March 13/92	17 days
February 29/92	March 25/92	March 13/92	nil
March 31/92	April 25/92	June 26/92	62 days
April 30/92	May 25/92	June 26/92	32 days
May 31/92	June 25/92	June 26/92	1 day
June 30/92	July 25/92	August 31/92	37 days
July 31/92	August 25/92	August 31/92	6 days
August 31/92	September 25/92	September 15/92	nil
September 30/92	October 25/92	October 20/92	nil
October 31/92	November 25/92	not received as of December 1, 1992	

7. Intermittently between August 9, 1991 and October 28, 1992, the Society forwarded to the Solicitor the following letters:

- (a) August 9, 1991: The Society advised the Solicitor that his trust comparisons for the months ended April 30, 1991, May 31, 1991 and June 30, 1991 were due on the 25th day following the month end and that it had not been received. The Solicitor was requested to provide this documentation forthwith.

- (b) October 29, 1991: The Society advised the Solicitor that further to its August 9th letter, the Solicitor's trust comparisons for the month ended April 30, 1991, May 31, 1991, June 30, 1991 and now July 31, 1991 had not yet been received. The Solicitor was requested to provide this information forthwith.
- (c) November 29, 1991: The Society advised the Solicitor that further to its October 29th letter, should the Solicitor not provide the trust comparison due from April 30, 1991 to July 31, 1991, within fifteen days, the matter would be referred to the Discipline Committee.
- (d) The filings referred to in paragraphs 7 (a) - (c) were made on January 23, 1992.
- (e) January 27, 1992: The Society confirmed a telephone conversation with the Solicitor in which the Solicitor had advised the Society that the reconciliations for the month of November 30, 1991 and December 31, 1991 would be remitted as soon as they were complete. The Solicitor was reminded of the requirements of the Undertaking and requested to submit this outstanding documentation forthwith. The Solicitor was requested to also provide explanations for several serious overdrawn trust ledger accounts and how several other overdrawn trust ledger accounts had been corrected. The Solicitor was requested to provide copies of the deposit slips evidencing the correction. The Solicitor was further advised that should satisfactory replies and the current trust comparisons not be received forthwith, co-signing controls would be placed on his trust account until all shortages had been identified and corrected. A copy of the Law Society's January 27, 1992 letter is attached as Exhibit "C" to this Agreed Statement of Facts.
- (f) By letter dated May 6, 1992, the Law Society advised the Solicitor that a review of his trust comparisons submitted on March 17, 1992 for the months ended October 31, 1991 to February 29, 1992, disclosed ten overdrawn trust ledger accounts. The Solicitor was requested to provide the Society, forthwith with copies of his deposit slips correcting the same. The Solicitor was further requested to corrected seven stale-dated cheques.
- (g) By letter dated June 11, 1992, the Law Society forwarded to the Solicitor a copy of its May 6th letter. The Solicitor was further advised that his trust comparisons for the months ended March 31, 1992 and April 30, 1992 had not been received. The Solicitor was requested to give this matter his early attention. The Solicitor provided his March and April trust comparisons on June 26, 1992.
- (h) By letter dated July 13, 1992, the Solicitor advised the Law Society that he had corrected the stale dated cheques.
- (i) By letter dated August 6, 1992, the Solicitor advised that the overdrawn trust accounts resulted from his having issued cheques, which were deposited in his general account, without having checked the individual client ledgers. The Solicitor stated that as they had identified the mistakes in each of the overdrawn trust accounts, he would make the deposits and withdrawals on or before August 10, 1992 and advise the Society once the same had been completed

22nd April, 1993

- (j) A Law Society staff employee spoke with the Solicitor by telephone on September 6, 1992. The Solicitor was advised that his letter of August 6, 1992 was not sufficient as an explanation was required for each client's overdrawn trust account. The Solicitor advised that he would review the matter with his bookkeeper and that he would advise the Society by telephone, the next day, as to when he would provide the explanations. The Solicitor did not return the call.
- (k) By letter dated August 25, 1992, the Solicitor filed his annual filing for the 1991 fiscal year end. The Solicitor advised that he had deposited \$6,867.41 into his trust account to cover all overdrawn balances and on the same day he withdrew a sum of \$6,751.28. The Solicitor stated that this total represented the withdrawals of fees and disbursements from client trust accounts after he had prepared those final statement of accounts.
- (l) By letter dated September 27, 1992 the Solicitor advised the Law Society that he had improved his trust account reconciliation procedures and provided an explanation as to the overdrawn trust account of Michelle Cheug. The Solicitor further advised that he had retained a student from Seneca College's accounting co-op program. The student was to commence work by December 15, 1992. The Solicitor further stated that he would write shortly regarding the remainder of the Society's inquiries.
- (m) By letter dated October 28, 1992, the Law Society advised the Solicitor that his trust comparisons submitted on October 20, 1992 contained three outstanding, stale-dated trust cheques as reconciling items. The Solicitor was requested to determine why these cheques had not been cashed, stop payment or reverse them and reinstate the trust obligations in the client's trust ledger for the clients involved. To date, the Solicitor has not replied.

V. DISCIPLINE HISTORY

8. The Solicitor was found guilty of professional misconduct on September 10, 1990 and received a reprimand in committee regarding his failure to produce all his books and records; breach of his written undertaking to the Law Society dated January 8, 1986, breach of his written undertaking to the Law Society dated April 12, 1989, and his failure to file for the fiscal years ended December 31, 1987 and December 31, 1988.

9. The Solicitor was found guilty of professional misconduct and suspended by Convocation on October 27, 1992 for one month commencing November 1, 1992 with respect to his having personally guaranteed a mortgage for a client, his failure to honour an undertaking given to a client, his failure to reply to the Law Society and his failure to honour an undertaking to the Law Society.

DATED at Toronto this 5th day of January, 1993."

RECOMMENDATION AS TO PENALTY

Upon the Solicitor having given the undertaking dated January 5, 1993 which is attached hereto as Exhibit 1, and based upon the Solicitor having given that undertaking, the Committee recommends that the Solicitor be reprimanded in Convocation and pay costs to the Law Society in the amount of \$2,000.00.

REASONS FOR RECOMMENDATION

At the hearing of this matter, the Committee was advised by the parties that the Solicitor had, immediately prior to the hearing, given the undertaking to the Law Society which is marked as Exhibit 1 hereto. That undertaking was marked as an exhibit at the hearing. As well, counsel for the Law Society asked for, and the Solicitor agreed to pay, the Law Society's costs in the amount of \$2,000.00. It was further agreed by the Solicitor and counsel for the Law Society that a reprimand was appropriate. The only area of disagreement was whether that reprimand should be in Committee or in Convocation.

The Solicitor advised the Committee that he has been offered, and has accepted, a job as managing director and director of product development of a large computer company in Hong Kong. He expects to take up his new responsibilities by the end of January, 1993, and will spend 10 months of every year in Hong Kong until 1997, when Hong Kong reverts to China. He therefore advised the Committee that he intends to largely withdraw from the active practice of law in Ontario, in practical terms if not formally, until that time.

That being said, the Solicitor intends to maintain his law office in Ontario and to hire a lawyer to come in one half day per week to administer his (the Solicitor's) practice. As well, a Law Clerk will work in the office on a part-time basis, and his accountant will remain full-time.

The Solicitor advised us that his office will not take on any new clients until his return to active practice, nor will it take on any new business from existing clients. The business which is presently in the office is limited to three transactions which are expected to occur in 1993: (a) a real estate purchase by the Solicitor's nephew; (b) the purchase of a house by one of the Solicitor's staff members; and (c) an uncontested divorce which is presently awaiting judgment. The real estate transactions are expected to be completed within forty days.

The Committee is of the view that the Solicitor's problems are practice management in nature. While he intends to curtail his law practice in Ontario, he also intends to maintain a staff for the practice and exercise a supervisory function in absentia. Accordingly, the Committee considered that the undertaking which is attached hereto is important. Counsel for the Law Society advised the Committee that the Practice Review portions of the undertaking could be fulfilled even with the Solicitor away. A Practice Reviewer can, and we hope will, attend at the Solicitor's office in the ordinary course, meet with the Solicitor and/or the lawyer he hires and the staff in charge of the office, and review all administrative matters taking place therein.

As to whether the reprimand should be in Committee or Convocation, the Solicitor argued that it would be a hardship to him financially and physically to have to return from Hong Kong for a reprimand in Convocation. No evidence was led or representations made about what those physical hardships might be.

The Committee regards the matters at issue here to be serious. The Solicitor has already been disciplined once for this very type of problem, and indeed the professional misconduct here arises out of the last discipline and a breach of the undertaking which he gave in that connection. After careful consideration, the Committee accepts the submissions of counsel for the Law Society and recommends that the Solicitor be reprimanded in Convocation.

Arthur Chung was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 29th day of January, 1993

"N. Finkelstein"
Neil Finkelstein
Chair

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Report of the Discipline Committee be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Convocation and pay the costs of \$2,000, be adopted.

Questions were taken from the bench.

There were no submissions and counsel, the solicitor, the reporter and the public withdrew.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's wish that a more detailed undertaking be prepared covering issues raised in Convocation that:-

- (1) that the sentence in paragraph 2 end after the words "two years" and deleting the words "upon my recommencement of practice;"
- (2) that the Practice Review Programme be completed prior to resuming full practice;
- (3) confirm undertaking to re-assign active files within 60 days;
- (4) give notice to Law Society of intention to resume practice; and
- (5) give undertaking not to take on any new clients or take on work from existing clients.

There were submissions by the solicitor in response to the matters raised by Convocation.

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

It was moved by Mr. MacKinnon, but failed for want of a seconder that in the event Convocation requires the solicitor not to take on new clients or new business that the matter be sent back to the Committee.

It was moved by Mr. Ruby, seconded by Mr. Lamek that the matter be remitted to a committee to make a recommendation as to penalty based on all the relevant factors.

Carried

22nd April, 1993

It was moved by Mr. Somerville, seconded by Mr. Bragagnolo that a motion be made to rescind the previous decision to adopt the Report.

Not Put

It was moved by Ms. Palmer that the solicitor be suspended for two months, submit monthly trust listings and reconciliations for 2 years and complete the Practice Review Programme before resuming practice.

This motion was ruled out of order because Convocation had already come to a decision to refer the matter back to a committee.

The motion to rescind the adoption of the report was adopted.

Counsel, the solicitor, the reporter and the public were recalled and informed of the decision to rescind the adoption of the Report so that the matter would be referred to a new committee to commence de novo.

Mr. Strosberg did not participate in the debate nor did he vote.

Counsel and the solicitor retired.

.....

The Treasurer withdrew from Convocation as one of the ineligible Benchers listed in the following Discipline Report. Mr. Howie took the Chair as Acting Treasurer.

.....

Re: RODERICK GRANT MACGREGOR, North York

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Ms. Peters withdrew.

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

Mr. Strosberg asked that an amendment be made to paragraphs 10, 11, 12, 19 and 25 of the Report to remove the names of legally aided persons and replace the names with initials for the purposes of confidentiality.

Convocation had before it the Report as amended of the Discipline Committee dated 29th January, 1993 together with the Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th March, 1993 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd April, 1993 (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:

22nd April, 1993

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Neil Finkelstein, Chair
Carole Curtis
Netty Graham

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

Christina Budweth
for the Society

RODERICK GRANT MACGREGOR
of the City
of North York
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 5, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 16, 1992, Complaint D111/92 was issued against Roderick Grant MacGregor alleging that he was guilty of professional misconduct.

The matter was heard in public on January 5, 1993 before this Committee composed of Neil Finkelstein, Chair, Carole Curtis and Netty Graham. The Solicitor attended the hearing and represented himself. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

2. a) He engaged in the practice of law during the period November 23, 1990 to December 19, 1990 when his right to do so was suspended for his failure to pay his errors and omissions insurance premiums;
- b) He engaged in the practice of law during the period March 28, 1991 to April 30, 1991 when his right to do so was suspended for his failure to pay annual fees.
- c) He engaged in the practice of law during the period May 24, 1991 to July 22, 1991 when his right to do so was suspended for his failure to pay his errors and omissions insurance premiums.

22nd April, 1993

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 D111/92 and is prepared to proceed with the hearing of this matter on January 5 and 6, 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 Complaint D111/92 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 5, 1979. He practices as a sole practitioner.

Practising while under suspension from
November 23, 1990 to December 19, 1990

5. Notices of the Solicitor's obligation to pay the Society's Errors and Omissions Insurance Levy were forwarded to the Solicitor on June 8, 1990, July 19, 1990 and August 16, 1990. All of the Notices contained the following statement:

Pursuant to section 36 of The Law Society Act, if a member fails to pay any fee or levy, payable by that member to the Society, within four months after the date on which payment is due, Convocation may by order, suspend such member's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

6. By registered letter, dated November 26, 1990, The Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended by Convocation pursuant to section 36 of The Law Society Act as a result of his non-payment of his Errors and Omissions levy. The Solicitor was advised that he was suspended from November 23, 1990 for one year and from year to year thereafter or until an application for exemption had been approved or the necessary levy had been paid.

7. Paragraphs 8 to 12, detail instances of the Solicitor practising while under suspension between November 23, 1990 to December 19, 1990. On December 19, 1990 the Solicitor paid his Errors and Omissions levy in full and was reinstated to the practice of law.

8. The Solicitor's trust bank account statement from the Royal Bank of Canada dated November 30, 1990 and copies of cashed trust cheques evidence the following transactions:

22nd April, 1993

DATE	DEPOSIT/ WITHDRAWAL	AMOUNT	CHEQUE TO
November 23/90	Withdrawal	\$ 800.00	R. MacGregor
November 27/90	Withdrawal	1,700.00	Hermina Gonsalves

9. Shown by the Solicitor's trust bank account statement from the Royal Bank of Canada dated December 31, 1990 and a copy of a deposit slip evidence the following transaction:

DATE	DEPOSIT/ WITHDRAWAL	AMOUNT	CHEQUE TO
December 6/90	Deposit	\$271.00	

10. Stated in the Solicitor's account to the Legal Aid Plan, dated December 10, 1990, regarding J. P. Lawrence, Certificate 46-611053, was the following:

Dec. 20/90	Block Fee for all Services rendered incl. Attendance at "204" Court, 80 The East Mall for Trial. Possession over Charge withdrawn. Guilty plea to theft fine imposed 9:30 am-3:00 pm	\$736.00
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11. Stated in the Solicitor's account to the Legal Aid Plan, dated December 11, 1990, regarding R. Moussai, Certificate 46-786828, was the following:

Dec. 11/90	Block Fee for all Services rendered incl. preparation & attendance this day at Scarborough Provincial Court for trial - all charges withdrawn	\$417.00
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12. Stated in the Solicitor's account to the Legal Aid Plan, dated December 12, 1990, regarding D.M. Harney, Certificate 46-581698, was the following:

Dec 12/90	Block Fee for all Services rendered incl. preparation and attendance this day at 40A, 311 Jarvis for trial. All charges dismissed	\$417.00
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13. The Solicitor admitted to Anita M. McCann, an Examiner with the Society's Audit Department, during her examination of his books and records in February, 1992 that he knowingly practised while under suspension during the period November 23, 1990 to December 19, 1990.

Practising while under suspension from
March 28, 1991 to April 30, 1991

22nd April, 1993

14. Notices of the Solicitor's obligation to pay the Society's Errors and Omissions Insurance Levy were forwarded to the Solicitor on August 24, 1990, November 16, 1990 and January 19, 1991. All of the Notices contained the following statement:

Pursuant to section 36 of The Law Society Act, if a member fails to pay any fee or levy, payable by that member to the Society, within four months after the date on which payment is due, Convocation may be order, suspend such member's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

15. By registered letter, dated April 2, 1991, The Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended by Convocation pursuant to section 36 of The Law Society Act as a result of his non-payment of his Errors and Omissions levy. The Solicitor was advised that he was suspended from March 28, 1991 for one year and from year to year thereafter or until an application for exemption had been approved or the necessary levy had been paid.

16. Paragraphs 17 to 19, detail instances of the Solicitor practising while under suspension between March 28, 1991 to April 30, 1991. On April 30, 1991 the Solicitor paid his Errors and Omissions levy in full and was reinstated to the practice of law.

17. The Solicitor's appointment book from March 28, 1991 to April 30, 1991, a copy of which is attached as Exhibit "A" to this Agreed Statement of Facts, shows numerous appointments and hearings the Solicitor attended with or on behalf of clients during that period.

18. Shown by the Solicitor's trust bank account statement from the Royal Bank of Canada dated April 30, 1991 and copies of cashed trust cheques evidence the following transactions:

DATE	DEPOSIT/ WITHDRAWAL	AMOUNT	CHEQUE TO
April 4/91	Withdrawal	\$11,500.00	Anne Raynor
April 5/91	Withdrawal	4,500.00	R. MacGregor re: Raynor & TTC et. al Settlement -fees & disb.
April 15/91	Withdrawal	750.00	R. MacGregor re: Byrne Settlement Fees

19. The Solicitor's account to the Legal Aid Plan, dated April 10, 1991, regarding Nigel Ramoutar, Certificate 46-641787, stated:

22nd April, 1993

April 28/91	Further Review of Crown Brief	\$67.00
April 8/91	Review of Crown Brief and Preparation for Trial	201.00
April 9/91	Attendance at YOA Court Scarborough to Trial; Following extensive discussions with Crown, Police, Co-Counsel, & Client, Client pleaded guilty to assault, remaining charges withdrawn 1 yr. Probation & 50 hrs c.o delivered by Judge Bonard 9:30 am - 3:45 pm 1 day	500.00

20. The Solicitor admitted to Anita M. McCann, an Examiner with the Society's Audit Department, during her examination of his books and records during the month of February, 1992, that he knowingly practised while under suspension during the period March 28, 1991 to April 30, 1991.

Practising while under suspension from
May 24, 1991 to July 22, 1991

21. Notices of the Solicitor's obligation to pay the Society's Errors and Omissions Insurance Levy were forwarded to the Solicitor on November 30, 1990, February 14, 1991, April 18, 1991, and May 6, 1991. All of the Notices contained the following statement:

Pursuant to section 36 of The Law Society Act, if a member fails to pay any fee or levy, payable by that member to the Society, within four months after the date on which payment is due, Convocation may be order, suspend such member's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

22. By registered letter, dated May 27, 1991, The Law Society advised the Solicitor that his rights and privileges as a member of the Society had been suspended by Convocation pursuant to section 36 of The Law Society Act, as a result of his non-payment of his Errors and Omissions levy. The Solicitor was advised that he was suspended from May 24, 1991 for one year and from year to year thereafter or until an application for exemption had been approved or the necessary levy had been paid.

23. Paragraphs 24 to 30, detail instances of the Solicitor practising while under suspension between May 24, 1991 and July 22, 1991. On July 22, 1991 the Solicitor paid his Errors and Omissions levy in full and was reinstated to the practice of law.

24. The Solicitor's appointment book from May 24, 1991 to July 22, 1991, a copy of which is attached as Exhibit "B" to this Agreed Statement of Facts, shows numerous appointments and hearings the Solicitor attended with or on behalf of clients during that period.

25. Stated in the Solicitor's account to the Legal Aid Plan, dated June 19, 1991, regarding Dennis McAnuff, Certificate 31-1777555, was the following:

22nd April, 1993

June 11/91	Preparation for sentencing 1.5 hrs.	\$100.50
June 12/91	Attendance at Ontario Court General Division, Brampton, for sentencing; following submissions, sentence suspended and accused placed on probation for three years 9:30AM-12:15PM 1/2 day	208.50
	Travel time 1.5 hrs.	64.50

26. Stated in the Solicitor's account to Glen and Judy Dickout, dated June 27, 1991, regarding DaSilva v. Dickout, Landlord claim for arrears of rent: \$17,220, was the following:

...attendance at Ontario Court General Division May 28/91 on your behalf, at which time landlord's claim dismissed by Judge Crossland; Further attendance at Ontario Court General Division before Judge Kane June 26/91 to speak to matter.

27. A Notice of Application was filed by the Solicitor on July 8, 1991 on behalf of Glen Dickout and Judy Dickout at the Ontario Court (General Division). The backpage of the Notice of Application indicates the Solicitor as Solicitor of record. The Application was brought under section 113 of The Landlord and Tenant Act with respect to a tenancy agreement concerning the residential premises described as 40 Newforest Square, Scarborough, Ontario M1V 2Z8.

28. On July 8, 1991, the Solicitor commissioned the Affidavit of Glen Dickout.

29. Shown by the Solicitor's trust bank account statement from the Royal Bank of Canada dated June 28, 1991 and copies of cashed trust cheques and deposits evidence the following transactions:

DATE	DEPOSIT/ WITHDRAWAL	AMOUNT	CHEQUE TO
June 21/91	Deposit	\$ 7,575.00	
June 21/91	Withdrawal	1,000.00	R. MacGregor
June 26/91	Deposit	925.00	
June 26/91	Deposit	1,000.00	
June 26/91	Withdrawal	750.00	R. MacGregor
June 28/91	Deposit	17,000.00	
June 28/91	Withdrawal	2,000.00	R. MacGregor

30. The Solicitor's trust bank account statement from the Royal Bank of Canada dated July 31, 1991 and copies of cashed trust cheques evidence the following transactions:

22nd April, 1993

DATE	DEPOSIT/ WITHDRAWAL	AMOUNT	CHEQUE TO
July 3/91	withdrawal	\$ 6,575.00	Mark Choo-Sun
July 5/91	withdrawal	2,000.00	Judy Dickout
July 9/91	withdrawal	25.00	Treasurer of Ontario
July 10/91	withdrawal	75.00	Treasurer of Ontario

31. By way of explanation for this particular instance of practising while under suspension, the Solicitor advised Ms. McCann that he does not pick up registered mail and that he did not learn of his suspension until he appeared at the Ontario Court (General Division) on June 26, 1991 to represent his clients Glen and Judy Dickout. Upon being advised of his suspension, the Solicitor indicates that he immediately telephoned the Society and confirmed that in order to be re-instated he was required to pay the Errors and Omissions levy.

32. By letter dated July 22, 1991, delivered to the Society, the Solicitor confirmed his conversation with the Finance Department of the Society, of July 21, 1991, and forwarded his cheque in the amount of \$826.04 in payment of his Errors and Omission levy.

33. The Society does not accept the Solicitor's explanation regarding the notification of suspension, particularly in light of its letters to the Solicitor advising of the impending suspension.

V. DISCIPLINE HISTORY

34. The Solicitor was found guilty of professional misconduct on April 8, 1992 and reprimanded in committee for his failure to reply to the Society and his failure to meet a financial obligation. A copy of the Complaint D99a/91 is attached as Exhibit "C" to this Agreed Statement of Facts.

DATED at Toronto this 22nd day of December, 1992."

FINDING OF PROFESSIONAL MISCONDUCT

Both the Solicitor and counsel for the Law Society agreed that the particulars of items 2(a) and 2(b) of the Complaint have been made out in full and constitute professional misconduct. The Committee agrees.

As to particular 2(c) of the Complaint, the Solicitor agrees that there is professional misconduct for the period June 26, 1991 to July 22, 1991.

As to the period May 24, 1991 to June 26, 1991, he explained in paragraph 31 of the Agreed Statement of Facts that he does not pick up registered mail and therefore did not actually learn of his suspension until June 26, 1991. Accordingly, he argued that this period should be excluded on the basis that he had not received the actual notice of the suspension.

22nd April, 1993

In opposition, counsel for the Law Society pointed out that the Solicitor was well aware of his obligation to pay and the consequences of non-payment i.e. suspension from his previous two experiences outlined in particular 2(a) and 2(b) of the Complaint. The Solicitor agreed that he had this knowledge. Furthermore, Law Society counsel argued that, as indicated at paragraph 21 of the Agreed Statement of Fact, notices of the Solicitor's obligation to pay were forwarded to him on November 30, 1990, February 14, 1991, April 18, 1991, and May 16, 1991. All of the notices contain the following statement:

'Pursuant to s. 36 of the Law Society Act, if a member fails to pay any fee or levy, payable by that member to the Society, within four months after the date on which payment is due, Convocation may by order, suspend such member's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances'.

The Solicitor admits to having received those notices.

The Solicitor further acknowledges that the Law Society sends out bills and registered letters regularly that he knew that, and he accepted responsibility for knowing his own status.

As well, the Solicitor was aware from the events in particulars 2(a) and (b) of the consequences of failing to meet his obligations and responding to fee notices. Finally, the Solicitor accepted that he cannot avoid his obligations by not picking up his registered mail.

The Committee accepts submissions of counsel for the Law Society that the Solicitor knew he was under suspension from the period May 24, 1991 to July 22, 1991. In the alternative, he was reckless and wilfully blind to his suspension given the background and circumstances detailed above, and in particular the notices he had received. That is sufficient to fix him with actual notice: R. v. Naqlik (1991), 65 C.C.C. (3d) 272 at 290 (Ont. C.A.).

The Committee therefore finds professional misconduct to be made out completely with respect to each of particulars 2(a), 2(b) and 2(c) of the Complaint. If the Committee is wrong as to the time period in particular 2(c), there was clearly actual notice of the suspension from June 26, 1991 to July 22, 1991, and professional misconduct is made out for that period.

RECOMMENDATION AS TO PENALTY

The Solicitor argued that he was disciplined in April, 1992, and that these matters should have been dealt with at that time. He said it would be unfair to impose a harsh penalty (i.e. suspension) now. As to deterrence, he submitted that the results of the disciplinary action which he suffered in April, 1992 have taught him a serious lesson which he has taken to heart. He therefore asks that he be reprimanded in Convocation.

In opposition, counsel for the Law Society recommended a disciplinary suspension for a period of time equal to that during which the Solicitor practiced while under administrative suspension, i.e. four months. She argued that it is important to send a message to the profession that practicing while under suspension, no matter what the reason for the suspension, will not be tolerated.

The Committee regards the professional misconduct here to be serious.

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First, a member of the Bar must know that he or she is not permitted to practice while under suspension. By doing so, a member breaches his obligation to the profession and, equally seriously in a case like this where the insurance levies were not paid, to the public.

Second, the Solicitor did not practice while under suspension once, or even twice, but during three successive periods in an eight month block of time. This raises questions about the Solicitor's governability.

The Committee therefore recommends a suspension for five months for the following reasons.

REASONS FOR RECOMMENDATION

The Solicitor practiced while under administrative suspension for four months. He knew he was not permitted to do that, but he was willing to take the risk that he might not be caught. He now seeks a lesser penalty than he would have faced had he complied with his obligations in the first place. To acquiesce to that would be to reward the Solicitor. It would be an inducement to others to practice while suspended in the expectation that, if caught, they would merely be reprimanded.

It is the Committee's view that the Solicitor should not be put in a better position by the disposition of this case than he would have been in had he complied with his obligations. Having said that, a four month suspension would simply put him in the same position as he would have been in had he complied with his obligations. A Solicitor who is prepared to flout the Law Society three times in the fashion that this Solicitor has done should not be put in the same position as a person who complied with his obligations and did not practice for the four months.

For the foregoing reasons, the Committee recommends that the Solicitor be suspended for the four months during which he practiced while under suspension, plus an additional month as both a specific and general deterrent, for a total of five months.

Roderick Grant MacGregor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 5th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 29th day of January, 1993

"N. Finkelstein"
Neil Finkelstein
Chair

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Report as amended be adopted.

There were no submissions and the Report as amended was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 5 months, be adopted.

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There were submissions by the solicitor that the recommendation was excessive and harsh and that there should be a lesser penalty such as a reprimand in Convocation or a 1 month suspension.

Counsel for the Society urged Convocation to adopt the recommendation of the Committee.

There were questions from the bench.

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

The motion as to penalty for a 5 month suspension carried on a vote of 10-9.

It was moved by Mr. McKinnon, seconded by Mr. Brennan that the solicitor be suspended for 3 months.

Not Put

It was moved by Mr. Bragagnolo, seconded by Mr. Hickey that the solicitor be suspended for 2 months.

Not Put

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

The solicitor requested that the suspension take effect at the end of May.

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

It was moved by Mr. Strosberg, seconded by Mr. Ruby that the suspension commence on June 1st.

Withdrawn

It was moved by Mr. McKinnon, seconded by Ms. Weaver that the suspension commence on May 10th.

Lost

It was moved by Mr. Copeland, seconded by Mr. Ruby that the suspension take effect on May 30th.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of the commencement date of the suspension.

Counsel and solicitor retired.

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CONVOCATION ROSE AT 12 NOON

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Confirmed in Convocation this day of 1993.

Treasurer